Widows in the Court of Exchequer:

Allowed Power and Legal Redress in England, 1620-1670

Being a thesis submitted for the degree of

Doctor of Philosophy

The University of Hull

by

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June 2022

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List of Abbreviations

Litigants and Witnesses

Def – Defendant

Pla – Plaintiff

Dep/s – Deposition/s

Repositories

TNA – The National Archives

Regional Groupings

Yorks., NE & Cumb. – Yorkshire, the Northeast, and Cumbria

NW & West Mid. – The Northwest and West Midlands

East Mid. – East Midlands

East – East England

SE – Southeast

South Mid. – South Midlands

SW – Southwest

Acknowledgements

The completion of this PhD is a culmination of my time at the University of Hull. The past eleven years have introduced me to a wealth of experiences and people, and I would like to thank the History Department at Hull for their support since I started as an Undergraduate in 2011.

Thank you to Dr Rachel Alsop, Dr Suzanne Clisby, and everyone who was part of the GEMMA programme at Hull and CEU. Special thanks to Ana Belén Amil, Lindsay Ullrich and Jo Wood for their friendship, company, and great humour – Budapest will always feel like a second home.

Very special thanks to Laura Burkinshaw and Vicky Taylor for the hours of conversation, laughter, and downright silliness – it's always a pure joy, and I look forward to many more times together.

Huge thanks to Adrija Dey, my wonderful whiskey sister, whose generosity never wavers and whose energy knows no bounds.

Special thanks to Maureen Galbraith, undoubtedly the best person in the world to work with. She has been so kind and so understanding, I thank her for her constant support. My thanks also to the trustees of the Economic History Society for giving me the opportunity to work with such a wonderful group of people.

Eternal thanks to Hull Women's Aid, for the constant reminder of the goodness of people and hope for the future.

Thanks to Dr Amanda Bevan at The National Archives in London – it was thanks to her that I was drawn to the Court of Exchequer. Her guidance and knowledge have been hugely helpful.

Many thanks to my supervisors for their support throughout this process: Dr Briony McDonagh for her expertise and advice; and Professor Elizabeth Salter, for her energy and excitement as this project came into being. Special thanks to my first supervisor, Dr Amanda Capern, whose special subject during my Undergraduate degree helped me realise not only an interest but a love of gender history. I cannot thank her enough for her kindness, guidance, and passion over the past nine years. I hope for many more coffee chats in the years ahead.

The final six months of this project have brought many changes and new people into my life, and for all of them I am grateful. Thank you for the time spent and time to come.

To my parents, Anthony Whiteoak and Jacinta Whiteoak – thank you for your love, support, endless generosity, and faith in me at every single turn. I'm incredibly fortunate to have you both and I can never thank you enough.

And finally, to the two who I share everyday with. The first will never really understand why I couldn't sit in the garden all day long or fuss him every minute of the day, but his company and endless excitement have been the most wonderful reminder of the small joys in life. He's also taught me the value of the nap. And to Ed, whose company I have shared for almost thirteen years and will never tire of. I am constantly amazed by your kindness, understanding and commitment in all that you do. Your support from the beginning of our time together has been unwavering. Thank you for being you, for encouraging me to be me, and for always striving for happiness and love above all else.

Abstract

Within the rich and growing historiography of women and the law, the equity side of the Court of Exchequer is long overdue a detailed quantitative and qualitative analysis. In the same way as the Court of Chancery has become an appreciated avenue for female legal redress, so too should the Court of Exchequer. This thesis presents quantitative findings taken from a purpose-built database of 3,968 depositions, to show how the Court was used by men and women over a fifty-year period across England. Combining this with qualitative findings, nineteen cases involving widowed female litigants appearing as plaintiffs and defendants are critically analysed. Using court narratives found in bills of complaint, answers, and depositions, as well as decrees, orders and wills, this thesis examines the expression and practice of women's legal identity in a patriarchal society and considers how their status as widows allowed them to protect, claim and manage what they had been left, despite their only qualification being that they had outlived a husband. These widows were drawn to the law out of necessity or choice and appeared as equals to all in the eyes of equity law. This thesis re-examines widowhood and the freedom of this life stage, arguing that not only was the independence of widowhood a contradiction of patriarchy, but it was an intentional contradiction. The allowed power that widows were given was not their own – it originated from their husband and served a purpose in patriarchal society. To think of widows as free obscures the influence of patriarchy, and yet their independence and proof of female capability were undeniable. This thesis therefore provides a nuanced approach to understandings of both widowhood and patriarchy in early modern England, and in doing so brings the Court of Exchequer to life.

Introduction

This thesis provides the first critical analysis of widows litigating in the equity side of Court of the Exchequer, focusing on the period 1620-1670. As a result of their widowhood, early modern widows held, understood, and negotiated their own legal rights in the Court across the country. Through an analysis of select cases involving widowed litigants, this project makes two significant contributions to the field of women's, gender, and feminist history. The first is a focused exploration of a lesser known early modern equity court, adding to historiography on women and law. The second is a re-examination of widows at law and their realisation of a legal identity. Widows were, in general, freer than other women of different legal status in early modern England. They could own property, write a will, lend, and borrow money, litigate, and were comparatively free of male influence: they were femme sole. Whilst they were not free of social pressure and rhetoric encouraging certain types of behaviour, these ideals held less power than those relating to married and single women. For all three, widows, wives and single women, their lives were dictated by their association with marriage, and therefore men. A married woman was femme covert, her identity subsumed, existing as 'wife of'. A single woman, particularly one who never married, whilst femme sole, remained distinct from a widow because of her perpetual singleness. A widow enjoyed independence because of her graduation from marriage – she was uncovered and gained a legal identity and power that was unique to widowhood.

On the surface, this realisation of a legal voice and social independence appeared to be at odds with patriarchal ideals about early modern women. The only criterion for this acquisition of power was outlasting a husband. This project argues not only that this was an innate contradiction of patriarchy, but an intentional one that gifted widows a legal identity and power at law that was sanctioned – it was an allowed power, and one that served a patriarchal purpose. The freedom of widowhood therefore was not a recognition of female capability or a failing of patriarchal ideals, but rather proof of patriarchy's reach. Historiography often argues that women were oppressed, that they found ways to get around restrictions and inequalities, and that their lives were far different than traditional historical enquiry, mostly conducted by white men, would have

us believe. Endeavours such as these are still necessary, but there is great value in considering those women who were the freest of their sex, and theoretically equal to men in terms of their legal identity. This project contributes to this consideration, arguing that in analysing this freedom we see the arbitrary nature of it and the falseness of its construction in the form of allowed power. Nevertheless, by pursuing cases at law with a recognised legal identity, widows continually disproved part of the foundation of women's oppression, making use of a power that may not have been truly their own, but still placed them as legal equals in a world dominated by male ideals and prescribed social order.

The Court of Exchequer has been chosen for this project because of its equity jurisdiction and its relative absence from discussions on women and the law. As an equity court, the Exchequer offered an alternative to common law courts, with a more flexible approach to legal redress and with a focus on fairness and conscience, rather than strict legal precedent. The lack of significant scholarly attention in comparison with other early modern law courts should not be assumed to be the result of any notable shortcomings of the Court itself, and this thesis clearly demonstrates the value of Exchequer records in women's, gender, and feminist history. A large and unique database of depositions grounds this project, which originated following initial explorations of Exchequer records at The National Archives in London. In addition to its value for this project, the database provides a wealth of information for any historian of seventeenth-century equity law, and an entry point for further research on the Court of Exchequer. Throughout the thesis, quantitative and qualitative findings are paired to provide an invaluable insight into the Court of Exchequer. It combines discussions of widow litigant trends across England over a fifty-year period with a case study approach to make best use of the rich court narratives and consider individual relationships with the law.

People and the Law

The interaction between people and the law is complex, varying across time and place. As a system that, in theory at least, codifies and protects judgements of fairness and morality, the law exists and has existed in a variety of expressions, with no two systems being entirely the same. A legal system resides at the centre of an orderly society and is a pre-requisite for governments of democracy or tyranny. Within it rests understandings of

liberty, citizenship, and equality between some, even if not all, and it is a defining marker of collective authority and society.

In twenty-first-century England, there have been some notable legal changes that have altered people's everyday experience and, in many ways, strengthened society's relationship with the law that ought to protect us. Precedents such as the Female Genital Mutilation Act of 2003 and the Domestic Violence, Crime and Victims Act of 2004 have demonstrated an awareness of issues that are so often hidden away behind closed doors. The 2010 Equality Act and the 2013 Marriage (Same-Sex Couples) Act are proof of a gradual shift towards a fairer and more just world, whilst the Data Protection Act of 2018 is testament to a changing world where power lies in places once untapped and newly realised. Whilst law courts, the police and the English justice system are known and recognisable across the country to varying degrees, people's experience of litigation and knowledge of the law varies much more widely. For most people, the possibility of taking a case to court, appearing as a defendant, or being called as a witness is a daunting prospect due to the unfamiliar nature of the courtroom setting. Our interaction with litigation and court spaces is not 'everyday', even though our society is far from lacking in tensions, conflict, and disagreement.

In seventeenth-century England, by contrast, litigation was a common part of everyday life and touched every part of it. The range of jurisdictions available covered local, regional, national, and international concerns. Early modern English society was 'bound together by the law', and it 'played a central role in the ordering of people's material and affective lives'.[1] Experience and regular contact with the law led to popular knowledge and understanding. This was a generally litigious period, with increasing numbers of men and women seeking legal redress, and the use of court records has steadily become a popular resource for historians across several disciplines. However, there remain debates concerning the value of court records and court narratives particularly given their mediated construction, and whilst their worth is largely unquestioned, an air of caution surrounds their use and the way that they should be discussed. Women's and gender historians have been, and indeed continue to be drawn

[1] John Walter, '"Law-Mindedness": Crowds, Courts and Popular Knowledge of the Law in Early Modern England', in Michael Lobban, Joanne Begiato and Adrian Green (eds.) *Law, Lawyers and Litigants in Early Modern England: Essays in Memory of Christopher W. Brooks* (Cambridge: Cambridge University Press, 2019), p.165

to early modern English courts as a resource that can offer a crucial insight into lives that history may otherwise have no record of. It is within this pursuit that this thesis rests.

Women have not commonly enjoyed the same relationship with the law as men – this is a part of the power of patriarchy. Whilst in twenty-first-century England women share equality according to the written words of law, their experience of the legal system, the police, and institutions in places of authority have some stark differences with the overall male experience. Women are not, of course, the only social grouping to struggle in this way, nor are such struggles the same in every instance. For seventeenth-century women however, they were legally and socially restricted because of their sex, with few calls for or demands for equality. As opposed to bad experiences with the law, early modern women had a limited relationship with the law, depending on which court they appeared in. A woman's relationship with the law in her own right across all jurisdictions was only complete following the death of a husband, and her entry into widowhood. It was an issue of what was allowed rather than what was accessible; what was sanctioned as opposed to what was safe.

This study makes use of the Court of Exchequer to analyse the innate contradictions of patriarchy, as exposed by widowhood, and to consider how widows sought legal redress with the power that their widowhood had granted them. The chosen location of an equity court, a place of a presumed equality of sorts by early modern standards, paired with a consideration of widows, the freest of early modern women, allows for the extent of patriarchal influence to be demonstrated. Patriarchy did not prevent female legal identity but merely sanctioned it, placing prerequisites on its attainment, and trapping it within confines that it still had control over. Whilst patriarchal control was undercut daily with every case at law involving female litigants, these instances largely escaped comment and were not seen as an example of the contradictions of patriarchal ideals. Widows were complicit in maintaining these ideals, but it did not appear to them as a choice – their concerns were security and the ability to live independently, not the mechanisms behind their ultimate inequality.

There are four recurring themes throughout this thesis: widowhood as proof of the contradictions of patriarchy; male influence after death; expressions and realisations of female legal identity; and allowed power. Within and across the four areas are discussions of the family, remarriage, and estate management, all central to

understandings of widowhood in early modern England. This thesis is therefore concerned with the widowed litigant as much as it is with the Court she appeared in, and in many ways the Exchequer is a conduit through which this discussion is had. Approaching the Court in this way helps to populate it and bring it to life, as well as situate it within historiography of women and the law.

Gender and Widowhood in Early Modern England

The link and reciprocal relationship between society and the law informed ideals and gender relations, and whilst neither society nor the law was a simple reflection of the other, they both worked in tandem to influence the English populace. Ideals of femininity could be seen in legal suits, early modern tracts, religious practices and beyond. Prescriptive behaviour concerning widows, at its very core, acknowledged their freedom and identity, even if it also disagreed with it. This freedom was best encapsulated by a widow's ability to litigate as a legal being in her own right. Not only did this give widows the chance to act independently, but it also allowed them access to power and rights that were typically reserved for men.

This interaction between society and law is what makes court proceedings so worthy of exploration. A patriarchal society, with class and religious divisions, political tensions and widening borders reaching to lands new and old, its hierarchic order had age, class, marital status, and most importantly gender, at the centre. Philosophical and political debates around the notions of liberty, citizenship, and authority, almost all of which were led by men, largely excluded women, although they were not absent entirely. The tenets of a patriarchal society were inscribed on seventeenth-century gender relations, and understandings of femininity and womanhood stemmed from basic assumptions that placed women as second to men in every respect. There were clear expectations and ideals for early modern women, both written and implied, and they persisted at every life stage across the social spectrum. Whilst there were also expectations of men, those placed on women were fundamentally restrictive and in place to maintain their secondary status.

In this project, gender is more than an analytical tool: it is instead 'a way to get at meanings that are neither literal nor transparent'.[2] Historiography warns against a simplified use of gender, and as gender and feminist history has evolved, so too has our understanding and application of 'gender' within history. As a term used when writing histories, it 'suggests that relations between the sexes are a primary aspect of social organization…that the terms of male and female identities are in large part culturally determined…and that differences between the sexes constitute and are constituted by hierarchal social structures'.[3] As a concept, and how it will be applied within this project, gender is defined as a language of power, to borrow from Jeanne Boydston.[4] Men held considerably more authority and control in early modern England, and therefore power could be thought of as commonly synonymous with men, or manhood. However, the division was not so clear cut as 'has power' and 'does not have power', nor should womanhood be associated with powerlessness.

Within this approach of gender as a language of power is an understanding that whilst gender in early modern England was shaped by social ideals and the law, lived experience did not neatly map onto ideals. As Merry E. Wiesner-Hanks has noted, ideals and laws were the creations of select elite men who made up a small share of the early modern population: 'Their ideas were the most significant, because they led to the formal laws and institutions that structured societies, but not everyone necessarily agreed with the powerful and prominent'.[5] Nevertheless, ideas around gender and relations between men and women were expressed 'in nearly everything produced by that culture'.[6] The pervasiveness of ideals reached into the law, a product of cultural ideals and male thought. Enshrined in legal doctrine, whether or not these ideals were commonly believed or maintained, they were part of the early modern context. Whilst this period saw some positive attitudes about women being voiced, in general the negative views were louder and were 'now based on new types of authority such as the natural sciences and comparisons of legal systems rather than on the views of Aristotle or the Bible'.[7] This

[2] Joan Wallach Scott, *The Fantasy of Feminist History* (Durham & London: Duke University Press, 2011), pp.4-5
[3] Joan Wallach Scott, *Gender and the Politics of History, 30th Anniversary Edition* (New York: Columbia University Press, 2018), p.25
[4] Jeanne Boydston, 'Gender as a Question of Historical Analysis', in Alexandra Shepard & Gatherine Walker (eds.) *Gender and Change: Agency, Chronology and Periodisation* (Chichester: Wiley-Blackwell, 2009), p.156
[5] Merry E. Wiesner-Hanks, *Gender in History: Global Perspectives* (Chichester: Wiley-Blackwell, 2011), p.84
[6] *Ibid,* p.85
[7] Merry E. Wiesner-Hanks, *Women and Gender in Early Modern Europe* (Cambridge: Cambridge University Press, 2019), p.23

thesis critically considers ideals and fictions on one side and women exercising power and independence in practice on the other. It also reflects on the normality of such occurrences in the Exchequer – whilst such instances were not common, they were not as extraordinary as patriarchal ideals would suggest, and the normality of women's legal identity in practice is even more interesting because of this.

Widowhood did not fit neatly into patriarchal ideals about womanhood and gender relations. All wives who outlived their husbands, regardless of whether they were deemed to be a good wife or behaving according to their sex, were thrust into the dangerous vulnerability of freedom.[8] If such freedom was discouraged, what was it about widowhood that suddenly made such a thing acceptable? Widows were also far from a homogenous group, with a wide variety of experiences not only of widowhood, but of early modern English life. The shared characteristic of widowhood was simply surviving a husband, and so the independence granted by this life stage was dependent on a single factor, regardless of whether that marriage had been short or long, happy, or unhappy, a partnership of experience and business, or a difficult and violent ordeal.

An array of intersecting factors impacted the lives of all seventeenth-century women, with legal status being only one of them. Just as twenty-first-century gender studies has demonstrated the multifaceted nature of inequality, oppression, and discrimination through the concept of intersectionality, so too can the gender historian acknowledge the varying degrees to which early modern women were impacted by a combination of factors, not just gender. A woman's class mattered just as her legal status did, so too did her occupation, her role as a daughter, a wife, and a mother, and even her role as a widow. She was confined by her body, her sexuality, and her fertility. She was subject to feminine ideals of obedience, humility, and chastity. She might be educated, but not too much; she could be used as a bargaining chip between families, 'sold' as a modest woman. There was a legacy to restrictions and ideals, and whilst some were more fictitious than others, they were all in play. The impact that they had would be dependent on personal circumstance. Widows were subject to conduct book ideals in the same way as all other women were. Stereotypes were explored in literature to similar extents, and discussions around sexuality touched on widowed, single, and married women alike. Ideals had the power to influence existence, and undoubtedly in many cases it did, legally

[8] Judith M. Bennett, 'Feminism and History', *Gender and History*, Vol. 1 No. 3 (1989), p.263

and socially, but it was the ideals themselves, partnered with legal precedents, which oppressed early modern women.

Nevertheless, all widows, regardless of other factors, were granted legal rights and an identity of their own. Ideals about womanhood were superseded by entering the legal status of widowhood. However, they were not simply 'honorary men'; their position was much more nuanced than that. Their experience was specific as far as the fact that they were women outside of coverture beyond certain feminine ideals and living as independent legal beings with similar, if not identical, freedoms as men. They were, of course, still women. If they chose to remarry, they would have reverted to their previous state. In this sense, their experience was temporal, and potentially transitional. Their freedom was intrinsically linked to their gendered state of widowhood, but it was not the eventual recognition of the capabilities of women. It was also a freedom relative to the experience of other early modern women, and by no means freedom as it is understood today.

Through the thesis I will be articulating a Foucauldian notion of allowed power. Foucault made the distinction between 'power over' and the 'power to do'.[9] When I use the construct of allowed power, it rests on the understanding that power and control are ultimately the acceptance, usually widespread, of the ability to dictate what happens, when and by whom. Power is only substantiated and given real-life value by the acceptance of it, even if this is despised, questioned or unfair. Power, in its very essence, is a social construct pertaining to action and hierarchy, and all power, no matter how great or seemingly insignificant, stems from a negotiation of who can do what, and what people (in terms of society, law and governance) allow. This philosophical reading of power is based on its seemingly unknowable construction and implicit control over the small and grand aspects of day-to-day life. Subsequently, using this framework, all power is allowed and sanctioned, men's as well as women's. It is not, therefore, an inherently gendered notion, but it can and does have a gendered impact in this project, in that typically power was not allowed or given to the majority of women: they were explicitly denied this. Any power an unmarried woman may have had a claim to became the right and power of her husband upon marriage. Those who did have power, whether they had

[9] Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings 1972-1977* (London: Harvester Press, 1980)

once been femme covert or not, resided in a different place within the law than married women, as well as in society. Power could be associated with specific places where it was constructed or maintained, and it was currency across society.[10] It was not transactional, but an ongoing relationship 'shaped by economic and social structures and cultures…[and] experienced through individuals'.[11]

The Court of Exchequer

The most thorough exploration of the Court of Exchequer to date has been conducted by W. H. Bryson, whose research has been crucial to this project's development.[12] His collective works provide an analysis of the Court in practice from its inception in the early sixteenth century until its abolition in 1841. Henry Horwitz has also contributed to historiography on the equity side of the Exchequer, in addition to his work on the Court of Chancery.[13] Scholars such as Margaret Hunt have also made notable use of Exchequer records in their research, commenting on marital rights and wives as litigants in the Court.[14] Studies that make use of Chancery, Star Chamber and Court of Requests records continue to diversify our understanding of women and the law, so that even whilst the Exchequer records have a great deal to offer, they remain a largely untapped resource.[15]

The majority of existing scholarship on the Court of Exchequer concerns its primary role in matters of government finance and revenue prior to the development of its equity jurisdiction. Separated into an upper and lower court, the medieval Exchequer

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[10] Amanda Flather, *Gender and Space in Early Modern England* (Woodbridge: Boydell Press, 2011), p.59
[11] P. Thompson, 'Women in Fishing: The Roots of Power Between the Sexes', *Comparative Studies in Society and History*, Vol. 27 (1985), p.16
[12] Most notably, W. H. Bryson, *The Equity Side of the Exchequer* (Cambridge: Cambridge University Press, 1975); and W. H. Bryson, *Cases Concerning Equity and the Courts of Equity* (London: Selden Society, 2001)
[13] See, Henry Horwitz, 'Chancery's "Younger Sister": the Court of Exchequer and its Equity Jurisdiction, 1649-1841', *Historical Research,* Vol. 72, No. 178 (1999), pp.160-182; and Henry Horwitz, *Exchequer Equity Records and Proceedings 1649-1841* (Surrey: Cromwell Press, 2001)
[14] See Margaret R. Hunt, 'Wives and marital "rights" in the Court of Exchequer in the early eighteenth century', in Paul Griffiths and Mark S. R. Jenner (eds.) *Londinopolis: essays in the cultural and social history of early modern London* (Manchester: Manchester University Press, 2000), pp.107-129
[15] For Chancery records, see: Cordelia Beattie, 'Your Oratrice: Women's Petitions to the Late Medieval Court of Chancery', in Bronach Kane and Fiona Williamson (eds.) *Women, Agency and the Law, 1300-1700* (London: Taylor and Francis, 2015), pp.17-30; Amanda Capern, 'Emotions, Gender Expectations, and the Social Role of Chancery, 1550-1650' in Susan Broomhall (ed.) *Authority, Gender and Emotions in Late Medieval and Early Modern England* (Palgrave Macmillan, 2015), pp.187-209 and Charlotte Garside, *Women in Chancery: An Analysis of Chancery as a Court of Redress for Women in Late Seventeenth Century England*. PhD Thesis (University of Hull, 2019). For Star Chamber records, see: Deborah Youngs, '"A Besy Woman … and Full of Lawe": Female Litigants in Early Tudor Star Chamber', *Journal of British Studies,* Vol. 58, No. 4 (2019), pp.735-750. For Requests records, see: Tim Stretton, 'Women, custom and equity in the court of requests', in Jenny Kermode and Garthine Walker (eds.) *Women, Crime and the Courts in Early Modern England* (London: UCL Press, 1994), pp.170-189

was responsible for receiving and accounting for a large proportion of royal revenues and some of the most widely used government sources, such as pipe rolls. By the twelfth century 'the exchequer process was coming into being'.[16] Following the disruption of the 1215-1217 civil war, the Exchequer was revived, taking over a decade to regain its functionality during which time efforts were made 'to tackle the exchequer's own internal bureaucracy'. [17] Ordinances in 1319 and 1323-6 confirmed the role of the Exchequer 'as the central and controlling agency of national finance, making it the sole receipt for all revenue and the channel for all expenditure'.[18] By the sixteenth century, the Courts of Augmentations and First Fruits and Tenths had been merged with the Exchequer. Despite many old-fashioned aspects of the Exchequer, mixed with levels of inefficiency and a complicated structure, it was 'capable of independent initiatives and modifications', and frequently underwent administrative change.[19] G. R. Elton has commented on the interdepartmental communication between the upper and lower Exchequer, the largest department during Elizabeth I's reign, as 'the most complete example of a civil service structure' in this period.[20]

The equity side of the Exchequer originated in the sixteenth century within the king's remembrancer's office, drawing on the doctrines and procedures of other equity courts, most notably Chancery. The personnel that made up the equity side of the Court consisted of clerical officers, headed by the king's remembrancer, and judicial officers. The king's remembrancer's office dealt with all Exchequer bills, and whilst Exchequer equity records were technically under his control, 'by the seventeenth century he no longer had actual control of them; the chief usher had the keys to the record rooms, and the sworn and side clerks had managed to establish an exclusive right to make searches and copies of them'.[21] The chief judicial officer was the treasurer, or lord high treasurer

[16] Warren Hollister, 'The Origins of the English Treasury', in *The English Historical Review*, Vol. 93, No. 367 (1978), p.273
[17] Nick Barrett, 'Finance on a Shoestring: The Exchequer in the Thirteenth Century', in Adrian Jobson (ed.) *English Government in the Thirteenth Century* (Woodbridge: Boydell & Brewer, 2004), p.73; and Nick Barrett, 'Another Fine Mess: Evidence for the Resumption of Exchequer Authority in the Minority of Henry III', in Louise J. Wilkinson and David Crook (eds.) *The Growth of Royal Government Under Henry III* (Woodbridge: Boydell Press, 2015), p.149; p.76
[18] G. L. Harriss, 'Budgeting at the Medieval Exchequer', in C. Given-Wilson, A. Kettle and L. Scales (eds.) *War, Government and Aristocracy in the British Isles, c.1150-1500: Essays in Honour of Michael Prestwich* (Woodbridge: Boydell & Brewer, 2012), p.181
[19] J. D. Alsop, 'The Structure of Early Tudor Finance, c.1509-1558', in C. Coleman & D. Starkey (eds.) *Revolution Reassessed: revisions in the history of Tudor government and administration* (Oxford: Clarendon Press, 1986), pp.141-142
[20] G. R. Elton, 'The Elizabethan Exchequer: War in the Receipt', in Stanley Thomas Bindoff (ed.) *Elizabethan Government and Society: essays presented to Sir John Neale* (London: Athlone Press, 1961), pp.213-214
[21] Bryson. *The Equity Side of the Exchequer*, p.66

of England, who held two separate roles that were recognised as distinct by the seventeenth century. Between 1660 and 1702 the treasury, which was co-extensive with the Exchequer, was transformed to the point that the treasurer's financial and political duties outweighed his judicial responsibilities. The chancellor of the Exchequer was the second judicial officer. The nature of this role changed quite considerably over the seventeenth century, and it came to be 'held by politicians of lesser importance who were concerned exclusively with financial administration'.[22] As with the treasurer, after 1660 the chancellor's practical role in the equity court declined. The barons of the Exchequer held the most important roles in practice, made up of a chief baron and three puisne barons. They settled revenue and common law cases, as well as hearing equity suits. Examiners were given the duty of taking depositions in Westminster, and a collection of clerks operated below the barons as private secretaries. A number of sworn clerks acted as attorneys for litigants in the Court, whilst side clerks had the responsibility 'to issue all writs, to prosecute or defend the suits of their clients, to enter, file, copy, and enroll [sic] all matters connected therewith, to attend the court at the hearing and read the documents and depositions, to attend the master on references, to draw up decrees and orders, to procure all necessary signatures'.[23]

In comparison with Chancery, the Exchequer had shorter deadlines for litigants to complete various pleading stages, but it was more expensive for litigants, partly due to the greater duration of cases.[24] Broadly, the relationship between the two courts 'was essentially one of comity, not competition'.[25] The Court of Exchequer was primarily concerned with matters that were of interest to the monarch, thus distinguishing it from other law courts of the period. This remit influenced the type of cases heard, and whilst a wide variety of cases were still brought to the Court, plaintiffs were predominantly appearing in their role as debtors to the Crown. Cases are therefore considered within this context, with an acknowledgement that Exchequer redress was not equally accessible. Once established, the substantive doctrines developed alongside Chancery, its only equity court rival following the Civil War. As Bryson notes, 'the existence of an alternative high court of equity in the exchequer had a significant effect upon the

[22] Bryson, *The Equity Side of the Exchequer*, p.43
[23] *Ibid,* p.77
[24] Horwitz. 'Chancery's "Younger Sister"', p.164
[25] *Ibid,* p.182

development of equity and upon chancery itself'.[26] By the early seventeenth century, the court had made 'a clear distinction between cases which [were] being heard in equity and those being heard by common law'.[27] It should be noted that the Exchequer never truly rivalled Chancery in terms of size or significance, even when the latter was experiencing public disfavour. The equity jurisdiction of the Exchequer was only part of its substantial workload, which also involved revenue jurisdiction and common law jurisdiction through the office of pleas. Nevertheless, by the mid- to late-seventeenth century, the Court of Exchequer 'was accepting virtually any sort of case that might be pursued in Chancery'.[28] It has been argued that this expansion of accepted complaints was partly the result of the scarcity of other equity courts.[29] This project is set within a period in which the nature of equity was changing, developing as its own body of law that clearly set the Court apart from common law courts. With this as the backdrop, the Exchequer grew in size and popularity, and by 1649 assumed general jurisdiction 'by means of the fiction that the plaintiff was a debtor to the crown'.[30] It also had the power to decided where equity suits would be heard through a writ of prohibition, should there be conflict with the conciliar or palatine courts. Its equity jurisdiction remained unchallenged until its merger with Chancery in 1841, by which point the equity business of the Exchequer was already in 'a sudden and sharp decline'.[31]

An equity case in the Court of Exchequer began with a bill of complaint in the form of a petition, appealing to the judge to hear the case. This was largely the same as a Chancery equity bill, with the addition of some formalities making it suitable for Exchequer. An address to the judges started the bill (a mixture of a standard formula and flexible opening phrase). This was followed by: the details of the plaintiff; a statement of the Exchequer's jurisdiction; the rights of the plaintiff, which were said to have been interfered with by the defendant; and the reason for the plaintiff invoking the Court's jurisdiction. The bill was signed on the bottom right of the document by the counsel and endorsed by the sworn clerks on the top left with the regnal year, date, and month. The county of origin would be marked in the left margin as well as the bill number for that

[26] Bryson, *The Equity Side of the Exchequer*, p.1
[27] Sybil M. Jack, 'In search of the custom of the exchequer', *Parergon*, Vol. 11, No. 2 (1993), pp.99-100
[28] Judith Milhous and Robert D. Hume, 'Notes and Documents: Eighteenth-century Equity Lawsuits in the Court of Exchequer as a Source for Historical Research', *Historical Research*, Vol. 70, No. 172 (1997), p.231
[29] Horwitz, 'Chancery's "Younger Sister"', p.162
[30] Bryson, *The Equity Side of the Exchequer,* p.33
[31] Horwitz, 'Chancery's "Younger Sister"', p.162

county, along with the last name or initial of the plaintiff's sworn clerk. The sheer number of bills led to the decision for them to be arranged by county in 1587.[32]

Whilst in theory the receipt of the bill of complaint by the Court should have instigated the process of the Exchequer, it was common for the subpoena *ad respondendum* to be issued by a judge's fiat and sent to the defendant before this formality was completed.[33] The subpoena, a writ that requested the appearance of the defendant in Court and their answer to the bill of complaint, was issued by the plaintiff's sworn clerk. Failure to appear would be in contempt of court and could lead to the defendant being declared a rebel. Bills of complaint were responded to by a defendant with answers, which could be taken in court or in the country, and were sworn from 1580 onwards.[34] They normally addressed the plaintiff's points and presented an alternate version of facts. If the bill was believed to be unanswerable due to a legal deficiency, a demurrer would be given. A pleading of exceptions could be used by the plaintiff to claim that the defendant had provided an insufficient answer, at which point the answers would have to be amended. An absence of such issues led to the plaintiff's replication, which was a response to the defendant's answers, and 'any new matter arising from the replication' was addressed by the defendant in the rejoinder.[35] Many were repetitive due to legal formulae, but there was significant detail contained within bill and answer narratives.

On some occasions, a plaintiff or defendant would sign their narrative – rarely would a female litigant do this. Scribe notes and drawings were present in some instances, and the hand in most cases was relatively legible. Evidence was then taken in the form of written depositions, or answers to interrogatories, conducted outside of the courtroom by a baron or his examiner, or appointed people if the witness lived over ten miles outside the radius of London. At the hearing, pleadings and depositions were read to the Court, followed by both counsels arguing the case. A decree was drawn up by the favoured party to be approved by the opposition, with any disputes being settled by the barons or the king's remembrancer. In this project, decrees and orders were not always present for selected cases. Rehearings could be petitioned with new evidence and a

[32] Bryson, *The Equity Side of the Exchequer,* p.106
[33] *Ibid,* p.107
[34] *Ibid,* p.117
[35] *Ibid,* pp.124-125

deposit to the Court. Failure to obey the decree would lead to time in prison until the decree was performed, or contempt purged.[36]

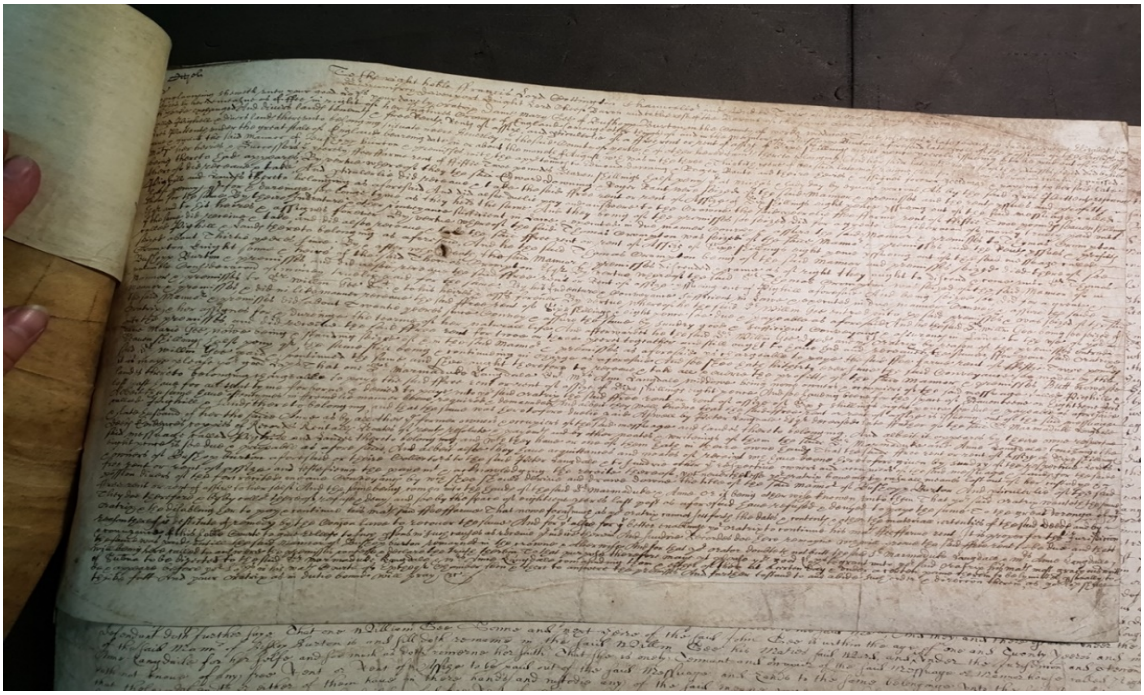

Figure 1 - Example of an Exchequer bill of complaint (TNA, E112/265, Case no.422, bill of complaint, Dame Mary Coe)

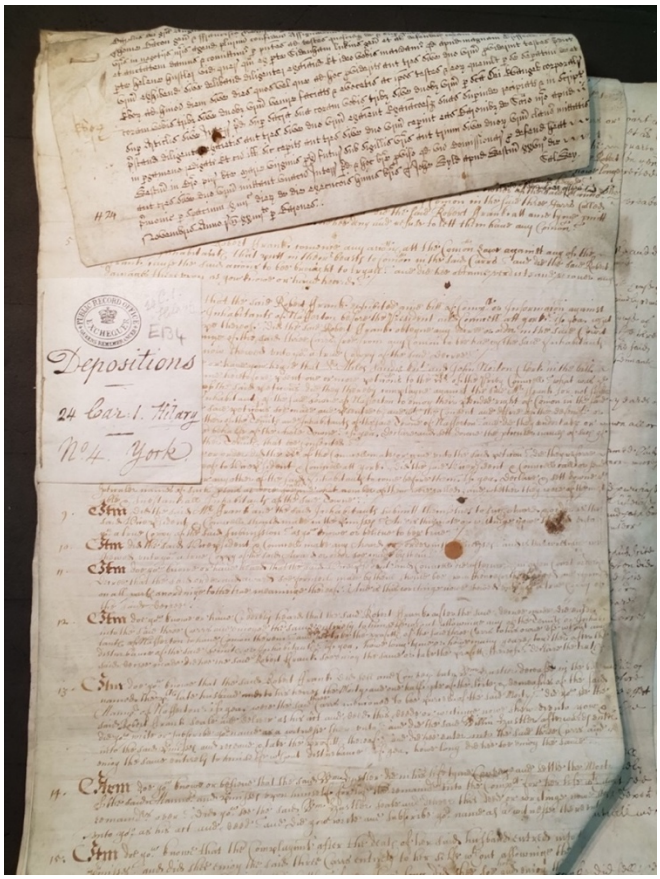

Figure 2 - Example of an Exchequer deposition (TNA, E134/24Chas1/Hil4, Interrogatories taken on behalf of the plaintiff, Helen Hustler)

[36] Bryson, *The Equity Side of the Exchequer,,* p.158

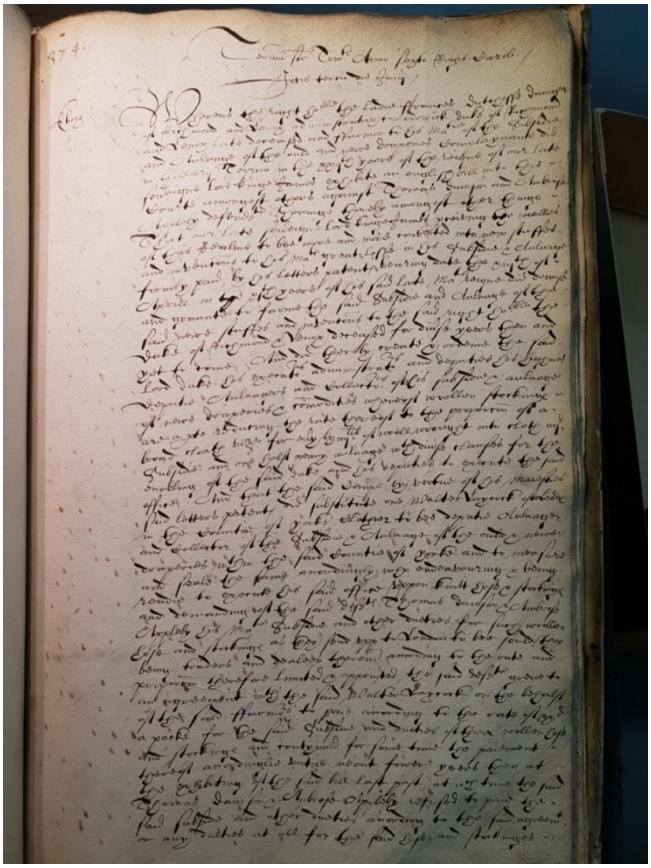

Figure 3 - Example of an Exchequer decree (TNA, E126/3, Frances Duchess of Richmond and Lennox, page 374)

Equity records were housed in buildings on the western side of Westminster Hall until the king's remembrancer's office relocated to the Inner Temple in the seventeenth century. Following this, 'only the current records of the court were kept in the king's remembrancer's office in the Temple; periodically the older ones of these were transferred to the record rooms at Westminster'.[37] The records are surprisingly well-preserved given their precarious location until 1858. They are filed by document class, of which there are seven, and research can therefore require reference to numerous places, sometimes to no avail. Bills and answers mark the first class (E 112), which vary in size and length. The remaining classes are: depositions (E 134); affidavits and 'bille' (E 103 & E 207); exhibits (E 140); special commissions of enquiry (E 178) and reports/certificates (E194); decrees (E 125, E 126 & E 130); and finally orders (E 127, E 128 & E 131). Bill books and appearance books (IND series and E 107) can provide basic access to bills and answers, though the former are often a mixture of English and Latin, and rarely provide information as to the subject of the suit. The Court drew women from across the social

[37] Bryson, *The Equity Side of the Exchequer*, p.82

spectrum, and the range of cases in terms of monetary and social scale reflects this variety. The cases of the Exchequer also included concerns that would not have been brought elsewhere given the remit of the Court, and these cases have an important place in the field of women's, gender, and feminist history. Not only does this thesis add to the growing body of knowledge about women's access to legal redress more broadly, it also contributes to more focused studies such as elite women's management of property and land.[38]

Thesis Structure

This thesis asks three research questions: what can Exchequer cases tell us about widows seeking legal redress; how does the concept of allowed power impact our understanding of widows at law; and what aspects of patriarchal ideals were called into question through the litigation of widows. The second chapter discusses the wealth of historiography on women in early modern England, situating the thesis within women's, gender, and feminist history. This chapter also introduces some crucial starting points for discussions around power and the contradictions of patriarchy. The third chapter introduces the database created for this thesis. It presents, explains, and justifies the methodological approach used and comments on empirical findings. The pairing of the quantitative and qualitative is of particular value in a project such as this and serves as both a strong starting point and continued foundation for research on the equity side of the Court of Exchequer. Chapter Three also reflects on the caveats for this project and considers the inherent difficulties and challenges of research based on court narratives. The remaining four chapters draw directly from cases involving widows who appeared as litigants in the equity side of the Court of Exchequer between 1620 and 1670. They are divided based on circumstance: widows who litigated alone (Chapter Four); cases involving widowed defendants (Chapter Five); elite titled widows as litigants (Chapter Six); and widows who brought cases during the Civil War and Interregnum years (Chapter Seven). Apart from Chapter Seven, each chapter considers cases from across the fifty-year period, and all consider cases from across England. Additionally, in Chapters Four through Six, a combination of a case study approach and direct comparison between cases is used. The cases of each chapter are first introduced with contextual information

[38] Briony McDonagh, *Elite Women and the Agricultural Landscape, 1700-1830* (London: Routledge, 2018)

where available and their central argument, whilst the highlights and themes of each case are discussed alongside each other and set within current historiography. Chapter Eight provides concluding comments on widows' appearance in the Court of Exchequer, their pursuit of legal redress and their use of their allowed power.

Chapter Four provides an insight into widows who brought a case against male litigants. For the purposes of this chapter, they are referred to as sole widows, meaning widows appearing as sole litigants. The chapter presents the cases of six women, and explores themes of family, remarriage, and estate management, as well as reflecting the breadth and reach of the Court, concerning matters of local, regional, and national significance. The central questions of this chapter are what role gender played in these cases that saw women appearing against men, and to what extent widows exposed, and ultimately challenged, the contradictions of patriarchal ideals.

Chapter Five analyses cases in which widows appeared as defendants against other female litigants. These were rare instances in the Court and are of great interest in part because of their rarity. Five cases are discussed, containing eleven women in total. Wills, rights to land and tithes featured most prominently, as well as family tensions and conflict. In conjunction with Chapter Four, this chapter asks what role gender played when both litigants were women and the impact that this had on how legal right was presented and defended.

Chapter Six focuses on titled widows appearing as litigants in the Court. Of the women in this chapter, one was a Countess, one a Duchess and three were Dames. Their cases touched on issues around money and business, customs, and property, and were supplemented with more substantial biographical information than other chapters, in most instances because of their husbands' actions and legacy rather than their own. Many referred to the will of their husband and concerned large scale interests and estates propped up by significant wealth and social status. This chapter questions the impact of wealth on allowed power and widowhood.

Chapter Seven considers three cases brought by widows to the Court during the Civil War and start of the Interregnum between 1642 and 1651, providing an analysis of how the Court was used during this period. One untitled and two titled widows are presented as case studies looking at widows' roles in the conflict in three English

counties. This chapter investigates two key questions: what drove these widows to Court during a time of national upheaval; and how did their actions, and their motivations, disrupt ideals around female assertiveness and independence?

In answering these questions and contributing both quantitatively and qualitatively to the historiography of women and the law, this thesis provides more than just a new research angle or argument: it seeks to put the Court of Exchequer on the women's history map and encourage the re-examination of the 'freedom' of widowhood. Not only do these findings broaden our understanding of women's relationship with the law, but they also demonstrate another side to early modern patriarchy – and we can still learn a great deal about both.

Chapter Two

Historiography of Women and the Law in Early Modern England

Exploring women's interaction with the law is an important avenue of women's history. Access to legal redress, the law's treatment of women, limitations on female participation, as well as the extent to which women were recognised as legal beings all tie into broader questions about society's treatment of women and femininity. It is also where records of women exist in their thousands, from those whose portraits still reside in one of the many country houses of England to others whose only mark in history was written by the hand of another. This project firmly resides within the historiography of women and the law, and owes a great deal to many works that have provided both a solid foundation and a springboard into lesser explored areas of the field. It is because the field is so rich that new projects can boast such a grounding. Five historiographical areas are drawn on to assist the research questions of this thesis, and these areas form the structure of this chapter. The first concerns the development of women's history and the theoretical elements of its pursuit. The second, scholarship on early modern English society with a focus on women's lives within patriarchal structures, particularly widowhood. The third and fourth areas directly relate to the law, namely: the various early modern English legal jurisdictions, focusing specifically on equity; and the construction and use of court narratives as historical sources. The final area is work that discusses power and authority, and where women's agency fits within these concepts. This chapter not only helps to situate this research within the broader historiography of women and the law in early modern England, but it is also a testament to the richness of the field – to know how far you have come, you must first recognise how you got there.

The Pursuit of Gender History

The field of women's and gender history in the early modern world is a rich one, evolving continuously as new records, methods, and lives are uncovered. It is the foundation for understanding women's role and experience in society, and it enjoys an increasingly dynamic relationship with other disciplines and modes of thought. As a new project, this thesis poses a number of questions that are influenced by themes of the field such as: how did the social construction of gender impact women in law courts?; in what ways were patriarchal structures created and embedded in courts and their jurisdictions?; how should we understand agency and operations of power when we consider women at law? Each question originated from a desire to further deepen the reaches of women's, gender, and feminist history. In order to do this effectively, an appreciation of our own history of thought and development is needed. The evolution of women's history is proof of successful efforts to reveal more about the lives, experiences, and legacies of women in the past. Understandings of agency, patriarchy and gender relations have been central to this evolution, and within this process different modes of thought have developed. Distinctions can be made between women's, feminist, and gender history, with the differences between them being both theoretical and methodological. Despite these variations, the approaches co-exist and find mutual benefit from each other.[1] For this project, the approach taken is that of gender history with feminist understandings of gender and patriarchy at the core.

A selection of works within the last forty years demonstrate this evolution of the field. The first of note was published by Gerda Lerner in 1986, when she wrote: 'Women are essential and central to creating society; they are and always have been actors and agents in history'.[2] Many of Lerner's observations in *The Creation of Patriarchy* still hold true today, from the contradiction between women's key roles in society and their corresponding marginality, women's 'complicity' in the patriarchal system, and the historicity of patriarchy. For this project, the contradictions evident in patriarchy's treatment of women is central. Judith Bennett placed a similar focus on the centrality of patriarchy in her 1989 article, 'Feminism and History'. For Bennett, this was at the heart of the pursuit of women's history: she stressed the need to 'return to feminism and to the

[1] Sue Morgan, 'Introduction: Writing Feminist History: Theoretical Debates and Critical Practices' in Sue Morgan (ed.) *The Feminist History Reader* (Oxon: Routledge, 2006), p.4
[2] Gerda Lerner, *The Creation of Patriarchy* (Oxford: Oxford University Press, 1986), p.5

grand feminist tradition of critiquing and opposing the oppression of women', and to strive to answer why this oppression has existed for so long.[3] The focus therefore was on patriarchal oppression and not agency or how women worked within the system enforced on them. This thesis suggests the need to re-examine oppression in relation to widows, but also comments on their ability to exercise their legal right within the system that continued to oppress them. An acknowledgement of how women lived within this system is arguably just as important as the system itself, in that it gives a way forward. Rather than dividing women as either victims of oppression or agents within oppression, Bennett argued that 'women have always been both victims and agents' and that '[emphasizing] either one without the other, creates an unbalanced history'.[4] In her 2006 work *History Matters*, Bennett commented on 'the seeming ahistoricity of patriarchy' and misconception that women are, and have always been, its passive victims.[5] Most interesting was Bennett's developed argument that patriarchy, rather than just a history of men, 'is also a history of women as survivors, resistors, and agents of patriarchy', moving away from the need to focus solely on oppression.[6] This shows patriarchy in its full complexity, as well as women's relationship with it.

Women in England, written by Anne Laurence in 1994, is a valuable resource for its scope and considerations of women and property. It provides a commentary on the act of researching women's history and the overarching questions that hold relevancies for all avenues of the history of women in early modern England. Laurence discussed three debates within the field of women's history, namely: the changing nature of the family; the ways in which women's lives were affected in different ways to men's; and how the development of individualism impacted women.[7] The second topic is of particular interest in this thesis, focusing on the gendered impact of widowhood. Also writing in the 1990s, Valerie Frith's edited collection commented on the importance of recognising gender ideology as part of women's history. She argued that this was because it 'describes something that we always find in the past, as well as in the present: certain standards of male and female conduct that are propagated because they are deemed

[3] Bennett, 'Feminism and History', *Gender & History*, Vol. 1, No. 3 (1989), p.259
[4] *Ibid,* p.262
[5] Judith Bennett, *History Matters: Patriarchy and the Challenge of Feminism* (Philadelphia: University of Pennsylvania Press, 2006), p.54; p.59
[6] *Ibid,* p.59
[7] Anne Laurence, *Women in England, 1500-1760: A Social History* (London: Weidenfeld and Nicolson, 1994), p.11

instrumental to the preservation of the existing social order'.[8] The necessary role of widows in managing their husband's estates was part of this. This corresponds with Laura Gowing's 1996 statement about the inherent difficulty of conducting women's history, namely 'sorting out women's experience from the perceptions of the men who, almost invariably, record it'.[9] For the field of women's history, these works formed part of a collection that were concerned with family structures and the social order of early modern England, such as Susan Amussen's *An Ordered Society: Gender and Class in Early Modern England*.[10] The context of our own time, and the shifting of historical centres, has a direct impact on the kind of history we choose to research. This is a large part of the field's evolution, as the early modern historian stride to fill gaps whilst also offering useful commentary wherever possible. This thesis is informed by this observation, shedding light on a lesser-known Court whilst providing a critical re-analysis of early modern widowhood at law.

A notable positive within the evolution of women's history has been the development of interdisciplinarity: the recognition of learning and lending from subject areas outside of history. In 1998, Jacqueline Eales commented that over the previous twenty years 'the influence of gender studies has provided women's history with greater theoretical clarity'.[11] As gender historians, we benefit from the innate interdisciplinarity of our field, and as one grows, so does the other. There is also an overarching service that gender historians provide, as our efforts to historicize patriarchy, as Bennett has suggested, aids in the dampening of the power of patriarchy in our own lives.[12] As part of this sharing across disciplines and the relationship between past and present found within historical enquiry, is intersectionality, a concept that recognises the multifaceted nature of oppression and experience. This concept has gained increasing traction in the field of gender history as it has developed within feminist and gender studies. Hunt has

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[8] Valerie Frith, 'Introduction', in Valerie Frith (ed.) *Women & History: Voices of Early Modern England* (Toronto, Canada: Coach House Press, 1995), p.xx

[9] Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford: Clarendon Press, 1996), p.8

[10] Susan D. Amussen, *An Ordered Society. Gender and Class in Early Modern England* (Oxford: Blackwell, 1988). See also: Bernard Capp, *When Gossips Meet: Women, Family, and Neighbourhood in Early Modern England* (Oxford: Oxford University Press, 2003); Christine Churches, 'False Friends, Spiteful Enemies: a Community at Law in Early Modern England', *Historical Research,* Vol. 71, No. 174 (1998), pp.52-74; and, Elizabeth Foyster, 'Silent Witnesses? Children and the breakdown of domestic and social order in early modern England', in Anthony Fletcher and Stephen Hussey (eds.) *Childhood in question: children, parents and the state* (Manchester: Manchester University Press, 1999), pp.57-73

[11] Jacqueline Eales, *Women in Early Modern England, 1500-1700* (London: UCL, 1998), p.4

[12] Judith Bennett, 'Women's history: a study in continuity and change', in Pamela Sharpe (ed.) *Women's Work: The English Experience 1650-1914* (London: Arnold, 1998), p.64

suggested that whilst some aspects of the concept do not map comfortably to the early modern period, some elements can aid in analysis and exploration, such as the ability 'to explain what might appear to be anomalies and inconsistencies in social practise by means of overlapping relations or structures of domination'.[13] Hunt also cautions against assumptions of, and opportunistic reference to, multiple hierarchies without consideration as to why and how they connect in practice. She argues 'that we should avoid the temptation to see social complexity largely in terms of problems internal or intrinsic to one or another axis of oppression', and that historians 'should think twice before adopting formulations that imply that any one relation of domination and subordination is autonomous or independent'.[14] These observations can be applied to widowhood and the attainment of allowed power: the state of widowhood was not only fixed within gender relations but also within patriarchal ideals of social order. Allowed power was the result of complex and conflicting ideals of gender and order.

To understand gender relations, we must understand the role and construction of gender. Joan Wallach Scott has argued that part of feminist and gender history is 'critically understanding how history operates as a site of the production of gender knowledge'.[15] Wallach Scott defines gender as 'a constitutive element of social relationships based on perceived differences between the sexes, and … a primary way of signifying relationships of power'.[16] This association with power is central to this thesis, and so too is the idea of perception. Employing Wallach Scott's definition of gender and its role in shaping day-to-day lives gives sufficient weight to its centrality in early modern life. Boydston has disputed this centrality in historical enquiry, arguing that treating gender as a category of analysis hinders pursuits in women's history. She instead suggests that gender should be a question asked by the historian, not an assumption, thus recognising that 'it is always gender as nested in, mingled with and inseparable from the cluster of other factors socially relevant in a given culture'.[17] In this project, gender was inseparable from legal status: the specific experience of widows at law was heavily influenced by their gender.

[13] Margaret R. Hunt, 'Relations of Domination and Subordination in Early Modern Europe and the Middle East', *Gender & History*, Vol. 30, No. 2 (2018), p.367
[14] Hunt, 'Relations of Domination and Subordination', p.375
[15] Wallach Scott, *Gender and the Politics of History*, p.10
[16] *Ibid,* p.42
[17] Boydston, 'Gender as a Question of Historical Analysis', p.156

The social relevance of widowhood had a unique impact on women, and this was also influenced by social class.

Whilst gender can be defined as a cultural and social opposite of the biological distinction between sexes, such an understanding does not map onto those of early modern England. Gowing has argued that dividing sex and gender is not necessarily helpful, arguing that 'understandings of genital, physiological and mental differences between women and men were not so much the foundations of gender roles, as the result of them'.[18] Thomas Laqueur's *Making Sex*, a vital resource for gender and feminist historians, argued that 'almost everything one wants to say about sex – however sex is understood – already has in it a claim about gender'.[19] Gender in seventeenth-century historical enquiry is used to reflect and discuss not only the biological differences, but also the differences in experience, power, roles, and expectations. Gender relations therefore convey how men and women in seventeenth-century England interacted, lived alongside each other and how they were distinguishable based on contemporary understandings and beliefs. Historians must recognise that these relations and the gender order were not fixed, and that gender itself was not simply 'a set of prescribed ideas mediated through institutional patriarchy'.[20] It was instead much more uncertain, in some instances flexible and 'the relationships between women and men, the ideals that gender roles are measured against and the assumptions of daily social relations are variable'.[21] The dissimilarities between womanhood and widowhood correspond with these observations, aiding our understanding of why ideals could appear so different, and the situation of women so influenced by their legal status.

The flexibility and variability of gender relations gives space for the notion of agency. Its use in historical enquiry has continually been interrogated by many and cautioned by some, but it is now widely recognised by historians such as Hunt as a central part of understanding gender relations.[22] Part of this recognition is actively being mindful when discussing the idea of agency in the early modern English context. The use, and at times overuse, of the concept has been discussed by a variety of historians, and opinions about the suitability of its employment vary. Given the importance of agency in feminist

[18] Laura Gowing, *Gender Relations in Early Modern England* (Hoboken: Taylor and Francis, 2014), p.6
[19] Thomas Laqueur, *Making Sex: Bodies & Gender from the Greeks to Freud* (USA: Harvard University Press, 1990), p.11
[20] Amanda Capern, *The Historical Study of Women: England, 1500-1700* (Basingstoke: Palgrave Macmillan, 2008), p.89
[21] Gowing, *Gender Relations,* p.3
[22] Hunt, 'Relations of Domination and Subordination', p.369

and gender studies, its relevance in gender and feminist history, following increasing interdisciplinarity, is understandable. Some historians, such as Allyson M. Poska, think in terms of agentic norms, allowing for a fluidity to the concept and the acknowledgement that demonstrations of agency were not the equivalent of advocating for equality.[23] Poska has argued that we must move away from the 'unhelpful and inaccurate juxtaposition of patriarchal impediments and exceptional female successes', and normalise women's agency whilst being more aware of the complexities surrounding it.[24] The exercise of legal right within the confines of allowed power does just that. Lynn M. Thomas has cautioned against allowing the use of agency in historical enquiry to slip 'from being a conceptual tool or starting point to a concluding argument'.[25] This means rethinking agency, both in terms of the motivations behind action and its place as a historical concept with changing definitions and expressions.

Both gender relations and the exercise of agency operate within a patriarchal cage. The ideals and restrictions inherent in both are the result of patriarchal influence, and it is this 'dialogue between prescription and practice' that is a vital aspect of gender history. [26] Whilst acknowledging patriarchy as a changing entity, as a term used throughout the course of gender and feminist history it 'succinctly lays claim to epistemic authority, roots in nature…an independent and autonomous field of analysis, and the status of a primary, or even originary system'.[27] Patriarchy can be recognised as the collection of ideals and power structures that place women as secondary to men. In order to make best use of patriarchy as a category of analysis, according to Androniki Dialeti, research should be 'informed by updated theoretical and methodological insights into gender, such as the exploration of masculinity, and more sophisticated conceptualisations of agency'.[28] A dual approach is suggested by Dialeti, with agency on the one hand and patriarchal discourses on the other, to consider their intersections and explore the 'ways in which women undermined, negotiated or even appropriated and enforced established norms so as to cope with everyday life or even acquire power in female or mixed

[23] Allyson M. Poska, 'The Case for Agentic Gender Norms for Women in Early Modern Europe', *Gender & History*, Vol. 30, No. 2 (2018), p.360
[24] *Ibid,* p.361
[25] Lynn M. Thomas, 'Historicising Agency', *Gender & History,* Vol. 28, No. 2 (2016), p.324
[26] Gowing. *Gender Relations*, p.5
[27] Hunt, 'Relations of Domination and Subordination', p.368
[28] Androniki Dialeti, 'Patriarchy as a Category of Historical Analysis and the Dynamics of Power: The Example of Early Modern Italy', *Gender & History*, Vol. 30, No. 2 (2018), p.332

environments'.[29] The power available and exercised by widows in the Exchequer was a prime example of this. As Gowing has highlighted though, it is a system that 'binds everyone caught in its net'.[30] As a system, it is inherently oppressive and based on concepts of inequality at every level. It is important to note however that it did not mean that women could not have power or control over men, as Queens, members of the elite and widows were the best proof of, but rather that the supposed 'natural' order placed authority in the hands of men and most women should be subordinate to a male head. Whilst demonstrating an understanding of these factors and an appreciation of patriarchy, prescription and suppression, this project focuses on what women were able to do, their allowed power, rather than what they were restricted from doing. The most recent publication on women and the law, an edited collection by Teresa Phipps and Deborah Youngs, echoes these sentiments and recognises a shift in historiography away from what women could not do to their experience of litigation.[31]

Early Modern England – A Patriarchal Society

Just as patriarchy continues to be central to the pursuit of women's and gender history, so too is it vital to any understanding of early modern English society. As Keith Wrightson has noted, 'There can be little doubt that early modern England was a patriarchal society in the sense that authority was conventionally vested in adult males generally and male household heads specifically'.[32] The family was central to ideals of social order and behaviour, and patriarchy placed men at the head of families, to mind and manage everyone beneath him. However, gender relations 'both in theory and practice, were far more complex than any simple patriarchal model would suggest'.[33] Some women, single and widowed, were heads of household, and not only on rare occasions. Many independent women wielded considerable power and wealth, and the vast majority of women, across life stages, 'were not the helpless, passive victims of male authority, despite the barrage of patriarchal teaching fired at them throughout the period'.[34] It was

[29] Dialeti, 'Patriarchy as a Category of Historical Analysis', p.335
[30] Gowing, *Gender Relations*, p.4
[31] Teresa Phipps and Deborah Youngs, 'Introduction' in Teresa Phipps and Deborah Youngs (eds.) *Litigating Women: Gender and Justice in Europe, c.1300-1800* (London: Routledge, 2022), p.3
[32] Keith Wrightson, 'The Politics of the Parish in Early Modern England', in Paul Griffiths, Adam Fox and Steve Hindle (eds.) *The Experience of Authority in Early Modern England* (Basingstoke: Macmillan, 1996), p.13
[33] Bernard Capp, 'Separate Domains? Women and Authority in Early Modern England', in Paul Griffiths, Adam Fox and Steve Hindle (eds.) *The Experience of Authority in Early Modern England* (Basingstoke: Macmillan, 1996), p.118
[34] *Ibid*, p.139

not, therefore, as Isaac Stephens states, 'a completely rigid system that prevented the expression of women's agency'.[35] As Margaret R. Sommerville has noted, 'no early-modern theorist ever attempted to argue that all women were inferior to all males in every respect', and in certain instances men and women could be seen as equal.[36] This was not then 'a simple patriarchal model in which men exercised unlimited control and women were submissive' – it was far more complex than that.[37] In a broader sense, the needs of the individual were sacrificed for those of the household, and this could work to the benefit of men or women, as allowed power demonstrates.

Patriarchal ideals also existed in a somewhat different form in early modern England, namely, the political theory of patriarchalism which 'presented a parallel between the household and the commonwealth'.[38] Robert Filmer's seventeenth-century work, *Patriarcha*, captured this theory: 'Power is given by the multitude to one man, or to more by the same law of nature; for the commonwealth itself cannot exercise this power, therefore it is bound to bestow it upon some one man, or some few'.[39] Whilst this had implications for gender relations, they were not explicitly stated by Filmer, but rather implied by statements such as: 'For what freedom or liberty is due to any man by the law of nature, no inferior power can alter, limit or diminish. No one man, nor multitude, can give away the natural right of another. The law of nature is unchangeable'.[40] A. L. Beier has commented on patriarchalism's limited purview as a social theory: it ignored class and economic divisions, made no provisions for social change, and 'assumed stability of the household as a lynchpin of society'.[41] The presence of this theory however is an important indicator of the manifestations of patriarchal ideals in early modern English society.

There are different ways in which patriarchy can be understood, and for this project it is an informed combination based on the work of other scholars. Bernard Capp

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[35] Isaac Stephens, *The Gentlewoman's Remembrance: Patriarchy, Piety, and Singlehood in Early Stuart England* (Manchester University Press, 2016), p.105
[36] Margaret R. Sommerville, *Sex & Subjection: Attitudes to Women in Early-Modern Society* (London: E. Arnold, 1995), p.40
[37] Karen Harvey, *The Little Republic: Masculinity and Domestic Authority in Eighteenth-Century England* (Oxford: Oxford University Press, 2012), p.3
[38] Gowing, *Gender Relations*, p.29
[39] Robert Filmer, *Patriarcha and other political works of Sir Robert Filmer*. Edited by Peter Laslett (Oxford: Blackwell, 1949), p.56
[40] *Ibid,* p.82
[41] A. L. Beier, *Social Thought in England, 1480-1730: From Body Social to Worldly Wealth* (Taylor & Francis, 2016), p.299

has argued that patriarchy in early modern England should not be thought of in terms of a 'patriarchal system' but rather as 'an interlocking set of beliefs, assumptions, traditions, and practices, and the largely informal character of patriarchy enabled each generation to adapt it to changing circumstances'.[42] Cissie Fairchilds refers to it as a 'patriarchal paradigm', and this definition is a useful one for understanding the intersecting and dependent strands of beliefs and ideals that ultimately created the backdrop for the social climate of early modern England.[43] By contrast, Karen Harvey describes it as a flexible 'grid of power' where several groups had authority and several did not.[44] Each definition has merit and encourages a critical analysis of patriarchy as a force in early modern society. For this project, patriarchy is seen as a paradigm of power and authority which was propped up by ideals of social order and created, as well as reinforced, gender relations.

The feminist historian must be mindful to situate patriarchy within the relevant contemporary confines whilst seeing it as something mundane yet influential, constant but inconsistent. It is therefore important to resist the tendency 'to reify patriarchy or turn it into something artificially tangible and monolithic which then makes it difficult to see how social organisation of the sexes ever changes'.[45] The multifaceted nature of patriarchy ensures that any attempts to substantiate or quantify it obscure its power and reach. This is not to say that the influence of patriarchy was all-encompassing, or the only power at play. Poska argues that patriarchy was not the only ideology influencing gender expectations: there were also 'agentic gender expectations for women that were familiar to early modern people and played an equally powerful role'.[46] It is beneficial to think about seventeenth-century England as a 'profoundly hierarchal' society, where relations of power 'were embedded in social relations, in families and in gender relations'.[47] Relations shifted when a woman moved from marriage to widowhood, but still held true.

Whilst the impact of patriarchal ideals should not be understated, historians have commented on the limits of its reach, most notably because ideals and lived experience did not always align. Amanda Flather has observed, 'Patriarchal norms shaped perception

[42] Capp, *When Gossips Meet*, p.1
[43] Cissie Fairchilds, *Women in Early Modern Europe, 1500-1700* (Harlow: Pearson/Longman, 2007), p.7
[44] Harvey, *The Little Republic*, p.4
[45] Capern, *The Historical Study of Women*, p.3
[46] Poska, 'The Case for Agentic Gender Norms', p.354
[47] Gowing, *Gender Relations*, p.33

and experience but they did not wholly determine them' – so too did age, status and place.[48] There were also inherent contradictions within and between patriarchal ideals, existing, in part, due to 'multiple demands that are in tension with each other'.[49] Despite ideals around female behaviour, women were involved in a 'multiplicity of roles in a variety of spaces that enhanced and inhibited their ability to exercise agency, depending on the context'.[50] There was therefore considerably more scope for female agency than ideals would suggest were possible, with patriarchy thus existing in 'a more permissive reality'.[51] What such observations show is the constant interaction between ideals and everyday life, and how they rarely mirrored each other. Ideals of womanhood and the requirements of widowhood were testament to this.

The meeting of ideals and practice is well-demonstrated by the presence of prescriptive literature, where order and obedience were encouraged and attempts were made 'to capture and dominate the terms of the debate about ideal femininity'.[52] As noted by Patricia Crawford and Laura Gowing, this kind of literature also reflected 'all kinds of anxieties about public, social, and spiritual order', and are therefore useful to consider alongside any explorations of gender relations.[53] Whilst this project prioritises the narratives of women, some instances of male litigants appearing against the female litigants evidenced these anxieties. Capp has commented on how patriarchal ideals demonstrated within prescriptive literature such as conduct books assumed that a family could rely on a single breadwinner, leaving women as 'domestic managers', making the ideal 'largely irrelevant for small tradesmen, craftsmen, husbandmen, and labourers'.[54] Contemporary works such as *Of Domestical Duties*, published in 1622, suggested that 'to imagine that she herself is not inferior to her husband, arises from monstrous self-conceit, and intolerable arrogancy, as if she herself were above her own sex, and more [than] a woman'.[55] The ideals of obedience and submission were common as virtues that were to the overall benefit of social order and the patriarchal structure of early modern England. The public consumption of these ideals and stereotypes took numerous forms.

[48] Flather, *Gender and Space*, p.133
[49] Susan D. Amussen, 'The Contradictions of Patriarchy in Early Modern England", *Gender & History*, Vol. 30, No. 2 (2018), p.345
[50] Flather, *Gender and Space*, p.176
[51] *Ibid,* p.176
[52] Capern, *The Historical Study of Women*, p.29
[53] Patricia Crawford and Laura Gowing, 'Introduction', in Patricia Crawford and Laura Gowing (eds.) Women's Worlds in Seventeenth-Century England (London: Routledge, 2000), p.1
[54] Capp, *When Gossips Meet*, p.28
[55] William Gouge. *Of Domestical Duties* (London, 1622), p.273

The notion of the unnaturalness of women having control, holding dominion and being independent, in a variety of sense of the word, was evident in many places, such as, for example, in William Shakespeare's *The Taming of the Shrew*, published towards the end of the sixteenth century. Ideals of womanhood, and women's relationship and reliance on male figures, was voiced by the character of Katherine in her final dialogue:

> 'Thy husband is thy lord, thy life, thy keeper
> Thy head, thy sovereign, one that cares for thee…
> And when she is forward, peevish, sullen, sour,
> And not obedient to his honest will
> What is she but a foul contending rebel,
> And graceless traitor to her loving lord?
> I am ashamed that women are so simple
> To offer war where they should kneel for peace
> Or seek for rule, supremacy, and sway
> When they are bound to serve, love, and obey'.[56]

However, as the cases in this thesis show, necessity made ideals fragile and easy to circumvent. These ideals were supported by elite men, whose views were significant because they informed the laws and institutions that made up early modern society, but 'not everyone necessarily agreed with the powerful and prominent'.[57] Similarly, it is worth noting that 'what kept women legally, economically and socially subordinate was a much less clearly articulated set of beliefs and behaviours' – there was no solid and coherent system, but interlocking beliefs and ideals that ultimately came together to dictate or prevent women's behaviour.[58] One of the tensions between the ideals of prescriptive literature and day-to-day life in early modern England was the extent to which they 'were often at variance with the social circumstances of ordinary people'.[59]

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[56] William Shakespeare, *The Taming of the Shrew* (from *The Norton Shakespeare, Second Edition*, New York & London: W.W. Norton & Company, Inc., 2008)
[57] Wiesner-Hanks, *Gender in History*, p.84
[58] Laura Gowing, *Common Bodies: Women, Touch and Power in Seventeenth-Century England* (London: Yale University Press, c2003), p.10
[59] Capp, *When Gossips Meet*, p.26

Ballads and chapbooks, the most popular types of literature in seventeenth-century England, were, in comparison to conduct books, filled with ambiguous images of gender roles: women were presented as 'disorderly, sexually voracious…and shrewish', whilst men were depicted as 'weak and sexually impotent'.[60] However, as Robert Brink Shoemaker has commented, this type of literature also upheld the patriarchal ideals, as whilst they were products of male anxiety they were 'intended to provoke laughter and ridicule'.[61] Therefore, whilst the principles embedded in prescriptive texts and patriarchal thought were socially accepted, and upheld to varying degrees, in practice it was far more complicated, and at times contradictory, as this thesis considers. As Catherine Richardson has observed, some household manuals did stress that they were discussing ideals, but nevertheless 'such ideals *were* intended to be models for, rather than absolutes of, behaviour, and the manuals expounded prescriptions for daily life which were grounded in practice, not theory'.[62] It should also be noted that the majority of men and women in mid-seventeenth-century England could not read, so the strictness with which ideals produced in print could be followed was hampered further down the social scale. Don Herzog has argued that 'some manuals are at least as much crystallizations of already circulating views as progenitors', and that even if they weren't read, their ideas still permeated early modern society.[63]

The tension between prescription and reality was not lost on seventeenth-century women. In their pivotal work, *Women in Early Modern England, 1550-1720*, Patricia Crawford and Sara Mendelson commented on married women's awareness 'of an inherent contradiction between the ideal of wedded comradeship and the compulsory nature of wifely subjection'.[64] As James Daybell has noted, rather than readily conforming to ideals of behaviour, many women 'were rather more assertive and confident than exhortations by conduct book writers might recommend'.[65] Whilst prescribed ideals did not fit with early modern life and were subsequently left un-enforced, ultimately 'at a personal and daily level men's power was consistently enforced at the expense of

[60] Robert Brink Shoemaker. *Gender in English Society, 1650-1850: The Emergence of Separate Spheres* (New York: Longman, c1998), p.37
[61] *Ibid,* p.37
[62] Catherine Richardson. *Domestic Life and Domestic Tragedy in Early Modern England: The Material Life of the Household* (Manchester: Manchester University Press, 2006), p.28
[63] Don Herzog, *Household Politics: Conflict in Early Modern England* (Yale University Press, 2013), p.38
[64] Sara Mendelson and Patricia Crawford, *Women in Early Modern England, 1550-1720* (Oxford: Clarendon Press, 1998), p.135
[65] James Daybell, 'Gender, Obedience, and Authority in Sixteenth-Century Women's Letters', *The Sixteenth Century Journal*, Vol. 41, No. 1 (2010), p.59

women's'.[66] This pervasive undercurrent, based on contradictory beliefs, had an impact that was extensive, if not highly concentrated. The power of widows complicated this further, but power still resided with men.

Women had a variety of important roles to play in early modern England. Whilst many of the roles were socially accepted and encouraged, some were more covert and yet integral to early modern social order, for example the vital link they played in the transmission of property between men.[67] This thesis is interested in how roles often merged together, especially during widowhood, which will be discussed in more detail throughout. In his book *Gender, Sex and Subordination in England, 1500-1800*, Anthony Fletcher commented on the difficulty of defending patriarchy in a society where women's 'activities outside the household were so multifarious, their contribution to the economy was so necessary, their expectations about contributing actively to the life of the community and even of sometimes going to law to protect their interests were so general'.[68] Single women's ability to operate freely in terms of their economic role, something that varied across Europe, has been argued to have 'transformed the English financial marketplace'.[69]

Relations between men and women in early modern England relied on 'compromises, conflicts and negotiations'.[70] Interactions at law were a formal example of this, most notably because gender 'was one of the most profoundly important distinctions between kinds of 'persons' within English law'.[71] The extent to which women held roles or entered spaces that were typically reserved for men largely depended on their socio-economic status. As Crawford and Mendelson have observed, 'the higher a woman's social position, the less likely she was to share or invade male physical or psychological space'.[72] In the same vein however, women of higher status and wealth could hold positions of authority, such as landowners, thereby encroaching on ideals of male supremacy. It is therefore more beneficial to consider spaces as impacted by gender relations, rather than

[66] Laura Gowing. *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford: Clarendon Press, 1996), p.273
[67] Laurence, *Women in England*, p.230
[68] Anthony Fletcher, *Gender, Sex and Subordination in England, 1500-1800* (New Haven: Yale University Press, 1995), p.264
[69] Gowing, *Gender Relations,* p.46
[70] Gowing, *Common Bodies*, p.7
[71] Christopher W. Brooks. *Law, Politics and Society in Early Modern England* (Cambridge; New York: Cambridge University Press, 2008), p.362
[72] Mendelson and Crawford, *Women in Early Modern England*, p.210

simply gendered. For example, court spaces should not be considered masculine, but instead influenced by ideals and restrictions placed on women. This meant that men appeared more often than women in court spaces, exercising a legal identity that was not accessible to all women. There has been a steady movement away from the idea of distinct public and private spaces, gendered in their make-up and restrictive in their construction, not least because of the indistinct line between the two: 'Public events might take place in private spaces; women's participation in one kind of public realm did not give them a place in others'.[73] The spatial turn in twenty-first-century historiography has encouraged an exploration of 'the unfixed nature of space', and the relationship between public and private.[74] This is not to suggest that specific spaces were not impacted by gender ideals or commonly closed-off, but rather that dividing early modern society into two spheres obscures the complexity, and contradictions, of this society.

Whilst it is relatively easy to find examples of where women were supposed to be and how they should behave it is 'much more difficult to ascertain exactly how women did behave', as well as how they responded to the limits placed upon them.[75] This was mitigated, to some extent, by the development of the printing press. In addition to facilitating the spread of prescriptive literature in the period, the printing press also 'empowered women as nothing else had ever done, enabling them to make their ideas public, somewhat permanent, and available to a wider audience than would otherwise have been possible'.[76] Women's writing was indicative of women's role within society, and their potential and capability for much greater roles. Up until the 1680s, the pamphlet, 'perhaps the loudest of all literary forms… [was] the most numerically significant vehicle for women's self-expression'.[77] Petitions captured female political participation and were taken great advantage of by the women of the Leveller movement in the mid-seventeenth century.[78] Around the time of the English Civil War, increasing numbers of women started printing their views on a variety of issues and engaging with

[73] Laura Gowing, '"The freedom of the streets": women and social space, 1560-1640', in Paul Griffiths and Mark S. R. Jenner (eds.) *Londinopolis: essays in the cultural and social history of early modern London* (Manchester: Manchester University Press, 2000), p.133
[74] Charmian Mansell, 'Beyond the Home: Space and Agency in the Experiences of Female Service in Early Modern England', *Gender & History*, Vol. 33, No. 1 (2021), p.25
[75] Amy Louise Erickson. *Women and Property in Early Modern England* (London: Routledge, 1995), p.223
[76] Lois G. Schwoerer, 'Women's public political voice in England: 1640-1740', in Hilda L. Smith (ed.) *Women Writers and the Early Modern British Political Tradition* (Cambridge: Cambridge University Press, 1998), p.57
[77] Joad Raymond, *Pamphlets and Pamphleteering in early modern Britain* (Cambridge: Cambridge University Press, c2003), p.320
[78] *Ibid,* p.304

political and religious debate, although they still remained on the fringes of these discourses.[79] By the end of the seventeenth century, English society had changed in a variety of ways. In terms of its patriarchal backbone, whilst social ideals and the law maintained women's position as obedient and domestic-minded, 'in reality women were no longer so effectively excluded from the world'.[80] Fairchilds gives some of this credit to 'the millions of ordinary women who, in going about their daily lives, displayed intelligence, virtue, steadfastness and moral strength that contradicted the traditional stereotypes about female nature'.[81]

Of all the perceived differences between men and women, it was women's assumed incapability, weakness and need of guidance that is most relevant to this project. The patriarchal paradigm, to borrow again from Fairchilds, was self-fulfilling, with assumptions of women's shortcomings and incapability being used 'to restrict their opportunities for education, careers and power in the public sphere and then the consequences of these restrictions…were cited as evidence of female inferiority'.[82] The idealised place and role of women in early modern English society was informed by several factors. Beliefs about the female body were a central part of this. The information that was available, and the beliefs that originated as a result, were not devoid of cultural influence – quite the opposite. Qualities of femininity were equated with inferiority, passivity, and fragility, but they were not focused on the difference in genitalia. As Laqueur has observed, 'In terms of the millennial traditions of western medicine, genitals came to matter as the marks of sexual opposition only last week'.[83] It was therefore gender that was at the heart of beliefs about women and their bodies – a social construction that placed men and women in opposition. As Gowing has noted, 'the assumption that women barely owned their own bodies' was at the heart of their perceived legal passivity.[84] Assumed issues around controlling female sexuality also had a connection with the law, as such concerns found their way into early modern courts. Amanda Capern has argued that the biological and reproductive qualities of womanhood were 'very much an intellectual and cultural construction with the power to shape femininity, but this was neither a monolithic construction nor one that was wholly

[79] Schwoerer, 'Women's public political voice in England', p.73
[80] Capern, *The Historical Study of Women*, p.317
[81] Fairchilds. *Women in Early Modern Europe,* p.326
[82] *Ibid,* p.14
[83] Laqueur, *Making Sex*, p.22
[84] Gowing. *Common Bodies,* p.86

negative'.[85] However, in comparison to men, who were seen and talked about as independent individuals, women were more commonly discussed 'in terms of sexual function and relationships, in domestic roles, or as exceptions in public economic or political roles'.[86]

Whilst there were expectations and ideals of gender for both men and women in early modern England, 'Part of the code of gender is that women carry it and men do not: men are the norm against which everything else is measured'.[87] Women were more strictly bound by their gender than men were. As a result of this, gender relations were more often primarily concerned with women's experience in relation to men. This should not distract from the fact that expectations of femininity and masculinity were both unattainable ideals: 'Perhaps men's power was not founded on a successful achievement of manhood, but forged in the struggle to get there. Women's subordination, too, was produced and mediated through the interaction between precept and power'.[88] Jessica Murphy has argued that women were encouraged towards virtuousness rather than subordination and submission, but that this necessitated the performance of submission and therefore, 'being a woman means performing obedience, which in turn is necessarily part of being considered a woman'.[89] Stereotypes around female incapability and ideals of female subordination did not, paradoxically, mean that all women were seen as incapable or suitably submissive. Many wives were made executrix or administratrix of their husband's estate, deemed to be not only capable but 'the most appropriate bearers of such duties'.[90] Many of the widows discussed in this thesis were named executrix, present at law to take on or forward an issue that had occurred during the life of their husband. The scale of this in terms of property management and litigation could be considerable.

Not only did women carry their gender more than men did, their lives were also constantly measured by their relation to men. Ideals of womanhood and femininity influenced every life stage and, regardless of which stage it was, 'conceptualizations of

[85] Capern. *The Historical Study of Women*, p.29
[86] Hilda L. Smith. *All Men and Both Sexes: Gender, Politics, and the False Universal in England 1640-1832* (Pennsylvania: Pennsylvania State University Press, 2002), p.39
[87] Gowing. *Gender Relations*, p.4
[88] *Ibid,* p.5
[89] Jessica Murphy, 'Feminine Virtue's Network of Influence in Early Modern England', *Studies in Philology*, Vol. 109, No. 3 (2012), p.262
[90] Wrightson, 'The Politics of the Parish', p.15

the ages of women almost always involved men, and centered on women's relationship to them'.[91] This centred womanhood on gender relations, defining women against men, but rarely the other way around. Womanhood was not, of course, a homogenous category, nor were the life stages of maid, wife, and widow. Social and financial status also had an impact on a women's accepted roles and activities. Barbara Harris has noted that 'the contradiction between aristocratic women's interests as members of the ruling elite and a subordinated gender did create a space that permitted and encouraged them to develop a distinct female perspective'.[92] Being a wife was a 'career' according to Harris, incorporating 'reproductive, managerial, political, and social functions essential to the survival and prosperity of their husband's patrilineages'.[93] Through the course of a marriage, many husbands delegated power and responsibilities to their wives. There was then, a confidence in female control that arose 'from an acceptance that daughters, wives and mothers were integral members of their households and could be trusted to work in the best interests of their families'.[94] The 'career' as a wife was restricted by two legal doctrines that had a significant impact on women's access to and relationship with property. This was particularly important given that the management and control of property was an important part of early modern status and identity. The practices of primogeniture and coverture both placed a preference on male ownership of property, disadvantaging women before, during and even after marriage. Despite this, Briony McDonagh has shown 'that female landowners as a group consistently held somewhere in the region of 10 per cent of land'.[95]

Whilst the ideal may have been a woman married living inside the family home, the number of single women in seventeenth-century England was by no means insignificant. Women who did not marry, whilst more likely to be free of male control, 'did not enjoy the privileges English society afforded wives, mothers, and widows'.[96] Amy M. Froide has written extensively on 'never married' women, arguing for the importance of marital status and highlighting the tendency to assume that all unmarried women were

[91] Wiesner-Hanks, *Women and Gender in Early Modern Europe*, p.64
[92] Barbara J. Harris, *English Aristocratic Women, 1450-1550: Marriage and Family, Property and Careers* (Oxford: Oxford University Press, 2002), p.9
[93] *Ibid,* p.61
[94] Tim Stretton, 'Law, Property and Litigation', in Amanda Capern (ed.) *The Routledge History of Women in Early Modern Europe* (Oxon: Routledge, 2020), p.202
[95] McDonagh, *Elite Women and the Agricultural Landscape,* p.32
[96] Amy M. Froide. *Never Married: singlewomen in early modern England* (Oxford; New York: Oxford University Press, 2005), p.7

widows. A single woman did not have a sanctioned role, and so whilst they 'shared the legal status of *femme sole* with widows, and thus had the legal ability to trade, in practice urban authorities allowed widows to engage in formal trades but not never-married women'.[97] Research by Gowing and Erickson challenges this supposed absence of never-married women as tradeswomen, but it is still worth noting the distinction between widows and single women.[98] The term 'spinster' originated in the early seventeenth century as a legal identifier for single women. Judith Spicksley has commented on the important contribution that spinsters made to the small-scale credit market in seventeenth-century England, an unsurprising avenue for them given their limited access to employment.[99] Despite appearing first as a neutral identifier for single women of all ages, the term evolved and became associated with stereotypes of old maids who were 'useless, lonely, barren, and bereft individuals…they were either to be pitied or scorned'.[100] They did however enjoy legal rights across jurisdictions, and so in comparison to their married counterparts, they still exercised greater freedom despite the lack of a defined social role, although 'The reality of independent single life that some women were achieving was unlikely to be reflected in the cultural landscape of late seventeenth-century England'.[101]

Most significantly for this project are the women who did marry and survived a husband, sometimes more than once. The legal status of the early modern widow is particularly important to consider in early modern gender history: Janine M. Lanza suggests that doing so aids in our understanding of civil law and the family.[102] A woman regained her legal status and independence when she moved from a wife to a widow. Her experience without a husband was very different to that of a widower, and could also be notably different to other widows: it was 'by no means a uniform category in society'.[103] For some widows the death of a husband could lead to a fall in income and capital,

[97] Froide. *Never Married*, p.28
[98] Laura Gowing, *Ingenious trade: women and work in seventeenth-century London* (Cambridge: Cambridge University Press, 2022); Amy Erickson, 'Mistresses and Marriage: or, a Short History of the Mrs', *History Workshop Journal*, Vol. 78 (2014), p.46
[99] Judith Spicksley. '"Fly with a Duck in Thy Mouth": Single Women as Sources of Credit in Seventeenth-Century England', *Social History*, Vol. 32, No. 2 (2007), p.193; p.201
[100] Froide. *Never Married*, p.218
[101] Gowing. *Gender Relations*, p.50
[102] Janine M. Lanza, *From Wives to Widows in Early Modern Paris: Gender, Economy, and Law* (London & New York: Routledge, 2007), p.15
[103] Beatrice Moring, 'Widows and economy', *The History of the Family*, Vol. 15, No. 3 (2010), p.220

resulting in social and economic instability at a time of supposed freedom.[104] Lanza frames it as a women mutating into a new life, 'one that began with a death and a funeral'.[105] This new life took widows outside of the usual confines of womanhood, for as long as she remained a once-wife without a husband.

The rights of a widow were in part assured by her dower, entitling her to up to one-third of the lands of her husband upon his death. This was a common practice by the seventeenth century and prescribed by law, but could lead to conflict.[106] The custom of Freebench granted a surety to widows living on manorial lands, although in some instances a widow needed to remain single in order to receive this custom. Jointure, which evolved as a substitute for dower, 'was a joint tenancy of husband and wife in lands which could only be alienated during marriage by consent of both parties; the survivor became the sole tenant of the entire estate'.[107] McDonagh has argued that whilst there has been some debate as to whether jointure was better for women than dower, the shift to jointure ultimately distanced women from property ownership: 'strictly speaking what jointure entitled widows to was the profits of a specified portion of land, not the land itself'.[108] Lindsay R. Moore has noted that dower rights became more difficult to claim over the seventeenth century, to the point where 'wealthy families devised a variety of different legal mechanisms to ensure that a once-wealthy woman would not be impoverished by a spendthrift husband'.[109]

Whilst not true across early modern Europe, widows in England, 'because of the cultural preference for elementary conjugal households', were encouraged to head their own households.[110] Eleanor Hubbard has found that not only did approximately 80 per cent of widows in London lived independently, but also that 'solitary widows headed far more households than solitary men'.[111] On a larger scale across the country, this meant

[104] Richard Wall, 'Widows and unmarried women as taxpayers in England before 1800', *The History of the Family*, Vol. 12, No. 4 (2007), p.250
[105] Lanza, *From Wives to Widows,* p.2
[106] Sandra Cavallo and Lyndan Warner, 'Introduction', in Sandra Cavallo and Lyndan Warner (eds.) *Widowhood in medieval and early modern Europe* (Harlow: Longman, 1999), p.12
[107] Maria L. Cioni, 'The Elizabethan Chancery and women's rights', in Delloyd J. Guth and John W. McKenna (eds.) *Tudor Rule and Revolution: Essays for G. R. Elton from his American Friends* (Cambridge: Cambridge University Press, 1982), p.176
[108] McDonagh, *Elite Women and the Agricultural Landscape*, p.19
[109] Lindsay Moore, *Women Before the Court: Law and Patriarchy in the Anglo-American World, 1600-1800* (Manchester: Manchester University Press, 2019), p.107
[110] Barbara J. Todd. 'The virtuous widow in Protestant England', in Sandra Cavallo and Lyndan Warner (eds.) *Widowhood in medieval and early modern Europe* (Harlow: Longman, 1999), p.66
[111] Eleanor Hubbard, *City Women: Money, Sex and the Social Order in Early Modern London* (Oxford: Oxford University Press, 2012), p.262

that tradition 'forced English widows to be 'un-headed' and out of control'.[112] In many ways, widows disrupted gender norms, taking on roles and undertaking activities that served their needs, ultimately '[breaking] away from a conception of gender as binary opposition', and instead '[occupying] a spectrum of acceptable gendered roles'.[113] The fact that widows were commonly older had some influence over opinions about them. Older women in early modern England were given more power and authority than younger women, in part 'because it was thought that their sexual needs would no longer cloud their judgements and disrupt public order'.[114] Speaking from the early modern French context, Lanza considers stereotypes about widows, many of which were similar to those found in England: she was poor, pious, or led a scandalous life.[115] Ella Sbaraini, by contrast, has noted that widows possessed a 'particular erotic power' and were presented as both lustful and desirable.[116] Whilst these considerations do not factor into the documents used for this project, they were part of the context within which early modern widows lived.

It has been argued that the relative freedom of widows and their ability to behave in ways deemed inappropriate for married women suggests that 'gender roles were relatively porous and diverse'.[117] I would argue however that whilst comparing the status of widows, married women and single women does shed some light on women's condition under patriarchy, it does not indicate a permeability of roles, but rather the weakness of their construction and the inbuilt rules that allowed or restricted movement between them. This also suggests that widowhood was a different role entirely, connected to womanhood, but distinct from it in ways that brought it closer to masculine norms and responsibilities. Miranda Chaytor made an interesting argument in her 1995 article, suggesting that the relative absence of widows deposing about incidents of rape was because 'there was no available narrative through which a widow could speak…a widow belonged to no one'.[118] This idea can be extended to widows more widely. Chaytor argued that by taking a husband's goods, his position in the household, a widow 'had in a

[112] Todd, 'The virtuous widow', p.67
[113] Lanza, *From Wives to Widows*, pp.9-10
[114] Fairchilds, *Women in Early Modern Europe*, p.103
[115] Lanza, *From Wives to Widows*, p.2
[116] Ella Sbaraini. '"Those that Prefer the Ripe Mellow Fruit to Any Other": Rethinking Depictions of Middle-aged Women's Sexuality in England, 1700-1800', *Cultural and Social History,* Vol 17, No. 2 (2020), p.169
[117] Lanza, *From Wives to Widows*, p.13
[118] Miranda Chaytor, 'Husband(ry): Narratives of Rape in the Seventeenth Century', *Gender & History*, Vol. 7, No. 3 (1995), p.385

sense *become* the dead husband once and for all'.[119] This notion of transitioning from a wife to a fill-in man is particularly interesting for this project.

Widows, of course, did have the option to remarry. Todd has written extensively on the topic of remarriage and has argued that opportunity, necessity, and preference were all in play when a widow was deciding whether to remarry.[120] Despite the stressed importance of marriage, widows were discouraged from remarrying. Rebecca Mason argues that remarried women had a different status to wives and widows: it was a 'blended marital status'.[121] Remarriage could have an adverse impact on children from an earlier marriage and could be seen as lessening a woman's allegiance to the family of her dead husband.[122] Those that did choose to remarry had contradicting qualities from a once liminal and then reversed status: 'she shared roles with men and women, and yet differed from both'.[123] As a widow who had the option to remain single, she may have had all the skills required to act independently. However, with the legal identity and social expectation shift came an allowed power, or the ability to act with the authority once associated with the husband and usually associated with men.

This concept of allowed power will be discussed in detail in the final section of this chapter. At the heart of this project is widows at law, exercising their newly acquired right to appear as legal individuals, free of coverture and 'unheaded'. Stretton has argued that widowhood was a catalyst for litigation.[124] However, I would take this further and argue that widowhood was a catalyst for legal identity. Litigation was possible for married and single women, with some courts seeing more wives than widows appearing as litigants in the court. It was more likely to be used following the death of a husband, in order to settle affairs and perform the role of executrix. But the number of widows who appeared following their entry into widowhood, some immediately and some many years later, as Stretton himself notes, was indicative of a larger trend, of fulfilling a legal identity that was reserved for the supposed final life stage.[125] Nevertheless, the independence and

[119] Chaytor, 'Husband(ry): Narratives of Rape, p.385
[120] Barbara J. Todd. 'Demographic determinism and female agency: the remarrying widow reconsidered…again' in *Continuity and Change* 9:3 (1994), p.422
[121] Rebecca Mason, 'Property Over Patriarchy? Remarried Widows as Litigants in the Records of Glasgow's Commissary Court, 1615-1694', in Teresa Phipps and Deborah Youngs (eds.) *Litigating Women: Gender and Justice in Europe, c.1300-1800* (London: Routledge, 2022), p.135
[122] Wiesner-Hanks. *Women and Gender in Early Modern Europe,* p.103
[123] Lanza. *From Wives to Widows*, p.4
[124] Stretton, *Women Waging Law,* p.113
[125] *Ibid,* p.117

legal entitlements enjoyed by widows still existed alongside the need 'to negotiate a whole series of obstacles that widowers simply did not have to face'.[126] Even in the freest state that they would enjoy, gender still held dominion.

Early Modern English Law

It was the joint operation of common law, equity, manorial law, and ecclesiastical law that allowed for a 'workable legal system' during this period.[127] Legal jurisdictions were central in early modern England as a vehicle for government and as a source of conflict resolution across the social spectrum. Such a system of law was the foundation of social structure, defining what was permissible and what was not, and legitimising select voices and desired behaviours. According to Moore, one of the reasons why the system was recreated in the colonies was because of its ability to meet the needs of a diverse population.[128] This was, in part, influenced by the popular knowledge of the law in early modern England. This knowledge was first-hand, based on people's own experiences and regular contact with law courts within various jurisdictions. It was also facilitated through print in the form of 'ballads and cautionary tales…in which crime, cozening and oppression loomed large'.[129] Accessibility improved as the means of communication did, showing a willingness to encourage popular participation. Every person involved in litigation, whether common, equity, manorial or ecclesiastical, found out about its existence and processes from somewhere or someone. Even for the Exchequer, whose remit appeared specific but became more open over time, some popular knowledge was necessary in order for a person to bring a case. John Walter has commented on the importance of this popular knowledge: 'Given that much government was self-government at the king's command, the government deliberately sought to promote knowledge of its laws'.[130] Popular participation was central to the English legal system, and 'the flexibility of the system both supported the gender order, and offered women ways around male authority'.[131]

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[126] Tim Stretton, 'Widows at law in Tudor and Stuart England', in Sandra Cavallo and Lyndan Warner (eds.) *Widowhood in medieval and early modern Europe* (Harlow: Longman, 1999), p.194
[127] Erickson. *Women and Property*, p.5
[128] Lindsay R. Moore. *Women Before the Court: Law and Patriarchy in the Anglo-American World, 1600-1800* (Manchester: Manchester University Press, 2019), p.4
[129] Walter, '"Law-Mindedness"', p.168
[130] *Ibid,* p.166
[131] Gowing. *Gender Relations*, p.57

Scholarship of the early modern period has noted the overall increase in litigation in England during the seventeenth century. Christopher Brooks has argued that this increase was largely driven by urban and middling sorts.[132] So accepted were lawsuits as a means of restoring harmony 'that historians now place litigation, legal institutions and a growing belief in the rule of law at the centre of explanations of state formation'.[133] The everyday accessibility of the law across the social spectrum was equally as important as knowledge of it. The array of available jurisdictions, combined with the various locations on offer, made seventeenth-century English law accessible, in some form at least, to most people in society. According to Peter Rushton, 'Wherever people turned, they had faith to some degree that there would be some kind of legal resolution to their personal problem'.[134]

The extent of this accessibility was not the same for everyone: gender and class were the two main determining factors. The placement of a case in a particular court was not necessarily purely strategic or a free choice: for some it was one of few available options. The practice of coverture, 'a peculiarly English system' impacted the accessibility of the law. [135] Coverture barred married women from litigating in common law courts, given that their legal identity was subsumed into their husband's. In addition, they could not 'alter or dispose of property without their husband's consent, even if it was their own inheritance'.[136] There were, according to Todd, two exceptions to the theory of coverture that supported the idea that wives maintained their own personal identity even during marriage. The first was that 'even while saying that man and wife were biblically "one flesh", writers acknowledged that a wife's soul was her own', and the second, 'the acknowledgment that all women, including wives, bore personal allegiance to their sovereign under common law'.[137] As a result of coverture within common law jurisdiction, far fewer women appeared in common law courts, a reflection of its power

[132] Christopher W. Brooks, 'Law and Revolution: The Seventeenth-Century English Example', in Michael Lobban, Joanne Begiato and Adrian Green (eds.) *Law, Lawyers and Litigants in Early Modern England: Essays in Memory of Christopher W. Brooks* (Cambridge: Cambridge University Press, 2019), p.299
[133] Tim Stretton, 'Written Obligations, Litigation and Neighbourliness, 1580-1680', in Steve Hindle, Alexandra Shepard and John Walter (eds.) *Remaking English Society: Social relations and social change in early modern England* (Woodbridge: Boydell, 2013), p.192
[134] Peter Rushton, 'Local Laws, Local Principles: The Paradoxes of Local Legal Processes in Early Modern England', in Michael Lobban, Joanne Begiato and Adrian Green (eds.) *Law, Lawyers and Litigants in Early Modern England: Essays in Memory of Christopher W. Brooks* (Cambridge: Cambridge University Press, 2019), pp.185-206
[135] Gowing, *Gender*, p.45
[136] Laurence, *Women in England*, p.228
[137] Barbara Todd, 'Written in Her Heart: Married Women's Separate Allegiance in English Law', in Tim Stretton and Krista J. Kesselring (eds.) *Married Women and the Law: Coverture in England and the common law world* (Montreal: MQUP, 2014), p.164

of limiting women's legal activity. This rule of coverture in common law 'was complex, contradictory, and as bewildering to most contemporaries as to historians'.[138] It was not universally applied, nor was it an accurate representation of daily gender relations – socially, it was a fiction.[139] Whilst the gulf between principle and the law was wide, this should not be used to discount the influence of coverture, at least in ideological terms.[140] It is important to note however that common law did not deny women's rights in their totality. In some instances, common law courts could be better avenues of justice for women, especially if they appeared 'not as women asserting women's rights, but as creditors, debtors, executrixes, administratrixes, leaseholders, tenants, midwives, servants or traders seeking redress for wrongs'.[141] Coverture was also challenged by women such as 'informal actions of resistance revolved around issues of property control and access to and custody of children'.[142] It would therefore be an over-simplification to say that common law provided no redress for women because of coverture or that it was an insurmountable obstacle for women's participation in the law.

Cost could also prevent litigation, and could become a burden following continued litigation, especially if it spread across multiple courts. Some jurisdictions, ecclesiastical and equity courts in particular, were more accessible for women than common law courts, and others were far cheaper than alternatives. Women's access to litigation improved across the early modern period, and so too did their participation, which 'may also have contributed to more general feelings of unease about women's independent behaviour'.[143] Some women, like men, 'were both proficient in the legal process and able to make informed, strategic decisions on the precise courts to petition'.[144] Moore has argued that women had 'a robust understanding of the law's protection of their persons

[138] Capp, *When Gossips Meet*, pp.29-30
[139] Erickson. *Women and Property*, p.226
[140] Tim Stretton and Krista J. Kesselring, 'Introduction: Coverture and Continuity', in Tim Stretton and Krista J. Kesselring (eds.) *Married Women and the Law: Coverture in England and the common law world* (Montreal: MQUP, 2014), p.9
[141] Stretton, *Women Waging Law*, p.33
[142] Danaya C. Wright, 'Coverture and Women's Agency: Informal Modes of Resistance to Legal Patriarchy', in Tim Stretton and Krista J. Kesselring (eds.) *Married Women and the Law: Coverture in England and the common law world* (Montreal: MQUP, 2014), p.242
[143] Stretton, *Women Waging Law*, p.217
[144] Youngs, '"A Besy Woman … and Full of Lawe"', p.735

and their property'.[145] They were, nonetheless, 'always bounded by their gendered position within interlocking hierarchies of age, wealth, and status'.[146]

Despite the variety of legal systems and jurisdictions in England, R. W. Hoyle has observed that 'the common lawyers had a low regard for ecclesiastical law and the church courts, and claimed supremacy over them'.[147] During the seventeenth century, there were tensions between common law and equity, described by Mark Fortier as 'a battle between the systematic thought of prominent men', with the eventual triumph of the latter.[148] The struggle between the two was in large part evident in the disagreements between Edward Coke and Thomas Edgerton, Lord Ellesmere, Lord Chancellor, and thus between King's Bench and Chancery. Whilst they disagreed about what constituted equitable jurisdiction, King James I had the final say on the place of equity, ultimately holding it as 'the law of the king's conscience, the exercise of his prerogative for mercy and fairness … [and] closer to the kind and closer to God's law'.[149] Compared to common law courts, representative of 'certainty and predictability associated with the merciless enforcement of obligations', equity courts allowed 'for a humane relaxation of strict liability on the basis of higher, "religious" principles'.[150]

The option to appeal to equity jurisdiction developed over the early modern period. As Brooks has articulated, there was no legal defence for the non-payment of a conditional bond, the most basic legal instrument of the time. Equity courts offered 'some relief to debtors of this kind, as well as to other people whose paperwork was not in order or who could point to extenuating circumstances that prevented them from honouring their obligations'.[151] The notion of conscience was central to equity, which was, in some instances 'particularly linked to the evil of arbitrariness'.[152] The idea of fairness and equity should not be confused with equality, Fortier warns, and it is therefore 'imperative

[145] Moore, *Women Before the Court*, p.10
[146] Alexandra Shepard and Tim Stretton, 'Women Negotiating the Boundaries of Justice in Britain, 1300–1700: An Introduction', *Journal of British Studies*, Vol. 58, No. 4 (October 2019), p.681
[147] R. W. Hoyle, 'Fountains of Justice: James I, Charles I and Equity', in Michael Lobban, Joanne Begiato and Adrian Green (eds.) *Law, Lawyers and Litigants in Early Modern England: Essays in Memory of Christopher W. Brooks* (Cambridge: Cambridge University Press, 2019), p.80
[148] Mark Fortier, 'Equity and Ideas: Coke, Ellesmere, and James I', *Renaissance Quarterly*, Vol. 51, No. 4 (1998), p.1258
[149] Fortier, 'Equity and Ideas', p.1278
[150] Brooks. *Law, Politics and Society*, p.314
[151] Brooks, 'Law and Revolution', p.302
[152] Dennis R. Klinck, *Conscience, Equity and the Court of Chancery in Early Modern England* (Farnham: Ashgate Publishing Ltd, 2013), p.224

that the reader see past our present usage to ascertain when equal means equitable and has nothing necessarily to do with equality'.[153]

The most important equity courts were those of Chancery and Exchequer, not only in terms of their longevity throughout the early modern period, but also in terms of the number of cases brought to them.[154] Both courts had similar origins, starting as departments of government and developing judicial activity.[155] The lack of precedents in equity law made some remedies possible that were not available in common law. Moore has stressed the importance of equity courts for women to realise their legal and economic independence because of these principles of fairness.[156] It could also be cheaper than common law alternatives, with Chancery and Exchequer costing between £3 and £6, with the ability to petition for court cost exemption.[157] It was within equity law and its court that trusts were developed and enforced, which allowed wives to maintain some control over property during their marriage and following their husband's death.[158] On occasion, equity courts also ignored coverture, and allowed wives to appear against their husbands.

Tim Stretton has written extensively on equity courts, specifically the Court of Requests. In his 1998 work, *Women Waging Law in Elizabethan England*, he noted how courts such as Requests:

> '…formed a hinterland between what contemporaries considered to be the private and public spheres of life, and they provide interesting forums in which to compare expressed attitudes to women with women's behaviour in practice, not just on the simple subject of whether it was right for women to pursue actions in court on their own behalf, but of whether women went to court confidently or with some

[153] Mark Fortier, *The Culture of Equity in Restoration and Eighteenth-Century Britain and America* (Farnham: Ashgate Publishing Ltd, 2015), p.4
[154] Hunt, 'Wives and marital "rights"', p.110
[155] Timothy S. Haskett, 'The Medieval English Court of Chancery', *Law and History Review*, Vol. 14, No. 2 (1996), pp.246-248
[156] Moore, *Women Before the Court*, p.25
[157] Hunt, 'Wives and marital "rights"', p.112
[158] Tim Stretton. 'Marriage, separation and the common law in England, 1540-1660', in Helen Berry and Elizabeth Foyster (eds.) *The Family in Early Modern England* (Cambridge: Cambridge University Press, 2007), p.21

> reluctance and how legal counsel, opponents and deponents characterised them in pleas and in depositions'.[159]

According to Stretton, women made up a quarter of litigants in Chancery and a third of litigants in Requests.[160] Star Chamber, in comparison with Chancery and the Exchequer, was 'less formulaic and more flexible', and saw a large number of cases that had been originally been brought elsewhere.[161] From Deborah Youngs' sample of three hundred Star Chamber cases, wives appeared the most frequently and 43 per cent of cases involving women were brought by a sole female plaintiff.[162] Craig Muldrew's work on debt litigation in the borough court of King's Lynn by contrast reveals the rarity of female litigants, and the dominance of widows and spinsters within these small numbers.[163] As database findings discussed in Chapter Three will show, the appearance of women in the Exchequer was comparable with other equity courts, but widows were the most common legal status.

In comparison with common law and equity courts, ecclesiastical courts were primarily concerned with cases of defamation, marriage, morality, and tithes. There was some variance of ecclesiastical law between north and south, unlike common and equity law.[164] Cases brought here 'had a special centrality to women's lives and female identity: battles for sexual honour, negotiations for marriage, and allegations of adultery'.[165] Bronach Kane has commented on women's ability to exercise agency through memory in the church courts and the fact that 'female expertise in communal relations afforded particular value'.[166] Ecclesiastical courts were in the decline over the early modern period, in part due to conflict with common law.[167] Women made up 76 per cent of litigants in defamation cases in the York Consistory Court in the late seventeenth century according to Moore, and 84 per cent of litigants in slander cases in south-eastern ecclesiastical courts throughout the century.[168] The suppression of ecclesiastical courts

[159] Stretton, *Women Waging Law*, p.11
[160] *Ibid,* p.39
[161] Youngs, '"A Besy Woman … and Full of Lawe"', p.736
[162] *Ibid,* p.740
[163] Craig Muldrew, 'Credit and the Courts: Debt Litigation in a Seventeenth-Century Urban Community', *The Economic History Review*, Vol. 46, No.1 (1993), pp.28-29
[164] Erickson. *Women and Property*, p.23
[165] Gowing. *Domestic Dangers*, p.251
[166] Bronach Kane, 'Women, Memory and Agency in the Medieval English Church Courts', in Bronach Kane and Fiona Williamson (eds.) *Women, Agency and the Law* (London: Taylor and Francis, 2015), p.57
[167] Erickson, *Women and Property*, p.35
[168] Moore, *Women Before the Court*, p.2

during the Civil War, 'cast doubt on [their] viability…[and] began a swing of the pendulum towards domestic patriarchy that was such a feature of the next 200 years'.[169]

In comparison with other bodies of law, manorial customs were more informal, less expensive than other alternatives and depended 'upon long usage'.[170] Stretton has commented on the flexibility of custom, and the subsequent resulting impact on women. Custom was never fixed and instead 'differed from manor to manor, they could shift and change on the same manor over time and, given the normative effect of custom, they could even differ markedly, in terms of the strength of support they offered, from individual to individual'.[171] Compared to other jurisdictions, manorial courts were the easiest to access in the seventeenth century.[172]

Whilst jurisdictions provided legal options for litigants, they did not necessarily exist in harmony. It has been argued that disputes between jurisdictions in the seventeenth century reflected 'the uncertainties of an untidy system in which jurisdictions overlapped'.[173] The fact that litigants could strategically bring cases in one court to forestall proceedings in another, often equity suits disrupting common law cases, contributed to these tensions. Many suits across jurisdictions also never proceeded past the initial complaint, 'as the threat of litigation was of itself enough to bring the parties to settle through private agreement or court-sponsored arbitration'.[174] The increase of lawsuits in the equity courts of Chancery and Requests at the end of the sixteenth century corresponded with a growing number of countersuits in both courts, 'launched in response to legal process initiated at common law'.[175] A large number of cases brought to equity courts fell into this category, and this added to the tensions between common law and equity jurisdictions as discussed above.

[169] Brooks, 'Law and Revolution', p.314
[170] Joseph Bettey, '"Ancient Custom Time out of Mind": Copyhold Tenure in the West Country in the Sixteenth and Seventeenth Centuries', *The Antiquaries Journal*, Vol. 89 (Cambridge University Press: 2009), p.310
[171] Stretton, 'Women, custom and equity', p.185
[172] Erickson. *Women and Property*, p.30
[173] Hoyle, 'Fountains of Justice', p.80
[174] Christine Churches, 'Putting Women in Their Place: Female Litigants at Whitehaven, 1660-1760', in Nancy Wright, Margaret W. Ferguson and A. R. Buck (eds.) *Women, Property, and the Letters of the Law in Early Modern England* (Toronto; Buffalo: University of Toronto Press, 2004), p.59
[175] Stretton, 'Written Obligations, Litigation and Neighbourliness', p.194

Using Court Narratives

Finding a window into the lives of early modern women is no simple task for the historian. One way to do this is via court narratives, which also enable us to reflect on women's relationship with the law. Matthew Franks Stevens has argued that looking at women's activity within legal frameworks provides a helpful insight into their 'capacity to engage with the economy and society'.[176] Large numbers of women appearing in law courts were doing so as a result 'of their distinctive experiences as women'.[177] These were cases about property during marriage, slander impacting their sexual reputation, disputes over wills and marriage contracts, and securing rights as a widow. Gender could, and indeed did, have a bearing on women's appearance in court – it was not a masculine space, but rather a space more suited to supposedly male qualities. This was, in part, evident from the fact that only between 5 and 20 per cent of litigants across civil and criminal courts were women.[178]

Stretton has identified litigation as 'a combative act', and women's presence in the court as a battle between ideals of 'correct' female behaviours and those of justice – 'and when these ideals came into conflict most members of the moralising elite believed the latter to be more important than the former'.[179] Even for widows, the tension between these ideals was considerable.[180] As Moore has noted, women's words in court could directly confront the hierarchy of the household and challenge patriarchal order.[181] There was power in the words of women even if they were not a direct opposition to established authority: 'Women censored their own speech and men disparaged feminine rhetorical prowess not because it was insignificant, but because it could be powerful and dangerous'.[182] The process of going to court, either bringing a case or appearing as part of one, was not necessarily a liberating experience for women, whether they were single, married, or widowed. Indeed, for widows, taking a case to court or defending one for the first time may have been 'an unwelcome responsibility that came at a difficult time in their lives'.[183]

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[176] Matthew Frank Stevens, 'London Women, the Courts and the "Golden Age": A Quantitative Analysis of Female Litigants in the Fourteenth and Fifteenth Centuries', *The London Journal*, Vol. 37, No. 2 (2012), pp.69-70
[177] Shoemaker, *Gender in English Society*, p.294
[178] Stretton, 'Widows at law', p.195
[179] Stretton, *Women Waging Law*, p.45
[180] Stretton, 'Widows at law', p.197
[181] Moore, *Women Before the Court*, p.8
[182] Mendelson and Crawford, *Women in Early Modern England*, p.215
[183] Stretton, 'Widows at law', p.208

Court narratives are well-suited for exploring women's relationship with the law, and many early modern English historians rely on them.[184] Courtrooms were not purely places of legal right and entitlement: there was an intersect with human feeling and need.[185] One of the central problems with many early modern records is the fact that they are often created by men, which impacts them as a resource, although it doesn't discount their value. This is one of the limitations that we must be aware of as gender historians, but we can learn from such limitations: if we are 'alert to the ways in which the categories of records are cultural constructions, we can see that they themselves are often indicative of gendered attitudes'.[186] Court records in particular add layers of complexity to our understanding of women's engagement with the law, whilst also allowing us to demonstrate that it was 'a process that women engaged in as both individuals and collectively with others of shared interests'.[187] As historians we must 're-present the past in the form of a narrative "historical discourse" it was never itself in'.[188]

Given that court narratives are already in a narrative format, they pose a difficult challenge and it can be tempting to take them as read and present them as sources that provide a rare and true glimpse into the lives and troubles of early modern life. In choosing to use them an understanding of their value and more importantly their limitations, is necessary. Witnesses' depositions for example could be described as 'fictive' given their artificial construction but reducing them as such 'both underestimates the value of the incidental details that attached to their stories, and more significantly leaves depositions curiously detached from the witnesses who provided them'. [189] The same can be said for court narratives from plaintiffs and defendants: ultimately 'records of litigation do not provide a straightforward window on early modern identities'.[190] Language choice in part reflects this. Alexandra Shepard for example comments that 'female plaintiffs' frequent tactical deployment of the language of poverty, weakness, and

[184] Churches, 'Putting Women in Their Place', p.50
[185] Hunt, 'Wives and marital "rights"', p.108
[186] Shoemaker, *Gender in English Society*, p.14
[187] Phipps and Youngs, 'Introduction', p.3
[188] Morgan, 'Introduction: Writing Feminist History', p.3
[189] Alexandra Shepard, *Accounting for Oneself: Worth, status, and the social order in early modern England* (Oxford; New York: Oxford University Press, 2015), p.8
[190] *Ibid,* p.8

subordination in pleadings often gave a double edge to the legal agency they managed to exercise'.[191]

Joanne Bailey [Begiato] has offered a useful foundation for looking at court narratives, suggesting that a historian is either a 'story-teller' or a 'translator'.[192] The former '[construct] stories of individuals, relationships and communities from legal testimony', whereas the latter 'recognize the limitations of court records and therefore view them, to a greater or lesser extent, as texts encoded with ideology, seeking to decode the symbol and form of their language'.[193] Both approaches have their flaws: story-tellers risk focusing on people who were not good representations of early modern experience, whilst translators can end up treating individuals as representative of larger groups. In addition, both necessitate transparency and caveats to ensure that they are not held up as objective sources without limitations. Focusing on the 'constructed' nature of court records, they were not just shaped by the people and workings of the court, 'but by their narrator's own strategic and unconscious reshapings'.[194] These documents were a product of the court, not simply the voice of the litigant: we must remember that 'legal requirements for cases shape the presentation of evidence, affect the construction of narrative, and dictate who and what events are portrayed as the salient ones'.[195]

Stretton has commented on the distortion of court records, and the subsequent difficulty of extracting reliable information.[196] This distortion exists for a few reasons: the formulaic nature of the narratives; their strategic construction; and the fact that they were not the first-hand words of the litigant but written by someone else. Court narratives, such as those found in the Court of Exchequer, have elements of storytelling, argues Hunt: 'The resulting stories are manifestly full of lies, omissions, temporal transpositions and eccentric interpretations of events'.[197] This thesis takes the approach of the story-teller, giving space to case studies with narrated and mediated voices at the centre, providing an insight into women's pursuit of legal redress. The narratives used in

[191] Alexandra Shepard, 'Worthless Witnesses? Marginal Voices and Women's Legal Agency in Early Modern England', *Journal of British Studies*, Vol. 58, No. 4 (October 2019), p.719
[192] Joanne Bailey, 'Voices in court: lawyers' or litigants'?', *Historical Research*, Vol. 74, No. 186 (2001), pp.392-408
[193] *Ibid,* p.406; p.407
[194] Gowing, *Domestic Dangers*, pp.54-55
[195] Linda A. Pollock, 'Rethinking Patriarchy and the Family in Seventeenth-Century England', *Journal of Family History*, Vol. 23, No. 1 (1998), p.4
[196] Stretton, *Women Waging Law*, p.13
[197] Hunt, 'Wives and marital "rights"', p.113

this project are not presented as true or objective retellings of events, but as the vehicle by which legal right was displayed and allowed power was realised.

Even whilst acknowledging the limitations of these sources, it is tempting to consider court records as subjective voices from the past. However, Frances E. Dolan cautions against using the notion of 'voice', as this implies 'that we are about to gain intimate access to first-person perspectives on the past'.[198] The association between voice and supposed truth risks romanticising court records. As sources they are inherently valuable, but they should not be seen as authentic representations of early modern women's words: they were not 'a clear expression of women's private inner thoughts or of a single authentic self'.[199] Moore however suggests that is 'self-defeating to discredit the possibility of hearing traces of women's voices in the legal record' and that we should instead focus on the strategies women used through the concept of voice, rather than looking to uncover the 'truth' within narratives. [200] I would argue that strategy is a more important consideration than voice, given that it explicitly indicates a decision to act and exercise a legal right with forethought. Even to uncover voice is to reveal something subjective, and whilst strategy is not objective, it had inherent purpose. Cordelia Beattie has argued that the historian does not need to explicitly choose between the 'textual' and the 'social'.[201] By recognising the interplay of construction, strategy and subject position, research that makes use of court narratives can reveal 'not only of gender ideologies but also of women's experiences of and interactions with the law'.[202] Depending on the court and the nature of the case being heard, there was a degree of juxtaposition between women in court and ideals around their behaviour. For widows in the Exchequer however, the juxtaposition was between the power that they had been granted and ideals of womanhood. The court setting provided a space for women's legal identity, authority of retelling, and interaction with the early modern legal system, as well as a written record of women's grievances and resolutions.

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[198] Frances E. Dolan, *True Relations: Reading, Literature, and Evidence in Seventeenth-Century England* (Philadelphia: University of Pennsylvania Press, c.2013), p.117
[199] Tim Stretton, 'Women, Legal Records, and the Problem of the Lawyer's Hand', *Journal of British Studies*, Vol. 58, No. 4 (October 2019), pp.697-698
[200] Moore, *Women Before the Court*, p.12
[201] Cordelia Beattie, 'Your Oratrice: Women's Petitions to the Late Medieval Court of Chancery', in Bronach Kane and Fiona Williamson (eds.) *Women, Agency and the Law, 1300-1700* (London: Taylor and Francis, 2015), p.18
[202] *Ibid*, p.29

Power, Authority, and Women's Legal Identity

Resistance to authority is a more common focus than conformity to it. Gender historians are interested in how women circumvented legal restrictions, and how in doing so they demonstrated 'that the letter of the law was neither definitive nor irremediable'.[203] But what of those women who operated within the confines and the rules, and who conformed to authority and were sanctioned power of their own in return? Capp has argued that there was no place for female power and autonomy, despite the fact that 'the basic principle that only men should bear rule was far from universally observed'.[204] I disagree with this statement, and counter that there was in fact a very specific expression of female power and autonomy.

Foucault's rationalisation of power is particularly useful to consider, providing a theoretical element that sees realisation across history in ever-changing ways. For Foucault, power is never stationary or appropriated; rather it constantly circulates and uses individuals as vehicles for its movement and actualisation.[205] Its successful exercise relies on 'a certain economy of discourses of truth' and as a result 'we are forced to produce the truth of power that our society demands, of which it has need, in order to function'.[206] Discussions around power in early modern England often refer to systems and hierarchies that formed the skeleton of a society 'organised around a series of overlapping power structures which sought to regulate and order the lives of people at every level'.[207] Within this were codes of behaviour that encouraged 'subordination… recognition, respect or fear of authority, and a sense of duty, together with emotional bonds, feelings of love and affection, and ties of friendship'.[208] Power was exercised day-to-day and applied to all spaces and relationships. It could exist and be exercised in numerous ways and could be 'informal, unpredictable, unaccountable, frittered away, or saved for important occasions'.[209] It was not limited to men's power over women, but also

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[203] Nancy Wright and Margaret W. Ferguson, 'Introduction', in Nancy Wright, Margaret W. Ferguson and A. R. Buck (eds.) *Women, Property, and the Letters of the Law in Early Modern England* (Toronto; Buffalo: University of Toronto Press, 2004), p.4
[204] Capp, 'Separate Domains?', p.119
[205] Foucault, *Power/*Knowledge, p.98
[206] *Ibid,* p.93
[207] Paul Griffiths, Adam Fox and Steve Hindle, 'Introduction', in Paul Griffiths, Adam Fox and Steve Hindle (eds.) *The Experience of Authority in Early Modern England* (Basingstoke: Macmillan, 1996), p.2
[208] Daybell, 'Gender, Obedience, and Authority', p.50
[209] Natalie Zemon Davis, '"Women's History" in Transition: The European Case', *Feminist Studies*, Vol, 3, No. 3/4 (1976), p.90

included women's power over each other, an example of how women participated in patriarchal order.[210]

In Stretton's exploration of women's experience of litigation in the Court of Requests, he makes a crucial point that can be applied to all projects that explore female litigation. He argues for the mutual dependence of women as litigants and women's status before the law: 'legal rights cannot be exercised until they are held'.[211] Of interest here is the fact that women were indeed allowed these legal rights, and it was their fundamental relationship with the law that allows for an exploration of their role as not only litigants, but more specifically as legal beings, recognised within and beyond the confines of the court. As Carole Pateman has noted, rights were two-dimensional – they consisted of civil and political rights, but also the rights that men had over women, 'the denial that women were born free, or possessed the requisite form of rationality and other capacities to take part in public and political life'.[212] A woman's decision to pursue litigation was neither 'a straightforward expression of agency or a resistance of patriarchy'.[213] Early modern women would have seen their actions as neither of an act of agency or resistance. As opposed to the challenge of patriarchy, this project looks at widows working within it, and rather than agency, it considers sanctioned authority and power. It is, therefore, women's operation and activity within the confines of patriarchy that is of interest: we do not need to reduce this to patriarchy versus female agency, but instead recognise the interplay between the two – allowed power. Phipps and Youngs call this 'strategic positioning', where women were not only aware of their rights and status in the law, but mindful of how to reposition themselves to better their chances at legal redress.[214]

Using the concept of allowed power aids in the movement away from 'simple narratives of resistance or celebrations of agency'.[215] It acknowledges the crucial fact that in order to maintain the patriarchal ideal and seek to control the activities of the majority of women required 'the partial bestowal of privileges to some of them'.[216] This was

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[210] Laura Gowing, 'Ordering the body: illegitimacy and female authority in seventeenth-century England', in Michael J. Braddick and John Walter (eds.) *Negotiating Power in Early Modern Society: Order, hierarchy, and subordination in Britain and Ireland* (Cambridge: Cambridge University Press, 2001), p.60
[211] Stretton, *Women Waging Law,* p.20
[212] Carole Pateman, 'Women's writing, women's standing: theory and politics in the early modern period', in Hilda L. Smith (ed.) *Women Writers and the Early Modern British Political Tradition* (Cambridge: Cambridge University Press, 1998), p.370
[213] Moore, *Women Before the Court,* p.10
[214] Phipps and Youngs, 'Introduction', p.6
[215] Shepard and Stretton, 'Women Negotiating the Boundaries of Justice', p.680
[216] Dialeti, 'Patriarchy as a Category of Historical Analysis', p.333

concentrated particularly on widows, whose liminal space within the gender order corresponded with their transition and limbo between realising their own legal identity. Lanza focuses on liminality in the Parisian context, and I argue that this can be applied and further developed in the early modern English context.[217] Despite women's overall marginalisation, 'Women's purchase on legal authority was both endorsed and circumscribed by the "patriarchal state", whose "incorporative force" built on gender discrimination whilst simultaneously empowering certain women'.[218]

As Lerner has noted, the patriarchal system 'can function only with the cooperation of women'.[219] In order to achieve and maintain this, some women must be awarded privileges that the majority do not enjoy. It is crucial to recognise that even in doing so, the independence and autonomy granted to women was intrinsically linked to male power and control, thus making it difficult to develop a tradition that would reaffirm women's capability outside of male legacy or obligations directly linked to the protection of the family. Poska's use of the term 'agentic' when referring to gender expectations of women is particularly useful to employ alongside the concept of allowed power. This acknowledges the fact that women 'had the opportunity to act independently, achieve success, and exert power and authority in many aspects of their lives'.[220] It also gives space for the idea that agency was an ongoing and flexible process 'in which dynamics of power were produced through a distinctively early modern interplay between gender and other sites of identity formation'.[221]

The realisation of power and authority relied on participation, by some even if not all: 'Authority was always, to a certain extent, bound by the limits of the possible and mitigated by the need for consent'.[222] Participation and rights were in the process of being defined in the seventeenth century, and this often 'meant redefining concepts and groups to explicitly exclude women'.[223] Notions of citizenship were equated with manhood, and individuality associated with control over property and capacity for action. Developing ideas then did not have women in mind. Stretton has argued that the gulf between early modern ideals and women's everyday life 'did not necessarily represent the failure of the

[217] Lanza. *From Wives to Widows*, p.222
[218] Shepard, 'Worthless Witnesses?', p.719
[219] Lerner, *The Creation of Patriarchy*, p.217
[220] Poska, 'The Case for Agentic Gender Norms', p.355
[221] Dialeti, 'Patriarchy as a Category of Historical Analysis', p.335
[222] Griffiths, Fox and Hindle, 'Introduction', p.5
[223] Gowing, *Gender Relations*, p.68

wielders of patriarchal authority to assert their chosen ideals and to subdue women', and indeed that attempts to limit and determine female behaviour 'served to undermine women's confidence'.[224] However, I would argue that it is a sign of the weakness of patriarchy as an oppressive force over women to sanction and encourage through its pervasiveness the power and authority of the widow, choosing the centrality of the ideal of the family over that of male supremacy. We understand patriarchy to be a melding of these two qualities, and yet we see one win out over the other, in a way that exposes the fundamental failing of the idea at its root. It is indicative of the resilience of patriarchy that in spite of its shortcomings and contradictions it was, and remains, such a prominent force, but within its very fabric lies the unshaken notion that whatever needs to be done to protect its overarching ideal of the power of some and the submission of many must be done, even if those given the power are believed ideologically incapable of wielding it.

The 1632 *Lawes resolutions of womens rights* poses the question as to why widows should mourn following the death of their husband:

> 'now you be free in liberty, & free proprieties at your own Law, you may see that maidens and wives vows made upon their souls to the Lord himself of heaven and earth, were all disavowable and infringible'.[225]

This project considers this question in the light of historical enquiry into how widows operated within, benefitted from, and exposed the contradictions of patriarchy. It also draws attention to how their independence was nothing more than an illusion maintained to ensure the longevity of a structure that relied on order being upheld at any cost, even if it meant giving power and a legal identity to a widow, still a woman, but shrouded by the legacy of the man that had left her behind. Within a thriving field, there will always be gaps in our understanding, and with each piece added old questions can be answered and new questions can be asked. This chapter has identified the questions and areas of the field that this thesis addresses, and the following chapter makes a significant contribution to filling a gap in our understanding of redress in equity during

[224] Stretton, *Women Waging Law,* p.229
[225] Thomas Edgar and Sir John Doddridge, *The lawes resolutions of womens rights* (London: 1632: Text Creation Partnership, 2011), p.232

the seventeenth century. Database findings lead into focused discussions on the narratives of widows as they made use of the power that patriarchy had allowed them.

Chapter Three

Methodology and Database Findings

An extensive and original database forms the foundation of this project on the Court of Exchequer. The selection of court narratives involving widowed litigants is informed by this purpose-built database. This chapter considers the conception and development of this project, reflecting on methodological challenges, decisions, and lessons before presenting an overview of quantitative findings. Whilst this project is primarily focused on widowed litigants in the Court, this chapter discusses male and female litigants in order to identify how the Court was used. Litigation patterns over time and the type of cases brought are also considered. Findings have originated from a database of depositions between 1620 and 1670. This quantitative picture of the Court provides a springboard from which a qualitative analysis follows. Pairing the quantitative and qualitative in this way not only strengthens this contribution to the field, but also situates the widows of the Exchequer in a wider litigious context.

Methodology

The methodological approach of this project has been influenced by the lack of existing research on the Court of Exchequer, alongside the inherent difficulties of working with court records and the interdisciplinary approach which incorporates historical and feminist explorations of women's access to the law. It therefore centres on a single early modern court, is driven by research findings and focuses on female litigants, specifically widows. This approach has been taken to ensure a nuanced project, with research intensity and value to two areas of gender history in particular: the study of widows and women's relationship with the law. Therefore, this project does not provide a comparison with the Court of Chancery, nor does it compare male and female litigants beyond this chapter. The limited number of detailed works on the Exchequer necessitates a focused analysis of this often-forgotten equity Court, which recognises its close association with its 'sister court', as it has been labelled by Horwitz, but led by organic research findings,

rather than constructing an argument around this judicial association.[1] In a similar vein, this project does not attempt a long time-period for the purposes of a surface-level analysis, lacking research intensity. It instead combines both an overview over a fifty-year time period and a critical analysis of widows in the Court.

This project originated from discussions at The National Archives in London with Dr Amanda Bevan, the Head of the Legal Records Team, and was influenced by the relative unpopularity of Exchequer records with historians in comparison with other early modern courts. Originally embarked upon without fixed questions, so as not to limit or constrain the research process or the findings, the project was driven by what was found and was adapted to demonstrate the richness and lack within the records. The original focus was on female witnesses in the Court, using depositions to explore their understandings of early modern spaces and their relationships with them, influenced by the spatial turn in the fields of history and geography. With very little other research as an example, it was unclear how feasible this approach would be. Whilst early archival visits revealed a large number of documents with relatively legible script and frequent, if not common female deponents, the depositions were not as detailed as was hoped, and many were difficult to fully understand without reference to the original bill and answer.

The decision was therefore made to pursue cases from conception to completion, thus introducing female plaintiffs and defendants in bills and answers, rather than the initial approach of focusing solely on female witnesses. Court narratives, in the form of bills and answers, as well as rejoinders, replications, and depositions, were used to analyse women's relationship with the law, situated within the specific context and framework dictated not only by legal requirements, but also by social standards and expectations. As Hunt has noted, bills and answers were more revealing than depositions, 'more carefully crafted' and with 'a clearly recognizable beginning, middle and end, generally chronologically arranged'.[2] What began as an enquiry into female deponents in the Court of Exchequer became a wider exploration of women in the Court during the seventeenth century. This brought with it a set of questions and a comparison of sorts between women at different life stages, whilst also introducing the narratives of women

[1] Horwitz, 'Chancery's "Younger Sister"'
[2] Hunt, 'Wives and marital "rights"', p.113

either instigating or refuting claims in a court setting, rather than commenting on predetermined questions in the form of interrogatories.

Pairing Exchequer Deponent Lists with the Reports of the Deputy Keeper of the Public Records, the original goal was to create a database of all depositions brought to the Court across England from 1600-1700, listing case types, location and the name of litigants and witnesses.[3] The decision was then made to reduce the time frame to a fifty-year period, considering depositions heard in the Court between 1620 and 1670. The rationale behind the fifty-year time frame was twofold: to make the project more manageable and to bookend the Civil War. This ensured a more focused analysis of the Court to consider social instability during and after the Civil War, and to what extent this impacted women's use of equity redress. This time period was also an important one for the Court of Exchequer, which, despite confusion during and immediately after the Civil Wars, was one of only two courts of its kind that survived the 1640s. Considering the dual function of the Court, with the equity side providing a small part of its business, it survived the disappearance of Star Chamber, the Council of the North, Marches of Wales and the Court of Requests, to become the second key equity court from 1642 onwards. Therefore, its place in the system of English equity law shifted, and its processes aligned more with Chancery, whilst typical cases remained distinct. The resulting database totalled 3,968 depositions and acted as the foundation for further enquiry, analysis, and case selection. It is worth noting here that many more suits were brought to the Court than reached the deposition stage, and so the figures presented were only a proportion of total cases brought. Similarly, not all cases that reached deposition were formally resolved in the Court.

This project looks at the Court of Exchequer across England, dividing the country into seven groups (see Table 1 below). These groups reflect how Exchequer records have been catalogued in categories such as E 134 depositions, but such groupings do not exist

[3] *Exchequer Deponents: Volume 1, 1559-1620* (The Society of Genealogists, 1916; 1917; 1918); and *The Thirty-Eighth Annual Report of the Deputy Keeper of the Public Records* (London: George E. Eyre and William Spottiswoode, Printers to the Queen's Most Excellent Majesty, 1877); *The Thirty-Ninth Annual Report of the Deputy Keeper of the Public Records* (London: George E. Eyre and William Spottiswoode, Printers to the Queen's Most Excellent Majesty, 1878); *The Fortieth Annual Report of the Deputy Keeper of the Public Records* (London: George E. Eyre and William Spottiswoode, Printers to the Queen's Most Excellent Majesty, 1879); *The Forty-First Annual Report of the Deputy Keeper of the Public Records* (London: George E. Eyre and William Spottiswoode, Printers to the Queen's Most Excellent Majesty, 1880)

for other records such as Decrees and Orders (E 125/E 126/E 127/E 128/E 130/E 131). They have been used in quantitative discussions for ease of analysis and comparison. These groups largely map onto familiar twenty-first-century regional divides. Given the absence of any geographical comparisons of cases in the Court elsewhere, this approach has been adopted to provide a suitably detailed yet also comparative exploration of how the Court was used, especially the distribution of female litigants across the country.

Table 1 - Description of geographical groupings

Group 1	Yorkshire, the Northeast, and Cumbria
Group 2	Northwest and West Midlands
Group 3	East Midlands
Group 4	East England
Group 5	Southeast
Group 6	South Midlands
Group 7	Southwest

The database provided the starting point for specific cases to be investigated. Available cases were narrowed down based on set criteria: it involved a widowed litigant as the plaintiff or defendant, who was either a sole litigant or the main litigant speaking for her children; the case had a surviving bill, answer, and deposition; the case was legible. Of the cases that met the criteria, those selected for inclusion in this project were chosen because of their detail, interest, and value as examples of female legal identity and allowed power in action.

To ascertain the full details of a case, the ensuing process was followed:

1) The database was used to find the county, the date of the interrogatory and the E 134 reference
2) The deposition would be consulted and recorded
3) The Bill Books (IND series) were then used to find the names of the litigants and note the case number for the bill and answer
4) Confirming that the listed county, year of interrogatory and litigants were correct, and having noted the case number, the TNA catalogue would be used to determine

which E 112 box the original bill could be located in. Depending on the size of the county and the number of cases over a given timeframe, this could be between one and four boxes

5) Once the original bill was found, it would be recorded
6) With all information found, decrees and orders in E 125, E 126, E 127, E 128, E 130 and E 131 would be explored, to ascertain if any additional information could be found on the case. Litigant names were used to find any reference in these documents

The employment of both a quantitative and qualitative approach has been chosen to provide as full as a picture as possible of women in the Court, whilst maintaining research intensity and populating the Court with the narratives of female litigants. Quantitative discussions consider Court usage and trends and divide female litigants who appeared in the Exchequer based on their social and legal status. These categorisations were made as part of constructing the database, in particular from reference to the Reports of the Deputy Keeper of the Public Records. Female litigants were listed as 'wife', 'widow' or 'spinster', but many were also given no identifier of legal status and are therefore listed as 'unspecified'. These categories will be discussed further in the chapter.

Qualitative discussions, by comparison, focus on widows, the most common category of female litigant in the sample. The choice to centre on widowed litigants originated following the database construction and after early explorations of case narratives. Initially, the project sought to consider cases from across social and legal categories, offering comparisons where applicable between married, widowed, and single female litigants. There were, however, two key reasons why widows were prioritised in this project. The first, and most important, is the pursuit of exploring the legal right and actions of female litigants in the Court. Whilst 24 per cent of depositions involved a female litigant, their visibility within cases was not uniform. Many wives, almost all of them in fact, appeared alongside their husbands, and whilst it is true that many husbands appeared without their wives, and therefore the presence of a wife suggested that she had some role in the litigation in some form or another, a sample of cases involving wives revealed a very telling fact: they are almost invisible. We must ask whether she appeared for him, him for her, or because the case concerned them both in

different, or perhaps equal, capacities. An example of this were the many cases brought by Elizabeth Lady Howard de Walden and her husband Theophilus Lord Howard de Walden. In this sample, they appeared together in eight cases between 1619 and 1621, all originating in Northumberland.[4] In each case, the rights of the plaintiffs were presented as rights of Theophilus, within which Elizabeth was subsumed. Her name was mentioned at the header of the bills, answers, and depositions, as the second plaintiff, but she was not mentioned beyond this, even within witness statements. This was not surprising: equity courts may have been 'freer' spaces in regard to the practise and enforcement of coverture, but the social dynamic of this legal precedent and social norms were still very much in play.

The second reason for this focus on widows was to allow space for sole female litigants and first female litigants that have been found within the sample. In instances where a female litigant, whether plaintiff or defendant, was one of many, she was often subsumed into a larger legal voice and ascertaining any sense of the individual was difficult, as with cases involving married women. Her role in litigation might not even be apparent, and in appearing as part of a list of names it can only be reasonably concluded that she had a vested interest of some kind in the outcome of the suit. It was this decision to focus on widows that lead to the development of the concept of allowed power following considerations of the freedom of widowhood and the presence of a female legal identity.

Using Records from the Court of Exchequer

This project considers cases in which depositions were taken by commission in the country outside of London by appointed people rather than before the barons of the Exchequer in Westminster. These records, E134, come under a different classification to those taken within London. Whilst some cases from London and the surrounding areas were found within the catalogues and therefore are present in this study, the depositions for the case are still noted as being taken outside of Westminster. This study is thus not representative of the Court as a whole, and any conclusions should be prefaced with these

[4] TNA, E 112/112, Case no. 169; E 112/113, Case no.182; *Ibid*, Case no.195; *Ibid*, Case no.207; *Ibid*, Case no. 213; *Ibid*, Case no. 214; *Ibid*, Case no.218; *Ibid*, Case no.220, and TNA, E 134/18Jas1/East13; E 134/18Jas1/Mich20; E 134/18Jas1/Mich21; E 134/18Jas1/Mich22

parameters and limitations in mind. These cases, whilst not entirely absent of urban matters, were more often rurally focused concerned and were with landed estates, agriculture, and rural economies. The main sources used in this project are Court narratives from bills & answers (E 112) and depositions (E 134). The survivability and quality of the sources vary depending on region and period. Unsurprisingly, surviving records that have been consulted from the Civil War years were often in poor condition, but we do not know how many cases were brought during the war years that did not survive. Some sources have large portions that are either missing or unreadable. Some were only partly complete, in that the depositions have survived, but the initial bill of complaint and answer have not, and vice versa. Given the complexity of the Exchequer sources in general, some sources were difficult to find and were not where one might assume they would be. From a palaeographical standpoint, sources were largely legible, with some hands being very common, and the overall style for the period being relatively consistent. Abbreviations were not infrequent, but easy to deduce, and Latin usage was minimal.

Working with Exchequer cases required extensive searches across a variety of catalogues, with the risk that key sources may be missing. As well as document survivability and quality, allowance must also be given for human error at every level of record keeping. The recording of female litigants' legal status could factor in here. Whilst some cases provided sharp and sudden detail (often over multiple parchments) other cases, or rather the issues that they are concerned with, as well some litigants, recurred. A litigant, or even several litigants, could appear across decades, counties, legal statues, and case types. Numerous depositions could have originated from a single bill when litigants divided their interrogatories, and some cases were revisited with the roles of plaintiff(s) and defendant(s) reversed. Examples of counter-litigation could be seen beyond the Exchequer, with some cases referencing suits in other equity courts or at common law. Injunctions from the Assizes and Court of Common Pleas in particular were referred to across the sample.

This project uses women's recorded words to explore their assertion of authority and legal identity, all of which were filtered through formulaic legal language that was recorded by clerks of the Court. As a result, it cannot be claimed that women's own voices are at the centre of this project, nor that Court records were simply narratives of past

experiences and conflicts, as the original telling of these stories will have undergone distortion and framing to make it suitable for the Court setting. Female narratives, as with all court narratives, were subject to legal requirements that had an impact on the construction of their narration. As records, they should be handled carefully and with awareness of particular limitations, as discussed in Chapter Two. However, their utility is not entirely removed, as they are still documents produced in a specific context for a clear purpose, and in every instance they were the result of multiple collaborators and a system of law with its own rules. These sources are therefore treated as documents produced with a purpose, referred to as court narratives throughout the thesis, and attributed as the retelling of litigants, as opposed to their active voice. The scribes are treated as an invisible filter and mediator, acknowledging the constructed nature of the documents that they produced. Nevertheless, the court narratives were proof of engagement with the law and the pursuit of redress: it was only because of the presence and words of litigants and deponents that anything could be written at all.

It can be difficult to uncover attitudes towards litigation, people's relationship with the court or even the style and production of court narratives, but in every instance, whether for plaintiff or defendant, legal right remained central. Not only were bills, answers and depositions all dealing with legal right in a basic sense, but they were also all dealing with various aspects of legal right: how it was framed, how it was defended, its origin, how it was interpreted and how it stood up against other legal rights. At their core, these documents were descriptions of legal right in theory and in practice. It had to be claimed and laid out in order to be challenged, considered, and measured. Importantly for the process of using court records, the extent to which narratives were constructed and mediated, and how far they masked hints of voice from litigants as well as witnesses, only serves to further this notion of legal right, and none of these qualities inhibit the exploration of it. In fact, the most immediately striking quality of the documents was that legal right had to be presented in a specific way and through chosen mediators, or court vessels that filtered early modern words into early modern legal narrative. Styles differed in terms of handwriting, the extent of abbreviations and other nuances which would be expected across multiple clerks, but the structure of the documents was the same, or if there were changes they were felt across the court and changed for a reason, such as the movement away from needing litigants to be debtors to the crown. I would argue that such distortions and filtering do not lessen the value of these sources, but rather need to

be taken into account and understood as part of the narrative construction - the importance of the storytelling rather than the strict accuracy of it. This project is therefore not seeking to simply convey seventeenth-century widows' authority in the Court of Exchequer in an abstract sense. It is instead focused on how widowed litigants framed, constructed, and relayed their assertion of authority from within the sterile space of the Court. Narratives from the Court then, rather than examples of women's voices, are better thought of as gateways between the realities of life and the law of the land that tried to control those lives.

This project does not seek to uncover women, their voices, or their lives. The people behind the names in every one of the records that made up this sample are obscured under layers of dust of varying sorts, and the only thing that we could hope to uncover is a construction through effort, and only ever the result of information that could be found, never a meaningful whole. The focus is therefore on the legal right of the individuals in question, as the legal right was understood and constructed within the text itself. It is there for inspection without alteration, and it tells a story that we read, not one that we unpick. The purpose of this project is to make use of Exchequer records to 'reveal a world in which male supremacy was less confident, marriage less secure and women more resourceful that they are generally assumed to have been'.[5]

Database Findings

Efforts to provide a clear picture of how the Court was used across fifty years stand out against previous studies on the Exchequer that have focused on the structure and processes of the Court, or have considered select regions, people, or cases. The methodological approach in this thesis enables a wide range of categories of analysis to be considered, not only benefitting this project but providing a variety of starting points for future projects on the Exchequer. The database facilitates an exploration of the Court based on the following categories: region (as noted above); case type; chronology; litigant number (divided as plaintiffs and defendants); female legal status; female social status; witness number; female witnesses.

[5] Hunt, 'Wives and marital "rights"', p.125

From the sample, depositions were evenly spread across the north and the south (Figure 4). Depositions originating in Yorkshire, the Northeast and Cumbria made up the highest proportion across all regions, aligning with Amy Erickson's findings about high levels of litigation in and around Yorkshire.[6] Given the frequency of land, property and customs of the manor cases, this high number may also be linked to the geographical make-up of the Northern regions. Depositions from East England accounted for the lowest at 11 per cent, despite the ability to take depositions by commission. Most cases had one corresponding deposition record.

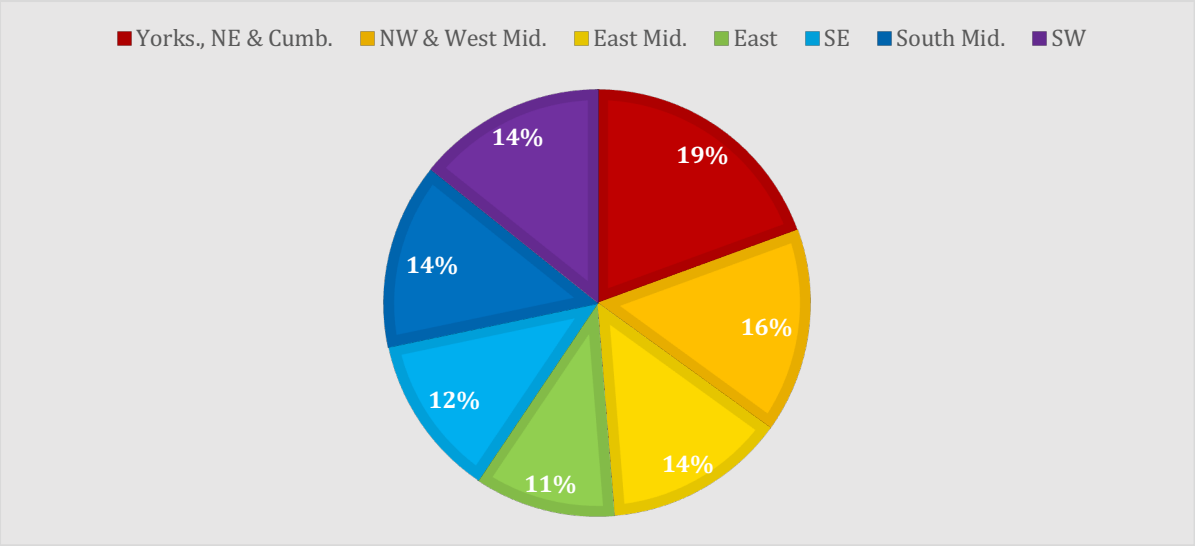


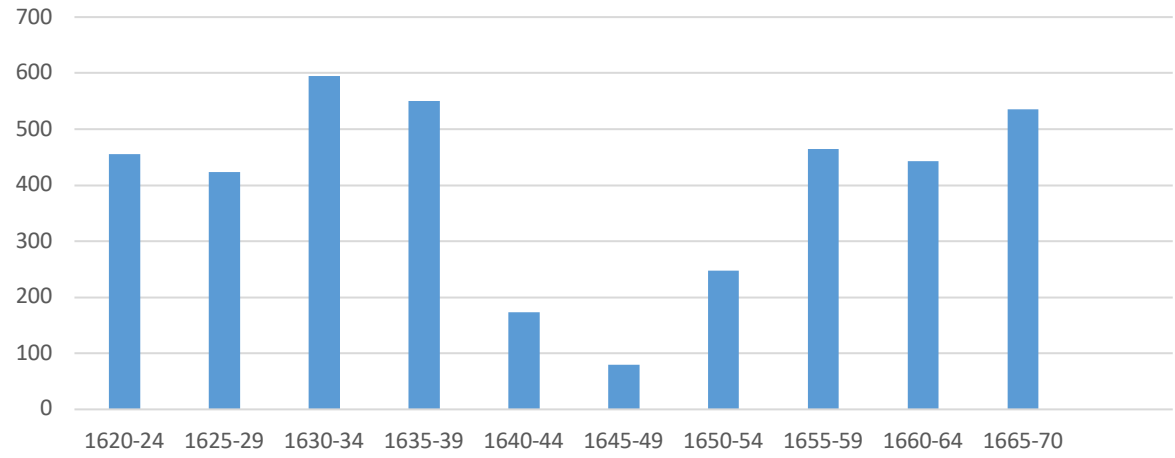
Figure 4 - Total depositions spread across region, 1620-1670

The number of cases that reached deposition fluctuated across the period (Figure 5), with a slight increase in the early 1630s. It is worth noting the steady increase of Exchequer depositions in almost every region prior to the Civil War, shown in Figure 6, demonstrating the growing use of the Court across the country. Whilst the Civil War impacted levels of litigation in the middle of the period, the number of depositions steadily rose from the 1650s to similar levels seen before the conflicts. Regionally however, patterns varied. Some regions such as the East Midlands saw consistently low numbers even following the Civil War and Interregnum. This was also evident in Yorkshire, the Northeast and Cumbria, which is surprising given how much the region dominated in Exchequer business overall. Deposition numbers in the Southeast and East

[6] Erikson, *Women and Property*, p.229

England by comparison rose steadily through the late 1650s and 1660s, whereas in the Northwest and West Midlands they reach pre-war numbers and remained stable.[7]

Figure 5 – The distribution of depositions over time, 1620-1670



Period	Yorks., NE & Cumb.	NW & West Mid.	East Mid.	East	SE	South Mid.	SW
1620-24	112	51	60	38	97	54	42
1625-29	93	51	54	43	50	62	67
1630-34	112	83	93	65	64	75	101
1635-39	130	87	91	34	57	79	71
1640-44	32	38	28	19	10	25	20
1645-49	14	13	21	9	7	15	0
1650-54	47	37	39	29	21	35	39
1655-59	93	84	48	42	45	69	84
1660-64	66	87	55	59	51	60	65
1665-70	71	83	55	86	84	83	74
Totals	770	614	544	424	486	557	563

Figure 5 – The distribution by region with hard numbers, 1620-1670 (depositions)

The distribution of litigants over time (Figure 7) largely reflected deposition patterns across most of the country. When we consider plaintiffs and defendants separately and compare the distribution of depositions for these two groups of litigants, we see that many more came to defend their cases than to sue. One possible reason for this imbalance between plaintiffs and defendants could have been the prerequisite that determined who could take a case to the Exchequer, a rule that was in effect until 1649. Those who sued had to be a debtor to the Crown, whether indirectly or directly, an

[7] These findings can be considered alongside the regional distribution of the English population during this period. E. A. Wrigley re-examines populations by county in his 2009 *Economic History Review* article, 'Rickman Revisited: The Population Growth Rates of English Counties in the Early Modern Period', Vol.62, No.3, pp.711-735. For example, if totals from 1600 and 1700 for counties making up Group 1 (Northumberland, Cumberland, Westmorland, Durham and Yorkshire) and Group 4 (Norfolk, Suffolk, Essex, Hertfordshire, Cambridgeshire and Huntingdonshire) are taken from Wrigley's findings and averaged for a mid-seventeenth-century estimate, we find that whilst Yorkshire, the Northeast and Cumbria had an estimated population of 713, 416, East England had approximately 684, 502. This difference suggests that population was not the only determinant in usage of the Exchequer.

informer to the monarch, a royal accountant, an officer of the Court, or a servant of an officer, which included cooks, butlers and any others who were deemed to be 'attendant upon an officer while he was performing his official duties'.[8] Beyond 1649, this rule was not stringently enforced. There was an average of approximately 1.6 plaintiffs per deposition compared to 3.1 defendants. Regionally, the percentage of plaintiffs (Figure 8) and defendants (Figure 9) was similar, with plaintiffs in the Northwest and the West Midlands making up to 16 per cent of all plaintiffs, and the same for defendants. The largest difference between plaintiff and defendant percentages was a difference of 3 per cent, found in Yorkshire, the Northeast and Cumbria, which accounted for 24 per cent of all plaintiffs and 21 per cent of all defendants, as well as the East Midlands which accounted for 12 per cent of all plaintiffs and 15 per cent of all defendants.

Period	Yorks., NE & Cumb.	NW & West Mid.	East Mid.	East	SE	South Mid.	SW
1620-24	444	206	204	139	400	212	248
1625-29	371	252	244	172	178	285	311
1630-34	616	377	594	294	274	352	498
1635-39	581	353	443	143	216	368	364
1640-44	166	225	104	103	66	143	72
1645-49	64	56	228	65	38	64	0
1650-54	302	158	165	113	68	127	231
1655-59	516	345	154	133	178	333	373
1660-64	468	614	268	246	218	290	343
1665-70	491	399	204	323	310	388	343
Total	4019	2985	2608	1731	1946	2562	2783

Figure 6 – The distribution of litigants across regions and time, 1620-1670

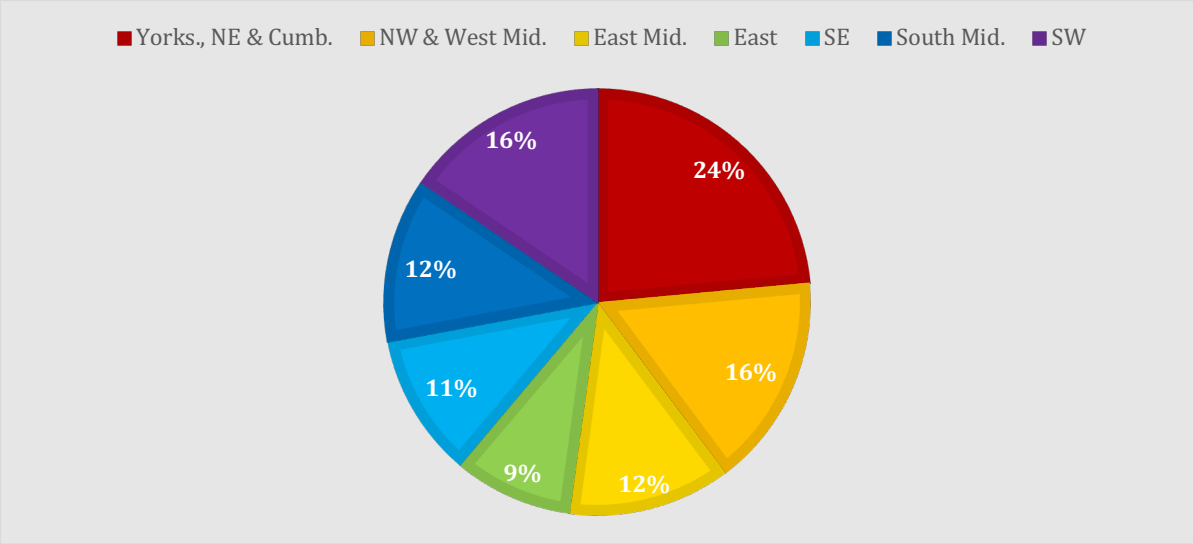


Figure 7 – The distribution of plaintiffs across region, 1620-1670

[8] Bryson, *Cases Concerning*, pp.xxxiii-xxxiv

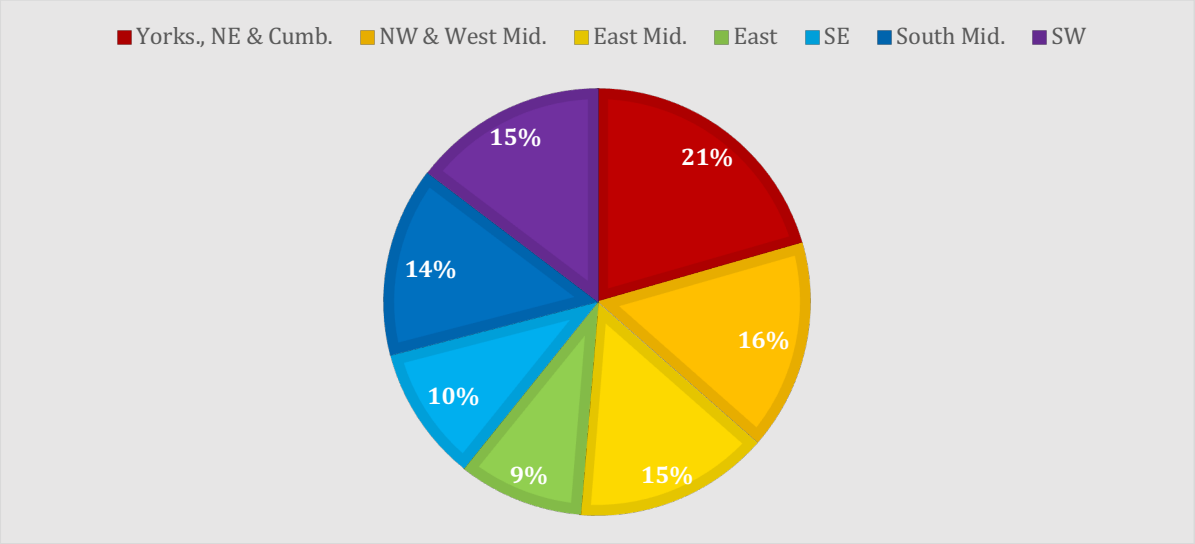


Figure 8 – The regional distribution of all defendants, 1620-1670

When gender is introduced as a category of analysis, we find that female and male litigant patterns were largely similar, with some regional variation. Shown in Figures 10 and 11, Yorkshire, the Northeast and Cumbria accounted for the highest proportion of both female and male plaintiffs, whilst East England accounted for the lowest. Figures 12 and 13 show the distribution of female and male defendants, revealing that for female defendants, the highest percentage originated from the Northwest and West Midlands, whereas for male defendants the region of Yorkshire and northern counties once again dominated.

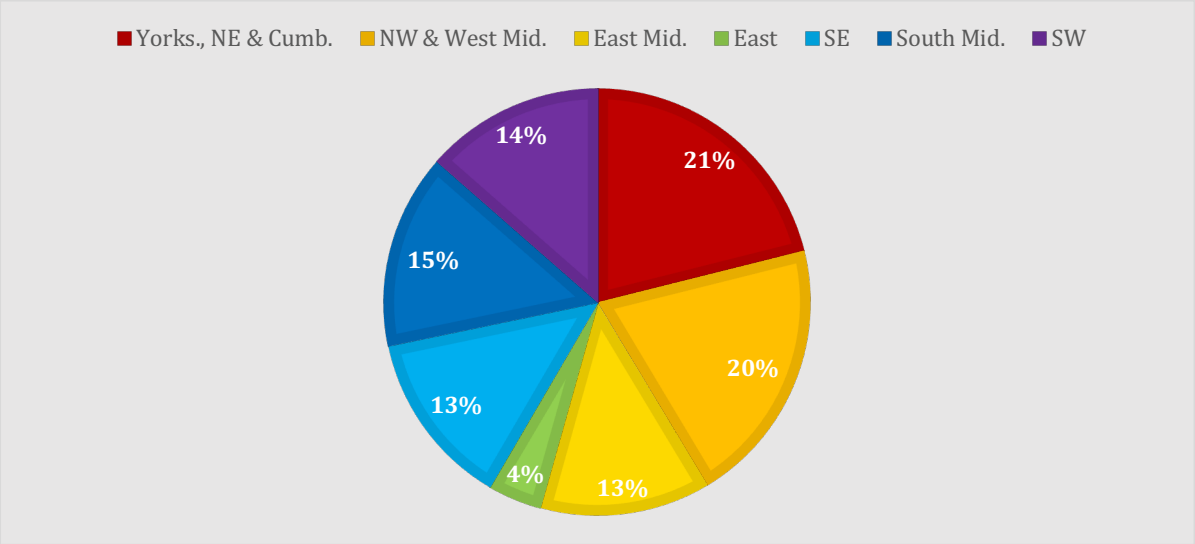


Figure 9 - The regional distribution of female plaintiffs, 1620-1670

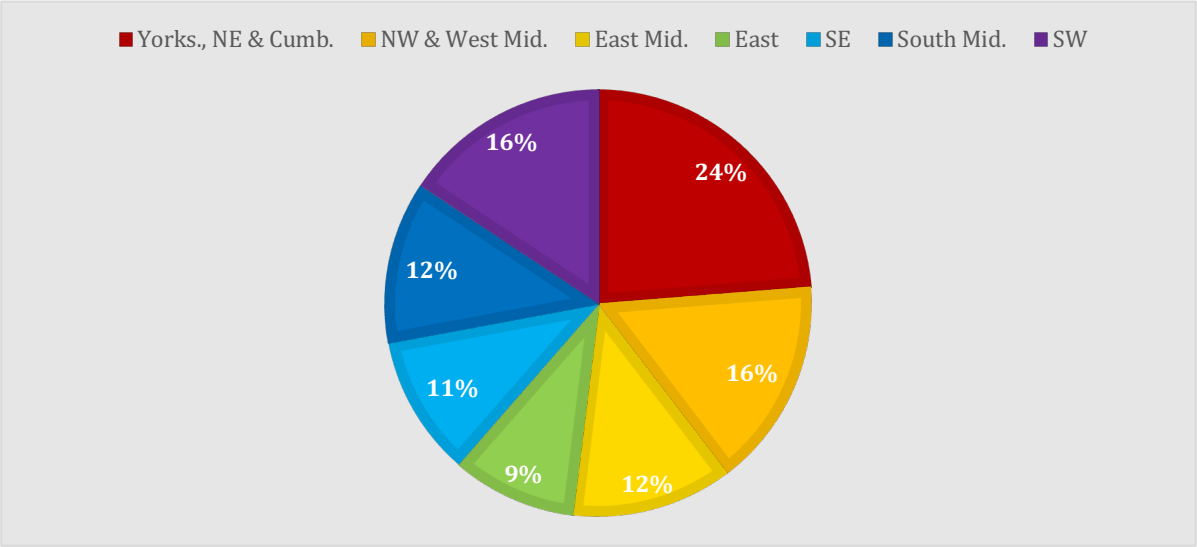


Figure 10 - The regional distribution of male plaintiffs, 1620-1670

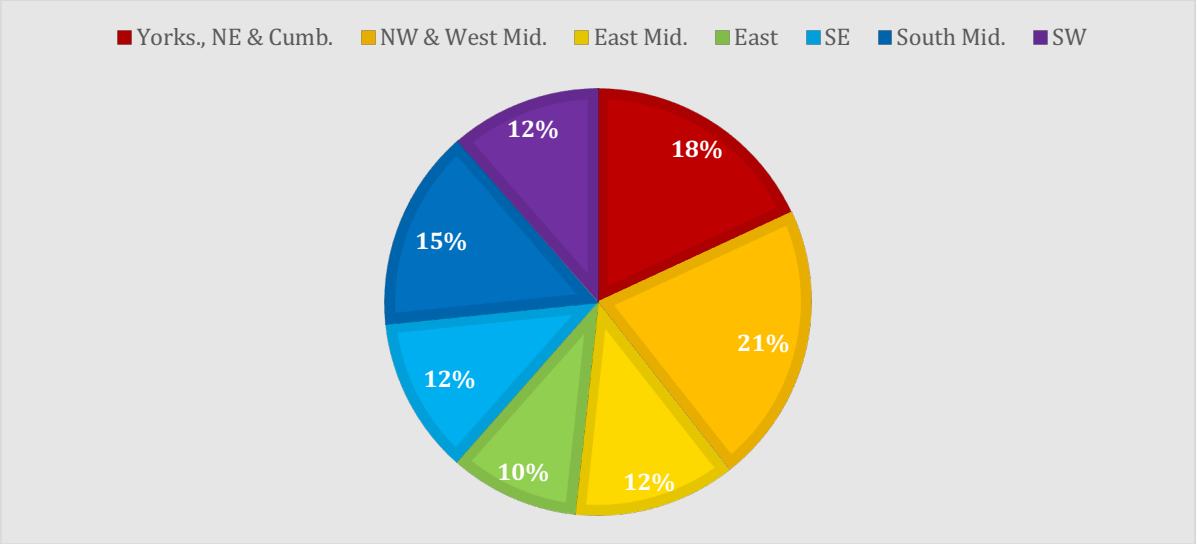


Figure 11 - The regional distribution of female defendants, 1620-1670

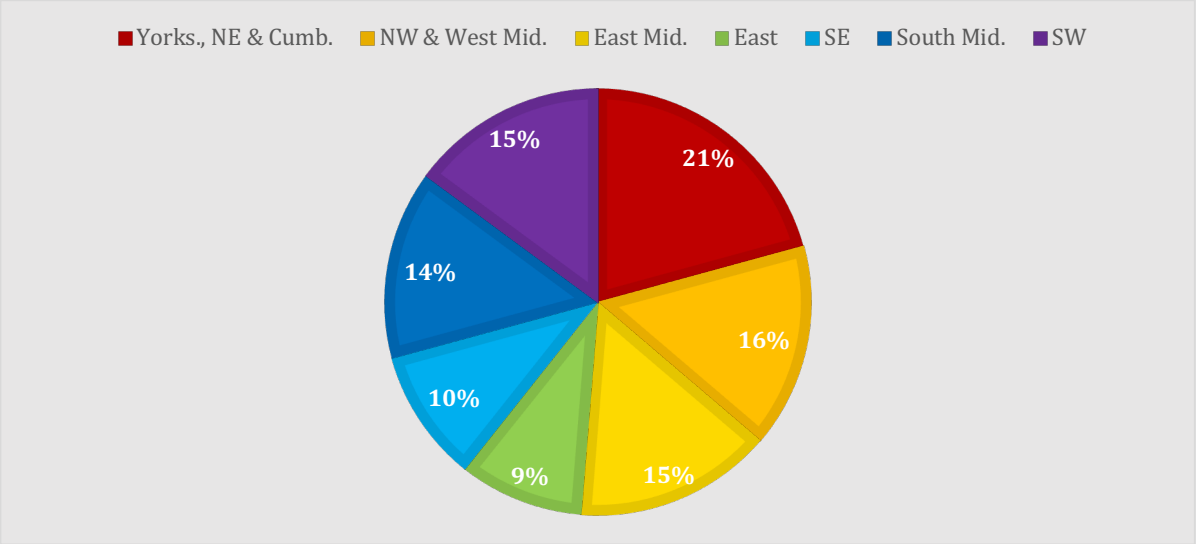


Figure 12 - The regional distribution of male defendants, 1620-1670

The distribution of male and female litigants across deposition type varied. Seen in Figure 14, property depositions were the most common for female plaintiffs, where 30 per cent of them appeared. Land cases were the next highest representing 21 per cent of female plaintiff activity. When compared with male plaintiff activity, shown in Figure 15, we see that male plaintiffs were relatively evenly spread across property, land, and tithes suits, with depositions touching on wills, inheritance and marriage involving only 2 per cent of male plaintiffs, in comparison to 9 per cent of their female counterparts. In real numbers of course, the number of men in all deposition types, including those on wills, were significantly higher than the number of women, but proportionally these differences are important. What brought men and women to the Court ultimately fit within the remit of the Exchequer as a whole, but their distribution across deposition types speaks to the nature of their engagement with the law, and what issues more commonly saw female litigant involvement.

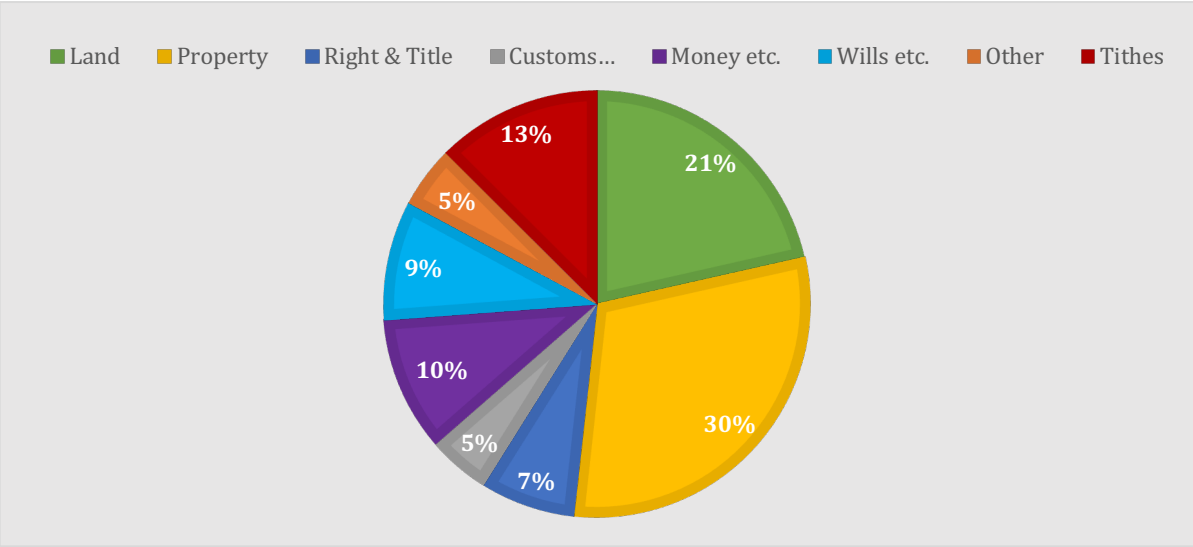


Figure 14 - Female plaintiffs across deposition types, 1620-1670

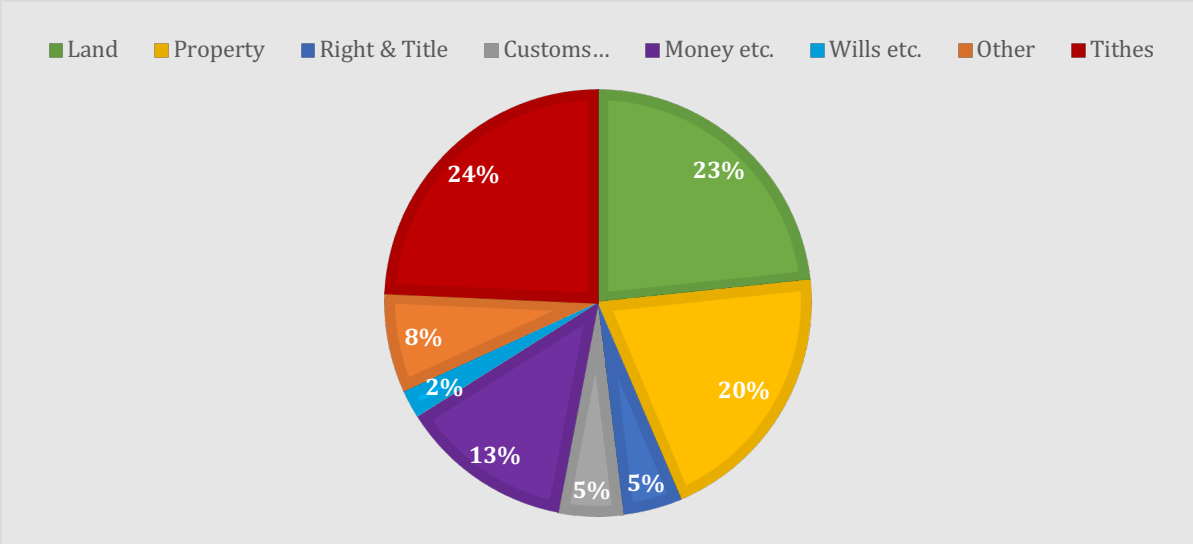


Figure 13 - Male plaintiffs across deposition types, 1620-1670

For defendants (Figures 16 and 17), property cases were also the most common for women, drawing 25 per cent of all female defendants. Land cases were similarly high, accounting for 22 per cent. In comparison with female plaintiffs however, where right and title cases only counted for 7 per cent of their litigation, these suits made up for 12 per cent of female defendant activity in the Court. For male defendants, land and tithes cases dominated, both accounting for 27 per cent of male defendants, with property only counting for 17 per cent. Across both female plaintiffs and defendants then, property cases were the most common and attracted a much higher proportion of total women than men. Whilst land also made up a significant proportion, findings indicate that property cases that reached deposition were the most common focus of litigation for

women in the Court. The decision to use depositions as an entry point means that continued engagement with the Court is demonstrated in these findings, answering questions about the Exchequer as an avenue of legal redress and resolution. However, it should be noted that cases resolved outside of Court or heard in another jurisdiction and therefore without a deposition, could impact findings, i.e., cases concerning wills and inheritance may have been more likely to be resolved informally.

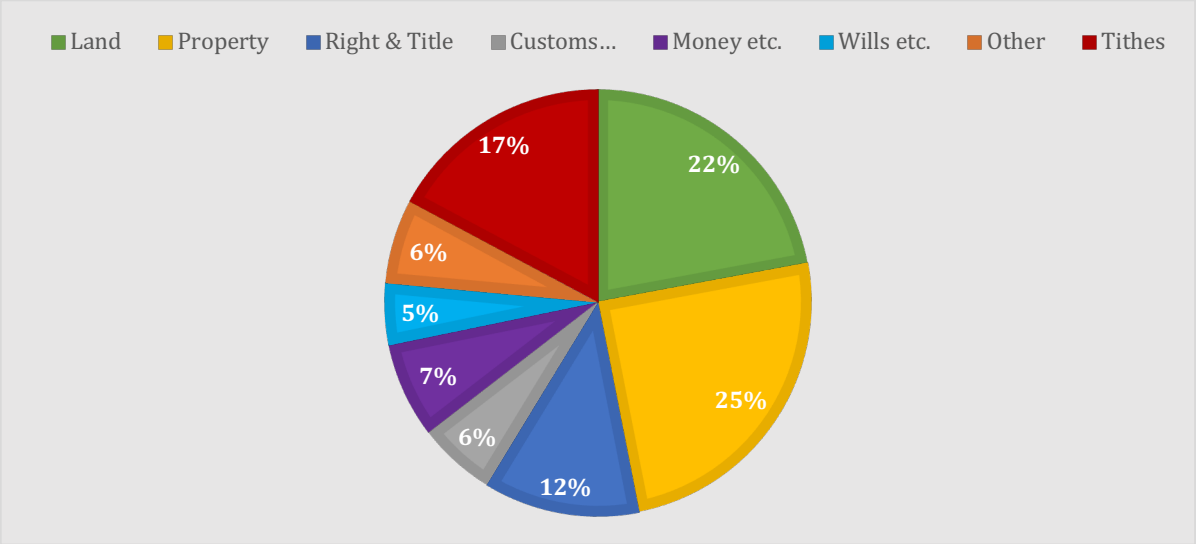


Figure 15 - Female defendants across deposition types, 1620-1670

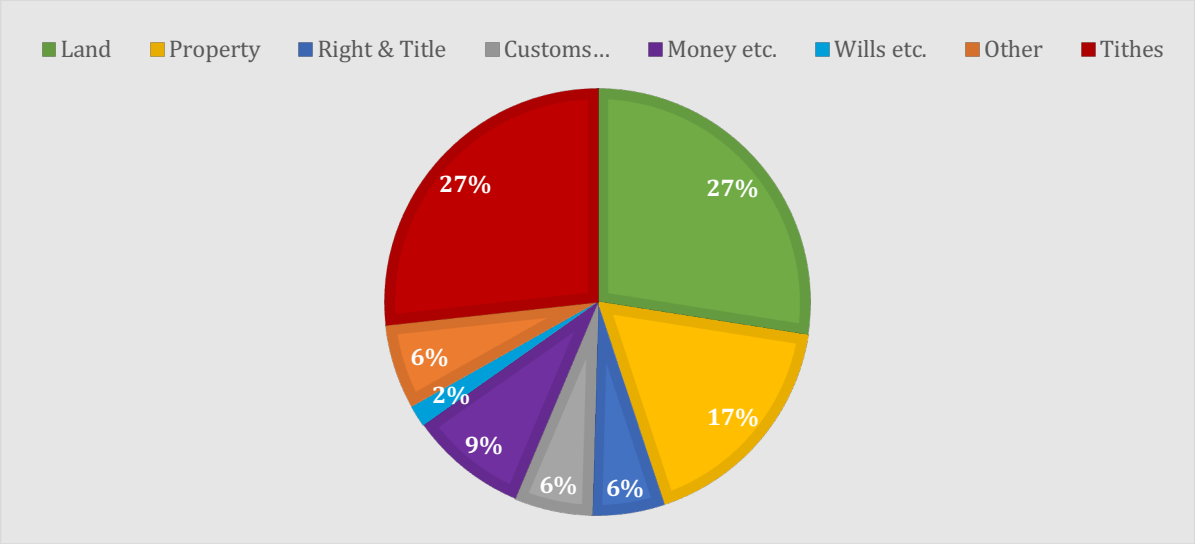


Figure 16 - Male defendants across deposition types, 1620-1670

The relationship between litigant and witness numbers did not follow a set pattern: whilst there was some correlation between the two in depositions involving

small numbers of both, more litigants in a deposition did not mean an equally high number of witnesses being called. Most depositions, 94 per cent, involved fewer than 10 plaintiffs and 10 defendants. In fact, on average, they involved 1.3 plaintiffs and 3.1 defendants. In these instances, there was an average of 11 witnesses per deposition. However, in depositions involving unusually high numbers of plaintiffs and defendants, there were not similarly high numbers of witnesses. When we consider depositions involving 10 or more plaintiffs, with an average of 17 plaintiffs per deposition (43 depositions), there was an average of 14 witnesses. Similarly, in depositions with 10 or more defendants (182 depositions), there was an average of 15 defendants and 15 witnesses per deposition. The most witnesses in a single deposition totalled 159, but in this deposition, there was only one plaintiff and one defendant. The most plaintiffs in one deposition were 55, but in this instance, there were only 26 witnesses, not even a ratio of 2:1. Similarly in the deposition with the highest number of defendants, 127, only 26 witnesses were called. These figures reveal a limited correlation between litigant and witness numbers, where the litigant to witness ratio was 2:1 in the majority of depositions, but fluctuated widely in depositions involving large numbers of plaintiffs and defendants, shown in Tables 2 and 3.

Table 2 - Plaintiff to witness ratio, 1620-1670

	Average plaintiff per deposition	**Average witness per deposition**	**Ratio (litigant : witness)**
10 – 15 Pla (19 deps)	**11**	**16**	**0.6:1**
16 – 21 Pla (9 deps)	**17**	**18**	**0.9:1**
22 – 29 Pla (6 deps)	**25**	**14**	**1.7:1**
30 – 55 Pla (5 deps)	**40**	**12**	**3.3:1**

Table 3 - Defendant to witness ratio, 1620-1670

	Average defendant per deposition	Average witness per deposition	Ratio (litigant : witness)
10 – 15 Defs (131 deps)	**11**	**15**	**0.7:1**
16 – 21 Defs (30 deps)	**18**	**14**	**1.2:1**
22 – 29 Def (7 deps)	**23**	**18**	**1.3:1**
30 – 55 Def (6 deps)	**37**	**30**	**1.2:1**
56 – 127 Def (4 deps)	**95**	**18**	**5.2:1**

It was more common for a woman to appear in the Court as a witness than as a litigant. Over 30 per cent of depositions involved at least one female witness, compared to 24 per cent of depositions involving a female litigant. Female witnesses did, however, make up a smaller percentage of overall witnesses than female litigants made up overall litigants: 5.6 per cent compared to 7.3 per cent. A noticeable proportion of female witnesses, 32 per cent, appeared alongside female litigants, and this was more common in depositions involving female plaintiffs than defendants. However, a greater proportion of female witnesses appeared in cases that did not involve any female litigants. Only 9 per cent of total depositions involved both a female litigant and a female witness, whilst 21 per cent involved male litigants and female witnesses. The majority of female litigants and witnesses did not appear alongside one another, and therefore female litigants do not appear to have increased the likelihood of the presence of female witnesses. The Northwest and West Midlands saw the largest proportion of female witnesses, with the next closest being the South Midlands (Figure 18). This seems in part to be attributed to the unusually high number of female witnesses who appeared in Lancashire in the early

1660s. They were called most commonly in tithes cases, as was true for witnesses in general, followed by property cases, which was specific to female witnesses. Interestingly, despite the high proportion of female witnesses originating from the Northwest and West Midlands, female witness numbers in tithes cases were one of the lowest in the sample. Female witnesses appear to have become more common over the period, with numbers after the 1640s surpassing those found in the 1630s.

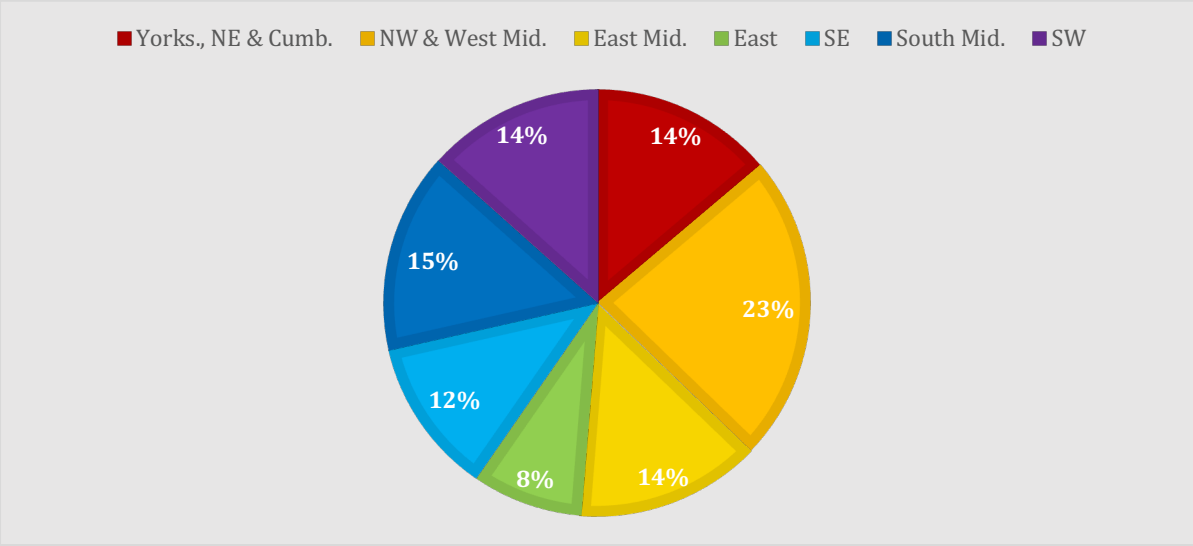


Figure 17 - The regional distribution of female witnesses, 1620-1670

Case Types

Whilst a variety of suits were heard, there were case types which were more common overall or in specific regions than others. In Yorkshire, the Northeast and Cumbria for example, property and land cases dominated – this was also the case in the Northwest and the West Midlands. In other regions however, tithes cases were the most common brought to the Court. After tithes, land cases dominated in the East Midlands, East England and the upper Southeast and upper Southwest, whilst in the Southeast it was cases concerned with money and business, and in the Southwest property suits were the second most common. The prevalence of particular case types could partly be attributed to the geography of the region and to the political and social climate of the time. If we consider tithes cases, we see that the large majority of these suits, over 68 per cent of them, were brought between 1650 and 1670. The most likely cause of this surge in cases could be attributed to the Quaker movement at the time. That these cases made up such a large proportion of the Exchequer's later workload not only exemplified the Court's role

in the seventeenth-century English legal system, but also demonstrated how reactionary the activity of the Court could be to social and political trends.

The case type categories used in this project were original groupings developed during the data collection process using secondary source material. They have been utilised for the ease of engaging with the data and are often broad categories to encapsulate as much as possible. Case type can be considered in regard to either deposition numbers or total numbers of litigants, both plaintiffs and defendants. Seeing both alongside one another reveals whether litigant distribution matched deposition distribution, and thus whether particular case types drew more litigants. Overall, litigant numbers corresponded with deposition numbers. The only exception to this were land cases, which drew higher numbers of litigants per case. This was most likely the result of higher numbers of male defendants involved in land cases, as female litigant and male plaintiff proportions in land cases more closely aligned with the proportion of land cases.

The property case category covered tenements, messuages, rents and leases, as well as any other disputes associated with the transfer or control of property and buildings used for production such as mills. These cases are distinguished from land cases in that the latter focused on land for the purchase of agriculture. Property cases spiked in the 1630s, and this surge could likely be explained by the 'ship money' levy enforced by Charles I, which subsequently collapsed by the end of the 1630s. Historians have noted that despite the nature of this tax, many people chose to sue those collecting the money, 'who attempted to distrain property in order to enforce payment'.[9] Following the Civil War, the number of property depositions steadily rose, to stabilise at slightly lower numbers than seen before the 1640s. It is important to note however that these trends did not apply to litigants across time. Despite this decrease in the number of property cases heard following the Civil War, the number of male and female defendants were high on average, with plaintiff numbers being slightly lower but still comparable to numbers prior to the 1640s. The lower number of plaintiffs was in keeping with the decrease in property cases. It is also worth noting that the high number of defendants after the Civil War was seen across most of the country. Property cases were the most common case type in the Exchequer during the early war years of the 1640s. Over 25 per cent of property cases were brought in Yorkshire and the Northeast (Figure 19), which also drew

[9] Brooks, *Law, Politics and Society*, p.202

the highest number of plaintiffs, whilst the fewest came from the upper Southeast and upper Southwest. The highest number of defendants for property cases were found in the Northwest and the West Midlands, but overall Yorkshire and the Northeast saw the highest number of litigants for property cases.

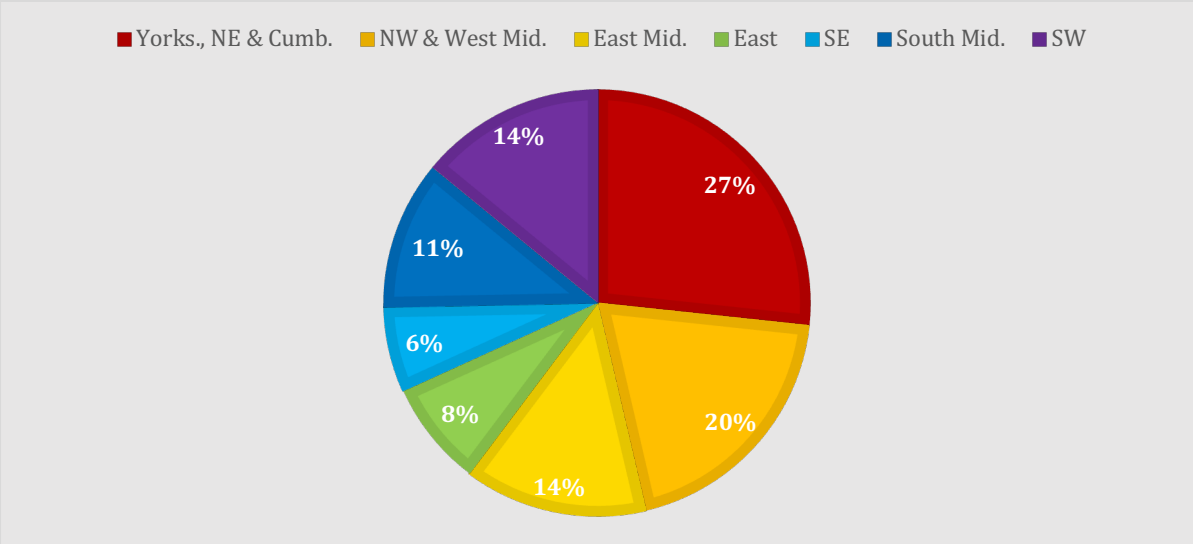


Figure 19 - The distribution of property depositions across regions, 1620-1670

Land cases included suits concerning fields, forests, cattle grazing, enclosure, and boundaries, as well as places of leisure such as gardens and parks. Jane Whittle has stated that 'land remained deeply embedded within the social structure and culture of English society', despite the changing nature of rural society.[10] Suits concerning land were at their highest in the early 1630s. This trend was seen across most regions during this decade. Following the Civil War, land cases were far lower in number, on average half the number of suits every five years. Litigant numbers followed a similar trend, with the majority of both plaintiffs and defendants appearing before the Civil War and fewer appearing from the 1650s onwards. This was the same for men as for women, with a general decline in land cases across the country. As with property cases, most lands cases came from Yorkshire and the Northeast, accounting for 21 per cent of all land cases across the period (Figure 20). This region also drew the most litigants. Land cases were seen the least frequently in East England and the Southeast. The latter may in part be explained by the

[10] Jane Whittle, 'Land and People', in Keith Wrightson (ed.) *A Social History of England 1500-1750* (Cambridge: Cambridge University Press, 2017), p.154

fact that the cases referred to here from this region will only account for a small percentage of the total cases for the region, as the majority of them would have been heard in Westminster and therefore not included in this sample. As to the small numbers in East England, this low percentage is more difficult to explain. However, this can largely be attributed to the overall small number of cases brought in the region, which was the lowest across the country.

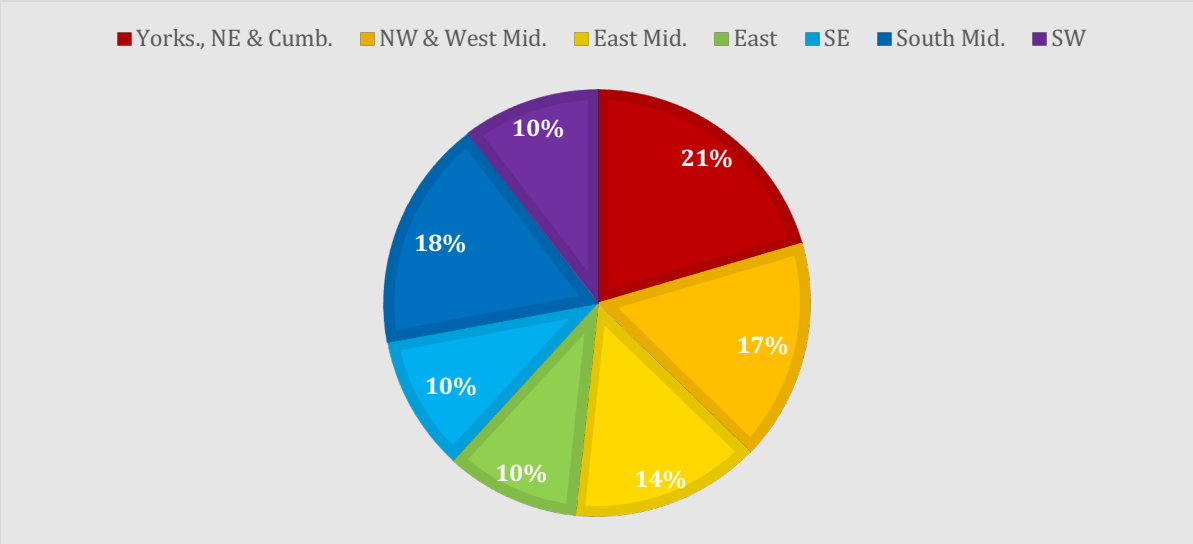


Figure 20 - The distribution of land depositions across regions, 1620-1670

Right and title cases included depositions in which right and title was directly mentioned and was the recorded focus of the case. Such cases often touched on issues of land, property, and tithes, but focused predominantly on ownership and the transfer of it. Right and title cases were at their highest in the early 1620s and the late 1630s, declining considerably after the Civil War. This trend was seen most clearly in Yorkshire, the Northeast, and Cumbria, as well as the East Midlands. The decrease in right and title cases may be linked with the fall in land and property cases as noted above. Very few right and title cases were brought in the Southeast, although this may have been because E 134 records only captured part of the whole picture of litigation in this region. Whilst litigant numbers largely corresponded with the patterns of these case types, the spike in defendant numbers in the early 1660s, accounting for 16 per cent of all defendants involved in right and titles cases, suggested a sudden and temporary break in this trend. This spike involved both male and female defendants. Closer examination revealed that this surge could be attributed to four cases which accounted for over eighty defendants. Cases were spread across different regions and involved different litigants. Once again,

the majority of right and title cases came from Yorkshire and the Northeast, accounting for 28 per cent of all cases in the category, as seen in Figure 21.

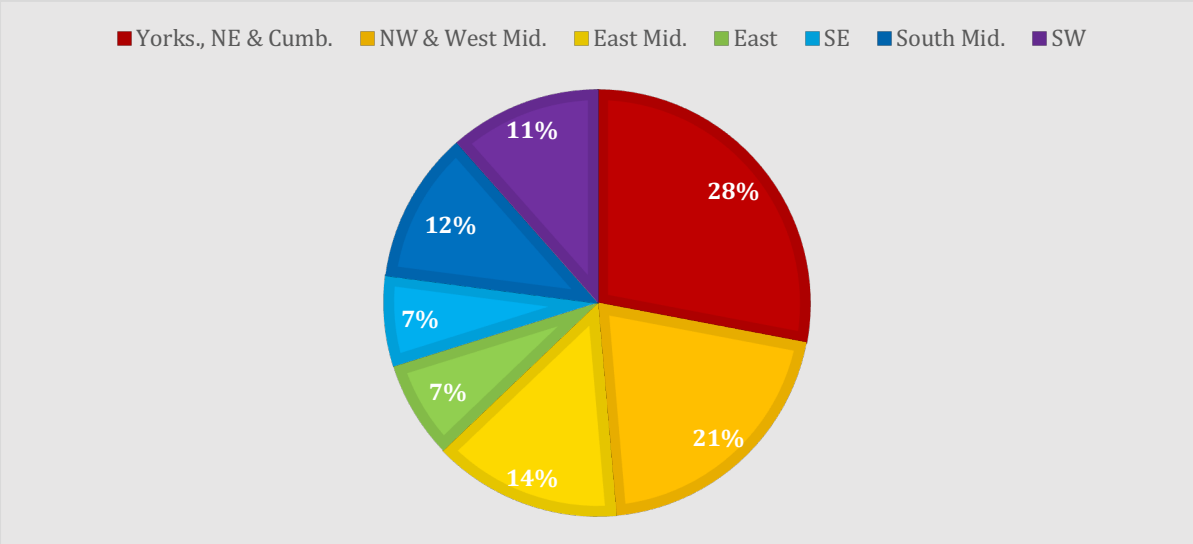


Figure 21 - The distribution of right and title depositions across regions, 1620-1670

Depositions concerning manorial customs were categorised as cases that referred directly to customs of the manor. These cases included a variety of matters, touching on land, property, and enclosure. They are distinguishable from other case categories due to the enforcement or challenge of a manorial custom. Customs cases were at their highest in the late 1620s and early 1630s and became less common after the Civil War. This trend was seen across regions and among all litigants. The presence of manorial customs cases in the Exchequer was indicative of the broad jurisdiction of the Court and its influence as a legal body during this period. Manorial courts would be expected to deal with such cases, where their jurisdiction would be purpose-made to address any arising disputes. Manorial rights differed across manors and could even shift on the same manor over time.[11] Across the early modern period, 'manorial authority was gradually undermined', and by the sixteenth-century manorial customs could be enforced in both equity and common law courts.[12] Despite this decline, Stretton has argued that in many communities customary law, an 'intensely local' and largely unwritten law, retained its significance.[13] The decline in the number of these cases heard in the Exchequer could be explained by

[11] Stretton, 'Women, custom and equity', p.185
[12] Erickson, *Women and Property*, p.30
[13] Stretton, *Women Waging Law*, p.161; p.157

the political upheaval of the Civil Wars on civic governance across the country. One aspect of Charles I's legacy was the increased social preference for smaller local and manorial courts, where traditions were upheld and order was easily accessible. As shown in Figure 22, manorial customs cases were most common in Yorkshire, the Northeast and Cumrbia. Whilst a higher proportion of litigants overall were seen in the same region, plaintiff numbers were equally high in the Northwest and the West Midlands, and defendant numbers were higher in the East Midlands. This shows that despite these regions not accounting for the highest number of cases, more litigants appeared per case than would be expected.

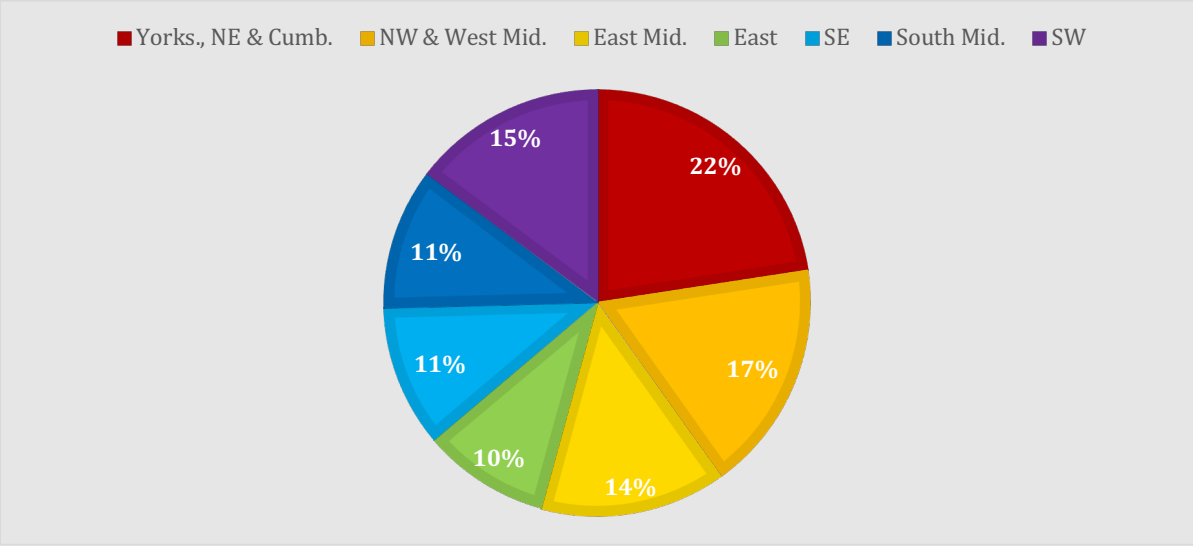


Figure 22 - The distribution of customs of the manor depositions across region, 1620-1670

The category of money, business, and trade covered suits concerning debt, bonds, contracts, and commercial disputes. Money cases were much more common between 1620 and 1624, accounting for over 23 per cent of all cases in this category across the period. Whilst figures almost halved in the late 1620s, numbers remained steady until the start of the Civil War. After the early 1650s, numbers gradually increased, and by the end of the period were similar to average case numbers from the late 1620s. This trend was shared across most regions, epitomised in the Northwest and the West Midlands. In the Southeast however, an area which importantly covered parts of London, the spike in cases in the early 1620s was most striking, a spike which was responsible for the overall appearance of a surge of cases across the regions. The high number of cases was accompanied by a suitably large numbers of litigants, particularly defendants, 23 per cent

of which appeared between 1620 and 1624. Closer examination suggested that these defendants were men in the Southeast. Interestingly, female defendants were also proportionally higher in this region, whereas for plaintiffs, women were more common in the Northwest and the West Midlands. The East Midlands accounted for the fewest number of money and business cases, only 8 per cent (Figure 23), similarly attracting the fewest litigants. Female litigants' involvement in such cases appeared to be more common than manorial cases and those relating to wills, marriage, and inheritance. Research into women's role in the local economy and trade would support their notable presence within cases concerning money and business, and the dominance of widows in this category, particularly widowed defendants who accounted for over half of all female defendants in these suits. This category also revealed high proportions of titled women, which corresponded with the high widow numbers.

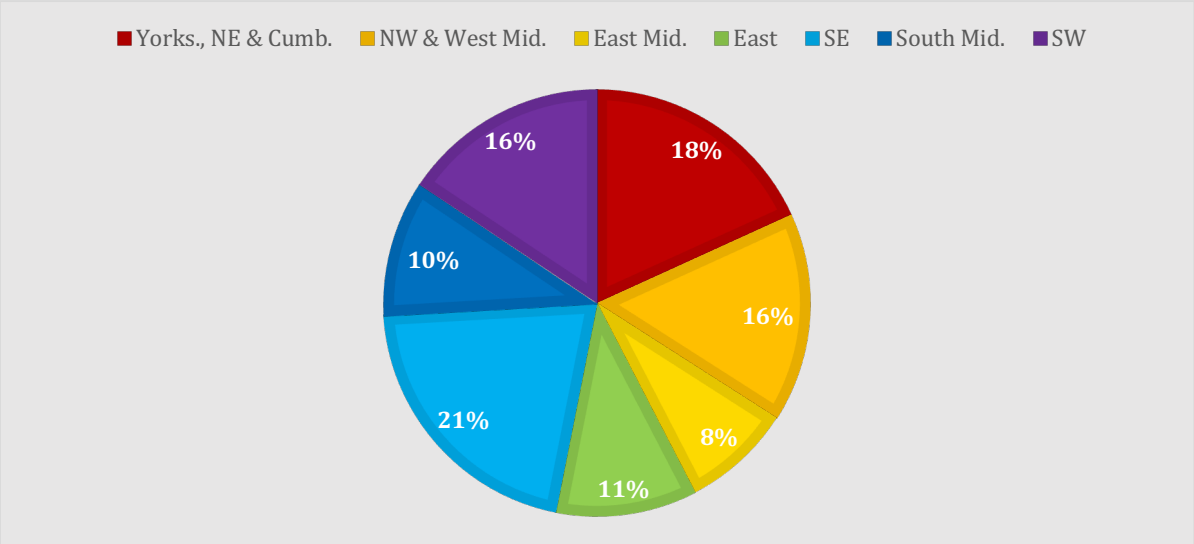


Figure 23 - The distribution of money, business, and trade depositions across region, 1620-1670

Cases regarding wills, inheritance, and marriage were the smallest in number across the period as well as across every region, apart from the Southeast. Suits concerning wills, rather than inheritance or marriage, constituted the majority of cases within this category. A plaintiff's rationale for selecting Exchequer rather than litigating within probate jurisdiction was rarely given. In comparison with the other case types, case numbers in this category not only fluctuated (although absolute numbers were quite small), but the number of cases brought was much higher at the end of the period, with suits in the 1660s accounting for over 43 per cent of all cases. Regionally, case numbers

varied widely, with 26 per cent appearing in the Northwest and the West Midlands, whilst only 5 per cent were heard in Yorkshire, the Northeast and Cumbria (Figure 24). In most regions, cases were more common after the Civil War, and this was supported by litigant numbers, where 66 per cent of plaintiffs and 54 per cent of defendants were accounted for from 1655 to 1670. Whilst one might expect higher numbers of sole female plaintiffs or defendants in this category in comparison to other case types, the numbers were small, and such cases attracted the lowest number of titled women.

Wives dominated in this category, especially as defendants, accounting for 57 per cent of female defendants. Research by Erickson and Barbara Harris suggests that widows were often executrixes for their husbands, reflecting women's 'reliability and practical skills'.[14] The higher proportion of wives was likely associated with something other than just the role of women as executrixes, and suggests that perhaps research into women's involvement with cases on wills should not centre on widows, as the Exchequer records suggest a different trend, at least within this sample. In comparison with men, women accounted for a significant percentage of litigants in comparison to other case types, making up 26 per cent of plaintiffs and 18 per cent of defendants. The location of litigants was noticeably different in comparison to other cases, where Yorkshire, the Northeast and Cumbria often accounted for large numbers of both plaintiffs and defendants. The highest proportion of female plaintiffs in this case type, 30 per cent, could be seen in the Southeast and Southwest, which was the same for male plaintiffs with 24 per cent. This trend did not follow through to defendants however, instead with the Northwest and the West Midlands dominating, accounting for 25 per cent of female defendants and 24 per cent of male defendants, whereas the Southeast and Southwest only accounted for 8 per cent of female defendants.

[14] Erickson, *Women and Property*, p.161; Harris, *English Aristocratic Women*, p.129

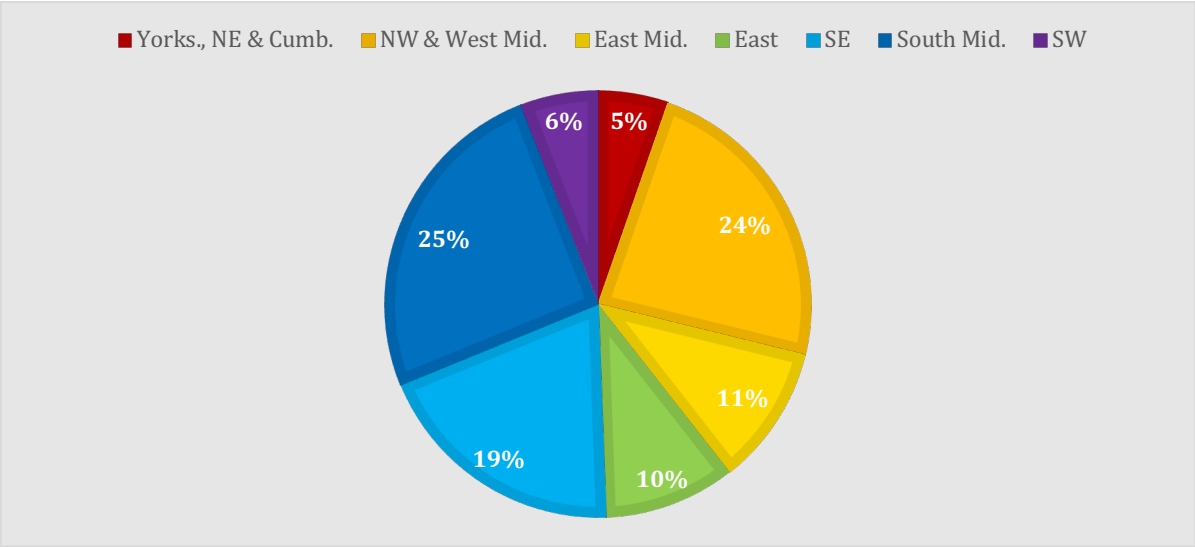


Figure 24 - The distribution of wills, inheritance, and marriage depositions across region, 1620-1670

It is important to note that whilst numbers appeared low, this did not suggest an inherent lack of suits touching on wills and marriage, but rather the infrequency of cases that were shown to primarily be concerned with particulars of a will or a marriage settlement. There were numerous instances in which the land, property or business of the deceased was relevant in suits brought to the court, but in such cases, it is not the legal contract that was at the heart of the dispute, but rather the content of the document in question, or other matters related to it. This case type should therefore be treated with caution, and as a category that deals with select cases rather than a broad range.

Given the wide variety of cases brought to the Exchequer, it was necessary to have an 'other' category that was broader in scope than the other case types. This category contained cases touching on contempt of court, breach of court orders, execution of writs, resistance to warrants, recusancy and procuration. Such cases were difficult to categorise and none appeared frequently enough to warrant a separate categorisation. Even contempt of court, which was the most common in this category, appeared only forty-nine times. The breadth of this category made it difficult to analyse, but on this broader level some initial observations can be noted. If we consider this category over time, we see a gradual increase that peaks in the 1630s before the common decline during the Civil War. Following these years however, numbers remained very low, and never rose much higher than wartime figures. Findings suggested that rather than a particular type of case accounting for the higher numbers in some years, it was instead simply a higher volume of varied cases, which were also spread across the country. Each region also followed

very similar patterns over the period, which is indicative of broader trends which quantitative analysis may not easily reveal without qualitative inclusions.

When we consider litigant numbers, we see much higher numbers of defendants throughout the 1630s in this category and over double the number of plaintiffs. Taken as a proportion of total plaintiffs and defendants, this was apparent but less striking, with 49 per cent of defendants appearing in the 1630s compared to 39 per cent of plaintiffs. When we introduce gender and regional analysis, the differences between plaintiffs and defendants were interesting. Whilst the proportions of male plaintiffs and defendants across regions were similar, apart from the East Midlands where male plaintiffs were less represented, for women there were striking differences based on their role as litigants. Of particular interest were litigant percentages in the East Midlands, where female defendants made up 23 per cent of total female defendants, but only 4 per cent of female plaintiffs. Similarly, in the Southeast, female plaintiffs accounted for 18 per cent of the total, but only 4 per cent of total female defendants. For both plaintiffs and defendants, the Southwest accounted for high percentages, 35 per cent of plaintiffs and 21 per cent of defendants, and widows were the most represented as litigants, at 39 per cent for both plaintiffs and defendants. Male and female litigant numbers were similar, apart from plaintiffs in the Northwest and the West Midlands, where men made up a higher percentage, with 17 per cent compared to 4 per cent of total female plaintiffs.

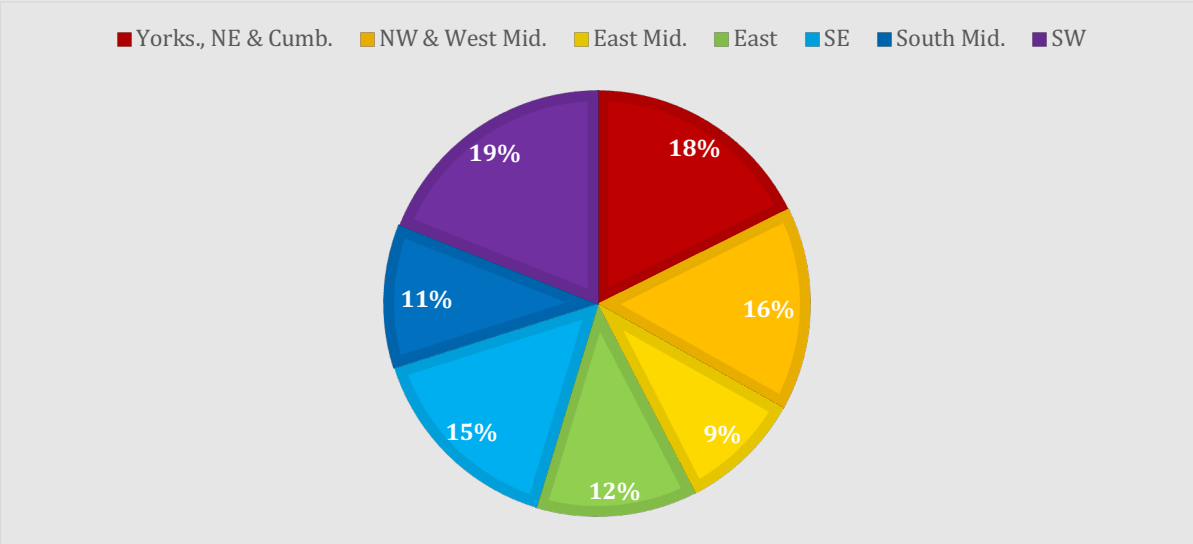


Figure 25 - The distribution of 'other' depositions across region, 1620-1670

Of all case types in this sample, tithes were the most common, making up 27 per cent of all depositions. The prevalence of tithes cases in the Exchequer reflected broader issues around tithes. A tax amounting to one tenth of agricultural produce, paid to the church and clergy before the Reformation, and paid to laymen or the Crown afterwards if they had been impropriated, disputes around it were understandably brought to the Exchequer, especially following its absorption of the Court of First-Fruit and Tenths. The Exchequer's jurisdiction in relation to tithes overlapped with ecclesiastical courts, but it was clear that high numbers of people chose, or were forced, into tithe litigation in the Exchequer. Most striking was the spread of cases over the period. Whilst cases increased slightly before the Civil War, it was from the 1650s onwards that we see a sudden surge in tithes litigation, culminating in 667 cases, or 62 per cent of cases being brought between 1655 and 1670. This significant increase could in part be explained by wider attitudes towards tithes following the Civil War, a topic which has been discussed in secondary literature by historians such as Stephen Kent, who notes that forced tithe payment 'was among the most bitterly contested issues of the day', with tithes being widely hated.[15] Kent's and Barry Reay's works on tithes during this period mentioned the Quaker movement and their 'vehement opposition to tithes', as well as their subsequent refusal to pay them, resulting in litigation.[16] This, coupled with wider disapproval of the system helped to explain the surge in cases seen in this sample, as growing numbers of people were taken to court following their resistance to the tax.

[15] Stephen A. Kent. 'Seven Thousand "Hand-Maids and Daughters of the Lord": Lincolnshire and Cheshire Quaker Women's Anti-Tithe Protests in Late Interregnum and Restoration England', in Sylvia Brown (ed.) *Women, Gender and Radical Religion in Early Modern Europe* (Leiden: Brill, 2007), p.65

[16] Barry Reay. 'Popular Hostility Towards Quakers in Mid-Seventeenth-Century England', *Social History*, 5:3 (October, 1980), p.387

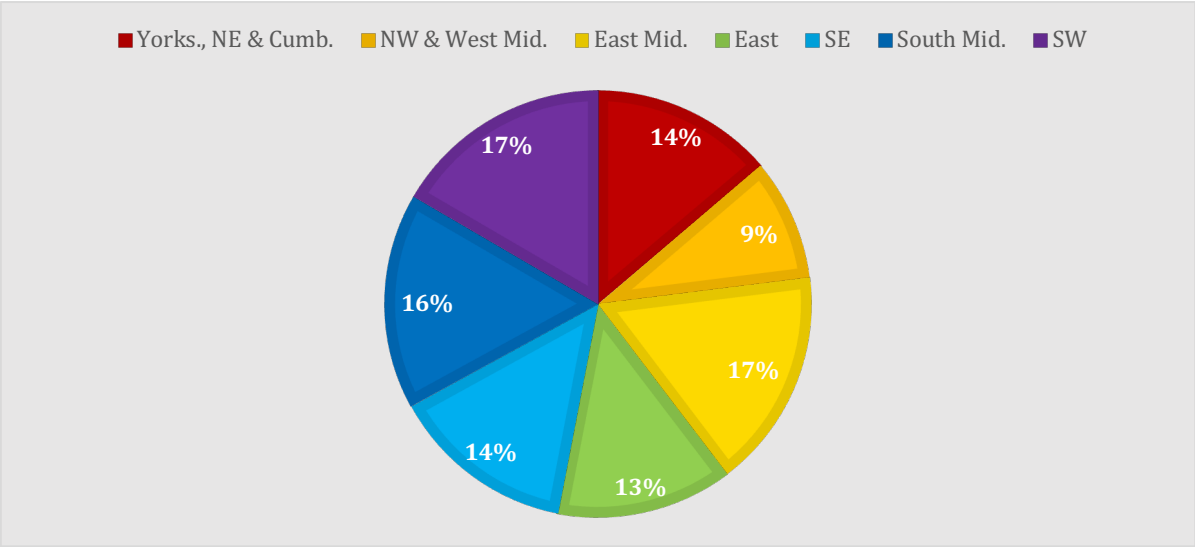


Figure 26 - The distribution of tithes depositions across region, 1620-1670

Tithes depositions were spread across the country, and whilst no single region saw a significantly higher proportions of cases, they were less common in the Northwest and the West Midlands (Figure 26). Each region followed the same broader pattern, but one difference stood out. Central regions of the country, East England, and the Southeast, unlike other parts, saw a steady increase in cases from the 1650s to the 1670s, rather than a sudden surge followed by fluctuations. Regarding litigant numbers, patterns between plaintiffs and defendants were similar, but defendant numbers were significantly higher, following the broader trend seen across the Court. The proportion of female litigants in tithes cases were low for both plaintiffs and defendants, but of those women, widows once again dominated. Interestingly, titled women made up 18 per cent of female plaintiffs in tithes cases, whereas titled defendants only accounted for 7 per cent of female defendants. When we compare plaintiff and defendant numbers, considering gender and regional analysis, we see strong patterns between male plaintiffs and defendants, but significant differences between women. Female plaintiffs in tithes cases were most often found in the Southwest and Southeast, whereas female defendants were more evenly spread across regions, being slightly higher proportionally in Yorkshire and the Northeast.

Female Litigants

In this sample, 24 per cent of depositions involved one female litigant or more, and female litigants accounted for 7 per cent of total litigants. These figures are notably lower than

in Chancery and Requests.[17] This infrequency cannot be explained by the prerequisite of the Exchequer, as this limitation would not have impacted female defendants, or female co-plaintiffs. If this was a notable factor, it would be expected that the number of sole female plaintiffs, or female plaintiffs in general, would increase following the removal of the prerequisite, which quantitative findings do not show. However, the type of cases brought to the Exchequer may have had an impact of female participation, for both litigants and witnesses. Many cases concerned Crown lands, business entitlements and landed estates, typically less common concerns for early modern women.

The average female plaintiff per case was 0.12, compared with the average female defendant of 0.22. Female plaintiffs accounted for 8 per cent of all plaintiffs, whilst female defendants represented 7 per cent of total defendants. The differences in proportion between female litigant appearance in depositions compared with plaintiff and defendant numbers demonstrated the extent to which female litigants appeared in significantly smaller numbers than their male counterparts. The majority of women who appeared in the Court between 1620 and 1670 did so as co-litigants and were therefore involved in cases alongside men. They were more often defendants (64 per cent of all female litigants), widows (43 per cent), untitled (88 per cent) and in cases against men (78 per cent of female plaintiffs and 87 per cent female defendants). Only 90 out of the total 3,968 depositions involved female litigants on both sides. These findings will be analysed further in this chapter, and provide the basis for qualitative discussion.

Depositions that involved sole female litigants were uncommon. Patterns for litigants in this category still followed those relating to overall case type, regional and temporal trends: sole female litigants were more common in places and cases that overall findings would suggest they would be. The interest then, is in their content and the example they provided of allowed power at work. Of the 489 female plaintiffs, 27 per cent were sole female plaintiffs. In comparison, of the 870 female defendants, 9 per cent were sole female defendants. For both female plaintiffs and defendants land, property, money, and tithes depositions appeared most frequently. Widows made up almost 91 per cent of all sole female plaintiffs, and 92 per cent of all sole female defendants. Whilst this predominance mirrored their higher numbers within the broader categories of female litigants, the relative absence of wives as sole litigants was at odds with their overall

[17] Stretton, *Women Waging Law*, p.39

presence within the Court. This infrequency however was not unsurprising. Of the wives that appeared in the Court in this sample, only six appeared without their husband, of which one was a sole plaintiff, and another was a sole defendant. Whilst coverture was not fully imposed in the Exchequer, or equity courts more generally, allowing wives to sue or be sued in their own legal right was uncommon in practice. There could be a variety of reasons for this, but in the case of the Court of Exchequer, issues that were of importance to a wife were likely to be an issue for her husband, and vice-versa. When we consider male litigants, 49 per cent of male plaintiffs were sole plaintiffs whilst 13 per cent of male defendants appeared alone. Like female litigants, sole male litigants were commonly involved in land, property, and money cases, and appeared even more frequently in tithes cases. These trends largely corresponded with those seen for all male litigants more generally, where tithes and land cases dominated. For both male and female sole litigants, their appearance was relatively evenly spread across the period (excluding the Civil War years), with sole female litigants mirroring the patterns seen for all women and sole male litigants doing the same (Figures 27 and 28). Comparing the trends of sole female litigants to sole male litigants reveals overall similarities, apart from in the late 1660s, where sole male defendant numbers were at their highest whilst female defendant numbers were below average.

Period	Sole M Plaintiffs	Sole M Defendants
1620-24	324	210
1625-29	295	164
1630-34	421	184
1635-39	405	184
1640-44	129	43
1645-49	51	25
1650-54	184	85
1655-59	329	201
1660-64	344	173
1665-70	407	240
Totals	2889	1509

Figure 27 - Sole male litigants over time, 1620-1670

Period	Sole F Plaintiffs	Sole F Defendants
1620-24	10	5
1625-29	22	10
1630-34	12	11
1635-39	15	17
1640-44	1	3
1645-49	5	0
1650-54	11	7
1655-59	23	9
1660-64	11	11
1665-70	23	5
Totals	133	78

Figure 28 - Sole female litigants over time, 1620-1670

Female categories of legal and social status correspond with how women have been recorded in the primary and secondary records used to construct the database. Whilst efforts have been made to identify the status of all female litigants who appeared in this sample across the period, the legal status of some female litigants remains unknown. This created a challenge when analysing female litigant's legal status in the Court. Due to the impracticality, and in some cases impossibility of correctly ascertaining every female litigant's legal status in this study, a sample was taken of all litigants whose legal status was unknown: this category was labelled as 'unspecified'. Based on a combination of primary and secondary catalogues, 19 per cent of female plaintiffs and 26 per cent of female defendants fell into this category of unspecified. Using Entry Books of Orders for the Court of Exchequer (1620-1670 covered by E 124, E 125 and E 126), the instances in which a female litigant's legal status was missing was investigated in an attempt to ascertain the legal status of the woman in question. The entry was then either corrected or left as unspecified. This enquiry did not result in a legal status being added for all unspecified litigants, but from those that did, the majority in this category came to be identified as widows. This was supported by the appearance of them over time, with a large proportion of both unspecified female plaintiffs and defendants appearing after the Civil War. For female plaintiffs, 58 per cent of unspecified women appeared from 1655 onwards, whilst for defendants this figure was 51 per cent. Given the significant loss of life, one would expect more widows from the 1650s onwards. It is clear however that in cases where large numbers of plaintiffs or defendants were present, the legal status of female litigants was often missing from Exchequer records across numerous document

categories. In these cases, it is only when deponents or other litigants directly mentioned the female litigant in question that there was any indication of her status in the records. After all efforts had been made to reduce this number, the unspecified litigant must be treated as an unfortunate but unavoidable category.

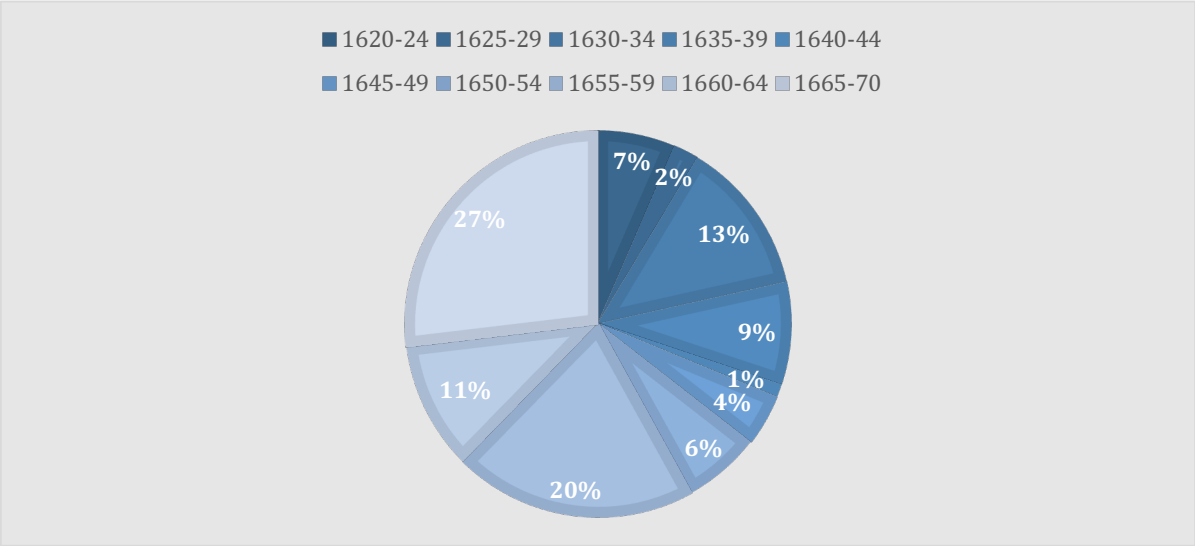


Figure 29 - The distribution of 'unspecified' female plaintiffs over time, 1620-1670

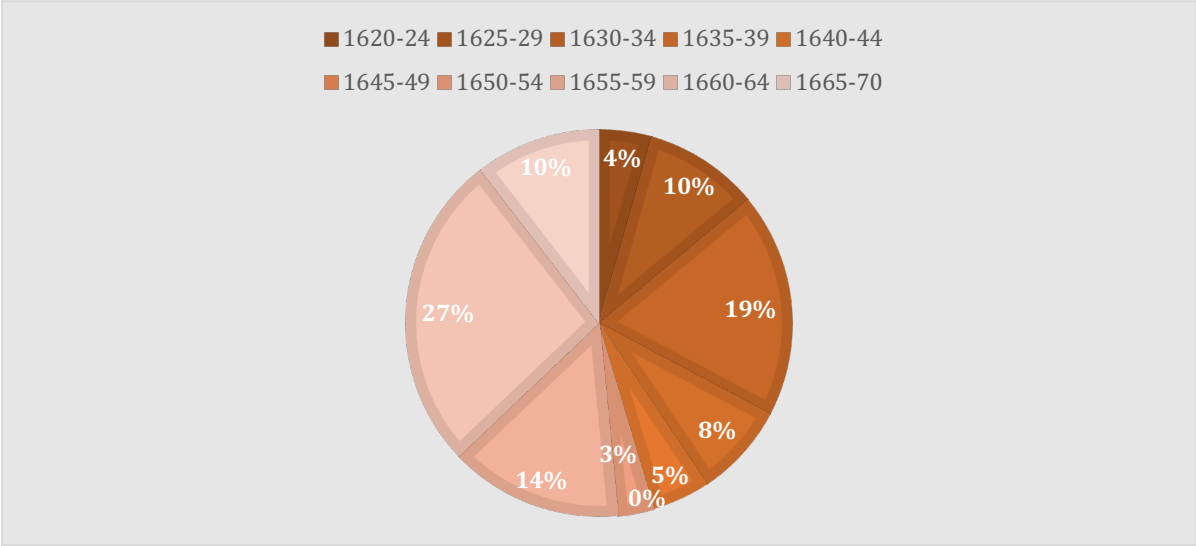


Figure 30 - The distribution of 'unspecified' female defendants over time, 1620-1670

Widows accounted for the largest proportion of female litigants, making up 44 per cent of plaintiffs and 42 per cent of defendants. It would be expected that percentages would reach over 50 per cent if not for the unspecified category. The high number of widows present in this sample of the Court was in keeping with recent findings in

Chancery about the prevalence of widows in litigation, and therefore demonstrate the consistent use of equity law as an avenue for redress.[18] The Northwest and West Midlands saw the highest percentage of widows: 21 per cent of all widowed plaintiffs appeared in this region, making up almost 10 per cent of all female plaintiffs across the sample (Figure 31). Widows appeared the least frequently in East England, as both plaintiffs and defendants (Figures 31 and 32), but this infrequency was a result of the low number of depositions in general in the region. The legal status of widow was the most common for female litigants in every region apart from two: Yorkshire, the Northeast and Cumbria; and East England. We would expect this prevalence of widows in the Court, and it is therefore surprising that in the most litigious region of the sample, Yorkshire, the Northeast, and Cumbria, this trend was not apparent.

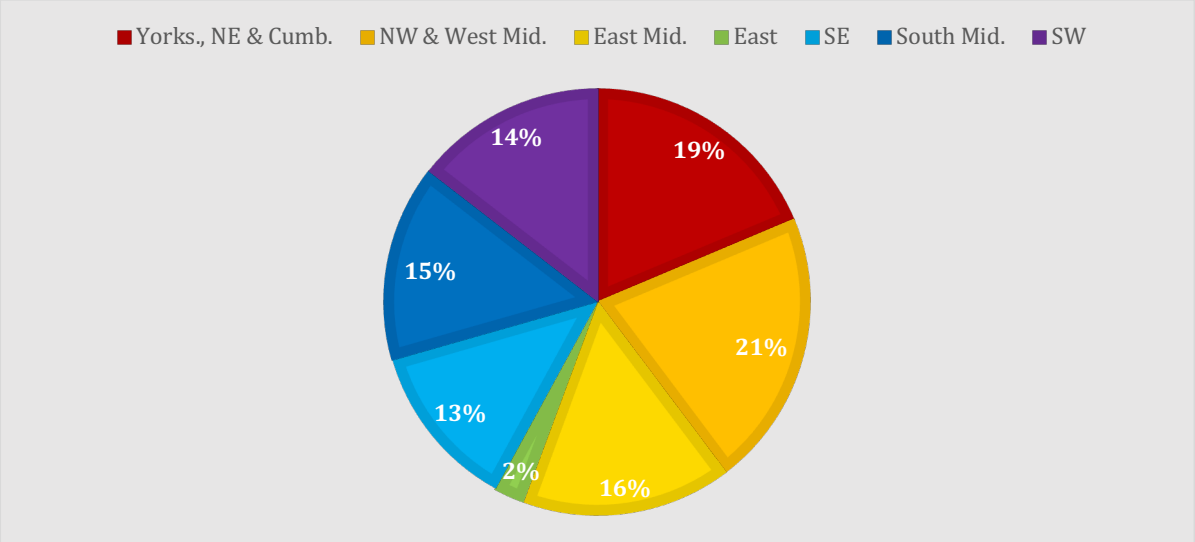


Figure 31 - The distribution of widowed plaintiffs across regions, 1620-1670

[18] Garside, *Women in Chancery*

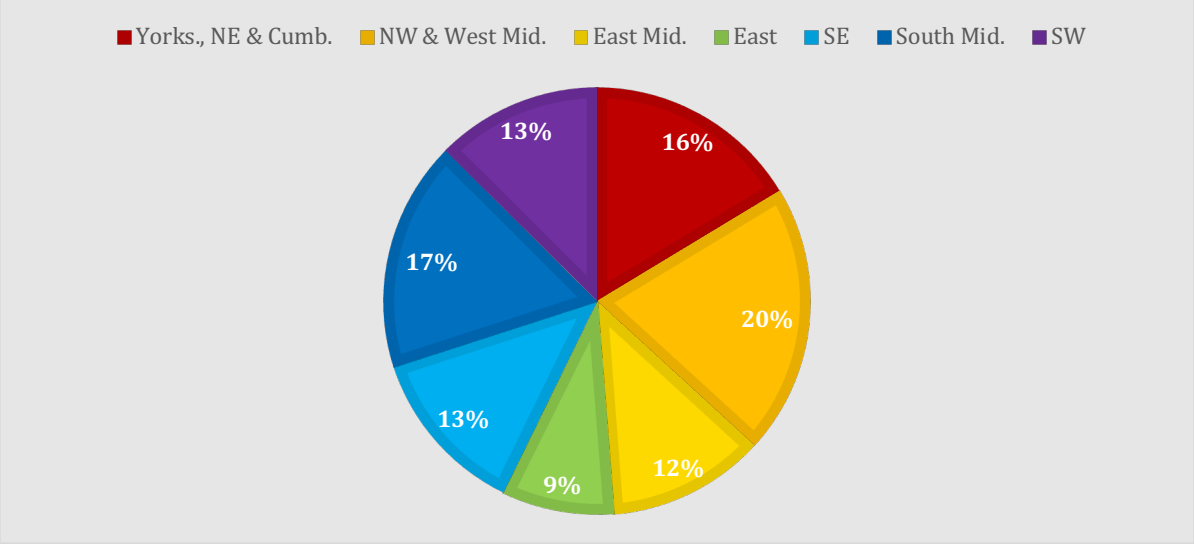


Figure 32 - The distribution of widowed defendants across regions, 1620-1670

Across the country and the period, the appearance of widowed litigants fluctuated (Figures 33 and 34). Widowed defendant numbers saw a gradual increase prior to the Civil War followed by a slow recovery from the 1650s onwards. More widowed defendants appeared before the War than after. Widowed plaintiff numbers by comparison were more sporadic, with a surge in the late 1650s, most likely a consequence of the Civil War. These numbers reflect a pull to litigation following entry into widowhood following the death of a spouse, as well as an increased need for intervention to protect and secure estates that may have been disrupted by the conflict. Temporal trends were evident for widowed plaintiffs in most regions, apart from Yorkshire, the Northeast and Cumbria, as well as East England, where numbers were lower after the wars. For widowed defendants, the wider temporal trends were far more scattered regionally. Whilst numbers prior to the 1640s were relatively steady, across some regions spikes could be seen from the late 1650s until the late 1660s. Of such regions, the East of England, the Southeast, and the Southwest were most notable, with the heights of female defendant numbers coming in the 1650s and 1660s. The most common case types for widows, both plaintiffs and defendants, were property and land cases (Figures 35 and 36). Right and title suits, as well as tithes cases, were more common for widowed defendants, whilst the proportion of cases on wills was similar for both widowed plaintiffs and defendants. Over time, the involvement of widowed defendants in land suits decreased, as did their presence in cases concerned with money and

business. Widowed plaintiffs were more involved in property cases following the Civil War. Identifying what case types drew the highest number of widows is central to understanding their place as litigants in the equity process and their response to changes and challenges of the time, both individually as heads of household and within the social context of seventeenth-century England.

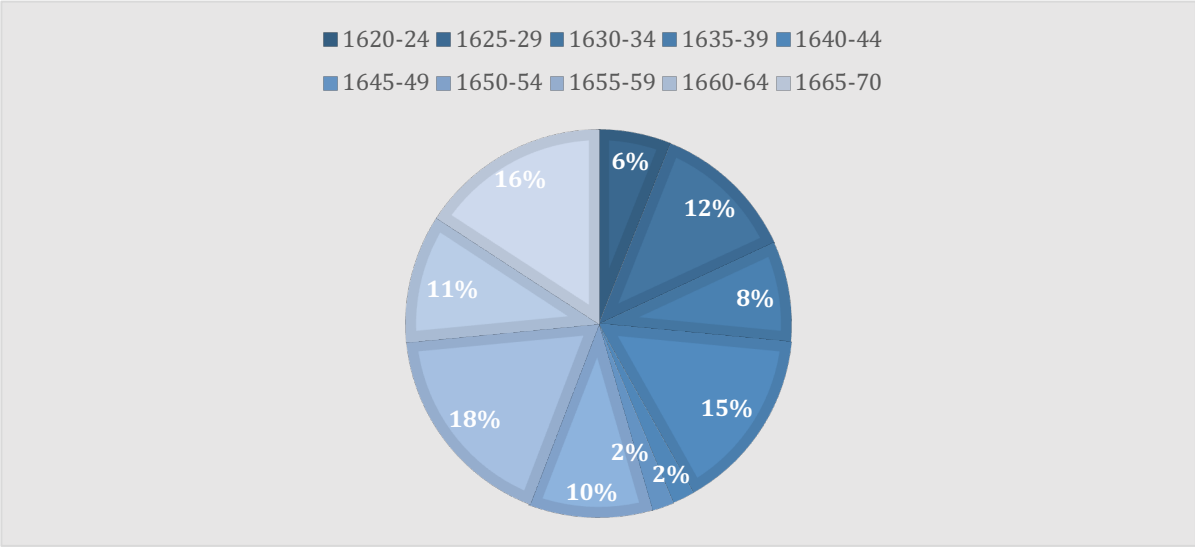


Figure 33 - The distribution of widowed plaintiffs over time, 1620-1670

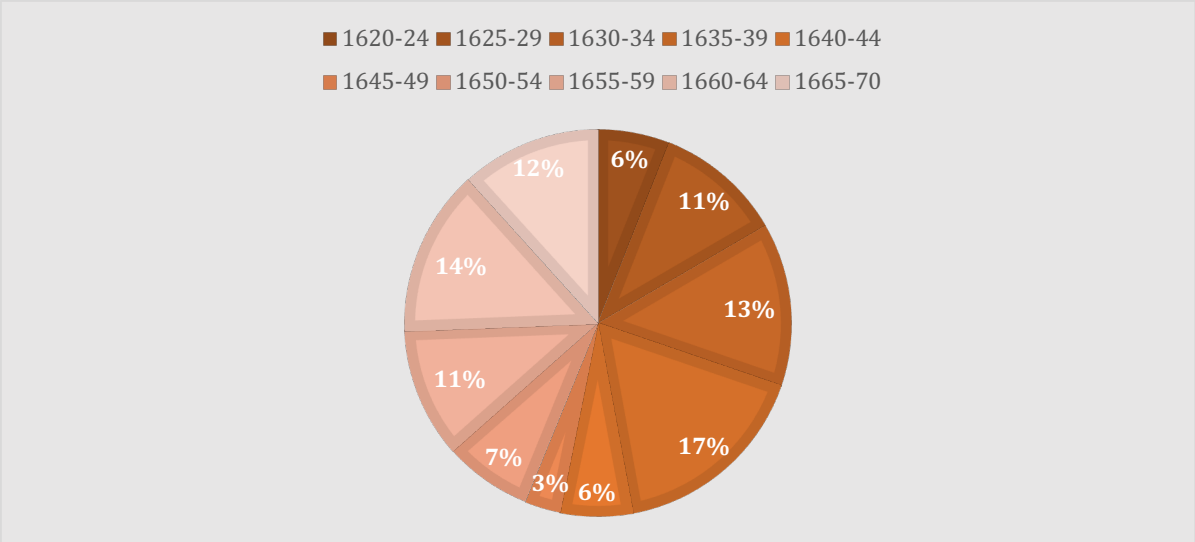


Figure 34 - The distribution of widowed defendants over time, 1620-1670

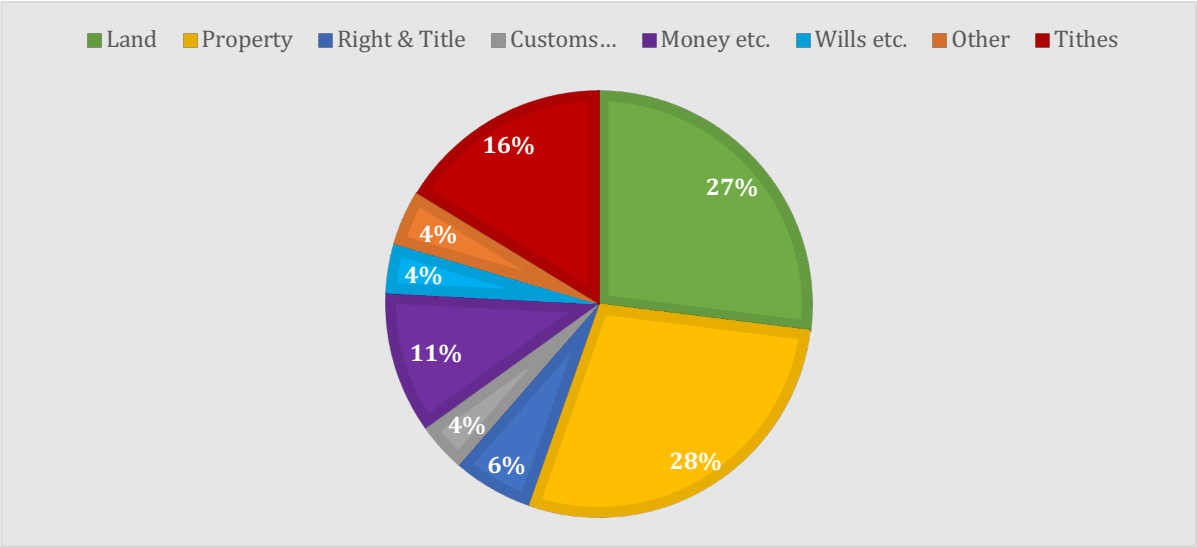


Figure 35 - The distribution of widowed plaintiffs across deposition types, 1620-1670

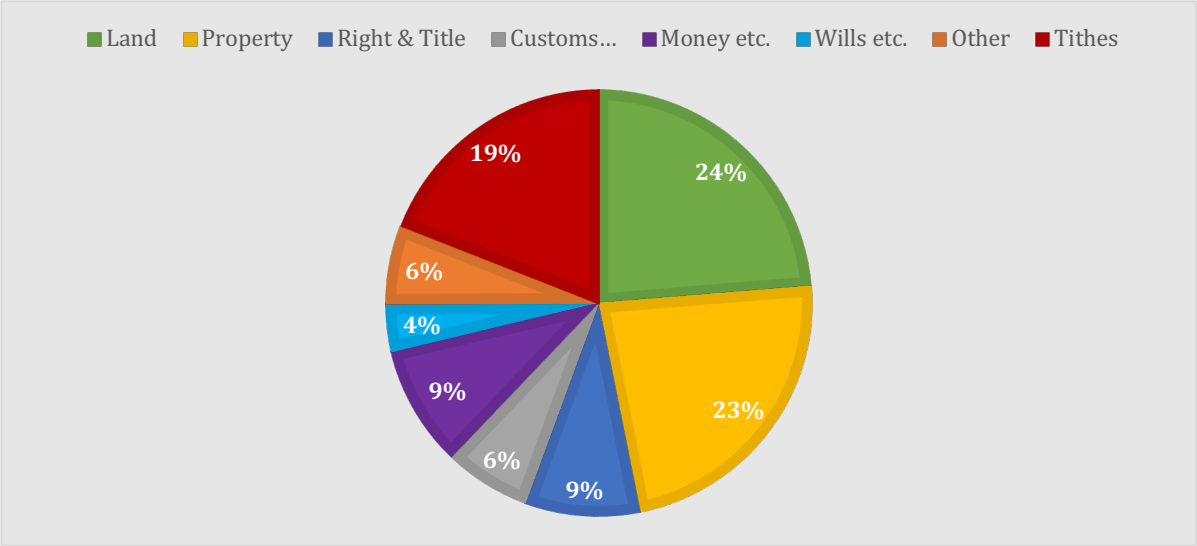


Figure 36 - The distribution of widowed defendants across deposition types, 1620-1670

The majority of widows appeared alongside other litigants rather than alone, and more often alongside men than other women. If widows were appearing with men as plaintiffs or defendants, they were also rarely the first named litigant, and early research indicated that it was very difficult to disentangle a narrative to identify different speakers, given that they were often presented as joint bills or answers. This was of course not specific to widows, or even to women, but instead was a characteristic of Court records. As a result, an exploration of widows litigating in the court needed to make use of cases that had a narrative under the name of a widow who was involved in the case in her own right, and, as far as possible, independent of direct male involvement. This focus reduces the number of suitable cases within the widowed litigant category, but in doing so it

highlights the multifaceted nature of a widowed woman's relationship with the law. A proportionately small number of widows appearing in the Court were full participants in the equity process exercising their legal right and voice, and we should not therefore see all widowed litigants in the same light.

The number of wives who appeared as litigants in this sample, whilst lower than widows, still made up a significant percentage of female litigants in the Court. Wives accounted for 35 per cent of total plaintiffs and 30 per cent of total defendants. Despite the wider prevalence of widows, wives dominated as plaintiffs in Yorkshire, the Northeast and Cumbria where they accounted for 41 per cent of female plaintiffs in the region, as well as East England where they made up 70 per cent. The most represented and the least represented regions in this Exchequer sample both boasted above average married female litigants, suggesting that levels of litigation did not ensure the dominance of widowed litigants. The number of wives in Yorkshire, the Northeast and Cumbria was so high in fact, that almost 25 per cent of all plaintiffs who were wives came from that region (Figure 37), and they accounted for just under 10 per cent of all wife litigants in the sample. For defendants, wives were similarly common in East England, where almost 45 per cent of female defendants were wives compared with the next highest in the Southeast, at 35 per cent. In comparison to plaintiffs however, when we consider wives across regions, the Northwest and the West Midlands dominated in terms of wife numbers. Of all defendant wives, 22 per cent of them appeared in this region (Figure 38), almost 7 per cent more than in East England. Considered alongside broader litigant numbers, defendant wives in the Northwest and West Midlands accounted for 13 per cent of all wife litigants. More wives appeared as defendants than as plaintiffs in every region except Yorkshire, the Northeast and Cumbria. Trends within regions therefore were not automatically representative of wider trends, and the absolute numbers behind the percentages were partly responsible for this. When we consider the presence of wives over time (Figures 39 and 40), we see a similar split between plaintiffs and defendants across the period, with close to 50 per cent appearing between 1650 and 1670 in both categories. Higher numbers of wives as plaintiffs appeared in the Court immediately following the Civil War, whilst for defendants this increase came at the end of the period in the late 1660s. The greatest proportion of wives however, for both plaintiffs and defendants, was before the war years in the early 1630s. This corresponded with Court-wide patterns of litigant numbers, which saw similarly large concentrations of plaintiffs

and defendants in the 1630s. Given that wider trends were greatly influenced by male litigant patterns, this suggests that trends for wives over time more closely aligned with male trends, whilst trends for widowed litigants were more distinct.

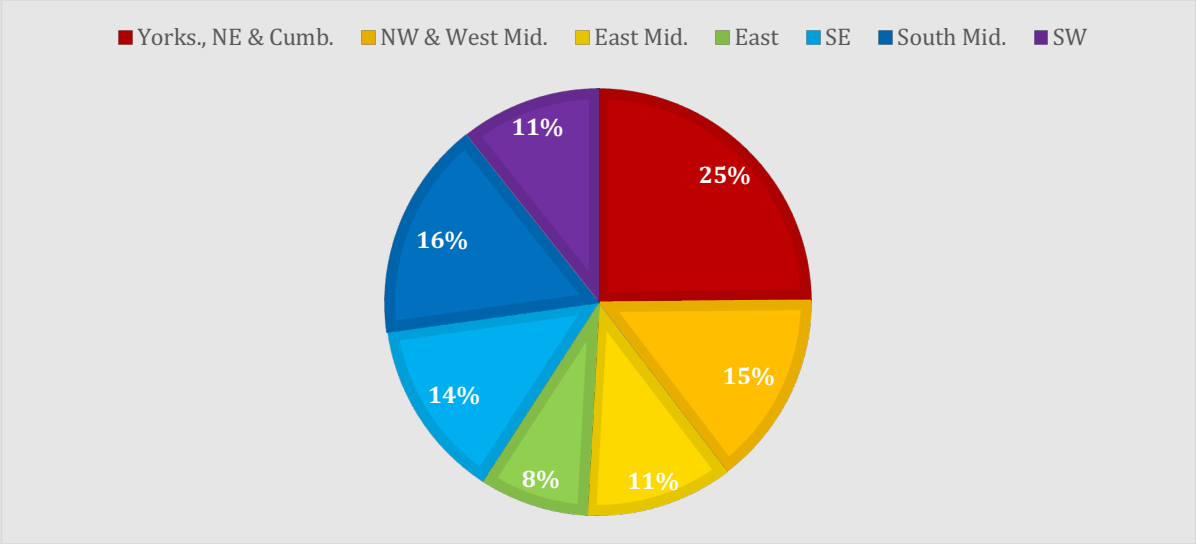


Figure 37 - The distribution of plaintiff wives across regions, 1620-1670

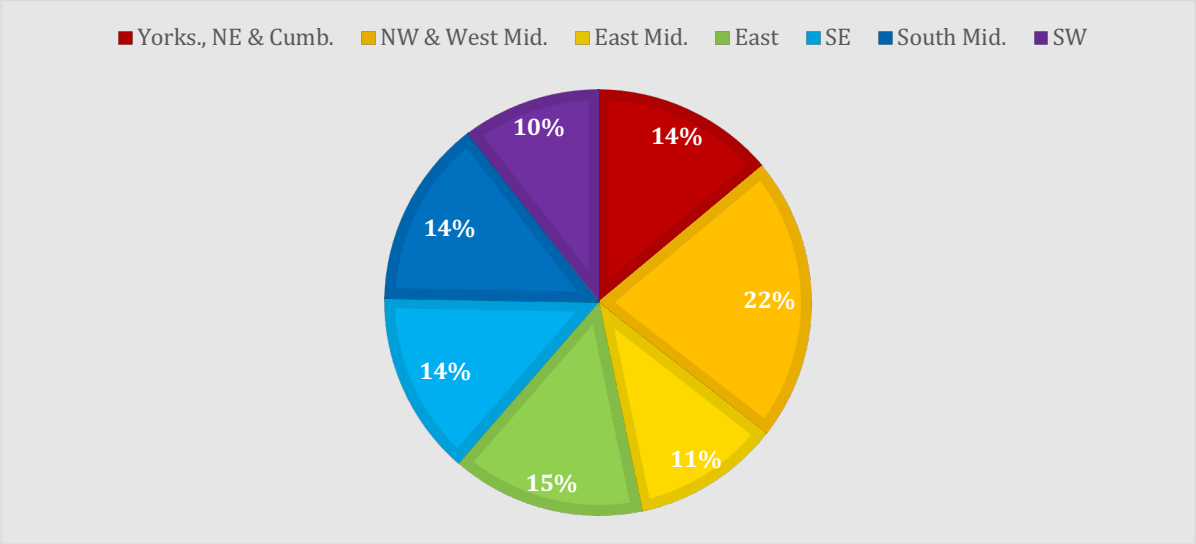


Figure 38 - The distribution of defendant wives across regions, 1620-1670

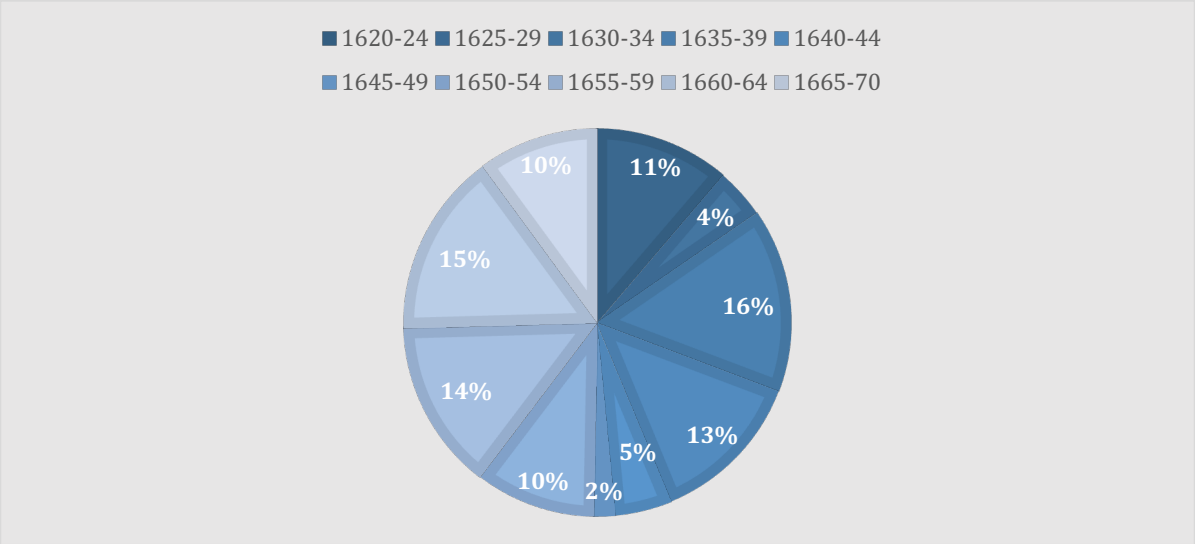


Figure 39 - The distribution of plaintiff wives over time, 1620-1670

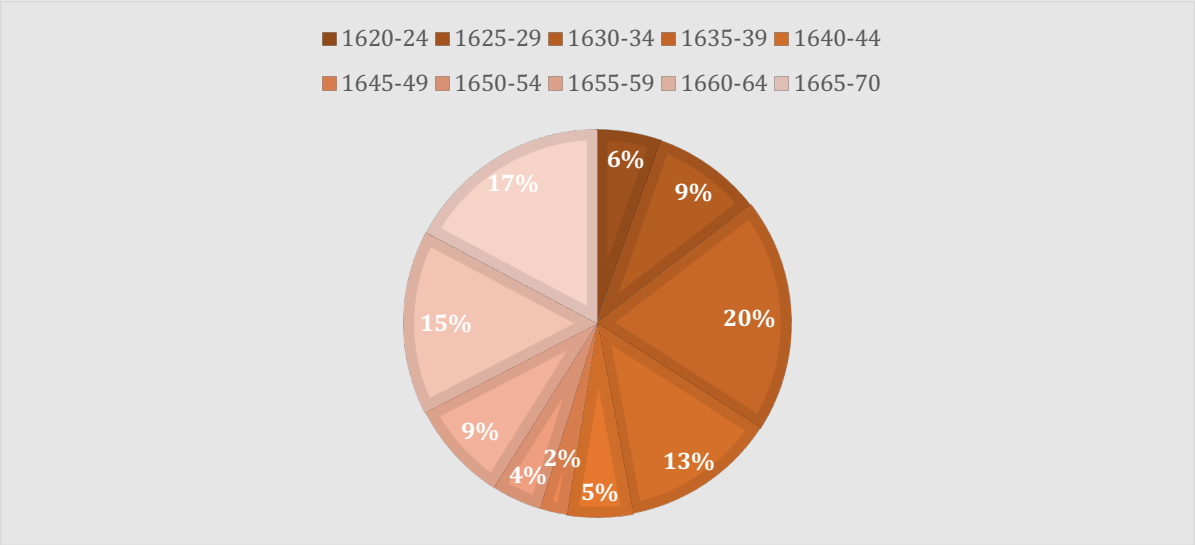


Figure 40 - The distribution of defendant wives over time, 1620-1670

Trends can be further explored when regional analysis and case types are introduced for wives. The majority of regions saw similar numbers of wives before and after the wars. For plaintiffs, the higher numbers of wives following the war was most apparent in Yorkshire and the Northeast, as well as the Southwest. In Yorkshire and the Northeast in particular, there was a notable absence of plaintiff wives during the 1660s. In every region apart from the upper Southeast and upper Southwest, defendant numbers

saw a gradual increase from the late 1650s and early 1660s onwards, with some dropping off in the late 1660s, suggesting that the higher proportion of wives seen in this period was the result of a few notably high figures in select regions. Looked at more closely, numbers would seem to suggest that the defendant increase was notable throughout the 1660s, and the plaintiff increase much less noticeable when regional variance was taken into account. Wives, following the broader trend for female litigants, were most commonly involved in property cases. Compared to widows, plaintiff wives were less involved in land cases, and wives in general were much less likely to be involved in tithes cases (Figures 41 and 42). They were however higher in number for cases concerning wills, inheritance, and marriage, and were well-represented in right and title cases.

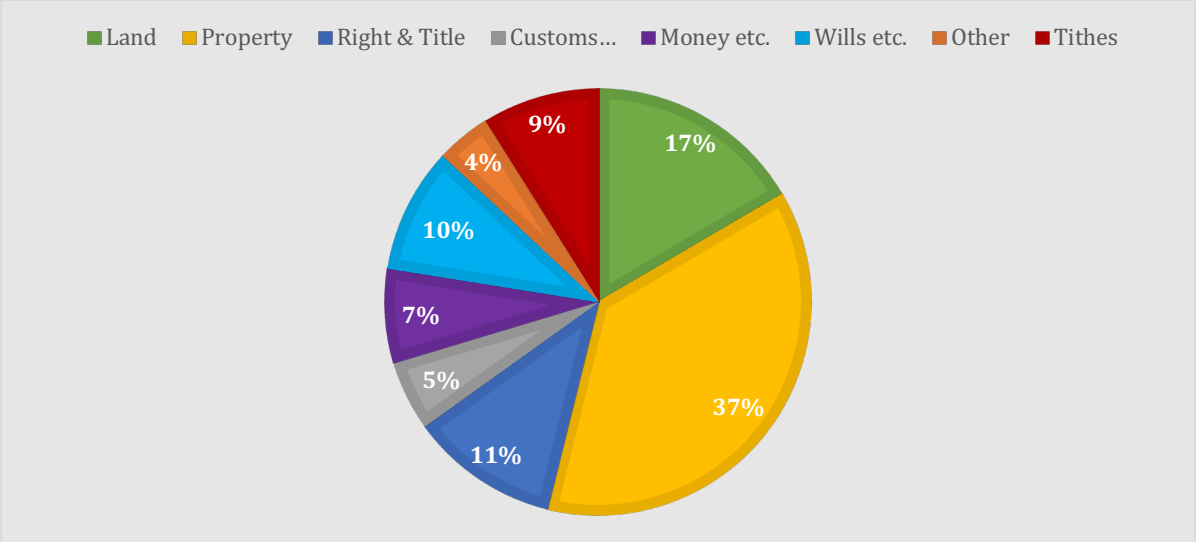


Figure 41 - The distribution of plaintiff wives across deposition type, 1620-1670

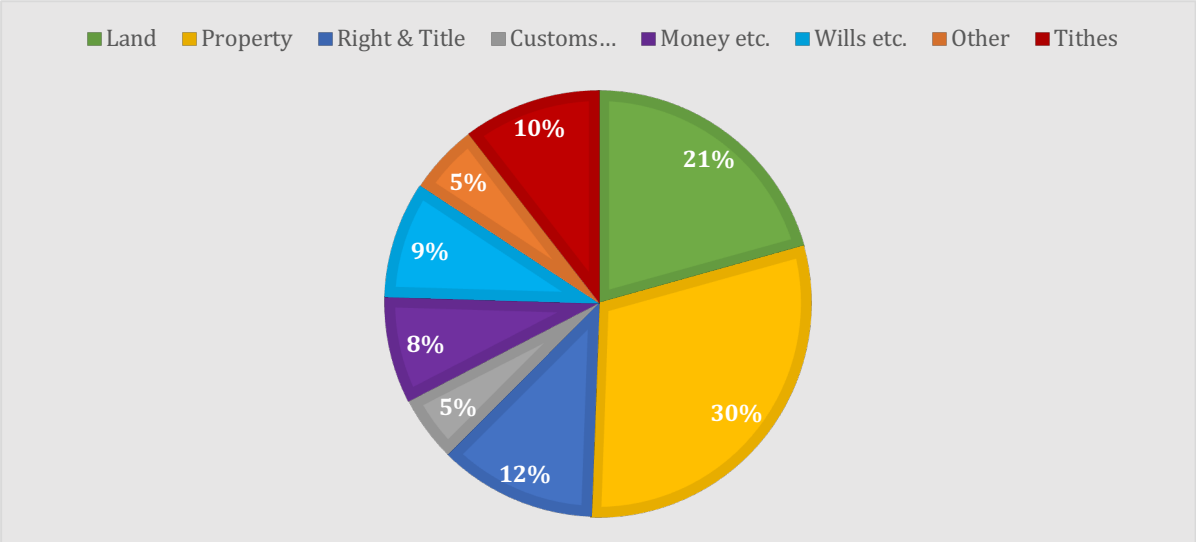


Figure 42 - The distribution of defendant wives across deposition type, 1620-1670

Spinsters, as they were referred to in Exchequer records, made up a very small proportion of female litigants in this sample. For both plaintiffs and defendants, spinsters made up only 2 per cent of women. Their presence was similarly low across regions for plaintiffs and defendants, with the highest being in the Northwest and the West Midlands, where spinsters accounted for 7 per cent of female plaintiffs. Spinsters in this region counted for over 58 per cent of all plaintiff spinsters. The spread of defendant spinsters was more even scattered across the regions, with almost 31 per cent found in the Southeast and 23 per cent from the Northwest and the West Midlands. Almost all spinsters in the sample appeared from the late 1640s onwards. There were no recorded spinsters in the upper Southeast and upper Southwest. Tithes cases attracted the most spinsters, whilst land and money cases involved the next highest proportion. Of the total twenty-five spinsters, nine appeared as sole plaintiffs and one as a sole defendant. The rarity of their involvement in the Court is interesting in relation to findings in other courts. Recent work on the un-married or never-married women of this period by Froide has argued that single women were not as rare or as invisible as was once thought. They have been shown as being increasingly involved in business and control of property before, during and after this period.[19]

In addition to the varied legal classes of female litigants who appeared in the Court, social class was evident as well. Titled women were identifiable by the presence of a title in their recorded name, as was true for male litigants. The appearance of both were spread across the period and the country. Titled women did not account for the majority of female litigants in the Court, as will be discussed in Chapter Six, although many of them were widows. Other indicators of social status are found within Court narratives themselves, but such indicators were not evident from the majority of case headings in the Deputy Keeper of Public Records documents.

A Foundation for Qualitative Analysis

The production of the database draws together key points of analysis and provides a basis for a qualitative exploration that is guided and informed by new quantitative findings. What is clear, even from this overview of findings, is that by documenting usage of the

[19] Froide, *Never Married*, p.217

Court, making use of as much information as possible, clear trends can be seen that on occasion reflect the context beyond the Court, aid in our understanding of the role and development of the equity side of the Exchequer and often raise interesting questions about people's use of and relationship with litigation. Most importantly, these findings are the foundation for a discussion on widows' role in Exchequer litigation between 1620 and 1670. As the most represented female legal status in the sample, present in every region across the period, accounting for the highest number of sole litigants and titled litigants, widows in the Court of Exchequer are a crucial part of the story of women's legal redress and relationship with early modern law.

Chapter Four

Sole Widows

Of the four groupings of widows considered for this project, the largest was untitled widows who appeared alone against male litigants. The six cases discussed in this chapter were spread across the period and the country and primarily concerned issues related to estate management and the family. Whilst entry to the Court had its restrictions both financial and procedural (the latter of which did vary over time) widows who sought legal redress in this Court were a varied group with detailed and often complex, narratives. Sole female litigants were of particular interest because of the intersections of their status: widowed, middle-aged or older, middle-class and heads of household. Their experiences of litigation varied, as did the forcefulness of their claims to legal right, but they all appeared as legally recognised individuals against men who were, by contrast, the legal norm. Sole litigants were, therefore, unlike widows in later chapters, and it was this specific intersection between class, their male opposition, and the fact that they appeared during a time of relative social stability that makes them a group worth considering.

There were 111 untitled sole female plaintiffs and 66 untitled sole female defendants in the sample (Figure 43), and the vast majority of sole female litigants were widows (Figure 44). The pattern of their appearance in the Court largely matched those of all female litigants, more so for untitled sole plaintiffs than defendants. Whilst the former shared the broader female litigant trend of a higher rate of appearance after the Civil War, untitled sole female defendants appeared less frequently after the 1640s. Sole female litigants more commonly brought cases associated with land (22 per cent), property (21 per cent) and tithes (22 per cent) and appeared as the sole defendant most often in cases regarding tithes (25 per cent) or property (20 per cent). Untitled sole female plaintiffs and defendants appeared least often in cases concerning manorial customs (3 per cent and 2 per cent) and wills, inheritance and marriage (5 per cent for both plaintiffs and defendants). These litigants could be found across the country throughout the period but were more common in the Northwest and West Midlands as

both plaintiffs (23 per cent) and defendants (17 per cent), compared with the East of England which, aligning with broader findings for the region, saw very few of either plaintiffs (2 per cent) or defendants (8 per cent). It is worth noting that the geographical trends for sole female litigants did not always match those of female litigants in general. This was most notable in the East Midlands, where the increase in female plaintiffs after the Civil War was not shared with sole female plaintiffs, and in the South Midlands, where consistently high numbers of female defendants were not mirrored in sole female litigant figures.

Period	Titled Plaintiffs	Titled Defendants	Untitled Plaintiffs	Untitled Defendants
1620-24	2	0	8	5
1625-29	6	4	16	6
1630-34	1	0	11	11
1635-39	4	3	11	14
1640-44	0	1	1	2
1645-49	1	0	4	0
1650-54	4	1	7	6
1655-59	1	0	22	9
1660-64	2	2	9	9
1665-70	1	1	22	4
Totals	22	12	111	66

Figure 18 - The distribution of sole female litigants divided by social status over time, 1620-1670

Period	Sole Female Plaintiffs	Sole Female Defendants	Sole Widow Plaintiffs	Sole Widow Defendants
1620-24	10	5	6	4
1625-29	22	10	21	10
1630-34	12	11	11	9
1635-39	15	17	15	17
1640-44	1	3	1	3
1645-49	5	0	4	0
1650-54	11	7	11	7
1655-59	23	9	20	7
1660-64	11	11	10	10
1665-70	23	5	18	4
Totals	133	78	117	71

Figure 19 - The distribution of sole female litigants and widows over time, 1620-1670

The sole widows selected for this chapter originated from these figures. One case, that of Anne Towenson, was brought in Cumberland in 1658, one of the few brought by a sole widow in the region following the Civil Wars – a region that saw some of the highest

levels of litigation across multiple categories in the sample. Frances Reade was one of the few widows who brought a case in London during the period appearing in E 134, as was Ann Hall who called a case in Kent in the late 1650s. Elizabeth Wheatley, the only defendant discussed in this chapter, appeared at a time of very few cases involving women in the region, and on the cusp of the Civil War. Ann Davis and Margaret Merryweather bookend the period in Gloucestershire, in a region of surprisingly consistent, albeit low, appearances of sole widowed plaintiffs. The selected cases are not intended to be representative of all widows in the Court, but rather their experience of litigation as women with a recognised legal identity. Whilst their social status as untitled and their legal status as widowed were shared, their narratives, background, and rationale for appearing in Court, as we would expect, were distinct. Instead, the interest lies in their expression of legal right and the role that their widowhood and allowed power played on their experience of litigation.

Despite being a widow in an equity court, their appearance as litigants, especially sole litigants, opposed the 'natural order' given the so-called 'natural relationships between male and female' that were, and still are, key to structures of hierarchy and patriarchy.[1] Gender order was, after all, 'regarded as the most 'natural' and therefore the most important to defend'.[2] Tensions between social ideals and widows at law were not immediately apparent in the cases used in this chapter. Whilst there were disputes as to whether they had a right to litigate in the Exchequer, this stemmed from the requirements of Court procedure, namely whether she was indeed a debtor to the Crown. These challenges, whilst in part influenced by gender, were not necessarily evidence of disfavour for widows appearing. The tensions therefore existed primarily outside of the Court, although the contradiction between ideals was particularly evident in this space.

Whilst there was undoubtedly a great variety in the experience of widows who came to the Court, there was one similarity shared between them all – they had been married. The length of time that they lived as a wife was far from uniform, nor was their experience during their married life or afterwards. Whilst discussions around marriage did not frequently occur in the narratives considered here, considerations of the family more broadly appeared in a variety of ways and the consequences of remarriage were

[1] Wallach Scott, *Gender and the Politics of History*, p.48
[2] Wiesner-Hanks, *Women and Gender in Early Modern Europe*, p.331

often underlying issues within more complex cases. This was not always the case however, as some women entered widowhood with no family to speak of and no other husbands to consider.

As we shall see, the most detached was the case of William Brotherhood v Elizabeth Wheatley and her two daughters, where the primary focus was on Elizabeth's actions as a landlady, and in a more implicit sense, her role as a mother.[3] Unlike the other cases discussed in this chapter, Elizabeth's responsibility as a widow was irrelevant to the case that she brought. Instead, she presented herself purely as a female head of household maintaining her family – we do not even learn her husband's name, as it was of no importance. By contrast, the will and legacy of the husband was central to the cases of Ann Hall and Ann Davis, both of whom appeared in the Court as plaintiffs against wealthy landed men, fighting for their claim to land that was their security in their later years.[4] Frances Reade was also striving for security, but hers involved a much larger sum that had originated from a business agreement made by her first husband.[5] Margaret Merryweather similarly brought the past affairs of her husband to the Court, looking to secure a denial of payment rather than seeking one.[6] Anne Towenson, by contrast, brought the numerous affairs of her mother to the Court, embroiling various members of her extended family.[7]

As a catalyst for litigation and the formation of a legal identity, widowhood was both inseparable from the patriarchal ideal of the family and marriage, and at odds with ideals around womanhood. Widows litigating in Court were a realisation of this tension, and when a case concerned a family that had once been headed by a man, this tension was exacerbated further. Sole widows appearing in their own legal right against men, looking to either secure their future economic stability, conclude business affairs, protect the rights of their children or challenge rights to land and property, were an example of women's legal identity in action. Yet despite the contradiction of this action and ideals of womanhood, it was not extraordinary and was instead an everyday occurrence. The normality of such interactions complicated gender ideals about being a good widow and mother, working to both undermine patriarchy assumptions about female action and

[3] TNA, E 112/252, Case no.94
[4] TNA, E112/307, Case no.175; TNA, E112/179, Case no.: 11
[5] TNA, E112/204, Case no.90
[6] TNA, E112/404, Case no.135
[7] TNA, E112/293, Case no.: 40; 42; 44

demonstrate the importance of the protection of posterity within the patriarchal paradigm.

As well as marriage and family, the cases considered in this chapter also concerned remarriage, rights transferred through wills and estate management. Such themes fit quite comfortably in the realm of widowhood. The Court of Exchequer was, therefore, a useful avenue for widows, and comparable with Chancery in terms of accessibility and suitability for cases that commonly concerned widows. Many of the cases discussed in this chapter also showed widows appearing against elite men. These cases were evidence of the ease of litigation, the realisation of female legal identity, and the myriad of experiences that were recorded in this early modern Court.

Biographical information about the widows of this chapter did not reach far beyond the information they provided in their own narratives, and occasionally what was added by witnesses. These sole widows have very little historical record past their appearance in Exchequer and were not found in other courts. When compared to the men they appeared against, we know very little about their backgrounds or their lives surrounding the specific instance mentioned in case records. They were, after all, legal documents with a legal purpose. Whilst this prevents a full exploration of their lives, it is in fact beneficial for this investigation that the information that we have is only that which was provided by them – only details pertinent to the case at hand. Of course, this selectivity was not purely the choice of a widow, but informed by Court procedure and practice. For the purposes of this project however, this concentrated information is ideal, in that it captures only that which fell within the parameters of her legal identity and the case that had driven her to make use of it. There were, however, some pieces of information that prove indicative of a certain way of life, or the precarity of a woman's widowhood, and her subsequent dependency on others, to varying degrees. Unlike the titled widows discussed in Chapter Six, the widows considered here were not elite or notably wealthy. The extent to which their security was at risk though, was variable, and ultimately unknowable beyond making reasoned assumptions based on the information made available as part of the case narratives.

Frances Reade, London, 1627

The parameters of the Court were wide, in both the type of cases brought and geography, as quantitative findings have shown. The extent of this variety however is somewhat obscured when widows become the focus, and the majority of cases were mostly local, sometimes regional, and occasionally national. In rare cases, sole widows were involved in cases of international scope. Frances Reade, a widow living in All Hallows, Barking, London, brought such a case to the Exchequer in 1627. There was very little information available about Frances' life beyond the details of the case. She did appear as a litigant in Chancery records with Gerrard Reade, her second husband.[8] There were also surviving records from the Prerogative Court of Canterbury in 1652 following her death which revealed she had a sister, Elizabeth Morgan.[9] However, the majority of what we learn comes from her Exchequer suit and the surviving will of her first husband, Richard Pearce. Dated as February 1609, Richard's will, where he was recorded as a citizen of London, revealed a man of reasonable wealth and generosity: he named no children but left money to family, the poor and servants totalling almost £600.[10] Those who received the most were Gerrard Reade, identified as a business partner of Richard, and Frances, Richard's 'well-beloved wife' and named as executrix.[11] It was unclear when Frances married Gerrard or the nature of the business partnership that the two men had shared. The suit brought by Frances almost twenty years after Richard's death concerned his business affairs in England and abroad and did not appear to touch on any matters concerning Gerrard. By the time the case was brought, Frances identified herself as a widow, indicating that Gerrard had died some time before 1627. The fact that the case concerned affairs from some time earlier suggested that Frances either waited until she was a widow again to bring the case to Court, or remained unaware or uninformed of the matter until sometime later. The details of the case suggest the former, but the reasoning behind this possibility was difficult to pinpoint.

Frances brought the case against Henry and William Garraway. It concerned an agreement made between Richard Pearce and two members of the landed gentry, Sir Nicholas Salter, and Sir William Garraway. The latter had been a merchant, tax farmer

[8] TNA, C 2/JasI/K1/41
[9] TNA, PROB 11/221/886
[10] TNA, PROB 11/113/149
[11] *Ibid*

and father to seventeen children, including the two defendants. Henry Garraway was a Levant merchant, a founding member of the East India Company and 'a member of the syndicates of traders in currants and of French and Rhenish wine farmers'.[12] His main residence was at Broad Street in London, but he also held estates across the country, and was briefly elected mayor of London in 1639. There was a notable difference in status and wealth between the widowed plaintiff and the defendants, and the topic of the suit was grounded in the realm of the landed elite.

The suit concerned a lease for a wine farm and imports of wine from France granted by King James I to Sir William Godolphin and Joseph Carth in 1605. Sir William Garraway and Sir Nicholas Salter had purchased this lease shortly after, and divided it into twenty-four equal parts. Frances stated that the agreement between her first husband, Sir Nicholas Salter and Sir William Garraway had been reached in June 1606, and granted Richard and his executors one part of the lease and the profits for seven years, for which he paid £666.[13] In addition, Frances stated that another part had been granted to an acquaintance, William Greenwell, in trust. The lease and imports in question were worth significant sums of money, with Garraway and Salter supposedly gaining around £35,000 a year. Frances claimed that Richard had not received any profits from his investment before his death in 1608, despite having paid his portion of the charges for the lease and the fact that William Greenwell had received his profits. There was no indication as to what Richard's actions had been before his death or any attempts to claim his rightful profits, and Frances' reasoning for bringing the case when she did rather than immediately following her taking on the role of executrix were not disclosed. William Greenwell had died at a similar time to Richard and had named his wife, Ann, as his executrix. In her bill, Frances stated that Ann did 'well know that the said William Greenwell her late husband was trusted in the said grant of the said twenty-fourth part of the said customs', and Frances thought that Ann 'would have suffered your said oratrix to have and receive the said rateable part of the said customs, imports, prizes…and have given her an accompt thereof'.[14] The defendants, Henry and William Garraway refused to pay any of the money that Frances believed was owed. She claimed that they, as well as Ann Greenwell, were working to deprive her 'not only of the said twenty fourth part of

[12] A. McConnell and R. Brown, 'Garway [Garraway], Sir Henry (bap. 1575, d. 1646), merchant and politician', Oxford Dictionary of National Biography. Oxford University Press
[13] TNA, E 112/204, Case no.90, bill of complaint, Frances Reade
[14] *Ibid*

the said customs, imports, prizes and other things granted by his said late Majesty…but also of the increase, profit and benefit thereof'.[15]

Ann Davis, Gloucestershire, 1627

Appearing as a sole plaintiff, Ann Davis brought a case against Wheathill Audley and William Hickes in 1627. The suit concerned copyhold land and property which consisted of one messuage, a small close and fifteen acres of arable land, all part of the Manor of Bisley in Gloucestershire, a small village between Gloucester and Cirencester. At the centre of this case was a dispute between tenant and landowner as to which customs were practiced within the manorial lands. At the time of the case, Ann's late husband, Richard Davis, had been dead for between two and three years. Ann's account in her bill of complaint described how the copyhold land and property had once belonged to Joan Compton, a widow, and William Sewell. Few details of the landowners were provided, beyond the fact that they held the manorial lands of Bisley and followed the custom that the lord or lady of the manor could grant copyhold land for up to three consecutive lifetimes. Their joint ownership of the estate, as further enquiry has shown, was the result of an earlier joint holding between Walter Compton and Richard Sewell in 1569. The former's moiety was passed to his grandson, Henry Compton, who married Joan, whilst the latter's was passed to William Sewell.[16] Between 1576 and 1577, Joan and William granted, by copyhold, the messuage, close and fifteen acres of land to Richard Davis, his wife Edith, and their son, Richard, the late husband of Ann. Each person listed on the copyhold died possessed of the messuage and land, until finally Ann's husband died. This much was undisputed by the two defendants. By 1627, Wheathill Audley and William Hickes had taken control over the rectory estate and the former was recognised as the lord of the manor. It appears that under him, the custom of granting copyhold land continued, at least initially.

It was, however, another custom that was the primary cause of the back-and-forth litigation between Wheathill and Ann, beginning with a Court of Common Pleas suit instigated by Wheathill immediately following Ann's entry into widowhood, as

[15] TNA, E 112/204, Case no.90, bill of complaint, Frances Reade
[16] A. P. Baggs, A. R. J. Jurica and W. J. Sheils, 'Bisley: Manors and other estates', in N. M. Herbert, and R. B. Pugh (eds.) A History of the County of Gloucester: Volume 11, Bisley and Longtree Hundreds. British History Online (London: Victoria County History, 1976), pp.11-20

mentioned in the bill of complaint. The custom, found selectively across the country and known as widow's estate or Freebench, was the right of a widow to copyhold land following the death of her husband. After Richard's death, Ann stated that she had entered the copyhold lands, paid a heriot as custom dictated and paid the yearly rent, all of which were accepted by Wheathill's steward and servants. She claimed that the defendants were denying her right to the property and land, had taken her copyhold agreement and that she was being prevented from accessing the manorial court roll. She also stated that Wheathill had taken her to court for trespass and that she was unable to defend herself at common law because of her lack of access to evidence and her 'extreme poverty', and feared for the future of her children should she be unsuccessful in equity.[17] Whilst this argument was frequently made in Exchequer cases, this type of language use was uncommon in this sample, with few widows making reference to the poor widow stereotype.

In their answer, the defendants denied that widow's estate or Freebench was ever a custom of the manor, whether or not the wife was named on the copyhold. They, acting on advice of counsel, believed that the property and land should have been returned to them following the death of Ann's husband, Richard, given that they were the lawful owners and the copyhold tenure had expired upon Richard's death. They denied that Ann had been admitted to the estate, or that they had taken any rent from her since her husband's death. Similarly, they stated that they did not have her copyhold or the court rolls, and admitted that whilst Wheathill had obtained a writ for damages following his suit at Common Pleas against her, 'by the mediation of friends the same was not executed'.[18] As cases such as this demonstrate, redress in Exchequer could be a culmination of a longer legal process, drawing on other jurisdictions and local customs.

Elizabeth Wheatley, Warwickshire, 1641

Elizabeth Wheatley, a widow with two daughters, appeared as a defendant against William Brotherhood in Warwickshire, 1640. In the sample, it was rare for a male plaintiff to bring a case against only female defendants, and rarer still for a widow to appear as the main defendant alongside her daughters. There was no available information about

[17] TNA, E 112/179, Case no.11, bill of complaint, Ann Davis
[18] *Ibid,* answer, Wheathill Audley

Elizabeth or her family, and no details regarding her husband were shared as part of the case. Given that the majority of cases in the sample had some association with an event, dispute, or payment during the life of a litigant's husband, some vague information about the husband is usually obtainable to assist in providing a background for the widow involved in the case. Cases such as this one, whilst difficult to contextualise in terms of Elizabeth's life, do give room for a narrative solely driven by a female litigant, her actions, and her legal right. This is not to say that her financial and social position were free of male influence, but for the purposes of this narrative snapshot, Elizabeth was litigating as an independent woman who held all the information necessary to defend her right in Court.

William's suit against Elizabeth concerned a tenement held by her in Kingsbury, a large parish overlooking the River Tame in North Warwickshire.[19] According to the bill, Elizabeth had leased the tenement to William at a rent of 20s in October 1636, initially for one year but with the option to continue year to year. William claimed that he had paid the rent due and had lived there peacefully until April 1641, during which time he had made use of the residence for his trade as a glover, gaining 'a competent estate and means of livelihood and had very good custom and quick return of his wares and was in good repute and credit amongst his neighbours'.[20] William stated that the tenement was fully furnished with a number of his wares, one bond and a licence for winding wool, all amounting to £40. On 15th April 1641, the bill stated that Elizabeth and her daughters had arrived at the residence without warning, and did 'with force and violence break and enter into the said house and wilfully put your orator's children (being three in number and of tender years) out of doors and then also caused all your orator's goods and chattels, wares and household stuff to be likewise thrown out of doors'.[21] Following this, William claimed that Elizabeth and her daughters had pulled down parts of the house and left carrying the doors and windows, in addition to them taking some of his belongings and causing damage to his wares. William concluded his bill by arguing that he had on numerous occasions, and in a friendly manner, requested access to the property and the return of his goods.

[19] 'Parishes: Kingsbury', in L. F. Salzman (ed.) A History of the County of Warwick: Volume 4, Hemlingford Hundred. British History Online (London: Victoria County History, 1947), pp.100-114
[20] TNA, E 112/252, Case no.94, Bill of Complaint, William Brotherhood
[21] *Ibid*

Elizabeth's narrative was markedly different from William's in a number of respects and sheds light on the community element of this case, as well as on Elizabeth's motive to evict William and his family from the tenement. The answer disputed William's right to the tenement and denied that he had ever paid rent during his tenancy.[22] Elizabeth stated that a local man, Mr Boyce, worked with the poor and had come across William's wife in a barn, destitute and alone with two children whilst pregnant with another, William having left her. Mr Boyce had persuaded Elizabeth to make the tenement available to this woman and her children, with the parish paying the rent of 8s per annum, to which Elizabeth agreed. William, according to Elizabeth, was never supposed to return to his family, and the tenement was only to be for the woman and children's use. Shortly before the tenement was meant to be vacated for Elizabeth's use, following the one-year tenancy agreed with the parish, William returned. Upon his return, he caused significant damage to the property and broke a hole in the wall that connected the house to a shop next door, which was also managed by Elizabeth, before stealing goods and tools. William had also commandeered the shop for his own use and was operating his trade from it.

Elizabeth stated that she had expected the men of the parish to remove William and his family, following the expiration of the year tenancy, but they did nothing. She denied entering the property without warning and declared that she had given the family six months' notice to leave. Elizabeth also informed the parish that if she had to, she would remove the house and shop and would rebuild them elsewhere. According to Elizabeth, William refused to make any provision to move and stated that if he left of his own volition then he wouldn't be able to compel the parish to find him another tenement to live in.[23] Elizabeth confirmed that she had entered the property with her two daughters, but did not do so violently. The wife was present with the children, and they were not forced from the property, nor were any household goods thrown outside or taken for their own use. Some goods were removed from the house at the wife's request, and the doors and windows were also removed at Elizabeth's request. The house and shop were then dismantled by local carpenters as Elizabeth had forewarned, before being relocated elsewhere. Somewhat distinct from other cases in this sample, this suit examined

[22] TNA, E 112/252, Case no.94, answer, Elizabeth Wheatley, Margaret Wheatley and Anne Wheatley
[23] *Ibid*

numerous physical actions and decisions taken by a female defendant, and the subsequent impact on family and the local community.

Ann Hall, Kent, 1656

Limited biographical information was available about the life of Ann Hall. We know from Exchequer records that she was married on two occasions, first to George Mills who died in 1614 and then to Christopher Hall, whom she married in 1615. By the time of her Exchequer suit in 1656, she was twice widowed, although the date of Christopher's death was not disclosed during the course of the case. She spent most, if not all of her life, living in the village of Hothfield, Kent. By contrast, we know a great deal more about the man whom Ann brought the case against, Sir Edward Dering, the 2nd Baronet of Surrenden Dering, Kent and Bloomsbury. His father and namesake, died in financial straits in 1644 when Edward was eighteen. He had been a person of great importance in Kent, and had taken up arms for the King, being pardoned shortly before his death.[24] During his own life, Edward was part of numerous Parliamentary committees, and was involved in preparing a bill to abolish the Court of Wards.[25] He kept both personal and parliamentary diaries, revealing information about his life and his 'constant preoccupation with his finances'.[26] As with the case of Frances Reade, a comparison can be drawn between the strikingly different social and financial status of Ann and Edward, and yet these two people, in theory, met as legal equals in Court, with Ann as the complainant, as a result of her allowed power. It was a widowed woman, whose claim amounted to yearly sum of £5, who brought a member of the landed elite to Court. This speaks to the overall litigiousness of the period, but also to how important this yearly amount must have been to Ann, a woman who did not appear before or after in the Court past the deposition stage, as far as surviving records show.

Ann appeared in the Court as a widow and debtor to the Crown and detailed the arrangements that had been decided by her first husband, George Mills, prior to his death. George had died seized of a messuage and twenty-eight acres of land in Hothfield. Ann was named executrix of his will, which was proved at law, and stated that the profits of

[24] Basil Duke Henning, 'Dering, Sir Edward, 2nd Bt. (1625-84), of Surrenden Dering, Kent and Bloomsbury, Mdx.', in *The History of Parliament: British Political, Social and Local History*
[25] Henning, 'Dering, Sir Edward, 2nd Bt'
[26] *Ibid*

the properties and lands were to provide for Ann, as well as 'towards the bringing up of his said children'; Sarah, Anne, and Thomasine.[27] It was unclear from Ann's bill whether she was the mother to the children. In his will, George requested that upon the eighteenth birthday of each of his daughters they should receive a third of the lands and properties, and that after the youngest had turned eighteen, Ann would receive £5 a year from the lands for the remainder of her life. Thomasine, the youngest of George's children, turned eighteen on 22nd March 1630, and until 1648 Ann had taken £5 a year for her livelihood from the occupiers of the messuages as dictated in George's will and with the approval of his daughters.

Ann's case against Edward concerned the non-payment of this yearly sum. In her bill of complaint, she was unsure as to how Edward had come to hold some of the land and properties in the area and stated that she only came to know when she was told by him that he owned the messuage and lands from which she claimed her yearly sum. As well as questioning his ownership, she claimed that Edward and a local landowner, George Coachman, had 'gotten into their hands and custody…the said original will of the said George Mills and all other writings, deeds and evidences concerning the said lands and tenements', which she needed to prove 'that the said lands are charged with the said yearly sum of five pounds unto your oratrix'.[28] She accused them both of 'being combined and confederated together to deprive and defraud your oratrix of the said five pounds a year and all the arrears thereof being very near one hundred pounds and have and do deny the payment thereof unto your oratrix'.[29] She challenged Edward to answer how he became seized of the land and property, and asked that he show cause as to why he was not liable to pay the annuity to her.

Edward's initial response to Ann's bill was a demur that not only denied her allegations, but also argued that she did not have the right to sue in the Exchequer.[30] This was followed by a full-length answer, in which he denied that he had George Mills' will in his possession and went on to detail how he had come to own the lands and properties in question. Edward's late father had purchased two of the three parts from Sarah and Thomasine in 1636, for the sum of £280. Since this purchase, and until one year prior to

[27] TNA, E 112/307, Case no.175, bill of complaint, Ann Hall
[28] *Ibid*
[29] *Ibid*
[30] TNA, E 112/307, Case no.175, demur, Sir Edward Dering, 2nd Baronet

the bill brought by Ann, 'this defendant's father nor he this defendant ever paid one penny of the said pretended rent or annuity of five pounds by the year or ever was asked or demanded by the said complainant or any person from her or on her behalf to pay the sum…or the arrears thereof or any part thereof'.[31]

One year later, Edward brought his own case against Ann in the Exchequer. In his bill, he provided a longer narrative detailing how the lands had been purchased by his father, and what arrangements there were regarding it. The sale of the land was arranged by Simon Matthews and Gregory Baker, the respective husbands of Sarah and Thomasine, and included a messuage in Hothfield with twenty acres of land for £280 as well as £14 a year. According to Edward's bill, he and his father were assured that the lands could be enjoyed without annuities, charges, or trouble.[32] This had been the case for almost twenty years until Ann exhibited her bill to the Court. Addressing the issue of non-payment of the annuity, Edward argued that his father had come to an agreement with Ann when he had purchased the land and property to stop the yearly payments. He stated that there were witnesses to this, but they were now either dead or living faraway, and he knew that Ann would be able to call on numerous people from the community to support her claim. As depositions revealed, Ann called nine local witnesses whilst no counterpart deposition was found for Edward, and each witness corroborated Ann's account of events.[33]

Anne Towenson, Cumberland, 1658

The 1658-60 cases brought by Anne Towenson provided an example of a daughter bringing a suit to law dealing with her mother's affairs and touching on inherited rights that had suddenly been left to her.[34] In many ways, these cases were more concerned with Isabel Vaux, Anne's mother, and should be seen as Isabel's rights being enforced and realised through Anne. Isabel was born Isabel Musgrave in 1579 and died in 1657. Her first marriage was to John Musgrave, a widower, with whom she had 5 children, including Anne, before his death in 1608. Isabel's second marriage was to John Vaux of Catterlen, with whom she had two daughters, Mabel Richmond and Mary Graham. John's daughters

[31] TNA, E 112/307, Case no.175, answer, Sir Edward Dering, 2nd Baronet
[32] TNA, E 112/307, Case no.196, bill of complaint, Sir Edward Dering, 2nd Baronet
[33] TNA, E 134/1658/Trin2; E 134/1658/East30
[34] TNA, E 112/293, Case no.40; 42; 44; E 134/1659/East31; E 134/1659/East32; E134/1659/Mich15; E 134/12&13Chas2/Hil10

were made his co-heirs upon his death in 1650. The Vaux family line ended with the death of John and Catterlen Hall was passed to the Richmond family through Mabel and her husband Christopher, who made additions to the property during their marriage. Through Isabel's lifetime, the Musgrave name merged with the Vaux family, which would eventually merge with the Richmond family.

Three cases were brought by Anne to the Exchequer, concerned with the affairs of her late mother. Two of the suits unfolded into a family dispute that stretched across marriages and were spread over multiple legal proceedings in Chancery as well as the Exchequer, all of which were instigated by Isabel.[35] From the records available, it appeared that these instances were Anne's only interaction with equity law, meaning that her litigation primarily concerned the affairs of someone else. Her mother on the other hand was found across jurisdictions as Isabel Vaux and Isabel Musgrave, most often regarding the area of Catterlen in Cumbria, meaning that across both marriages she remained in the same locality. Her involvement in equity litigation regularly concerned members of her family or family estate.

The first suit, one that did not concern family members but rather family property, was brought against John Watson, for which no depositions survived.[36] The Exchequer case brought by Anne was a continuation of Isabel's Chancery suit against John Watson, which had been settled out of court shortly after being instigated. The case concerned Isabel's right to part of a tenement as a portion of her dower, a property which had been left in part to her by her late husband John Vaux, and also conveyed to John Watson. Before the Chancery case had been concluded, Isabel and John came to an agreement that she would relinquish her right to dower in exchange for a bond to her and her assigns, for the amount of £10 and then 20s annually. Isabel died before the money had been paid, and Anne's case against John concerned the money owed, which he had repeatedly refused to pay after learning of Isabel's death. It was unclear whether Anne was a beneficiary of her mother's estate. The framing of this case centred on the notion of exchanging a right for a monetary amount, and so the focus was on recognition of the relinquishing of that right. The two remaining cases were brought against Isabel's sons-in-law but were more specifically against her two daughters from her second marriage,

[35] For example: TNA, C 8/94/136 (Isabel Vaux v John Vaux) and TNA, C 5/21/120 (Isabel Vaux v Sir Edward Musgrave)
[36] TNA, E 112/293, Case no.40

Mary and Mabel. Both suits concerned money and property following John Vaux's death, largely because Mary and Mabel were both co-heirs to their father's estate – the latter was named executor of his will. Available records do not show what Isabel was left in John's will, but it was clear that she disputed a great deal of it, a fight taken on by her daughter, Anne.

The original case against Mabel Richmond and her husband Christopher was brought to Chancery by Isabel to challenge the division of her late husband's estate, which was valued at £2000.[37] It was unclear whether a conclusion was reached in or out of court, but it was agreed that Christopher would enter into a bond of £1000 and would pay £50 to Isabel and her executors. Upon this payment, two more bonds and the amount of 5s for writings and costs of the suit, Isabel agreed that she would release her claim to her husband's personal estate by 1st November 1656. She did so on 7th October 1656, before the payments had been made, and died 4 days later. Upon her death, all authority was passed to Anne but Christopher refused to pay and argued that Anne could not sue him because of her mother's deed of prelease. Anne's bill detailed the agreed arrangement between her mother and her brother-in-law, which she either was party to during her mother's lifetime or she was informed about.[38] The relationship between mother and daughter Anne was a stark contrast to the mother-daughter relationship Isabel appeared to have had with Mabel.

Presented as being from the perspective of Christopher Richmond, the answer stated that the defendants did not know Anne and that the money had been paid before they heard of Isabel's death.[39] Following her death however, the defendants alleged that John Musgrave, Isabel's son from her first marriage and brother to Anne, had taken Christopher and Mabel to court himself regarding the money and soon had entered into Isabel's property and taken her goods, depriving Mabel of any of her mother's estate, worth around £160. The defence also claimed that Anne and her brother were plotting to make a claim to John Vaux's estate and deny Mabel, the only surviving daughter of John by 1659, of her inheritance, largely because Anne had a fortune of no more than £5 a year. Interestingly, the depositions for this case centred on Isabel's personal estate and

[37] TNA, C 6/125Pt2/80
[38] TNA, E 112/293, Case no.42, bill of complaint, Anne Towenson
[39] *Ibid,* answer, Christopher Richmond

behaviour before her death.[40] In Anne's interrogatories she asked witnesses to confirm Isabel's state of mind before her death and whether Isabel had chosen to leave her goods to her son, to which witnesses testified that she had refused to make a will but wanted to support her son's business. The defendant's interrogatories focused on Isabel's personal estate (which was estimated to amount to less than £50), and the fact that Mabel received nothing following her mother's death.

The case brought against William Graham concerned land and a tenement from John Vaux's estate in Westmorland, for which Isabel made a claim that such property should be granted in satisfaction of her dower.[41] William Graham appeared to have been the husband of Mary, the other daughter from Isabel's and John's marriage. Given that the Exchequer suit instigated by Anne only listed William as a defendant and that in the case above Mabel was noted as being the sole surviving daughter of John Vaux, we can assume that Mary had died before the case reached the Exchequer. As with the other cases involving Isabel, the bill noted that following the original suit between Isabel and William in 1653, men were chosen to arbitrate and subsequently it was decided that Isabel would have the right to keep cattle on the land and dispose of woodland in exchange for her relinquishing her claim to the messuage in Kellbarrow, a hamlet in Westmorland. Over the years that followed, Isabel disposed of various woodland though an arrangement that she had with Stephen Nelson and Thomas Stephenson. Since Isabel's death, a year before the case was brought to the Exchequer, William brought cases against the two men and Anne as the administratrix of her mother's affairs for the removal of the woodland, stating that he had not given Isabel the authority to do so and that she had gone against their agreement. Both sides conceded that there had not been a written agreement, and that the terms had been agreed privately. With an absence of written documentation, the Exchequer was called on by Anne as an authority capable of redress based on the arguments presented, given that a formal solution elsewhere would have been unlikely.

Margaret Merryweather, Gloucestershire, 1669

The suit brought by Margaret Merryweather in 1670 in Uley, Gloucestershire, against John Hill was one of the few cases where more than one female deponent was called,

[40] TNA, E 134/1659/East32
[41] TNA, E 112/293, Case no.44

despite the fact that they were called on the request of the defendant. There was scarce information available about Margaret, other than what was found in her husband's will, dated 1661. From it, we can ascertain that the Merryweather family were relatively wealthy in terms of goods, cattle, annuities, and ready money.[42] We learn too that Francis had at least four daughters and one son, and that Margaret appeared to be the mother to these children. All four of the daughters were aged under eighteen at the time of Francis' death.

Margaret's bill detailed her husband's financial agreement with Anthony Hill and John Hill twelve years earlier.[43] Francis had agreed to pay £40 to purchase one annuity of £6 for the life of his mother, Mrs Isabel Sheppard of Minchinhampton, instead of lending money with interest. According to Margaret's account, the £40 was paid by Francis to Anthony and John, and Francis enjoyed the annuity until his death, after which time Margaret received the annuity until twelve months before the bill of complaint, when Isabel died, and the arrangement was concluded. The suit at the Exchequer was the result of demands of money that John Hill had made of Margaret, which she argued had only started following the death of Anthony Hill. Margaret disputed that any money was owed, arguing that if it had, they would not have continued to pay the £6 a year to her. She declared that her husband 'never did borrow any money of the said Anthony Hill and John Hill or did owe them any other sum of money than the said forty pounds for the said annuity or yearly rent which was long since paid'.[44] She claimed that John's demand of £10 was driven by the fact that he was 'very poor and necessitous and one that is too apt to claim where there is nothing rightfully due'.[45] Such a comment on the nature and behaviour of a male opponent was rare in this sample. One of the issues in the case was that neither party had the agreement in writing, for either the £40 payment or the alleged £10 payment. John, driven by a 'dishonest desire' to take her money, had commenced a suit at common law against Margaret, and she had acted to halt those proceedings by bringing her own case at the Court of Exchequer, although she acknowledged that many of the witnesses that she would otherwise call lived too far away. This type of legal

[42] Gloucestershire Record Office GDR/R8/1661/29, Will of Francis Merryweather (1661)
[43] TNA, E 112/404, Case no.135, bill of complaint, Margaret Merryweather
[44] *Ibid*
[45] *Ibid*

strategy was commonly played out in the Exchequer and could cause tensions with other jurisdictions.

The answer given by John Hill provided more detail about the agreement between Francis and the Hill brothers. Anthony had decided to borrow money from Francis in May 1657, with Francis suggesting the arrangement of repayment through annuity.[46] John became part of the arrangement after the details had been agreed and was promised half of the £40 by his brother, in return for paying half of the yearly £6 annuity. When the three met to seal the bond for the annuity and to exchange the £40 Francis 'brought the bond and withal pretended that his wife the now complainant would by no means suffer the said Francis to pay or part with so much money'.[47] John stated that rather than providing the £40 in ready money as originally agreed, Francis 'pretended that he had a parcel of wool worth as he thought for about ten or twenty pounds…and that his wife…would not suffer him to pay any money until that wool was firstly gone'.[48]

There was a delay of six months before Francis paid the remainder of the £40, consisting of ready money and some commodities valued at dear rates according to John, which he could provide receipts for. Following this, John recounted how he and his brother complained to Francis 'of the extraordinary hard bargain they had…and the great loss of the said Anthony of the wool and other commodities that were forced on him towards the said forty pounds when indeed they should have received the said forty pounds in ready money'.[49] In recompense of this, John claimed that Francis had promised an additional £10 and in June 1659 Francis sealed and delivered a bill obligatory for the sum, due to be paid in September of that year. During this period, Anthony died in debt and his widow, named executrix, refused to pay towards the £6 annuity, arguing that the original bond had been forfeited by Francis. Despite his promise to pay the additional £10 by September, when Francis died in February 1660, no payment had been made. John declared that following Francis' death, he approached Margaret to inform her of the payment owed, but she responded that 'there was no bill unless a forged bill nor no money was due to this defendant nor none she would pay but would sue him on the forfeiture of the said bond for non-payment of the said six pounds per annum'.[50] John

[46] TNA, E 112/404, Case no.135, answer, John Hill
[47] *Ibid*
[48] *Ibid*
[49] *Ibid*
[50] *Ibid*

went on to detail how he had to borrow money to continue to pay the annuity to the point of impoverishment and was threatened with jail, until he fled the country, only returning in November 1666. On his return, John declared that he chose to conceal the bill for the remaining £10 'because of the covetous and perverse dealing of the said complainant towards this defendant…fearing the said complainant would not then have made an agreement with this defendant so that he might have come home to this country and employment at liberty'.[51] Once they had reached an agreement regarding the unpaid annuity, John instigated a suit in King's Bench, where he claimed the £10, damages sustained and argued that the original £40 had not been paid in the manner agreed.

Family Relations and Remarriage

Despite the fundamental ideal 'that all women were to be under the headship and control of men, living in obedience within a family unit', many widows were acting heads of household in this period.[52] Across Europe as well as within England, as many as 20 per cent of households at a given time were being headed by women.[53] If we consider widow-led households in England specifically during the seventeenth century, they made up approximately 13 per cent of households in rural areas and small towns, with regional variance sometimes increasing this figure to as high as 24 per cent in larger towns such as Lichfield, Shrewsbury and Southampton.[54] A widow becoming the head of the household was not a certainty following the death of her husband, and there were a wide range of variations that were dependent on factors such as socio-economic status, family size and whether the widow decided to remarry. For the widows discussed in this chapter however, they were acting heads of household, and we can see examples of variety within the category of female heads of household. All the cases brought, in some way or another, concerned the widow in her role as head, but not all involved or necessarily impacted other members of the family that she was the head of. It is also worth considering the widow who headed no one but herself, such as Anne Towenson, and what kind of household this was in early modern society. Anne's concerns still centred on the family as with other cases in this chapter, and her presence in Court was motivated by a mother-

[51] TNA, E 112/404, Case no.135, answer, John Hill
[52] Todd, 'The virtuous widow', p.66
[53] Wiesner-Hanks, *Women and Gender in Early Modern Europe*, p.64
[54] Manon van der Heijden, Ariadne Schmidt and Richard Wall, 'Broken families: Economic resources and social networks of women who head families', *The History of the Family*, Vol. 12, No. 4 (2007), p.224

daughter relationship. For a female head of household, the affairs of the family were a primary concern, no different than men. The practice of acting on these affairs however, despite being a responsibility without gendered constraints, was impacted by gender in the same way as anything else involving a woman at law.

The fact that issues pertaining to the family reached the Court was certainly not unique to Exchequer. Moore has noted that cases involving women were frequently concerned with family matters, meaning that 'the law often pierced right into the heart of the patriarchal family itself', with suits between family members reflecting 'that the patriarchal ideals of reciprocity and mutual obligation sometimes failed to provide adequate remedies for both men and women'.[55] Court cases across jurisdictions provided some examples showing that 'women's words before the court directly confronted household hierarchies'.[56] In the case of widows, this confrontation and tension was perhaps more likely to reach beyond the household, challenging wider hierarchies in different ways. If we utilise Moore's argument that some women used the law to gain leverage within a household, we can expand on this to reflect on the efforts and strategies of widows in the Exchequer, litigating to secure power outside of the home when there was no challenge from within it.[57]

Two of the cases, rather than focusing on familial tensions during widowhood, touched on marital tensions within the household. There were significant differences between the two cases in the way in which this theme appeared, another indication of how varied cases could be, reflecting the myriad of experiences within everyday early modern life. In many ways, this is one of the most valuable qualities of these cases – the original yet mundane nature of the circumstances presented, and the fact that nowhere else but in court records would we be given a look into seventeenth-century lives. The first case was that of Elizabeth Wheatley. This case did not concern her relationship with her husband but rather the plaintiff's relationship with his wife. Whilst the details of this case have been discussed, there was an important aside for this case and something that was unique within the sample of cases taken for this project. In the course of William Brotherhood bringing this suit against Elizabeth and her two daughters, the relationship between William and his wife was exposed as one of violence and unrest. Elizabeth's

[55] Moore. *Women Before the Court*, p.2
[56] *Ibid*, p.8
[57] *Ibid*, p.9

answer touched on what was then expanded on by witnesses called for both sides – Elizabeth recognised William as a man of 'unusual behaviour' who was often absent, whilst witnesses claimed that he was a drunk, violent towards his wife and children, and someone whom his family appeared to be trying to escape from.[58]

Acting as a landlady to the family, an act persuaded onto her by the local parish, Elizabeth Wheatley never agreed to house William as well as his wife and children, and his appearance, shortly after the birth of another of his children, was a surprise to everyone, his wife included. One witness called for Elizabeth, Christopher Comley, commented that William was a man of lewd and uncivil behaviour, who on one occasion 'went for drink unto one Henry Brownes about nine of clock at night and because they would let him have no beer he broke their windows and throw their jug into the house and broke it'.[59] The witness also stated that William 'used to beat his wife and turn her out of doors in the night time', to the point where his wife sought the help of the parish to find and her children a home of their own.[60] Witnesses called by William also commented on the fact that his wife was very eager to leave Elizabeth's residence and move elsewhere whilst William was absent. Thomas Willington and Francis Pickerell both recalled that the wife asked for the assistance of Elizabeth's daughters to help her to remove all of the family's goods from the residence so they could be housed by a nearby member of the parish, Thomas Snape.[61] The records for this case did not mention William's wife by name, nor was she called as a witness by either side. Elizabeth's descriptions of William's violent behaviour did not hint at the extent to which the local community had noted the same. The actions of the parish to assist a wife to live apart from her husband, albeit one who was often absent and struggled to provide for his family, was another example of how marriage could appear in cases in the Court.

This case also had an interesting comparison with other cases in this chapter – the absence of the widow's deceased husband, and the sole familial focus being on her children. Elizabeth's role as a mother was an undercurrent to her actions, offered as an aside to contextualise her decisions. This suit was about more than just her security – it concerned her family at large, specifically her son, and put her clearly in the role of head

[58] TNA, E 112/252, Case no.94, answer, Elizabeth Wheatley; and E 134/17Chas1/Mich20
[59] TNA, E 134/17Chas1/Mich20, depositions on behalf of Elizabeth Wheatley, Christopher Comley
[60] *Ibid*
[61] *Ibid*, depositions on behalf of William Brotherhood, Thomas Willington and Francis Pickerell

of household as well as mother. Her widowhood, whilst allowing her to litigate as a legal individual, did not feature in the same way as other cases in this chapter. Her legal challenge did not originate from her widowhood in quite the same way, and she appeared more as a woman fulfilling the role of parent and landlady. Had Elizabeth still been a married woman it is likely that her husband would have forcibly evicted the family, rather than her having to ask for assistance from the men of the parish, only then to ultimately have to step in herself when William was absent and dismantle the property to ensure that it could no longer be inhabited. It is also worth noting that Elizabeth's original act was something requested of her by the local community, at the behest of Mr Boyce. Her widowhood gave her the legal rights that she defended, but it did not drive or dictate the narrative – her legal identity, whilst granted by her widowhood, was not confined by it. There was no specific legal identity of a widow, but it was dictated by the power that had been allowed. We learn more about the relationship between another husband and wife than we do about the widow appearing in the Court, to the point where there was no mention at all of Elizabeth's husband. Unlike cases such as that of Ann Hall, there was no narrative provided about the role that the husband had played in securing property, and in fact, in Elizabeth's case, there was no mention of how the property had come to be under her control. Given that her role as a defendant did not necessitate the sharing of this information, this could be seen as an understandable absence.

The second case that touched on marital relations was that of Margaret Merryweather. Whilst her husband Francis was important to the case, the nature of her relationship with him was not discussed in her narrative, nor through the witnesses that she called. As with the case of Elizabeth, this information by itself did not seem pertinent to the case, at least from Margaret's point of view. However, this relationship was relevant to the details of the case, and the information was offered by the defendant, John Hill, in his answer, where he stated that Margaret's husband did 'oftentimes…complain of her perverse behaviour and condition towards him'.[62] John also claimed that Francis told him and his brother Anthony that Margaret did not like him lending money, and often complained that the amounts were too much. As a result, John stated in his answer that when Francis promised to pay John and Anthony for damages as a result of the delayed payment of the money outstanding, he asked that the details of the arrangement

[62] TNA, E 112/404, Case no.135, answer, John Hill

remained unknown to Margaret.[63] Interestingly, Margaret's argument was seriously damaged by this claim. Following on from the summary of Margaret's case above, the claim that there was an additional fee of £10 promised by Francis to the Hill brothers, a fact that John claimed was kept from Margaret by her husband because of her complaints about him lending excessive amounts of money, meant that the money that was being disputed was either a false claim from John, or a secret between husband and wife. If the latter, then the litigation that Margaret pursued was undertaken without a key piece of information. Francis' will, among things such as leaving £20 to each of his four daughters, his cattle and horses to his 'beloved friends Richard Dowpell…and John Parslowe', also indicated the details of annuities and outstanding money owed, which evidently left out this particular payment to John Hill, if the claims of the £10 for damages were true.[64]

The relationship between Francis and Margaret regarding his business of money lending, which was a part of his trade if not his entire occupation, was just one example of a marital relationship regarding business. Wives could be, and indeed were, involved with the business of their husbands to varying degrees.[65] However, in Margaret's case we find a widow who had no knowledge of the extent of her husband's business agreements and was presented by others as unsupportive of ventures that she did know about. This acts as a reminder of the impact that a women's relationship with her husband as wife had on her experience as a widow – as sudden a severing as the entry into widowhood was, the legacy of the marriage that put her there remained. Margaret's concern about the amount of money being lent, if true, was not by itself indicative of anything other than a cautious spouse. John's claim that Francis thought his wife behaved in a perverse manner towards him was subject to a broad interpretation. Nevertheless, this kind of indication of tension was largely at odds with other cases in this sample. It is also worth noting that Francis did not name Margaret as his executrix, which was uncommon within the sample and across the period in England as a whole. In her findings, Erickson has noted that when a man died with a will, wives were usually named the executrix and were often 'the principal beneficiaries of their husbands' wills, almost invariably receiving much more than their legal entitlement of one third'.[66] If we also draw on Barbara Harris' work, the decision by Francis to not name Margaret as an executrix could also have been

[63] TNA, E 112/404, Case no.135, answer, John Hill
[64] Gloucestershire Record Office, GDR/R8/1661/29
[65] Stretton, 'Law, Property and Litigation', pp.199-200
[66] Erickson, *Women and Property,* p.162

an indication that he did not have 'confidence…[in Margaret's] reliability and practical skills', which would correspond with John's claim that there was tension regarding Francis' business as a money lender. It also aligns with the fact that Margaret evidently had limited knowledge of her husband's business affairs.[67] The frequency with which widows were named executrix declined in the late seventeenth and early eighteenth centuries, as a result of the statutory limitations, reducing widows' power.[68] In this period however, and certainly within this sample of cases, Margaret's circumstances were the rarity – she was one of the few widows appearing at law in this project not named as an executrix.

Family relationships and dynamics were also impacted by the presence of children, and could influence a widows' role as head of household. Gowing has observed that there were 'significant numbers of single women heading households, usually widows, often with spinster daughters or dependent children'.[69] From the cases discussed in this chapter, children featured in four to varying degrees, two of which are worth considering further. The welfare of the children was linked to the legal case being brought in that it was entangled with the widows' own security and role as head of household. Litigation driven or influenced by maternity was not uncommon. In the Court of Chancery maternal litigation increased across the seventeenth century and often involved widows.[70] Elizabeth Wheatley's decision to evict William Brotherhood in part stemmed from her desire to provide for her son. It was revealed during her answer that her son and heir was destitute, a fact that had a notable impact on her decision to act as she did on 15th April 1641. Elizabeth was also the only voice present in the answer, speaking on behalf of her daughters, called as co-defendants. It was clear from the answer, and subsequent depositions, that Margaret and Anne Wheatley were acting at the direction of their mother. Elizabeth, as head of the household, acted to support her family and enlisted their help in order to ensure the maintenance of that family unit. Whilst we know that neither Margaret nor Anne was married, and so were likely still living with their mother, we do not know their age at the time of this suit, nor to what extent they assisted their mother in her role as landlady and property owner, or indeed

[67] Harris, *English Aristocratic Women*, p.129
[68] Amy Louise Erickson, 'Property and widowhood in England, 1660-1840', in Sandra Cavallo and Lyndan Warner (eds.) *Widowhood in medieval and early modern Europe* (Harlow: Longman, 1999), pp.162-163
[69] Gowing, *Gender Relations,* p.49
[70] Amanda L. Capern, 'Maternity and Justice in the Early Modern English Court of Chancery', *Journal of British Studies*, Vol. 58, No. 4 (2019), p.704

whether they helped to support the family themselves. By contrast, William was failing to provide for his family, and forced his wife into the position of head of household in his absence, leaving her to care for their young children and rely on the charity of others. Protection, support, and shelter were themes that applied to both mothers in different ways, and as far as early modern society was concerned, Elizabeth's role was sanctioned, whereas Mrs Brotherhood's was a woman failed by her husband, and thus by the patriarchal ideal of the family.

The cases brought by Anne Towenson were founded upon a mother-daughter relationship and centred on the family, albeit an extended family spread over two marriages. There were two sides of familial litigation evident – Anne litigating on behalf of her mother against her stepsister and brothers-in-law, and a mother bringing suits against her daughters and their husbands. Litigation brought by a mother against her children was the other side of maternal litigation coin. Elizabeth's son, William, was a male living outside of the home, but was still cared for by his mother in her attempts to provide a living arrangement for him. The relationship between mother and children, as with all variations of familial relationships, were varied and could be complex. This is not to say that one would expect, even in the litigious climate of seventeenth-century England, that litigation between a mother and her children was expected, but it was far from extraordinary. On the other side, we see how the care of children could be part of widowhood just as it was part of wifehood, although it was by no means a guarantee of the type of relationship between a mother and her adult children.

The relationship between Isabel and her children from her second marriage was presented as one centred around competing claims to parts of John Vaux's estate. As co-heirs to their father's estate, daughters Mabel and Mary had a legal claim which was disputed by Isabel up until her death. The challenge brought by Isabel against Mary and William Graham, claiming that her late husband's estate should be granted in satisfaction of her dower, was an example of the possible tension between a widows' security and the inheritance of her children, the troubled side of the mother-daughter relationship spectrum. Whilst Elizabeth Wheatley was working to alter her affairs in order to provide for her son, being taken to court in the process, Isabel was taking her own family to court at cost to herself and to them, to claim her legal right to property that had never been in her possession before it was passed to her children. We do not know what Isabel was left

in John Vaux's will, but from her disputes it appears that she felt entitled to more than she received, with John providing more for his daughters than for his wife and mother to his children.

In the case of Ann Hall, she was not named as the mother of the three Mills daughters in any available documents. It has therefore been assumed that she was their stepmother during her marriage to Christopher Hall, but the ages of the children encourage this assumption to be questioned. As a result, one of two scenarios was possible: that she was in fact their mother and was simply not recorded as such; or that she married their father George shortly after the death of their biological mother, when the youngest was around 2 years old, and took on the role of mother. The case ultimately brought by Ann indirectly involved these children who were, by 1658, married and widowed themselves. Unlike Elizabeth Wheatley, Ann was acting for her own security and in contrast to Isabel Vaux, her widowhood did not involve litigation against those she had been a mother figure to.

For women, the death of a husband had a much larger overall impact than the death of a wife for a man – her identity and financial security were more likely to be tied to his, impacting her ability to make a living.[71] Todd has commented on 'the emotional and financial shocks of losing a partner', mixed with the sudden need 'to be courageous and secure', whilst unlearning the lessons of obedience, 'and instead [taking] control'.[72] Their increasing economic, legal and social worldliness, mixed with their sexual experience, made widows threatening in the eyes of some, and would seem to suggest remarriage to be a logical alternative.[73] Of the six cases considered in this chapter, remarriage featured in three of them, which in turn tied into other issues such as family disputes and the difficulty of managing family estates. Rates of remarriage in England varied dependent on factors such as the financial or landholding position of the widow.[74] Despite the emphasis placed on marriage, widows were aware that 'they were the one strong exception to that doctrine', and were actively discouraged from remarrying in contemporary literature and propaganda.[75] Widows did not fit very cleanly into the

[71] Wiesner-Hanks, *Women and Gender in Early Modern Europe*, p.102
[72] Todd, 'The virtuous widow', p.67
[73] Elizabeth Foyster, 'Marrying the experienced widow in early modern England: the male perspective', in Sandra Cavallo and Lyndan Warner (eds.), *Widowhood in Medieval and Early Modern Europe* (Harlow: Longman, 1999), p.120
[74] Gowing, *Gender Relations*, p.38
[75] Todd, 'Demographic determinism and female agency', p.430

overall rhetoric of early modern English ideals: as a whole, women living independent of male control and observation were discouraged, and financially speaking it was difficult to live as a self-supporting woman unless you were born into, or widowed into, wealth.[76]

The fact that women were discouraged from remarrying, and persuaded against re-entering into subordination and subjection, was at odds with the logic of patriarchal society. Todd has argued that there was 'widow's agency in choosing the single life', and for those women who did not need to remarry in order to survive, there clearly was a choice to be made, but one that considered varying factors depending on how fortunate a widow you were.[77] In any potential decision to remarry, a woman needed to consider the interests of herself and her children, and acknowledge that she would once again be forced to relinquish her legal personality. For some, their children were an important part in their decision to remain widowed, or remarry, choosing to protect not only her interests but those of her children as well.[78] The social and economic independence that could be possible during widowhood was problematic to some, with remarriage therefore being a suitable solution. However, as Wiesner-Hanks notes, remarriage was also troubling, in that it 'lessened a woman's allegiance to the family of her first husband, could have serious economic consequences for the children of her first marriage, and, if she was wealthy, might also give her what was seen as an inappropriate amount of power over her spouse'.[79] It was, therefore, a contradictory system, that both encouraged and discouraged female independence after her first marriage as well as reiterating the place of women underneath male dominion. A widow's decision to remarry was not readily explained in the cases of Anne Towenson, Frances Reade, or Ann Hall, but in each it had some role to play in the matter being raised at law. Remarried widows in these cases also only appeared at law when they had been widowed for a second time. In each, this fact had different implications and importance.

To return to the cases brought by Anne Towenson, it was her mother's remarriage that was the catalyst for the suits brought to the Exchequer. Of the three cases, all concerned matters related to the estate and affairs of Isabel's second husband, John Vaux. Why she decided to remarry we do not know. Her age may have been a factor, widowed

[76] Todd, 'Demographic determinism and female agency', p.442
[77] *Ibid,* p.443
[78] Cavallo and Warner, 'Introduction', p.12
[79] Wiesner-Hanks, *Women and Gender in Early Modern Europe*, p.103

in her late twenties or early thirties with five children, and her decision to remarry may have been associated with social and economic security. It may have also been in part influenced by the manner in which she became a widow, and her own life outside of her role as a mother and temporary head of household – her first husband, John Musgrave, according to Star Chamber records, was hanged for robbery in the early 1610s, and she too was attributed to some criminal activity, including forgery and conspiracy in 1616.[80] She was, therefore, no stranger to law courts even before her second experience of widowhood. She appeared to wait at least until 1616 before marrying John Vaux, at which point she disappeared from court records as far as we can tell, before reappearing in 1649 in Chancery, suing her second husband in regards to property in Catterlen.[81] The following year she would be widowed again, taking up the case against her children in the absence of their father, and following the evident absence of her name from parts, or perhaps all, of his will.

Despite marrying twice, Isabel's legal identity in equity law as a widow only came into being in the final years of her life, even though she had experienced the law many years earlier. Her decision to remarry relegated her to a dependent and subsumed state of being, whilst giving her financial support and appearing to keep her out of court for criminal activity. She was evidently a person of a litigious nature, appearing in Chancery against members of her first husband's family as well as her second husband's. Her remarriage and subsequent widowhood then were part of the reasons as to why she pursued cases at law, but were not necessarily the catalyst. Her daughter Anne, by contrast, only appeared in the Exchequer because of her mother's remarriage and as a result of her role as a widow. If Anne's husband had still been alive, it is likely that either the case would not have been brought or it would have been done alongside her husband, given how rarely wives appeared without their husbands in this project.

The role of remarriage in the case brought by Frances Reade was notably different. Rather than leading to litigation, Frances' decision to marry the business partner of her first husband appeared to lead to the postponement of it. The matter brought to the Court explicitly involved Richard, her first husband, but gave no mention to her second husband Gerrard, and so the space of twenty years between incident and case at law was a delay

[80] TNA, STAC 8/209/13
[81] TNA, C 8/94/136

that could be most adequately explained by her remarriage, as there was no other reason presented that justified her lack of action. We might ask why she did not take the case to court immediately following Richard's death, or why the challenge was not pursued during her second marriage, but what we do know is that she waited until her second state of widowhood to take Henry and William Garraway to court, and that this delay damaged her legal claim. In the aftermath of Richard's death, her choice of married security trumped the administration of Richard's affairs, despite the fact that a successful case at law may have provided her with financial security and supposed social security as under a male head of household. This case was also a reminder of the impact of time on memory, and the separation between different married lives, all worth considering within the theme of remarriage.

Unlike the circumstances of Isabel and Frances, Ann Hall's decision to remarry had very little impact on her litigation in the Exchequer. She remarried one year after the death of her first husband, George Mills, and appears to have still been a young woman when this happened. No aspects of her second marriage to Christopher Hall featured as part of her case, which instead focused on a yearly sum that had been promised to her in George's will to provide for her and for George's children. This sum was not tied to her state as a widow, and she was therefore not prevented from remarrying in order to receive it. Ann had been demanding the money for twenty years before bringing the case to Court, ever since the annuity had stopped. As we do not know when her second husband died, it is possible that she was making the claims and demands for the money from Sir Edward Dering during her second marriage, but Christopher Hall was never mentioned by either Ann or Edward. This would suggest that her remarriage had no role in this case or in her claims but was instead a standing testimony and security from her first husband. Her decision to remarry may have been influenced by her age, and her responsibility to care for George's children, but without further information these are simply possibilities. In contrast to those cases above though, Ann's remarriage did not appear to have negatively influenced her experience of litigation.

Inherited Right, Estate Management, and the Community

The management, protection and in some cases development of family estate was central to early modern widows and appeared frequently in cases throughout this thesis.

Widows' experience of estate management varied widely, not least because of 'their own aptitude and enthusiasm for property ownership and management'.[82] The cases chosen to explore this theme only scratch the surface of these experiences. As Stretton has noted, the number of women who took on and managed estates well as executrixes, administratrixes and guardians 'provides a tonic to talk of female incapacity'.[83] Indeed, in ecclesiastical probate courts widows 'dominated the lists of executors and administrators of deceased persons' estates'.[84] The fact that these women were chosen was testament to the fact that, in some instances, 'wives were deemed to be both capable of acting as executors and administrators of their husbands' estates and the most appropriate bearers of such duties. The very confidence with which they were routinely given such authority demonstrates an assumption of their independent decision-making capacity'.[85] The act of entrusting responsibility to a wife upon her entry into widowhood was a formal step of allowed power – it assumed independent female decision-making. Despite the patriarchal context, it was not expected that widows would be ineffective estate managers. The specifics of estate management and the rights inherited through wills provide a more detailed picture of the widowed life outside of the court, and of her role as head of household.[86]

For widowed women, interaction with the law was a part of the process of inheriting right and taking control of the household, sometimes by their choice, but often out of necessity. The evidence that is continually being drawn from numerous courts across Europe 'provides a strong counter to old assumptions about female passivity or modern conceptions of a sharp gender divide between public and domestic spheres'.[87] It is worth noting that in another equity court, the Court of Requests, litigation regarding contested estates was most commonly pursued by joint female and male plaintiffs, including brothers and sisters as well as husbands and wives.[88] In her study on Whitehaven, Christine Churches found that 'women, whatever their marital status, were caught up in litigation over deceased estates more often men'.[89] It was, therefore, a

[82] McDonagh, *Elite Women and the Agricultural Landscape,* p.24
[83] Stretton, 'Law, Property and Litigation', p.208
[84] Stretton, 'Widows at law in Tudor and Stuart England', p.195
[85] Wrightson, 'The Politics of the Parish', p.15
[86] For an examination of women's roles in testamentary litigation, see Lloyd Bonfield, *Devising, Dying and Dispute: Probate Litigation in Early Modern England* (Oxon: Routledge, 2016), pp.225-242
[87] Stretton, 'Law, Property and Litigation', p.210
[88] Stretton, *Women Waging Law*, p.100
[89] Churches, 'Putting Women in Their Place', p.53

feature in early modern litigation, and certainly not specific to widows. Nor, of course, were widows limited to litigating only in connection with their husband's estates. In these cases, however, themes around inherited right and estate management featured to varying degrees.

If named as executrix, 'a widow had virtually complete control over her former husband's estate'.[90] Whilst wills from deceased husbands were a common feature in the cases discussed here, this was not a general trend across early modern England, and many men died intestate, and therefore without a named executor or executrix. In such instances a widow had the legal right to choose to administer her husband's estate, a decision that was very often taken up.[91] A woman choosing to administer her husband's estate was a social as well as a legal assumption, supporting the idea that widows were seen as capable by grace of the fact that they had passed from wife to widow.[92] Whilst the roles of executrix and administratrix were ultimately the same in practice, the relative presence or absence of a will influenced the way in which entitlement and legal right were discussed by the widows appearing in the court. The role of widow and possible executrix or administratrix took some time to adapt to, perhaps longer for those women who had had less involvement in family and business affairs when married. This lack of experience and understanding could also have influenced a husband's decision to not name his wife as his executor, as was the case with Margaret Merryweather. It was evident from the answer of the defendant, John Hill, and corroborating witnesses that Margaret did not know the specifics of her husband's moneylending. Margaret was appearing at law as a widow to argue that an agreement had been completed by her husband, acting not as his executrix or administratrix, but as a once-wife being pursued for money that she had no knowledge of.

Anne Towenson was administratrix of her mother's affairs and estate. We do not know why Isabel did not leave a will, or indeed why Anne was chosen as administratrix. In regard to the former, we might expect a woman of such litigiousness to be more likely to make a will, but given the topic of the cases brought to the Court, it may have been informed by the pending legal surety of various sums and property. In terms of Anne's legal role and responsibility, this distinction made little difference. If we consider why

[90] Erickson. *Women and Property,* p.161
[91] *Ibid*, p.175
[92] Cioni, 'The Elizabethan Chancery and women's rights', p.179

Anne was chosen, it may have been because she was one of Isabel's oldest children who hadn't been taken to court. It is often easy to forget the circumstances under which suits were brought, and the dynamics at play in their conception and pursuit. Posing these questions then is a reminder of the complexities, especially when family was involved, and the details that simply do not appear in court records. It is interesting to note Anne's legal status and identity in comparison to that of her surviving stepsister. She was appearing as a widow, litigating in cases that did not directly involve her, against a stepsister who could not appear in her own right outside of equity, and was named but not distinguishable as a married female defendant. The narratives presented were very much from the perspective of her husband – information was relayed through him, but the origin of that information was difficult to pinpoint. The fact that Mabel could have appeared in her own right in the Court did not remove the fact that the interests within the case were those of her family, headed by her husband. Whilst there were examples of married women appearing alone in the Court, or indeed as the main litigant, such instances were infrequent, a reminder of the power and hold of the patriarchal ideal. At the same time, we are presented with a case that was ultimately a twice-widowed woman in Isabel seeking to control land and property rather than letting it enter another pair of male hands. This was an active and constant juxtaposition, encapsulated within a relatively mundane set of cases, concerning relatively small amounts of money.

These cases displayed an interesting interplay of family dispute and legal right in litigation. It appeared as if there was some tension between the Musgrave and Vaux families, evidenced by the difficult relationship that Isabel had had with her daughters from her second marriage. It is particularly interesting that this case focused on the rights of the plaintiff's mother, and yet they were rights that her mother had sold and had not received recompense for. Isabel's litigiousness in part drew her daughter Anne into the world of litigation through her being named as administratrix. Anne was ultimately arguing for her mother's relinquishing of her legal right and claim to be recognised, rather the right itself being in question. By the time Anne presented the cases to the court, the rights had been removed, so the focus of the cases was largely on the process of identifying, exchanging, and rescinding legal right, with the case against William Graham arguing that authority had been given without the presence of written proof.

As Maria L. Cioni has noted in Chancery cases, many widows 'seemed to mature in their role: as they brought problems before Chancery and received remedy, their confidence and litigiousness increased'.[93] It should not therefore be assumed that widowhood was a stationary life stage. In addition, the independence brought on following the death of a husband may have been difficult to settle into. In the case of Ann Davis, whilst her narrative suggested that she had not been named as executrix or administratrix to her husband's estate, she did appear in the Exchequer relatively soon after being widowed. Her case concerned the customary right of Freebench that would provide her with future financial security, a right ultimately generated through her husband and supposed to be upheld by local custom. In lieu of proving a will or settling her husband's affairs, Ann had to appear in Exchequer to claim a right that she had only recently gained access to, similar to those bestowed through a will.

Both Frances Reade and Ann Hall appeared in the Exchequer acting as executrixes of the estates of their first husbands. Here we see a compartmentalised widowhood, separating the affairs of different husbands across marriages and widowhoods. It is also an indication of the permanent nature of the role of widow – a women would always be a widow to any husband she outlived and would therefore almost always be executrix or administratrix of his affairs. The complicating of this legal status has recently been explored by Mason.[94] There was no time limit on this role or responsibility, and it merged with any widowhoods that followed. This element of remarriage is perhaps less often discussed but is especially interesting to consider in the context of widows appearing at law and bringing suits that concerned the estate or affairs of a longer-dead husband, delayed for any number of reasons, some strategic and others not. The temporality of allowed power is also evident within discussions of remarriage, in that a widow waited until she her second husband had died before being able to exercise her legal right once again.

In the case of Ann Hall, she was concerned with the rights given through her first husband's will. She had been named executrix of his estate and had proved his will at law, which sought to provide for her and his children. In her role as executrix, she was also charged with caring for the three daughters and given the assumed pre-existing

[93] Cioni, 'The Elizabethan Chancery and women's rights', p.182
[94] Mason, 'Property Over Patriarchy?', pp.133-151

relationship between Ann and the children, all under the age of ten, it was likely that she continued to raise them alongside her second husband. Her role as executrix therefore merged with that of mother or guardian, as she re-entered wifehood leaving her legal independence behind – the power she had been sanctioned was no longer available to her. Following the reinstatement of her legal identity, Ann brought a case centred on her claim to £5 a year from the lands, messuages and lettings of George Mills, which he split into thirds at his death for the future use of his three daughters. Ann's right to this annuity, an amount which had added to family finances during her second marriage and may have been a small or a large proportion of her security as a widow later in life, was filtered through the legacy of her first husband and ought to have been provided by the active land and property owners from which the money came. This had been the case until Sir Edward Dering purchased land and property from two of the three Mill daughters. Despite the fact that her right depended on the action of others, it was her responsibility to fight for it and secure it, reappearing as executrix to George Mill's estate to ensure that his will continued to be followed. Therefore, whilst widowhood was not a stationary process, nor was the responsibility of the widowed executrix limited to the immediate aftermath of a husband's death. This did, of course, have a direct impact on Ann's life, so it was in her interests to protect George's legacy and reaffirm his desire to provide for his once-wife. Nevertheless, the act of taking a Baronet to court, when she may have had no other experience of such a process, was indicative of the power of the legal identity revealed within widowhood.

Frances Reade as executrix, unlike Ann Hall, brought a case to the Exchequer that concerned a matter which arose shortly after the death of her first husband, Richard Pearce. It did not concern her husband's will or relate to the welfare of any children, but rather centred on his business affairs and entitlement to a large sum of money following an investment, almost twenty years before the case was brought. Frances admitted that she had known little about the arrangement and had lived mostly in ignorance of the matter before bringing the case in 1627. When Richard named Frances as he executrix, he also named two others to assist her in executing his will, which was largely focused on giving various sums of money to charity, family, friends, and servants.[95] There was little mention of his business affairs and we do not know whether Frances was meant to

[95] TNA, PROB 11/113/149, will of Richard Pearce

receive similar assistance in resolving matters outside of those raised in the will, but it seems likely that she did not. The knowledge that Frances possessed and her suitability to act as Richard's executrix was inevitably influenced by two things: firstly, that Richard had not discussed the arrangement that he had made with Sir William Garraway in 1607; and secondly that Richard had not produced a written document confirming the agreement and payment, with the necessary signatures. Frances, and indeed anyone in her position, was poorly equipped to bring the case to court, regardless of her role as executrix or widow. Such circumstances hint at the burden of these roles and the nature of them as ultimately originating from somewhere, and someone, else. Regardless of whether the role and independence was new to them, widows were active heads of household in their maintenance and defence of their rights and estates. The cases remind us of the responsibility that came chained to that newfound freedom and legal identity – they had not grown up in the same arena as men had. Widowhood had fundamentally changed things for each of them.

Given the friction between patriarchal ideals and the everyday workings of the Court, there were constant tensions between women appearing in court seeking redress and resistance towards women speaking out in public, especially confrontational spaces. As Stretton has noted, 'legal venues regularly exposed a potential contradiction between the desire that widows remain silent and the realization that their complaints needed to be heard'.[96] Wider social assumptions of female incapability tied into these frictions, but existed alongside the fact that recent widows were often 'singled out…as the most likely candidate to administer the estate'.[97] In some instances, only a relatively short amount of time may have passed before a widow, recently a wife under her husband, was deemed the best choice in cases of intestacy. There was a sense of expectation for recent widows, 'to take on responsibilities, to be aware of legal rights and duties and to be supremely competent immediately upon the death of their husbands'.[98] This was a logical solution, in some instances more than others, but was illogical when following the logic of the patriarchal mind.

Each of the six widows discussed in this chapter were acting as the head of household when they appeared in the Exchequer, although most were seemingly a one-

[96] Stretton, 'Widows at law in Tudor and Stuart England', pp.197-198
[97] Cioni, 'The Elizabethan Chancery and women's rights', p.179
[98] Stretton. 'Widows at law in Tudor and Stuart England', p.200

person household. Only Elizabeth Wheatley appeared as the head of an active household, with children to care for and a family economy to maintain, in part at least through her role as a property owner. She was taken to court by William Brotherhood because of her roles, and she defended her actions accordingly. Elizabeth claimed that she had the right to act as she did, especially given that the local parish did not act to remove William and his family, although they did assist in the removal of goods from the shop that William had unlawfully taken as his own. Elizabeth's actions were presented as not only just, but also motivated by her desire to provide for her family, in particular her destitute son. In her answer, she stated that she wanted to support her son by granting him access to the tenement in Kingsbury, and that is what motivated her to dismantle and rebuild the property. Witnesses called for both sides attested to Elizabeth's narrative. One witness called on behalf of William, Richard Whatley, stated that the rent for the tenement had been paid by the church warden for the four years.[99] Other witnesses knew that William had been using the shop next door, but doubted that he had the consent from Elizabeth to do so, and the majority of witnesses also agreed that William's wife had been present and cooperative on 15th April 1641, and had requested that goods be removed from the house.[100] The final witness called, Thomas Lawing, appeared on behalf of Elizabeth and her children, and claimed that he had tried to dissuade William from commencing the suit against her, to which William responded that he wanted to waste Elizabeth's time and money.[101] Her ability to manage her own estate was disrupted by William's actions, and by the lack of involvement from the community even following her requests. As head of household, Elizabeth was not only a mother, landlady and property owner, but also a charitable party in the local community, for which she ultimately ended up being taken to court.

Many widow-headed households were not fully independent economic units and therefore relied on the transfer of resources or money from other households.[102] Elizabeth's position as a property owner collecting rent was not shared across the cases, and the other widows considered in this chapter brought cases to claim or protect the securities that had been left or due to them. Ann Davis' appearance in the Exchequer was solely to secure her estate and right to a premises left to her by her husband – she claimed

[99] TNA, E 134/17Chas1/Mich20, depositions on behalf of William Brotherhood, Richard Whatley
[100] *Ibid*
[101] *Ibid*, depositions on behalf of Elizabeth Wheatley, Thomas Lawing
[102] Wall, 'Widows and unmarried women as taxpayers', p.251

she was already struggling as head of household and needed resolution in the Court. Ann Hall made continued attempts to secure the annuity she believed was owed to her from Sir Edward Dering. We do not know whether she had other means to support herself and manage any remaining estate, such as aid from her second husband during his life or through a will after his death, other family, or support from the local community. Ann's claim that the annuity payments were £100 in arrears could have been very detrimental to her survival otherwise. Interestingly, she did not use language of poverty or impoverishment as Ann Davis did, only once citing her old age as a reason as to why she could not travel to confront Edward about the money owed to her.[103] Therefore, whilst her second widow-headed household was far from financially independent, she does not appear to have been solely dependent on the legacy of her first husband some forty years earlier.

Whilst we know very little about Anne Towenson, we do know that hers was a widow-headed household, and the cases she brought were continuations of those brought by her mother, also the head of her own, twice-widowed, household. The focus of Anne on her mother's affairs gave the impression that Isabel was the head here too, and indeed, the management of estate in these cases were Anne's management of the residual estate of her mother as her administratrix, not necessarily her own. We learn more about Isabel as head of household than about Anne, and although both litigated as widows, Isabel also litigated as a wife and never brought a case to the Exchequer, although she did appear as a defendant. Given that Isabel's cases were predominantly concerned with family land and property, her household appeared to be one of solitude and Anne's own narratives around the cases brought by her mother framed them as claims and challenges that would secure her own control and financial stability, not that of an extended household. Depositions from the cases brought by Anne focused on Isabel's authority over the land and agreements had been made.[104] Many of the witnesses called by Anne noted that they had known Isabel during her first marriage and that she wanted control over the lands and the power to cut down and sell the wood in lieu of her dower. Of the witnesses called by William Graham, many had known Isabel for a number of years, although very few knew Anne, and all noted that Isabel had claimed her dower as soon as her husband, John Vaux, had died. She was keen to secure her household and

[103] TNA, E 112/307, Case no.196, Answer, Ann Hall
[104] TNA, E 134/1659/East31; E134/1659/Mich15

estate and spent her final years seeking this security. How this security translated to Anne's own life was unclear, but regardless of the impact she was an active head of household taking up cases at law and by choosing to assume the legal responsibility of her mother's estate. She was unusual in this sample as a widow using her allowed power for the continuation of her mother's affairs and not her husband's and appearing to be focused more on her mother's legacy than her own security, at least as far as court narratives suggested.

For Margaret Merryweather, it was a matter of fierce denial of money owed, rather than money left or rights due to her. As head of household, she displayed clear, if partly uninformed, conviction. From the defendant's answer it was evident that Margaret had exercised some influence over her husband and the household prior to her widowhood, specifically in regard to her resistance to spend more money. She was an external influence on her husband's business affairs.[105] We do not know whether Francis was truthful in his statements, or indeed if John was when he relayed them in his narrative. The interrogatories posed by Margaret acknowledged that part of the £40 owed had been paid in a combination of money, wool, and other goods, but disputed that any other payments had been agreed upon and asked, 'have not the said Hills been very necessitous and wanting of money…have they not been always reckoned and reputed to be borrowers of money and to be indebted'.[106] The witnesses called by Margaret similarly acknowledged that the £40 had been paid in the form of money and goods, but unlike Margaret they added that money was still outstanding from the arrangement, amounting to £10. William Darcey and Christopher Darcey both stated that the residual payment was because the £40 hadn't been paid in full, and Thomas Lunley attested to this, stating that John had told him that the £10 was part of the original £40 owed.[107] One witness, William Smith, had advised both Anthony and John during the original agreement with Francis, and had mediated between Margaret and John following the defendant's return to the country. William stated that during the mediations, John made no mention of any money owed, 'which this deponent verily believes he would have done had there been any thing then justly due to him'.[108]

[105] TNA, E 112/404, Case no.135, answer, John Hill
[106] TNA, E 134/22&23Chas2/Hil29, depositions of behalf of Margaret Merryweather
[107] *Ibid*
[108] *Ibid*, William Smith

The witnesses called by John were largely a combination of the same witnesses called by Margaret and members of John's family. Joanne Curnock, John's sister and one of the three female deponents, testified that the £10 owing to Anthony and John was promised by Francis to make amends for the manner in which the original sum had been paid.[109] Christopher Darcey confirmed the seal and handwriting of the bill obligatory presented to him, dated 2nd June 1659, and stated 'the said Francis was a wary understanding man in his dealings of worldly affairs'.[110] A number of other witnesses provided more details regarding the wool given by Francis. Richard Hill, brother to the defendant, described Francis valuing the wool at £20 or 28 shillings a toll, which was 4 shillings more than the valuation provided by others after the exchange. Henry Hill, the son of Anthony, recalled his father returning home with the wool and saying to his son that he had made a loss.[111] If the suggestion of payment through wool had indeed been Margaret's, then her influence within the household was evident even before her becoming the head of it. As a widow, she sought to protect her finances from what she saw as a dishonest and greedy man, to the point of threatening him with legal action until John 'had paid away all his estate'.[112]

The expectation regarding a widow's ability of estate management could place some at a disadvantage rather than allowing them to take advantage of new legal and social freedoms. Even if they had been involved in the affairs of their husband prior to his death, this did not mean that they would 'be competent managers of property, money and other interests, when prior to achieving their new status they had (at least in theory) been excluded from this world'.[113] Contrasted to perceptions of female incapability and preferred subordination, widowhood could place a surprising and heavy burden which could push too far in the opposite direction. Sir Henry and William Garraway, the defendants who appeared opposite Frances Reade, insinuated that her behaviour and claim to money was driven by her situation as the head of two estates. The answer divulges some seemingly innocuous information that appears to implicitly accuse Frances and/or Gerrard Reade of taking the money. The defendants noted that Frances' sister had married Sir Francis Jones, knight, alderman and lord mayor of the City of

[109] TNA, E 134/22&23Chas2/Hil29, depositions of behalf of John Hill, Joanne Curnock
[110] *Ibid*, Christopher Darcey
[111] *Ibid*, Henry Hill
[112] TNA, E 112/404, Case no.135, answer, John Hill
[113] Stretton, 'Widows at law in Tudor and Stuart England', p.201

London, 'a man of great estate and credit', and that by contrast Frances had struggled to manage Richard's estate after his death, and that her second husband's estate 'grew very weak' through their marriage and following his death. Accordingly, the defendants argued that should the money have been outstanding, Frances would have claimed it much earlier when she was in great need of it as she struggled to manage two estates. There was no further documentation for this case, and no available decree from the Court. We do not know how the case was settled, or indeed whether it was to a satisfactory conclusion for Frances. If the defendant's claims were true about her struggling to manage two estates, possibly as executrix for both, a resolution that left her without what she claimed to be owed, as well as out of pocket for the costs of bringing to case to Court, was certainly not the redress she would have been seeking. Whilst there was independence to be found in her widowhood and the ability to make decisions that may have affected investments and trade, this case also showed the fragility of the individual and family economy, and the potential difficulties that could ultimately rest on the shoulders of newly appointed heads of the household. Allowed power gave the possibility of control and authority, but it did not come with the necessary experience to manage affairs that prior to widowhood had been unfamiliar. We do not know why Frances left it so long to bring the case to Court: the reasoning may have been driven by strategy, malicious or honest, a delay in managing affairs or a range of other circumstances. Given that she appeared in Chancery on more than one occasion, it is possible that she was preoccupied with more timely matters that concerned her second husband. She may have also wanted, or perhaps benefitted from, bringing the case as Richard's widow and not Gerrard's wife. The amount of time that the matter had been left however, at least in terms of official discussion, did not help her cause.

Of the cases considered in this chapter, three in particular saw widows appear against men from the landed and wealthy elite. We see an immediate challenge of the widows' right to bring a case to the Court of Exchequer and a clear divide between the local concerns of the widows litigating and the national, or even international, concerns of the men they are appearing opposite. These encounters concerned class as well as gender, pitting a widow's security to maintain herself and her family for the remainder of her life unless she chose to remarry against the profits from sprawling estates and business investments. Landed men were also considerably more likely to have been involved in litigation elsewhere for a wide range of purposes, as a result of the law's

relative accessibility for men and due to their roles as business owners, landlords and politicians. Whilst each widow had the right to litigate in the Court, this was questioned in two cases that involved the wealthiest men who appeared as the sole widows' opposition. Henry Garraway and his brother William, the former of whom would be knighted by King Charles at Whitehall in 1640, argued that they did not believe Frances Reade was 'any way privileged to sue these defendants in this honourable court'.[114] In the case of Ann Hall, defendant Sir Edward Dering submitted a demur objecting to the fact that she had brought a suit to the Court, 'the complainant hath not sufficiently entitled herself unto the relief of this court nor enabled herself to sue in this court, because she only alleges herself to be a debtor and accomptant…and doth not say as by the records thereof…as she ought to have done'.[115] This was the only instance in this sample of cases where a demur was used to directly challenge the right of a widow to bring a suit to the Court. In Frances Reade's suit, there was an interesting extension to this discussion around her right to take the defendants to court over the matter of supposedly outstanding business profit payments. This centred on the terms of the agreement originally entered into by Frances' husband, which specified that no business partner or their executors 'should at any time after such year expired commence any suit or bring any action or otherwise molest and trouble them', and rather that any disputes should be made in a timely manner in writing.[116] The fact that the same challenges were not made as part of the other cases in this chapter suggests the role that class could play. The widows who were appearing against men of a similar untitled class were not challenged in the same manner in this sample and claiming to be a debtor to the Crown and without access to remedy at Common Law was unquestioned grounds for appearance. This was commonly the central justification for appearing in the Court of Exchequer, but it not does explain why the cases were brought there as opposed to Chancery, or in the case of Ann Davis, a local manorial court. Of course, the remit of the Court of Exchequer influenced this to some extent, encouraging cases dealing with Crown lands, money, and property, but cases could, and did, go outside of these parameters.

The cases covered in this chapter were testament to the nature of equity, and the ideal of legal justice, as poorer widows looking to secure their later years faced off against

[114] TNA, E 112/204, Case no.90, answer, Henry and William Garraway
[115] TNA, E112/307, Case no.175, Demur of Sir Edward Dering
[116] TNA, E112/204, Case no.90, Answer of Henry and William Garraway

some of the wealthiest men of the period. We see the interaction between community, law and wealth, and the strength of communal networks and local knowledge. The upper hand that Ann Hall had when it came to her place within community networks, as identified by the defendant Edward, was an interesting counterpart to Edward's direct challenge to Ann's right to bring a case to the Court. We see different spheres of authority and knowledge colliding – the centralised sphere of law versus the local sphere of communally sanctioned right. Edward could only claim entry to one of these, whereas Ann, because of the intersection of her social standing, marital status, and financial position, could claim access to both. In her answer to Edward's bill, Ann noted that she had been advised since the last suit by her counsel that upon the purchase of the said two parts of land and property that Edward's father, and his heirs, became liable for the annuity.[117] As Ann argued, whilst Sarah and Thomasine had held the land and property, they had ensured that the annuity was paid accordingly, but that this ceased as soon as Edward's father took ownership. For twenty years she had made a continued claim to the annuity but had never been able to demand the money in person due to the almost continuous absence of both Edward and his father, most often away in London. Ann had exhibited the original bill in the Exchequer upon hearing that Edward had returned to the Dering residence in Pluckley. Ann encouraged Edward to call upon Thomasine as a witness as she still lived nearby and concluded by 'absolutely denying that at the time of the said purchase or at any other time she came to any agreement or received any satisfaction for the quitting, discharging and extinguishing of the said annuity'.[118] This parchment was one of the few in the sample where the widowed litigant signed her own name on the record.

Despite this matter being split across two separate suits, the only available interrogatories are from Ann as the plaintiff, separated across two documents. The questions posed to the witnesses were short and concise, and focused primarily on whether the deponents knew that Edward had purchased the land, and whether the annuity was due to her according to George's will. The witnesses who were called were a mixture of tenants, elders from the community and those directly related with the matter. A number of witnesses confirmed that Edward, and his father before him, had been mostly absent from the area since purchasing two parts of the land and property left by

[117] TNA, E 112/307, Case no.196, answer, Ann Hall
[118] *Ibid*

George, but very little information was offered by any of the deponents regarding the nature of the purchase. Additional detail did come from Thomasine Baker, the youngest daughter of George, who at the time was a forty-five-year-old widow living in the parish of St. Mildred near Canterbury. Thomasine confirmed the details of the sale and stated that the land that she and her sister Sarah were 'chargeable with the payment of the said rent or annuity of five pounds…to the plaintiff during her life'.[119] Esaias Hall, a forty-year-old husbandman, of unknown relation to Ann, explained how he had been asked by Ann on several occasions to demand the annuity from servants of Edward, but had never received any response.[120] George Coachman was also called as a witness by Ann, whom she had originally accused of conspiring with Edward, and he said that he had held the third part of the land for a number of years and had always paid his part of the money owed to Ann.[121] We do not know how the case was concluded, and whether this was done by decree of the Court or through mediation. From the information presented, it seems apparent that Edward lacked the knowledge regarding the arrangements concerning the property, and Ann had waited patiently for an opportunity to claim her right and reclaim money promised to her many years prior. Given her testimony and those of the deponents called, it appeared as though the wealthy, absent landowner, had ignored the pre-existing rights of those around him.

Ann Davis claimed manorial custom and the widow's right of Freebench against the lord of the manor, Wheathill Audley. Depositions from the case were only available in response to interrogatories from the plaintiff. Of the deponents called, one was a widow, Margaret Davis, whose relationship to Ann Davis was undeclared. Margaret attested to the presence of the custom of widow's estate or Freebench, stating that she had benefited from it since the death of her husband ten years earlier. Another deponent, Roger Batt, similarly stated that the custom was practiced in Bisley, saying 'he hath known many widows to have enjoyed their widow's estate'.[122] The six other deponents agreed that the custom of granting copyhold lands happened within the manor and that Ann had followed the custom of paying a fee following her husband's death, because of his presence as a tenant. Three deponents also stated that Ann had paid rent for the messuage and lands, totalling around £4 a year. There was no further information available on this case. The

[119] TNA, E 134/1658/East30, depositions on behalf of Ann Hall, Thomasine Baker
[120] *Ibid*, Esaias Hall
[121] *Ibid*, George Coachman
[122] TNA, E 134/3Chas1/Mich3, depositions taken on behalf of the plaintiff, Roger Batt

question of the presence of the custom of widow's estate or Freebench was central to Ann's interrogatories, and therefore the lack of a response on the custom from the majority of the deponents would seem to suggest that if it were a custom, it was not widely known or actively pursued. The nature of manorial customs, the variance across manors, and the fact that they were practised at the will of the lord or lady, means that the difficulties of this case are to be expected. The custom of widow's Freebench was particularly contentious, but was often upheld in cases brought to Chancery or replaced by an annuity and premises for the duration of the widow's life.[123] One would perhaps have assumed that Ann would have called more widows as deponents, if indeed she were able to, as women in her position would have been the best sources of evidence in support of her case. For Ann, it appeared that the custom of widow's estate was her security following her husband's death, so much so that she simply assumed her right to continue as a copyholder, pay any money owed, and continue her life as a widow. Ann was fighting for a right that she could only prove to a certain degree, and a right that was not guaranteed in the same way as other rights were. Indeed, rights powered by manorial custom were more commonly dealt with in manorial courts, in part for this exact reason, but could be enforced in common law and equity courts from the sixteenth century.[124] Arguing for this right then was more than fighting for herself, but rather for the right of widows in her locality, establishing a precedent with a new lord, if indeed that was enough impetus to attempt to do so: 'customs survived in localities when enough people wanted them to survive'.[125] The primary concern was of course her own security, and her ability to secure her right of Freebench.

Frances Reade, rather than making a claim based on a will or manorial custom, faced off against a family known for their role in international trade. Unlike Ann Davis and Ann Hall, Frances could not present documentation to support her claim, given the absence of a written agreement between her husband, Garraway and Salter in 1606. She argued that the verbal agreement had been kept from her to prevent her claiming the money that was outstanding for almost twenty years. Furthering this point, we might ask where Frances received this information: her knowledge included details about the lease itself, which may well have been known publicly to some degree as well as the amounts

[123] Cioni, 'The Elizabethan Chancery and women's rights', p.169
[124] Erickson, *Women and Property,* p.30
[125] Stretton, 'Women, custom and equity in the court of requests', p.186

of money in profits, which may have been the subject of conjecture. The answer from Henry and William Garraway was extensive and provided a clear narrative about the farm and profits, as well as Frances' husband's connection with them. Their narrative filled in significant detail that had been missing from Frances' bill, demonstrating her limited knowledge by comparison. Whilst we often see the male litigants, and indeed answers in general, filling in context and information in court narratives, the extent of Frances' ignorance about parts of the agreement and the farm itself was noteworthy when compared to other cases. Similar to other cases though, the male defendants disputed Frances' right to sue in the court, especially so far after the matter had originally been active through her husband.

The defendants acknowledged that Richard had been a partner in the farm, but argued that they and their father had given Richard accompt of the profits for seven years, as had been agreed, until the agreement expired in 1615. They stated that during that period and up until the suit none of them had been asked for outstanding payments of profits gained from the farm and imports, and argued that given that the issue had been left unchallenged for so long that it would not be "fit to charge or make them liable hereunto in any court of equity being for matters quite out of their native land so long".[126] The defendants detailed the indentures that had been produced by their father and Sir Nicholas Salter that were agreed with all partners. The indenture stated that payments were to be made yearly and would be paid twelve days after every reasonably requested accompt by Sir Nicholas Salter: Henry and William made it clear that their father was not responsible for the payments. It also noted that Sir William Garraway and Sir Nicholas Salter 'should not be compelled by any…exposition…to accompt more than once', that any disputes should be delivered in writing, and that no partner or their executors 'should at any time after such year expired commence any suit or bring any action or otherwise molest and trouble them'.[127] In addition, they denied that William Greenwell had been given a part in trust, but rather that he 'had another like part and share in the farm to his own use'.[128] Henry and William Garraway claimed that the money owed had been paid, and that it must have been collected by someone with suitable knowledge and access. Frances' replication replied to the numerous 'faults and imperfections' of the provided

[126] TNA, E 112/204, Case no.90, answer, Henry Garraway and William Garraway
[127] *Ibid*
[128] *Ibid*

answer.[129] She insisted that William Greenwell had received a grant of one part in trust from her husband, claimed that the brothers, and their father, had intentionally kept what was owed to her and others to themselves, and argued that she had 'often requested the said Sir William Garraway and Sir Nicholas Salter…and the said defendants…to accompt for the said farm and to pay the said complainant her rateable part'.[130] The rejoinder from Henry and William firmly denied all points presented, and once again stated that someone did receive the money owed, but they could not be sure whom.

Only the interrogatories taken for Frances survived. The questions posed were particular in their detail, concerning exact sums of money and further details about the arrangement of the lease granted by the King. She questioned whether Richard and William Greenwell had together paid two thousand marks for two parts of the lease and farm, and asked for clarification as to whether any of the said money came from William and whether he had paid anything else towards the farm afterwards, as Richard had for charges and other costs. She also presented the account books of Richard, as part of her proof that he had not received any money prior to his death, and that he had paid out for both of the two parts in the lease. The depositions from the seven witnesses called shed some more light on the matter, but did not provide a clear answer as to what had happened. Simon Smith confirmed that the books presented were those of Richard Pearce, and stated that he had encouraged Frances to continue to use them following his death to keep track of his affairs. The accompt books that belonged to Frances and Gerrard were also presented, and Simon confirmed that neither had any record of any payments for the profits that were owed.[131] Interestingly, he also noted that only one payment of one thousand marks was recorded in Richard's accompt book, suggesting that only part had been purchased. Roble Greenwell, most likely a relation of William Greenwell, stated that he believed William had paid for his own part in 1607, and that it had not been in trust from Richard.[132] None of the witnesses supported Frances' claim that the part had been purchased by her first husband. They did however all attest to Richard's own purchase of one part of the lease and farm. Despite the testimony of witnesses and the production of account books, Frances still presented a case from twenty years earlier with little evidence, claiming large sums of money which totalled a

[129] TNA, E 112/204, Case no.90, replication, Frances Reade
[130] TNA, E 112/204, Case no.90, replication, Frances Reade
[131] TNA, E134/3Chas1/Mich22, depositions taken on behalf of Frances Reade, Simon Smith
[132] *Ibid*, Roble Greenwell

figure even she was unsure of, from businessmen involved in countless other affairs across Europe and beyond. Whilst we do not know the outcome of this case, Frances' right to litigate in the Court was both questioned and legitimate. Nevertheless, the strength of her challenge was hampered by the size of the issue that she had brought, and her delay in seeking redress may have prevented her from receiving a favourable resolution.

Litigating Against Men as a Sole Widow

Despite the regimented narration of suits presented, the narratives still documented transitions in the lives of the widows who appeared. In detailing the events that culminated in legal action, they relived their time as wives, mothers, recently bereaved and suddenly independent. They had come to the Exchequer alone, sometimes their first interaction with equity law, as legal beings in their own right, but presented cases as widows with responsibility over the welfare of themselves and others.

Of the six cases discussed in this chapter, only that of Anne Towenson discussed the jurisdiction of another court. She made the decision to attempt to conclude cases in Exchequer rather than continue suits in Chancery – why she did this, we do not know. The litigiousness of Anne's mother, Isabel, was not something shared by the widows discussed in this chapter, or even by Anne herself, according to available evidence. None of the six widows discussed appeared in the Court concerning more than one overarching case, and only Frances Reade was recorded as having appeared in Chancery. This suggested a clear purpose to the cases brought and perhaps quiet lives from a litigious viewpoint beyond the parameters of the Exchequer case. Their legal identity was exercised through necessity, and did not lead onto more interactions with the law, or indeed encounters that may result in ending up at law. As far as record survival and accessibility indicate, the widows of this chapter did not appear in other cases within Chancery or the Exchequer that reached deposition, and therefore these cases were perhaps their only interaction with the full equity process.

It is worth noting that the framing of some questions, especially considering that the male litigants would already have read the widows' bill of complaint, suggested a challenge to their authority and place in the Court based on how a right had been transferred to them, most often via a will or her role as executrix. This challenge had some

association with widowhood, and therefore gender, considering how widows made rights their own, and how they subsumed them into their newly found legal identities, even if these identities were confined to few interactions with the law explicitly. It is worth remembering that her identity and rights, if supported at law, existed outside of the legal sphere as well, and informed more than just the case at hand. The power that had been allowed was not specific to the Court, but to widowhood more generally.

Even in the six cases discussed here, the variety and richness of Exchequer records was evident, and the myriad ways in which they can be used is clear. Within the category of widows appearing as sole litigants in the Court, those of middling social status who appeared against men were the most common. Unlike the titled widows in the following chapter, these female litigants may have never been recorded outside of parish registers if not for their cases in the Exchequer. In a similar vein, their court narratives provided a window into the lives and experiences of those around them, giving a platform to the disputes of the Vaux and Musgrave families, and the personal hardships and violence endured by Mrs Brotherhood at the hands of her husband. The case of Frances Reade was an example of middle-class business meeting European trade and Margaret Merryweather an aggressive litigator forcing a man to leave the country. Ann Davis fought for the recognition of a custom long established but much disputed, and Ann Hall looked to protect a will against a member of the elite. In this space of equity law within the Exchequer, they and their concerns were of equal weight as the men they appeared against.

Chapter Five

The Widowed Defendant

Female litigants appeared as defendants at a similar rate to plaintiffs. Despite almost double the number of defendants in the Court than plaintiffs, female litigants made up 8 per cent of plaintiffs (489 women) and 7 per cent of defendants (870 women). Of these, the proportion of widows was also similar: 44 per cent of female plaintiffs and 42 per cent of female defendants. Sole female defendants however appeared in much smaller numbers than sole female plaintiffs. Only 9 per cent of female defendants appeared alone, compared with 27 per cent of female plaintiffs. This discrepancy was mirrored by sole male defendants. Group litigation was therefore a more common experience for defendants in the Court of Exchequer, and influenced averages across the sample.

Although women did meet as opposing plaintiffs and defendants, this occurrence was far from the norm in the Court. Only 24 per cent of female plaintiffs and 12 per cent of female defendants appeared opposite at least one other female litigant in this sample. Female plaintiffs and defendants were found in 90 cases that reached deposition, and the majority of them appeared as co-litigants. Sole female plaintiffs and defendants more often appeared against sole male litigants and were therefore less likely to appear against other sole female litigants. In fact, 48 per cent of all sole female plaintiffs brought cases against sole male defendants, whilst 68 per cent of sole female defendants were called by sole male plaintiffs. Of cases brought by sole female plaintiffs, twelve of them involved female co-defendants. By comparison, cases in which a sole female defendant was called, female co-plaintiffs appeared on ten occasions. It was uncommon for female litigants to appear without male co-litigants: there were eight cases in which two female plaintiffs appeared as the only plaintiffs, and four cases for female defendants. Only five cases that reached deposition involved sole female litigants on both sides.

The central focus of this chapter is to explore whether female legal identity and the exercise of allowed power were framed and expressed differently when a widowed female defendant when challenged by another woman. Historiography tells us that

women were able to interact with other women in ways that they would not have been able to act with men, and that in some courts of law, especially ecclesiastical courts, litigation would be focused on issues such as reputation and honesty in cases between women.[1] In addition to the central focus, this chapter also considers how cases between women were different and the influence of men in cases that only involved female litigants. The suits also allow for discussions around the centrality of security in widows' litigation, as well as the impact of time in regard to how recently they had been widowed or how long they had been living independently. In each case, there was the question of whether they were acting for their family, for their own protection, or for duty. The appearance of female litigants on both sides in the Court of Exchequer provides an opportunity to closely consider women as legal beings and independents within the Court.

Five cases are considered in which female litigants appeared against widowed defendants. In comparison to the focus on sole widows, the cases in this chapter have been used to explore how women referred to each other in court narratives and consider how male influence changed in their relative absence. Moreover, the cases evidence the meeting of female legal identities, which were, by the very nature of their appearance in Court, in opposition to each other. How female litigants framed their own rights and challenged the rights of others adds to our understanding of how female litigants operated as legal entities. These cases allow for an exploration of the extent to which gender, widowhood specifically, played a role in their legal identity, and whether cases differed when they predominantly involved female litigants whose allowed power was in opposition. The majority of cases in this chapter were brought after the Civil War, and all female litigants involved were untitled. Three cases had a sole female plaintiff versus a sole female defendant; one case saw a female plaintiff appear alongside a man and against a sole female defendant; the remaining case involved two female plaintiffs appearing against a widow and a male litigant. Aligning with the previous chapter, the cases discussed here concerned land, property, and estate management. In contrast, these cases also touch on tithes and the execution of wills. The themes of family and widows' security persisted here too, as they did across all cases in this project.

[1] See: Gowing, *Domestic Dangers*; Capern, *The Historical Study of Women*; Capp, *When Gossips Meet*

Dorothy Estmond v Elizabeth Archer, Dorset, 1633

In the case of Dorothy Estmond and William Swanton against Elizabeth Archer, we find two widows challenging each other over money and the transfer of land from a deceased husband. This case was primarily between Dorothy and Elizabeth, with William being a notable absence in both narrative voice and feature within the context of the case. Dorothy as plaintiff was seeking to state and reclaim the rights of her late husband, Richard Estmond. The defendant, Elizabeth, appeared to defend rights that she had purchased for her own use. For both female litigants, there were substantial rights at stake, concerning large amounts of land and money. Dorothy was securing her financial future as a widow and relict, whereas Elizabeth was continuing to expand a portfolio of land and property during her widowhood, at the very least involving holdings in London and Dorset. The two women were at different stages of widowhood in this sense, with Elizabeth managing her own affairs in this suit as opposed to settling the affairs of a deceased spouse.

Dorothy and Elizabeth were two of seven female litigants involved in an Exchequer deposition in 1630s Dorset – Elizabeth was one of three sole female defendants in the county across the sample. The case narrative recounted the affairs between Dorothy's husband and Elizabeth. Richard Estmond had owned by freehold a messuage, farmland and lands in the Manor of Fifehead Magdalen in Dorset. Cases of this nature were relatively uncommon in Dorset, with the majority of cases concerning business or tithes. A portion of the farmland had been granted to William Crowe and William Swanton in September 1619, of which Richard and Dorothy were to receive profits for their lifetime. Elizabeth first appeared as a creditor in this narrative and was said to have approached Richard and his brother-in-law Nicholas Darkombe about the prospect of lending them money. This arrangement had been unknown to Dorothy at the time – she noted how she had been informed of this by Nicholas after her husband's death.[2] Elizabeth had agreed to lend Richard and Nicholas the money, the amount of which was unspecified, on the agreement that she would receive an annuity of £120 for a similarly unspecified number of years. Following this, in 1621, Richard 'by his indenture did demise unto Elizabeth Archer of the city of London widow all that his Manor of West

[2] TNA, E 112/174, Case no. 37, bill of complaint, Dorothy Estmond and William Swanton

Stour', in addition to a portion of farmland in Fifehead for 7 years.[3] The lease noted a payment of £444 due from Elizabeth, which Dorothy claimed was never paid. Dorothy also argued that almost immediately after her husband's indenture, Elizabeth 'did redemise and grant the said Manor of West Stour and the said particular closes and grounds…onto Nicholas Darkombe', for which Nicholas was supposedly paying Elizabeth a rent of £120 per annum.

Dorothy went on to document that, in 1626, Elizabeth had entered the grounds of Fifehead where she and her husband lived and demanded money from him. The reasons for this demand were not divulged, or were perhaps not known, by Dorothy. By this time, Richard was 'extremely sick and at the point of death', and, according to Dorothy, Elizabeth 'did then advise and contrive with some of her accomplices which she had brought with her how to draw some further estate from the said Richard Estmond being then in extreme of sickness and past any disposing memory'.[4] Dorothy's narrative described how Elizabeth persuaded her and other people in the house to leave to find a physician for Richard and, whilst they were away, Elizabeth 'did draw and procure the said Richard Estmond…to seal some other and further lease'.[5] This lease was for farmland in Fifehead and in addition, Richard offered to pay Elizabeth £444. Dorothy claimed that her husband was unaware of his actions and died within hours of Elizabeth leaving. Shortly after Richard's death, Elizabeth exhibited a bill against Dorothy and William regarding the lease that had allegedly been granted by Richard and money that had been owed by Richard at the time of his death. The court was not named in Dorothy's bill, and there was no surviving record of a case reaching deposition with Elizabeth as a plaintiff in the Exchequer. Later that year, Elizabeth was granted an order by that court in her favour, which demanded that the outstanding money be paid by Dorothy and William. At the close of her bill, Dorothy noted that over £1,000 had been paid to Elizabeth since 1626 as a result of the earlier Exchequer suit, but that nevertheless Elizabeth continued to demand more as well as take more land and rents as her own. It appeared that Dorothy's suit against Elizabeth was the result not only of an attempt to settle a legal dispute, but also out of frustration regarding Elizabeth's actions and apparent greed.

[3] TNA, E 112/174, Case no. 37, bill of complaint, Dorothy Estmond and William Swanton
[4] *Ibid*
[5] *Ibid*

Elizabeth's answer denied owing any money to Richard during his lifetime, stating that she had paid the £444 due for the lease in 1621, soon after the original lease had been granted.[6] The money that Richard had agreed to pay her, £120 for seven years, had not been paid during his life or after death. A large portion of Elizabeth's answer detailed the agreement that had been made with Richard, with Elizabeth noting that she had travelled from London to discuss with Richard the money that was still owed, stating that Richard 'did at several times express himself to be very willing and desired that this defendant should be paid her said money before any other of his creditors saying he would do anything within his power'.[7] The deed of indenture was, according to Elizabeth, freely given, with Richard stating that he had the power to dispose of his lands in payment of his debts and that Elizabeth should 'enjoy the said demesned possessions without any interrupting of the said Dorothy his wife'.[8] Elizabeth further argued that the matter had already been settled in court, and needed no further litigation.

Bridget Delbridge v Joane Lambert, Cornwall, 1657

A small number of sole female plaintiffs brought multiple suits to the Exchequer that reached deposition: they were more often titled women involved in cases regarding land or tithes. Bridget Delbridge, a widow living in Cornwall, brought a series of cases in the late 1660s concerning tithes in the parish of St. Cuby in the village of Tregony. Tithes cases were one of the most common in Cornwall across the sample. Bridget's husband Nathaniel Delbridge had, for twenty years prior to his death, been vicar of the parish, and she claimed he had therefore been entitled to tithes from the parish lands.[9] It was unclear the extent to which Nathaniel had received tithes during his lifetime, but based on the fact that Bridget had taken people to court and that some deponents acknowledged that they had paid tithes to Nathaniel, we can assume that he received a proportion of what was deemed to be have been owed. It is worth asking why this matter was not addressed by Nathaniel during his lifetime, or why Bridget decided to take the matter to Court three years after his death. However, as other cases have shown, neither was uncommon. Ascertaining why an issue had either not been addressed by a husband or had been left

[6] TNA, E 112/174, Case no. 37, answer, Elizabeth Archer
[7] *Ibid*
[8] *Ibid*
[9] TNA, E112/292, Case no. 44, Bill of Complaint, Bridget Delbridge

for some years following a wife's entry into widowhood cannot be done easily unless it was mentioned as part of court narratives or depositions. In this instance at least, Nathaniel seemed to have been content with the tithes he had received. It was also possible that neither Bridget nor Nathaniel was under the impression that they were due more than they had received, and that this challenge only materialised during Bridget's widowhood. Given that allowed power came from the death of a husband, it is interesting to consider those instances in which a widow made use of that power for something related to her late husband's affairs but not a continuation of them. In Bridget's case, this was an issue that predated her husband's death but had not been addressed by him. It was therefore taken up by her in her role as a widow.

Four cases that were brought by Bridget to the Exchequer regarding tithes reached deposition.[10] The framing and overall argument of the respective bills were similar across all cases, and one was brought against Joane Lambert in 1658, a widow appearing as sole defendant, and one of only two sole female defendants in Cornwall across the sample.[11] In each case, Bridget documented the defendant's specific actions that in her opinion warranted the payment of tithes and stated that she couldn't prove what was owed or estimate an amount outstanding, and so was unable to find relief at common law. Whilst the cases shared a number of similarities, there were some differences in the case brought against Joane and as a result these cases demonstrated potential deviations in narrative framing and challenge of legal identity on the basis of gender. Both Bridget and Joane were widows living in the same locality and left to administer their husband's estates. Bridget's widowhood involved her claiming money owed by various people in the village, whilst Joane appeared to be struggling to make ends meet following the death of her husband and the loss of land. The bill brought against Joane detailed the holdings that had been owned by Joane's late husband John Lambert, including numerous messuages, lands and orchards in Tregony which Bridget valued at £50.[12] Bridget claimed that Joane should have settled her husband's debts following his death by paying the tithes owed, and that she had spoken to Joane asking for the money once her husband had died. John had died 1655, around seven months

[10] TNA, E 134/1653/East23; E134/1658/East4; E134/1658-59/Hil4
[11] TNA, E 134/1658/East3
[12] TNA, E 112/292, Case no.45, bill of complaint, Bridget Delbridge

before Bridget's husband Nathaniel, but the matter had not been brought up with Joane immediately following her husband's death.

Joane's answer questioned the extent to which Nathaniel had been entitled to the tithes of the area and, interestingly, she also questioned the letters of administration that had been granted to Bridget, as some of the defendants in the other three cases had also done.[13] Whilst the details of these letters of administration were not disclosed, their credibility was questioned, as well as Bridget' right to exercise them. The allowed power that she had gained upon being a widow enabled the challenge as well as affirmation of rights. Joane noted that her husband had not been the owner of substantial property and land, but rather of a single estate, of which she did not know the value. She also stated that the majority of the estate had expired soon after John's death in 1655, and that she was left with one dwelling in Tregony, a meadow and one cow. Regarding the quantities of hay that John had collected, Joane said she could not comment as she was 'a very sickly and weak woman and had not the ability to look after the same'.[14] This was another example of uncommon emotive language use in the Court from the sample. She noted that there had been a final agreement between Nathaniel and John before their deaths, but was unable to offer any details as what the agreement may have been.

Isabel Parkinson v Frances Parkinson, Lancashire, 1659

The case between Isabel and Frances Parkinson was a fascinating example of women meeting in court and the interaction of opposing legal rights and expectations.[15] These two female litigants constituted half of all sole female litigants in the region between 1640 and 1664. Frances was one of six sole female defendants who appeared in the county across the period. The case was brought by Isabel to the Exchequer in 1658 against her mother-in-law, Frances. By this time, both were widows, and both were fighting to secure the rights that had been left to them in their husband's wills. The content of both wills according to the bill and answer largely concerned a property in Heysham, referred to as

[13] TNA, E 112/292, Case no.45, answer, Joane Lambert
[14] *Ibid*
[15] TNA, E 112/311, Case no.140

Overhouse and worth approximately £24, and large portions of land spread across parts of Lancashire in Fairsnape, Bleasdale and Blindhurst.[16]

Frances' husband, Robert Parkinson, had died eighteen years earlier and had left her the land and property in Heysham to be used for the remainder of her life.[17] She moved into the property immediately following his death in 1641. The value of his personal estate at the time of his death was £1000, and their son, George Parkinson, was made executor of his father's will. Under the direction of Robert's will, George was to ensure that Frances retained a lease to the property. In her bill, Isabel argued that Frances had accepted this land and property as her dower in full, which Frances denied. In February 1651, Frances leased the same land and property to Robert Lords and William Clifton, taking a yearly rent of £20. It was during this time that George married Isabel. In 1656, George sold his inherited land and property in Bleasdale to Thomas Blackburne, Isabel's father. Whilst Isabel stated that her mother-in-law agreed to this sale, Frances denied this. Frances then laid claim to the lands and took out two writs of dower against Isabel and her father at the Assizes in 1658. Frances' answer and corresponding depositions largely focused on the dishonesty of Isabel's claims and the deceitful practice of her son George.[18] According to Frances and several witnesses, George had visited Frances at her property in Goosnargh a month before his death and asked to borrow her lease to the property and the lands in Heysham. Frances had agreed to this, and George had assured her that he would return the lease within the week. Witnesses confirmed that he did not return it, and when Frances demanded that he do, he told her that the lease was 'in his trunk at home safely locked up and that he had then forgot it but the next time he came he would bring it her or send it within a week's time…about a fortnight after the said George Parkinson died'.[19]

Whilst Isabel claimed that Frances was aware and supportive of all decisions made regarding the inherited land and property of Robert Parkinson, the main focus of her claim was on the character and behaviour of her mother-in-law, specifically in regard to her use of the land and property left to her. Whilst one witness recalled Frances saying that the collection of the rent was all she had, Isabel and a number of witnesses recounted

[16] TNA, E 112/311, Case no.140
[17] *Ibid,*bill of complaint, Isabel Parkinson
[18] *Ibid*, answer, Frances Parkinson
[19] TNA, E 134/1659/Mich33, depositions taken on behalf of Frances Parkinson, Jane Sager

how she had greedily claimed that she would take as much as she could. Thomas Mather deposed the following, referring to Frances: 'it was true she had enjoyed or taken the said profits of the said tenement since her husband's death and that she intended to have it during the continuance of the lease if so long she lived but although she had received the profits of that she would have more if she could get it'.[20] Ultimately, the Court gave credence to Isabel's account of a greedy widow who had incurred large legal fees for both parties across numerous jurisdictions, laid claim to land and property that she had no right to, as well as unfairly and in an unequitable manner had enjoyed the profits, rent and use of the land and property in Heysham, rather than the limited use and benefits that had been granted by her husband's will. Frances was ordered to pay £179 and 1 shilling to Isabel for damages and anguish, or to repay the profits that she had taken from Heysham since she had started taking rent in 1651.

Ann & Margaret Perry v Elinor Perry, Staffordshire, 1663

In the case brought by Ann Perry and Margaret Perry in 1663, the listed defendants were their brother, John, and their sister-in-law, Elinor.[21] As the case narrative showed however, this case was really against both of their brothers, John and Thomas, but the latter had died and so his newly widowed wife, Elinor, was called as a co-defendant. This case concerned a will in the Perry family, residing across parts of Staffordshire, and centering on the parish of Trysull. There were no sole female defendants in Staffordshire and two female plaintiffs appearing as co-litigants was uncommon across the sample. Will and inheritance cases were also rare across the sample, but Staffordshire had the highest number of depositions. The two plaintiffs, Ann and Margaret, were daughters of the deceased, Thomas Perry senior, and had taken John and Elinor to Court over the non-payment of legacies left to them by their father. Their late father had owned a modest personal estate, including various household goods, cattle, and jewellery, totalling around £500. In his will, Thomas had left both Ann and Margaret a legacy of £50, and he had made John Perry, the defendant, and Thomas Perry the younger, John's brother and Elinor's late husband, executors of his will. Ann and Margaret claimed that after their father's death, a number of legacies owed out of the will had not been paid, including their own, and that

[20] TNA, E 134/1659/Mich33, depositions taken on behalf of Isabel Parkinson, Thomas Mather
[21] TNA, E 112/513, Case no.30

John and Thomas had taken their father's personal estate 'and converted the greatest part thereof to their own use'.[22] The brothers had also never shown the inventory of the estate to the two sisters, despite being asked for a copy.

When directly challenged over the payment of the legacies and the division of personal goods from the estate, the brothers had refused to pay any money to either Ann or Margaret and similarly refused to consult the will for an account of what was owed and to whom. According to the sisters, the brothers claimed that their father's debts were too large to allow for the additional payment of legacies, and at times suggested that the will gave no mention to legacies at all. It was also claimed that the brothers had divided the estate amongst themselves, something which witnesses attested to. Thomas Perry the younger had left his estate to his wife, Elinor, which included parts of his late father's estate that he had laid claim to. By the time of Thomas' death, his father's estate had still not been divided according to the will and his father's final wishes. It was only following Thomas' death that his wife Elinor was drawn into the matter, otherwise she would have had no reason to be called as a defendant.

The decrees and orders offered a rare insight into further case details and a Court decision. The absence of a copy of the answer was also remedied by the detail of the additional documents. Court records stated that Thomas Perry the older had a personal estate that amounted to £227 1s 4d, and that the two sons, John, the defendant, and Thomas, the late husband of Elinor, took control of the estate and divided it between them. It was recorded that John had admitted in his answer that Margaret had not yet received all of what was owed to her, stating that it had been Thomas' job to arrange the payment of a surplus of £6 17s 6d and her share of the household goods. Ann, he argued, had received her surplus and 'over and above her share in the household', and both Ann and Margaret had, according to him, received their legacies of £10, and had consented to both sums being lent as bonds to Richard Stubs and Ferdinando Pratt respectively.[23] The matter of these bonds was not mentioned in the bill, either suggesting that the plaintiffs did not know about them or chose not to mention them, and the majority of the detail about them, as well as information about a number of other bonds, came from the interrogatories of the plaintiffs. The questions posed by Ann and Margaret and the

[22] TNA, E 112/513, Case no.30, bill of complaint, Ann Perry and Margaret Perry
[23] TNA, E 126/9, page 193-194

depositions given for both the plaintiffs and the defendants strongly suggested that the bonds were made without their knowledge or consent. This revelation meant that not only did the brothers withhold what was rightfully owed to the sisters, but also entered a financial agreement in their names without their approval.

Several witnesses were called by the defendants, although the interrogatories did not appear alongside the depositions. Richard Stubs stated that he had a bond that was to be repaid to Ann, under the direction of William Radge, who was in turn indebted to the brothers Thomas and John.[24] Richard also stated that approximately six months after the division of the estate, he received a letter from his brother-in-law William Tawney in London, who was the master of Ann at the time, who requested, on behalf of Ann that Richard go to Thomas Perry and ask him to take her part of her father's goods. No further information was available on this matter, and it was not corroborated in any other depositions. Mary Perry was called as a deponent by the defendants, a twenty-two-year-old spinster, and sister of the other Perry siblings, who stated that she had never met Elinor.[25] Mary noted that she had received all the money and goods that she was owed, and more, totalling £20, as a result of the interest gained from the bond that she was appointed to receive from John Granger, which was owing to Thomas Perry. Ann Granger commented on the taking and delivery of household goods, stating that she saw Thomas Perry deliver a bedtick to Margaret.[26] John Bolton attested to the fact that Elinor was administering Thomas' estate, and that she had paid wages that were owed to him at the time of Thomas' death.[27] Edward Whitmore and Walter Greene also confirmed that money owed had been paid by Elinor as part of settling her husband's affairs.[28] William Barnsley, a commissioner and appearing as a deponent for both sides, deposed that he had been owed money and cattle by Thomas Perry senior, which had been repaid.[29] A bond of £13 3s 6d owed by Elinor's late husband however, had not been repaid. William had also been present when the brothers Thomas and John had divided the estate, stating that Thomas had taken £30 and John £19, and that some of their siblings, who were unnamed, had been present. William noted that they did not protest, and therefore consented to the divide. William also presented evidence of what was left to pay and to whom, listing six

[24] TNA, E 134/16Chas2/East6, depositions taken on behalf of Thomas Perry and Elinor Perry, Richard Stubs
[25] *Ibid*, Mary Spencer
[26] *Ibid*, Ann Granger
[27] *Ibid*, John Bolton
[28] *Ibid*, Edward Whitmore and Walter Greene
[29] *Ibid*, William Barnsley

siblings: himself, Ann, Margaret, Mary, James, and Richard. According to William, more than £6 was still waiting to be paid to each sibling, with the most, £11 1s, being owed to Ann.

Two witnesses called by Thomas and Elinor testified that they had overheard conversations involving the plaintiffs. Richard Perry described how during the harvest in 1659 he heard John tell his brother that he had told Margaret that if she wanted her money she had to visit Thomas at this home, with Margaret replying that Thomas 'will sure pay me I will therefore forbear it a little longer'.[30] Francis Whitbrooke deposed that he heard the sisters talking to John at the Four Ashes in April 1660, where they visited John travelling from Trysull. Francis stated that 'John said to both the complainants sisters I hope you will not go away but you will give me a discharge by reason I owe you nothing and they answered you owe us nothing, we will ask you nothing, we take our brother Thomas…our pay master'.[31] Henry Pratt deposed that a year or two earlier he had asked Margaret whether she had received the legacy owed to her, and that she had responded that John, her brother, 'says he will come over shortly about it'.[32] It appears then that there was at least some discussion between the siblings about the payment of legacies after their father's death. In both instances where only Margaret was involved, her apparent responses were relatively passive and not evidence of negotiation or active pursuit of what was hers. From the depositions it would appear as if Ann was the lead in these attempts to claim the legacies owed.

Mary Spencer v Ann Maundy, Kent, 1666

In comparison with cases that centred on the continuation of a husband's right being exercised following their death, a case brought by Mary Spencer in 1666 against Ann Maundy presented a context in which female right was the focus.[33] The rights in question may have been passed to the two widows, but their court narratives did not mention their origin, only reinforcing what rights were held and the extent of them. This is interesting

[30] TNA, E 134/16Chas2/East6, depositions taken on behalf of Thomas Perry and Elinor Perry, Richard Perry
[31] *Ibid*, Francis Whitbrooke
[32] *Ibid*, Henry Pratt
[33] TNA, E 112/421, Case no. 334

when compared to how other female rights were framed, with the right of the widow framed as the continuation of her husband's right rather than her own.

Mary Spencer described herself as a farmer in Orpington, Kent, entitled 'to and of right ought to have all tenths and tithes of all corn, hay, woods and underwoods'.[34] Beyond this, she offered very little context to her claim, instead focusing on the actions and wrongdoing of Ann Maundy and William Waller, with only the former being called as a defendant. There was no evidence of Mary bringing a separate suit against William, and it is difficult to confirm whether or not he had died by the time the suit was brought. Whilst William was mentioned in the bill, the main focus was on Ann's actions of cutting and selling wood without agreement with Mary, and Ann refusing to set out a tenth for tithes. Mary did not indicate how much had been taken, or in what capacity Ann had taken the wood, whether as a farmer, tenant or owner of land and property in the village – Mary was unable to confirm this information. She nevertheless accused Ann of 'leaving stumps, stubs and runts from which the said coppice woods…did spring and arise uncut'.[35] Mary's case against Ann was to determine the value of what had been taken, and subsequently to be reimbursed to maintain her right to tithes in the area.

Ann, who appeared as only one of two sole female defendants in Kent in the sample, answered that she was neither a farmer nor an occupier of the wood, and denied cutting down any wood within the parish, stating that Mary should pay her for the trouble of common law and equity suits over the issue. This suggested that the case had been unsuccessful in common law courts, most likely for lack of suitable evidence, and that Mary had brought the case to equity in search of redress. The Exchequer commonly dealt with cases that touched on land and tithes, thus making it an unsurprising case to reach its jurisdiction. In a further answer, Ann stated that the land was leased out to Richard Tinner, and noted that 'the severing, cutting and felling of the said wood and trees was utterly against the mind and desire of the defendant, and she believes and is well assured that the complainant knows and knew before the exhibiting of the said bill of complaint that this defendant was not concerned in the selling, cutting or carrying away thereof'.[36]

[34] TNA, E 112/421, Case no. 334, bill of complaint, Mary Spencer
[35] *Ibid*
[36] *Ibid*, second answer (duplication), Ann Maundy

We do not know the outcome of this case in Exchequer, nor whether it was resolved elsewhere.

The Changing Family and Responsibility

There was an ideological weight for the family and household in this seventeenth-century patriarchal society.[37] Therefore, whilst widowhood was not central to the family as marriage was, it was intrinsically linked to it. As the cases in this chapter demonstrate, the family still had an important role to play in the life of a widow, even if that family was not her own or she was the only surviving member. As Jacqueline Eales has commented, 'women could legitimately exercise authority through the social status of their family and their own role in their communities', and were therefore 'able to promote the rights of their family or to protect communal privileges in the same way that men did'.[38] Widowhood was the continuation of a family unit, with movements within it and beyond it. This was partly achieved through wills, with the transfer of money, goods, and property, some of which stayed within the family whilst other parts left it. Just as widowhood impacted family dynamics, so too could it lead to the transfer of fault and responsibility for that fault, passed from husband to wife. This was largely done through wills but could also result from administration of estate and entanglement with a husband's affairs. In the cases discussed in this chapter, notions of fault and entanglement were found within the residual family unit following entry into widowhood.

In the case of Isabel Parkinson and Frances Parkinson, the rights of both in the case were founded on the wills of their respective husbands, rights that ultimately conflicted with one another because of family ties. For both women, the land and property in question had been left to them for the remainder of their lives, and had been transferred to them, both once external to the family. Whilst Isabel still had the support of her father, Frances was left without her immediate family, and in dispute with her daughter-in-law, almost twenty years after becoming a widow. Isabel's widowhood gave her entry back into her familial home, with lands and property received through marriage. Frances' ability to provide a better life for herself, in the absence of the support of others, was hampered as a result of her remaining without her copy of her lease for

[37] Gowing, *Gender Relations,* p.29
[38] Eales, *Women in Early Modern England*, p.14

Overhouse. Witnesses deposed that the document was in Isabel's possession, meaning that proof of right had been taken.[39] Widow and daughter-in-law were in fierce opposition, as family dynamics shifted towards the newer members of the family and the family estate became divided as the men who had managed it died.

In the suit brought by Ann and Margaret Perry, rights within the family were also in opposition, although they had originated from a father rather than a husband, and primarily concerned tension between the rights of siblings. The interrogatories posed by the plaintiffs were clear and direct, showing a thorough understanding of their rights and how redress should be achieved. At the centre of the case was the issue of whether the brothers had been given consent by their siblings who were of age, the plaintiffs included, to both divide the estate amongst themselves and to take out bonds in the names of their siblings. Therefore, whilst only Ann and Margaret were named as plaintiffs in this case, they were also fighting for the rights of their siblings. These familial relationships, as James Daybell has commented, '[sponsored] ties of familial loyalty which privileged the collective interests of the family over those of the individual'.[40] All deponents called for the suit attested to the fact that the legacies were owed and had not been paid in full. Deposition responses suggested that the division of the estate and the taking out of the bonds were done without the plaintiffs being present and were presumed to also have been done without their consent. In their interrogatories, the plaintiffs queried the age of those siblings who may have been present and providing consent, drawing attention to the fact that recognising the weight of such decisions was beyond those below a certain age.

Mary Payton, a sixty-year-old widow, and the only woman called by the complainants, discussed the household goods left by Thomas Perry senior, noting that she saw goods being taken from the house, and heard that they were to be divided between the children, but didn't know what became of them.[41] Henry Pratt confirmed that he and William Bausley collected the goods from the home and were advised that they would be divided, but that in fact the goods remained in the hands of the defendants.[42] Richard Hopkins attested to this, stating that they were specifically in the hands of

[39] TNA, E 134/1659/Mich33, depositions taken on behalf of Frances Parkinson, George Pigot
[40] Daybell, 'Gender, Obedience, and Authority', p.50
[41] TNA, E 134/16Chas2/East6, depositions taken on behalf of Ann Perry and Margaret Perry, Mary Payton
[42] *Ibid*, Henry Pratt

Elinor.[43] William Bausley deposed that Ann and Margaret had not consented to the estate being divided, nor had any of the other legatees listed on the will.[44] Instead, John and Thomas had decided between them who would pay whom, put it in writing but taken no further action prior to John's death. William Perry, one of the siblings and twenty-four years of age, stated that he 'did never consent or agree to any such accompt or dividend between them and did never agree to take either of the executors alone for his payment of his legacies but accounted that one as well as the other liable to pay him'.[45] The Perry case also highlighted the potential impact on a widows' relationship or affiliation with the family that they had married into. Whilst Frances Parkinson was left with little surviving family, Elinor Perry was thrust into a family dispute that placed her as the opposition to the wishes of Thomas Perry and the wider Perry family. Although court narratives suggested that Elinor was not close with Ann, Margaret, or other members of the family, becoming embroiled in a legal action because of familial problems cut her off even further. Unlike Isabel Parkinson, we do not know what support, if any, Elinor received from her own family. We also cannot ascertain whether the suit had lasting implications for her widowhood.

Entry into widowhood could bring burdens as well as changes: the sudden burden of responsibility for the actions and fault of a late husband, which could then be played out in Court. It was sometimes 'an unwelcome responsibility that came at a difficult time in their lives. Not only did they have to enter an environment that might be unfamiliar to them, but they had to overcome a whole raft of obstacles'.[46] Cases in this chapter show a combination of widows and spinsters bringing suits to demand responsibility be taken by widows they had subpoenaed as defendants. Whilst the notion of responsibility as executrix or administratrix was still applicable, as it was in the previous chapter, there is another element to this responsibility – the implications and consequences of it.

In the case of Bridget Delbridge and Joane Lambert, Bridget took on the responsibility to claim tithes owed as Joane defended her claim that she was not liable to pay them. Unlike the other cases that Bridget brought against inhabitants of Tregony, Joane was not the primary focus of the suit that she was embroiled in. It was her husband

[43] TNA, E 134/16Chas2/East6, depositions taken on behalf of Ann Perry and Margaret Perry, Richard Hopkins
[44] *Ibid*, William Bausley
[45] TNA, E 134/16Chas2/East6, depositions taken on behalf of Ann Perry and Margaret Perry, William Perry
[46] Stretton, 'Widows at law in Tudor and Stuart England', p.208

whose actions were predominantly in question, and she, as administratrix of his estate, was charged with settling his affairs and answering to his debts. She had undoubtedly benefitted from the actions of her husband if he had been avoiding the payment of tithes, but her involvement in the case was purely a result of her marriage and being left a widow. She could not answer the suit in the same manner as the three other defendants had in their cases, in part because of her gender but also because of her health having excluded her from working alongside her husband in the past. It had not been her direct responsibility, evidenced further by the fact that she was unable to estimate the value of her husband's estate. This case was evidence of how a widow could be liable for something that she had little to no involvement in as a result of her role as a wife and the responsibility of widowhood. This was part of the reason why allowed power was granted, to enable widows to resolve such issues in the absence of their husband. In addition, the only use of gendered language by either Bridget or Joane was the latter's use of the weak woman trope and using this as a reason for her lack of knowledge regarding her husband's, and the household's affairs.

Elinor Perry, taken to court by her in-laws in the stead of her deceased husband, was held responsible not only for husband's actions but for her own actions by following a will that others then disputed, and then expected to remedy what her husband's actions had caused.[47] Her role as administratrix of Thomas' estate meant that the responsibility rested on her shoulders, and so the claim against her husband became a claim against her. Elinor only knew Ann and Margaret through her marriage, and it was unclear how close a relationship or even acquittance they would have had before the case was heard. Elinor's right to her husband's estate and money was challenged by Ann and Margaret on the basis that Elinor's husband had not been rightfully in control of all that he had left for her, so it was his original right transferred to her that was in question. Interestingly, both the sisters' attack and Elinor's defence centred on the notion of whether Thomas had done what his father's will had dictated, and there are no attacks based on Elinor's reputation and honesty. Elinor believed that her husband had settled the affair, and so had acted accordingly, paying the debts that had been left outstanding, and even passing furniture on to his siblings, but not paying out legacies that she believed to have already been paid. The sisters believed that John and Elinor were working together to prevent

[47] TNA, E 112/513, Case no.30

their receipt of their legacies from their father. They argued that the amount of debt claimed was untrue, and that his estate and debts had been fully accounted for before his death, which had left at least £100 in surplus. Both Ann and Margaret were relying on the money to pay their outstanding debts and were unsure what had happened to their father's estate.

The conclusion of the case was in favour of Ann and Margaret. John was ordered to give the two bonds to the plaintiffs and told to give Ann power of attorney to sue for the debts. The court also nominated Mr Baron Ramsford to fully settle the will of Thomas Perry senior to ascertain what remaining was owed to the plaintiffs and to decide what John and Elinor should pay them in recompense. This conclusion not only recognised Ann and Margaret's right as documented in a will, but also their right as legal individuals with control over the payment of money and debts. To a certain extent, it also drew attention to their indirect and consequential role within the family, as it was their actions at law that shed light on the improper conduct and actions of their brothers and how they had taken advantage of their younger siblings by keeping money that was owed to them. Whilst we cannot comment on Margaret, we do know that Ann had for some time been living and working in London as a single woman. She had returned home to Staffordshire to instigate a suit alongside her sister, and following the death of her brother, to make right on a will that had, to a large extent, fairly divided the family estate. It seems likely that she was also in Staffordshire soon after the death of father, and it is unclear whether she left for London after this period of time, or returned from London following his death. Whilst Elinor was forced to use her power as widow to defend her actions and those of her husband, Ann and Margaret were single women living independently of a typical head of household, appearing at law for their own benefit and security as femme sole. Their power at law was not sanctioned as Elinor's was, but came without the responsibility of widowhood, or the legacy of a husband.

The Independence and Restrictions of Widowhood

Looking beyond the family unit and taking on the role of executrix or administratrix, there were specific freedoms and limitations within widowhood. It was the combination of and interaction between these freedoms and limitations that constituted allowed power,

predominantly influenced by gender, but also by social status, class, and financial security. The intersection of them varied, as did any early modern life. For widows, the independence that their status granted things such as legal identity, social autonomy, and the ability to make a will. What this translated to in everyday life was wide ranging. The independence of widows however 'was a matter of contemporary concern', given their 'unbridled sexuality' and 'freedom from household restraint'.[48] The restrictions on widowhood, by contrast, were more uniform, and acted as limitations from a married state and a continual cycle of patriarchal norms. Froide has cautioned against over-romanticising the freedom and independence of singlewomen in early modern England, and I would argue that the same can be said for widows.[49] In cases where a sole female litigant did not mention a family or taking over the management of her husband's estate, their concerns appeared to be solely their own. Of course, the absence of mention did not necessarily indicate an absence entirely but given that so many narratives in this project were structured around male right and the transfer of authority, the lack of mention is worthy of recognition.

In the suit between Mary Spencer and Ann Maundy, only the depositions for the former were available – it was unclear whether Ann's were missing or were not taken. In the interrogatories, Mary discussed the role of Richard Mortimer, who was not mentioned in the bill, answer, or exception. The interrogatories suggested that Richard was the agent of Ann, who either cut down the wood himself or directed others to do so at Ann's direction.[50] Mary claimed that Richard used several wagons to take wood away, arguing that Ann intended to keep them for her own use. Deponent John Green noted that Richard was a farmer and had cut down trees for many years and worked for Henry Mallor of Northolt.[51] John Capon attested to this, noting that Richard was employed by Henry and not Ann, but added that he saw Ann directing three wagons away from the area.[52] Richard Mortimer was called as a deponent, and confirmed that he had cut down some of the wood, as had Ann earlier in the year, as argued by Mary.[53] She also claimed that Ann was a landlady in the area, and that she made allowances to her tenants for what she had

[48] Pamela Sharpe, 'Survival strategies and stories: poor widows and widowers in early industrial England' in Sandra Cavallo and Lyndan Warner (eds.) *Widowhood in medieval and early modern Europe* (Harlow: Longman, 1999), p.228
[49] Froide, *Never Married*, p.42
[50] TNA, E 134/19Chas2/East11
[51] *Ibid*, depositions taken on behalf of Mary Spencer, John Green
[52] *Ibid*, John Capon
[53] *Ibid*, Richard Mortimer

taken. No deponents commented on this. Mary also noted in the interrogatories that she had offered 'to refer the matter in difference to two understanding men to end the same rather than go to law' and asked deponents to attest to Ann's answer.[54] Thomas Gilping deposed that Ann had refused the offer, instead saying that she 'would stand it out at law for she could prove the said wood she carried away to be roots'.[55]

The lack of interrogatories by Ann, alongside the testimonies of the deponents, makes it difficult to ascertain more details from Ann's perspective. Multiple deponents confirmed that Ann had been present, had taken wood and had directed Richard to cut it down for her. Testimonies supported Mary's claims, and they are interesting in light of the fact that Mary had originally offered an informal mediation, possibly following an unsuccessful common law suit. If we follow the evidence presented in the depositions, we also see how Ann exercised authority to ultimately undermine another woman's right and then deny any wrongdoing. The case also brought into question what was classed as tithe-able in this context, and how legal right could be navigated. In Mary's bill, she acknowledged that roots were exempt from inclusion in tithes but believed that Ann knew the importance of the roots for future felling and coppicing and should therefore be liable for the tithes that her actions later hindered. Thomas Gilping's deposition supported this notion and demonstrated Ann's understanding of what was tithe-able. If true, it was also evidence of strategy by Ann, who explicitly stated that she never cut down trees or wood, and she would not sell woods, which she did not if she told Richard to take the roots. None of the deponents testified to what was taken or what was in the wagons, so could not corroborate Mary's belief that wood was taken and cut from the roots as well as stumps being taken.

The evidence suggested that Ann knew of Mary's right to tithes in the area, but she attempted to avoid this. Her refusal of informal mediation suggests that she thought she was in the right or could persuade others that she was. Ann did not however offer any support for her right to act as she did, but in employing others to take wood that she would then benefit from, she exercised a right publicly which was not immediately questioned or denied. Those who saw her directing wagons away from the scene may have noted her presence, but they did not challenge her. Ann acted with planning and

[54] TNA, E 134/19Chas2/East11
[55] *Ibid*, depositions taken on behalf of Mary Spencer, Thomas Gilping

independence, directing others to carry out work for her, for what purposes we do not know. This independent action however had an impact on another widow, who was also acting independently, both looking to secure their estates and income in the absence, both in mention and presence, of male partnership.

Isabel Parkinson and Frances Parkinson, by contrast, had their widowhood restricted by opposing claims to land and property, when both were seeking financial security.[56] Frances' financial strategy, if it could be called such, was to ensure her own security and protect what she believed had been left to her by her husband. Isabel's was to some degree the same, but she benefitted from a more secure financial future with the support of her remaining family. Neither Isabel nor Frances necessarily benefited from the 'freedom' of widowhood – they were to some degree reliant on the outcome of the Exchequer case for security, although Frances appeared more precarious than Isabel. Both relied on the allowed power of their widowhood to attempt to secure their future. This case was an example of how widowhood, especially the early years of the life stage, was rooted in the legacy of the late marriage, and on finding a means to survive with what a husband had left behind. Isabel and Frances were competing over the same rights, and whilst the outcome is unknown, we do know that only one of them will have achieved the redress she had sought.

The case of Dorothy Estmond and Elizabeth Archer had examples of both a widows' independence and restrictions. Whilst the latter was expanding her land holdings and subsequently her income as head of household, the former was struggling to reclaim lands and money exchanged on the eve of her husband's death. The same leases and monetary sums that had helped to secure Elizabeth's independence were absent from the estate that Dorothy's husband had left behind. There are only records of Dorothy's and William's interrogatories and accompanying depositions. A replication revealed that Elizabeth was subpoenaed and told to call witnesses, but no further documents are extant. The interrogatories offered by Dorothy and William were surprisingly short and lacking in detail.[57] She did not, for example, ask any questions related to Elizabeth entering her home and sending people away, nor any regarding the health and faculties of her husband before he died. The interrogatories instead focused

[56] TNA, E 112/311, Case no.140
[57] TNA, E 134/9Chas1/Mich28

on a small parcel of land, a meadow called Great Ham, and the role of John Newman, an alleged agent of Elizabeth. Questions centred on how Elizabeth had directed John to disturb cattle and make claims on the estate on Elizabeth's behalf. Four male deponents appeared to answer Dorothy's interrogatories, all of whom had seen Elizabeth but had never met her. They had, however, all met and interacted with John, and all attested to the role that he had played as Elizabeth's agent taking hay from the meadow and claiming overdue rents from tenants. William White deposed that John 'did always allege that what he did, was for the said Elizabeth Archer, and for her use'.[58] Robert Hammer and Edward Gillet both deposed that John served writs and court orders on Elizabeth's behalf.[59] It was also claimed that Elizabeth directed John to sell the hay that had been collected.[60] Gender was an integral aspect of this case in an implicit sense. The interaction between Dorothy and Elizabeth in this case was almost entirely the result of their widowhood. Dorothy's involvement in litigation appears to have started only once she became a widow, and Elizabeth's independence, both financial and social, was similarly supported by her legal status as a widow. This supports the idea that whilst there was an absence of gendered language or tropes, gender still played a role in the case, framing the very context of the issue. The relative freedoms and limitations of both Dorothy's and Elizabeth's lives were also a result of the gendered category of widowhood. Cases like this further the notion that widows were not simply honorary men – they were still women, and their widowhood was ingrained into their legal identity and experience of litigation.

Bridget Delbridge was keen to exercise her independence, continuing on the rights of her late husband.[61] Her claim and ultimate goal were the same across all four cases. However, the framing of right and what was owed was different as a result of gender. Firstly, the case was only brought by Bridget in the initial instance because she was a widow to a vicar. She was arguing for legal right, and a socially recognised and long-established agreement, of tithes which had been due to her husband during his lifetime, and were still due to her following his death, despite the fact that he had never appeared to raise the issue himself. What had been due to Nathaniel in his lifetime Bridget saw outstanding and due to her. We might ask what Bridget was entitled to in regard to tithes following the death of her husband, and whether what had been left to her gave her the

[58] TNA, E 134/9Chas1/Mich28, depositions taken on behalf of Dorothy Estmond and William Swanton, William White
[59] *Ibid*, Robert Hammer and Edward Gillet
[60] *Ibid*, John Copp
[61] TNA, E 112/292, Case no. 44, bill of complaint, Bridget Delbridge

right to continue to collect tithes. Joane on the other hand did not hold the same land that her husband had. This meant that whilst she was unable to continue the life she had lived as a wife, she was also not liable for payments as her husband had been.

In the case of Ann, Margaret and Elinor Perry, the question of independence and restriction should also include spinsterhood, as well as widowhood. Neither Ann nor Margaret had a legal status listed in the Exchequer documents.[62] They could be noted as spinsters in that they were listed as the children of Thomas Perry and appeared with the family name. There was no clear record of either Ann or Margaret's age, so it is not known if they were young or old. As Pamela Sharpe has noted, 'Widows were viewed very differently from spinsters. Spinsters were also free of direct patriarchal control but the assumption was that they had chosen their state. Widowhood was involuntary'.[63] There was similarly little known information about Elinor, other than the fact that she was, by the very fact that she was involved in the case and in that it was recorded, a widow. Her legal status made this case her business, and in administering the affairs of her husband, she was ultimately responsible for the affairs he had not resolved, whether intentionally or not. It is then, by circumstance only, that this case involved women on both sides. Elinor's role as a widow dictated her involvement. It was her earlier choice to marry John Perry that saw her involved in litigation, not by her own wrongdoing or challenge of legal right.

There were two types of female legal identity evident in this case – single women claiming their rightful inheritance, and a widow defending what had been left to her. For Elinor, her widowhood created a legal identity, recognised once she became a wife without a husband, free of coverture and given a socially and legally recognisable responsibility, a sanctioned authority and allowed power within the law. Ann's and Margaret's, by contrast, was sanctioned within the Court, but it was not an identity passed from a husband. These two examples of female legal identity were able to meet in the early modern equity, but the case at hand still concerned the will and estate of a male head of household. We also see the different ways in which claiming what was owed could be approached by different women in the same context. Margaret, based on the testimony of witnesses, was relatively passive, choosing to wait on her brothers rather than pursue

[62] TNA, E 112/513, Case no.30; E126/9, page 193-194; E134/16Chas2/East6
[63] Sharpe, 'Survival strategies and stories', p.229

what was owed. Ann on the other hand travelled back from London to pursue the case, and it was only when Ann was present that the sisters directly challenged their brothers about what was owed to them. This case also provided as example of how male death could have a different impact depending on what their role had been. Thomas, the father, left legacies and money, rather than legal right and title. The death of Thomas, the husband, left legal power and identity behind. Interestingly though, Elinor was freed from the bondage of marriage to be granted legal right, whereas Ann and Margaret continued to hold the status of single women, or spinsters. The death of their father changed very little for them in terms of legal status, and the impact on their social status was difficult to gauge. This case therefore demonstrated the differences between losing a father and a husband, and the differing responsibilities that could subsequently fall on female shoulders.

When Women Met in the Exchequer

Female litigants were drawn most often into litigation because of men, not because they had a legal right to seek redress. Those instances in which female litigants appeared against each other was the most definitive example of female legal identity in action, and whilst such instances were uncommon, they were entirely possible given the legal rights of a widow, thus highlighting how strange it was that they were not more common. Appearing against each other in the Court did not fundamentally alter the narratives that they shared or the language that was used. There was of course no novelty to be found in these occurrences – the workings of the legal system made it possible and probable that widows would meet at law, especially given the conflicting social pressures regarding remarriage. Legal right was not spoken about differently, nor were female litigants less likely to challenge other female litigants when they appeared against each other in court. Certainly, the frequency of the encounters was less likely, but this was due to social factors rather than an unwillingness.

The cases in this chapter have demonstrated that female legal right was most influenced by the nature of the case being brought or defended, and most complicated when it had roots or entanglements with husbands since dead. Female litigants did litigate for their own concerns, such as Mary Spencer and Ann Maundy, and could appear as independent widows seemingly free of any male influence, such as Elizabeth Archer.

However, many female litigants were driven or dragged to Court because of family concerns and the responsibilities of becoming a widow. For both groups, the power and legal right that they held was sanctioned, whether it was used for their own security, that of their family, or their own gain. The extent to which this allowed power was made use of, and how far removed it appeared to be from the patriarchal society that had once confined them, was dictated by how much distance a widow had from her past married life. Her legal identity was simply borrowed to allow her to settle her husband's affairs – but it was her identity should she make a life of her own. The patriarchal paradigm is here seen as a paradox, where power had to be given, but with limited ways to control it once had been.

Chapter Six

Titled Widows

We are often forewarned about suggesting age-old truths or consistencies across time and societies, but there is perhaps one thing that has held to be fiercely true for many centuries past: the power of wealth and associated status. In any capitalist society of course, this is par for the course, but even before its embrace during the Renaissance, money has resided close to power. The impact that such a catalyst has had is multifarious, although not always consistent. The titled women of early modern England, just as their sisters in Europe, were part of this category of wealth, even if little of it was rightfully theirs. These women lived in ways that the majority of the populace would never hope to experience. Yet we would not simply say that they were free because of their wealth. Women were expected to marry, and within marriage they were still subject to the same conventions and limitations as women from across the social spectrum. Experiences did, of course, vary considerably as various intersections collided and the influence of wealth was not quite the same for women as it was for men. Just as movement from marriage into widowhood was a catalyst for untitled women, so too was it for titled women, who made the transition with the wealth that they had lived within but perhaps had very little control over. We must of course acknowledge that the women who did appear in the Exchequer were far from the poorest in seventeenth-century English society. In order to have access to this kind of litigation, money was necessary. Yet the wealth that some titled women had access to was immense in comparison to some of other litigants in this sample, men as well as women.

Alongside the changes that widowhood brought for all women, titled women were met with increased or newfound access to wealth, estate, and perhaps social responsibility. Most obviously, this provided greater financial independence for a variety of pursuits, including litigation. Of even greater interest though was the impact that money had on the emergence and development of a female legal identity. Boydston reminds us that 'there is no social subject whose experience is solely constructed through the processes of gender… even an identity as male or female is in constant and

inseparable interplay with other processes of status and identity'.[1] The content of their Exchequer cases was not unaffected by their wider concerns as a result of their wealth, in fact it was often the reason for the cases being brought, but the most notable differences between these cases and those of untitled women was the expression of legal right and identity. They also complicate the understanding of allowed power, and the role that men played in the affairs of their wealthy widows.

This chapter draws on the cases of five titled women – three Dames, a Countess, and a Duchess. These cases provide an opportunity to analyse how experiences could differ based on social status, considering the variety to be found in pursuits of redress and the impact that wealth could have on early modern women's engagement with the law. This is not to say that all wealthy women were more adept, experienced, or successful litigators, nor that financial security ensured case content or outcomes. Instead, the aim is to analyse the role that wealth and social status could play in women's ability to frame, argue, and defend their legal rights. We cannot see women, of any combination, as a homogenous group, but trends within collectives gives some indication of experiences that lay beneath.

The Appearance of Titled Women in the Court

The court was not only accessible to a variety of women based on their legal status, but their social status as well. The majority of female litigants were recorded as untitled, but 15 per cent of female plaintiffs and 10 per cent of female defendants were titled women. When we consider the low number of families in the peerage during the seventeenth century, these figures are notably high. They are partly explained by the remit of the Exchequer as a destination for debtors to the Crown, which would support their presence in such a Court.[2] They also suggest a preference towards Exchequer as an avenue of redress for the elite. Titles included Dame, Countess, Viscountess, Lady, and Duchess, and appeared across the period and the country. Titled female plaintiffs appeared most frequently in Yorkshire, the Northeast, and Cumbria (Figure 45). As a proportion of total plaintiffs in a region however, they are most prevalent in the Southwest, where 23 per

[1] Boydston, 'Gender as a Question of Historical Analysis', p.156
[2] For information on the number of peerage families, see a reflection on Gregory King's Scheme of 1688, Tom Arkell, 'Illuminations and Distortions: Gregory King's Scheme Calculated for the Year 1688 and the Social Structure of Later Stuart England', *The Economic History Review*, Vol.59, No.1 (2006), pp.32-69

cent of all female plaintiffs were titled. In comparison, titled women only constituted 7 per cent of female plaintiffs in Yorkshire, the Northeast and Cumbria. The higher numbers of overall female plaintiffs in this region goes some way to explaining this. For defendants, the Southeast had the highest percentage and absolute numbers, with titled female defendants accounting for 17 per cent of female defendants in the region. It is the representation of titled women in comparison to untitled women that is of interest, and these proportions help to show their prevalence relative across regions. When we consider the presence of titled women across time, we see regional variance as well as differences between plaintiffs and defendants. Overall temporal trends showed similar levels of involvement in the Court before and after the Civil Wars. Regionally, trends varied. The most notable occurrence was seen in the Northwest and West Midlands, where there was a sudden increase in the number of titled defendants during the early 1660s. Such a surge in numbers was limited to this single instance. Southern regions saw a slight increase in the presence of titled women in the 1650s. Numbers remained steady elsewhere, apart from a decrease in the number of titled defendants in East England after the Civil War years.

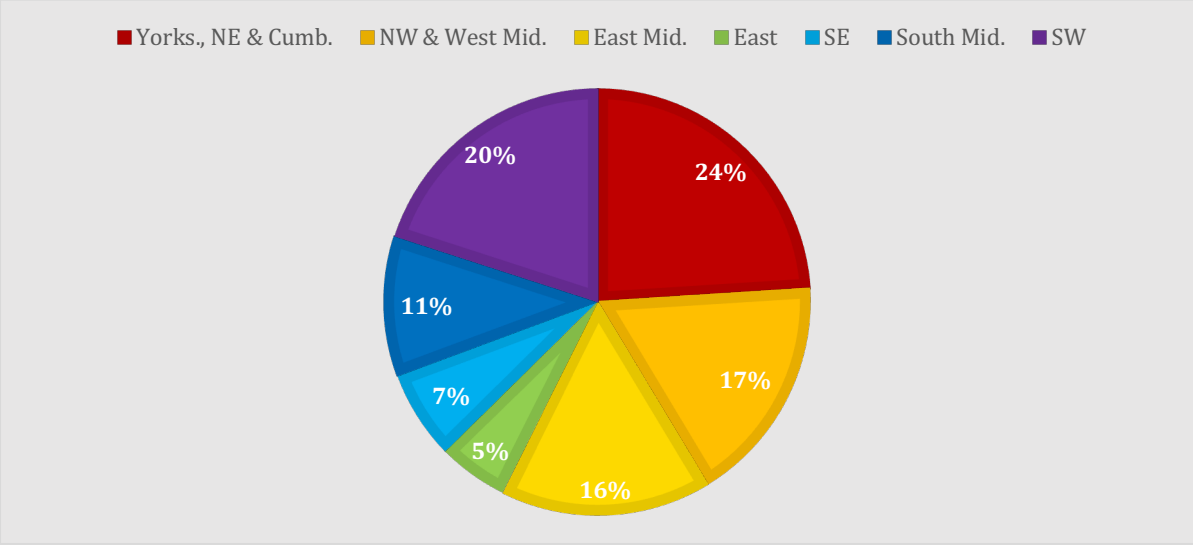


Figure 20 - The distribution of female titled plaintiffs across regions, 1620-1670

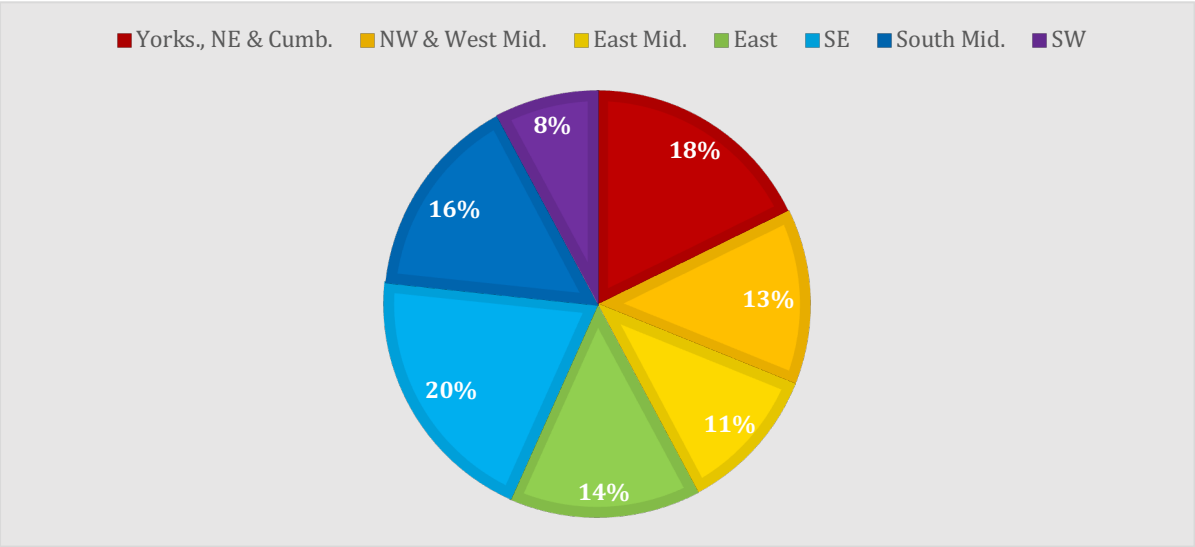


Figure 21 - The distribution of female titled defendants across regions, 1620-1670

Of titled women, the majority were widows: 65 per cent of titled female plaintiffs were widows, whilst almost 31 per cent were wives. This was similar for titled defendants, where 60 per cent were widows and 35 per cent were wives. Titled plaintiffs made up just over 16 per cent of sole female plaintiffs, and 15 per cent of sole female defendants. We might have expected titled female litigants to constitute a higher percentage of sole litigants, especially given the prevalence of widows in this category and the concerns of the Court. However, when we consider that almost 30 per cent of titled plaintiffs appeared alone, as did 19 per cent of titled defendants, we see that titled female litigants were more likely to appear as sole litigants. These findings highlight that whilst social status had some impact on litigation, it did not mean that litigant practices, in particular that practice of appearing alone, was dictated by status.

To explore what impact social status could have on litigation trends, we can first consider the case types that titled female litigants were most often involved in (Figures 47 and 48). In general, trends were very similar with untitled female litigants, with property cases dominating, where titled women accounted for 19 per cent of all female plaintiffs involved in such cases, followed by land, and then tithes cases. In contrast with broader trends, titled female litigants were more likely to be involved in manorial

customs cases, with titled plaintiffs making up 22 per cent of all female plaintiffs involved in these cases. Such findings reflected the role that many titled women played in their local communities, as well as the role that the Exchequer had in dealing with cases concerning customs of the manor. Titled female litigants were also more likely to be called as defendants in cases regarding money and business, making up 19 per cent of female defendants in this category. This proportion in cases to do with money and trade was largely made up of cases concerning international business and sale of goods such as cloth and wine. Money cases were more concentrated at the start of the period in the 1620s. Similar to broader trends, there were high numbers of property cases involving titled female defendants during the early 1630s. Interestingly, we also see a surge in land cases defended by titled women in the early 1660s, which corresponds with a similar trend seen in wives defending during this time. When compared to patterns in case type over time for untitled women, the most noticeable differences were the sudden increase in lands cases and gradual decrease in property cases. It should also be noted that very few titled women were involved in cases related to right and title, and even fewer for those concerning wills and marriage. In all instances, absolute numbers were small for titled women – there were only 165 in this sample. Nevertheless, patterns were still identifiable, and similarities shared with untitled female litigants were still evident.

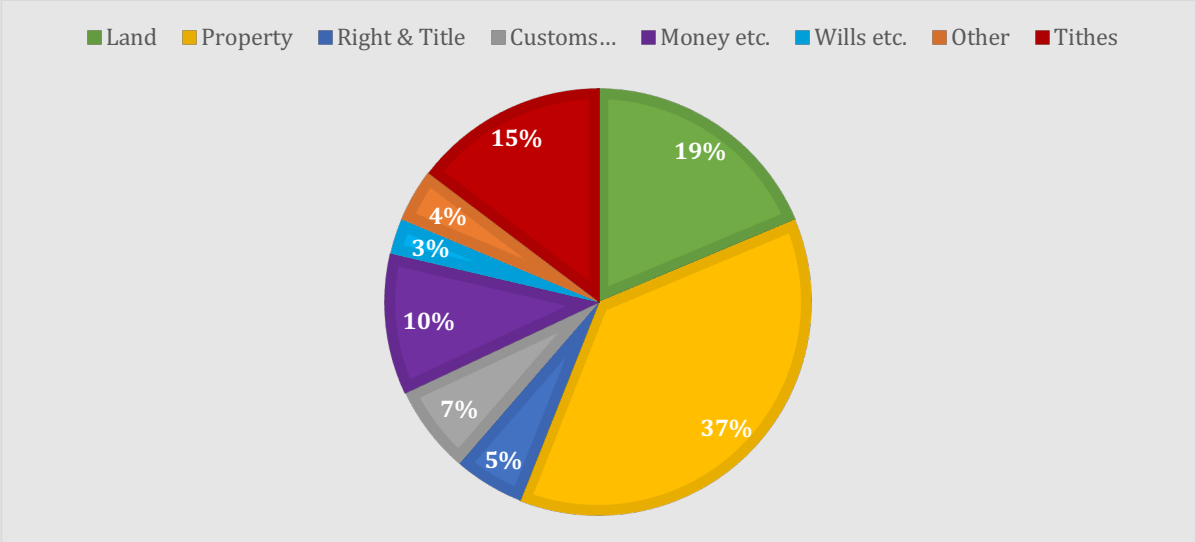


Figure 22 - The distribution of female titled plaintiffs across deposition type, 1620-1670

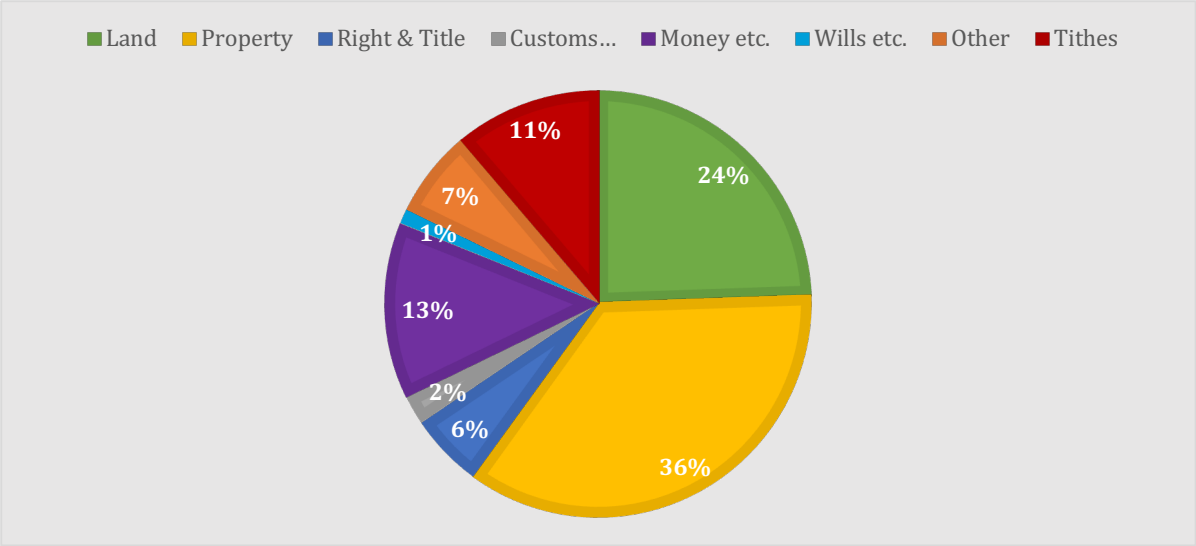


Figure 23 - The distribution of female titled defendants across deposition type, 1620-1670

A combination of wealth and social standing made litigation more easily accessible for titled widows, and their concerns could be well-suited to the remit of the Exchequer. Their affairs may also have made them more likely to need to resort to litigation rather than mediation outside of court. In this sample, some titled women appeared on numerous occasions, across the country and across a range of case types. Here we see involvement with a number of local communities and disputes, reaching beyond the boundaries of immediate, private concern. Each of the five cases in this chapter touched on issues of a larger scale than other cases in the thesis, but scale did not necessarily change primary concerns such as family, living as a widow and estate management. However, as a result of their social standing, the relevance of these cases within the local community and beyond was notably different, having wider repercussions and more lasting consequences.

Jane, Countess of Shrewsbury, Yorkshire, 1620

Of those women who brought cases to the Court, there were those who did so in order to have their right officially recognised by the law and, by extension, the local populace the right touched upon. Jane Countess of Shrewsbury, born Jane Ogle in 1561, brought a case to the Exchequer in Yorkshire in 1620, acting as a plaintiff alongside Katherine

Witherington, who appeared to be a friend rather than a relation.[3] She presented a case arguing for the legal right that she, and Katherine too it appeared, had to tolls taken from the River Idle, within the lands of the Manor of Bawtry. The river would later be affected by drainage work in Hatfield led by Cornelius Vermuyden, but in 1620 the river was passable from Nottingham to Doncaster, in south Yorkshire, and even as far as Kingston-Upon-Hull. Crucial to this case was the extent to which the river had greatly benefitted from improvements carried out in the early seventeenth century by Edward Talbot, 8th Earl of Shrewsbury, late husband to Jane. A member of parliament based in Northumberland, Edward had inherited his title of Earl from his eldest brother Gilbert Talbot, the husband of Mary Cavendish. Edward died in February 1617, leaving no surviving children, and his title was passed to George Talbot, his closest male relative. Edward made his 'most dear and well-loved wife' Jane his sole executor, noting her 'faithfulness and care to see all things by me to be appointed'.[4] He left her the Manor of Langford in Nottingham, along with all of his properties there, for the payment of his debts, and for her use following the settlement of his affairs. In addition, Edward left sums of money and annuities to numerous family members and servants, as well as leaving gilt cups with covers to his mother-in-law Katherine Lady Ogle and his sister-in-law Lady Katherine Cavendish. He also left money to several parishes for the support of the poor. Sir Richard Hutton, a Justice in Common Pleas, was named a supervisor of Edward's will.

The lands within the Manor of Bawtry were Jane's primary concern following the death of Edward. Jane was involved in numerous other law suits in Shrewsbury and Nottingham concerning property and mortgages.[5] Most of the cases involved (on the same side as well as against) her Cavendish relatives, by the marriage of her sister Catherine to Sir Charles Cavendish of Welbeck, and her original Ogle relatives, an ancient family from the time of William the Conqueror based in Northumberland.[6] This was one of the few cases where she appeared independent of such family ties, as far as narrative information revealed. Jane's argument was with the merchants who used the River Idle for the transport of commercial goods. At the centre of the suit was the recognition of Jane as the rightful owner of river tolls, rather than rights over the land surrounding or along the river within the Manor of Bawtry. However, this legal right was not passed

[3] TNA, E 112/140, Case no.1568, bill of complaint, Jane Countess of Shrewsbury and Katherine Witherington
[4] TNA, PROB 11/131/263
[5] From TNA Discovery search: 'Jane Countess of Shrewsbury', such as Nottingham Archives, 157 DD/P series
[6] For example: TNA, C 21/C30/13

down from her husband, or from a male relative, but was instead purchased by Jane for a large, and undisclosed, amount of money after her husband's death. Such a purchase was therefore made using her own money and entitled her to authority over movement through lands she likely knew well. The payment gave her rights over all of the profits and commodities on the boats that passed through Bawtry lands via the River Idle, as well as a general cost of passage.

Despite this right being Jane's, a right purchased not inherited, and its history being one within royal hands, Jane centred this right around the fact that her husband had made improvements on the land, thus allowing easier passage which was, by 1620, enjoyed by many people. Jane's right stemmed from her husband's efforts and subsequent land improvement, for which she would financially benefit. This presented a dichotomy between her right through transaction and her right through relation – both were influenced by the allowed power of her widowhood, but the former was also influenced by her wealth. The fact that Jane had purchased the rights to receive tolls along the river, for which she paid a yearly rent of around £300, was briefly mentioned in passing, as was the fact that the rights would pass to Katherine on Jane's death.[7] It was instead the efforts of her husband that recurred across the various court records, and it was these efforts that were used to justify her control over them. As a result, the central argument of the defendants, and a major focus of interrogatories, was whether the river had once been a common passage.[8] Whilst Jane denied that there had ever been common passage in the last twenty years, which was corroborated by some of her witnesses, defendant witnesses argued the contrary, and no witnesses on either side commented on Jane's right to the tolls as purchased from the Crown. In total, fourteen witnesses were called, five by Jane and nine by the defendants, all of whom were men.

The defence was made up of six men: John Mosley; William Boote; John Noble; John Shaw; John Fox; and John Winter. Part of the argument put forward by the defendants was the role played by Richard Richardson, who became the bailiff for Jane after the death of her husband. The defendants argued that Jane was being misled by Richard and that it was actually a suit brought by him but in her name.[9] They also claimed

[7] Only referenced in the bill of complainant: TNA, E 112/140, Case no.1568,
[8] TNA, E 134/18Jas1/East12
[9] TNA, E 112/140, Case no.1568, answer, John Mosley, William Boote, John Noble, John Shaw, John Fox, and John Winter

that Richard had refused the payment of the toll made by the defendants, instead demanding the profits of the commodity being transported. Jane denied any influence of Richard and claimed that the defendants were attempting to undermine her authority by transporting goods at their pleasure and encouraging others to do the same.

Dame Mary Harrington, Somerset, 1625

In the case brought by Dame Mary Harington, we see the protection and statement of longstanding rights. Mary was born in 1565 to Sir George Rogers of Cannington and Jane Winter, and married Sir John Harington in 1583, becoming 'a member of one of the more colorful families of the Tudor period, a family that was involved in both local and national government'.[10] John, a courtier, author, and godson to Queen Elizabeth I, completed the family manor in Kelston in 1590 – 'it was said to be the largest and grandest house in the county of Somerset'.[11] John Stephen Edwards commented that their marriage 'seems to have been a love-match…[John] wrote poems, sonnets, and epigrams to her regularly', and called her 'Mall'.[12] John was briefly imprisoned in 1603, and faced debt as guarantor for his uncle. Following his death in 1615, Mary remained a widow until her own death in 1634 – she was buried next to John at the St Nicholas Parish Church in Kelston. Mary named her daughter, Elizabeth Harington, sole executrix, leaving her all goods and furniture from the Kelston estate, an estate in Bitton, a house in Bath, as well as a lease of a tennis court and orchard.[13] In addition, she left small amounts of money to her other children, £20 to her chaplain, £10 to her servant Jane Backway, and 25 per cent extra on top of all other servant's wages. The wealth that Mary enjoyed, in terms of property and land, was focused on a relatively small area between Bristol and Bath. Her family home in Cannington, under 50 miles away, was hers to manage following the death of her mother, after being named as executor alongside a minor. In 1614 John Harington held the manor of Kelston as well as land and property in Batheaston, Kelston and St. Catherine, all held by right of the Crown.[14] In 1583, John transferred the Kelston estate to Mary for her life and the estate of St. Catherine was conveyed to William Blanchard of

[10] John Stephen Edwards, 'A new portrait of Mary Rogers, Lady Harington', *The British Art Journal*, Vol. 12, No. 2 (2011), p.55
[11] *Ibid*, p.56
[12] Edwards, 'A new portrait of Mary Rogers, Lady Harington', p.56
[13] TNA, PROB 11/173/385
[14] TNA, E 112/119, Case no.409, bill of complaint, Dame Mary Harrington

Marshfield, Gloucestershire, with a yearly rent of £20 and 35s towards the tenth due to the Crown. Shortly afterwards, John notified William that if the lands were taxed, William could deduct the cost of any legal fees from the yearly rent. The said rents were then transferred to Mary. Following John's death, estates and lands were controlled by either Mary or their son John, but Mary retained control over all that her husband had conveyed to her, which would be passed to their son on her death.

Mary's case, brought in 1625, was against William Blanchard and concerned the estate of St. Catherine. She argued that William had refused to pay the yearly rent of £20, or any part of it, for the past two years, with him claiming that he was keeping the money in recompense of the encumbrance on the land. Mary stated that William had repeatedly failed to provide any information of evidence of the damage that he had sustained, and that she wanted the matter resolved before her death so that her son would not have to deal with the issue. William claimed that John had sold him the manor and surrounding lands of St. Catherine, so he did not need to pay rent for it and that Mary was wrong to tell others that he had no right to it.[15] He also argued that he was ready to pay the tenth out of the farm and premises at St. Catherine, but that he thought he needed to pay this to the Crown rather than to Mary. The case, he said, should instead be presented at common law.

The replication from Mary denied that William was ever sold any part of the manor, farm, or lands of St. Catherine, and that his rent of £20 was only for part of the lands and did not include any of the tenements.[16] William had paid the required rent for eight years following the death of John, although rarely voluntarily and usually following demands from Mary, but that three years earlier issues began and for the past two years William had refused to pay anything. Mary suggested that the recent change was caused by the involvement of others, convincing William that the deeds he had following the conveyance gave him powers and rights that were false – her replication made it clear that were he to provide the deeds to the court, her legal right would be proven. William's rejoinder questioned Sir John Harington's extent of ownership prior to his death and the legitimacy of Mary's claim.[17]

[15] TNA, E 112/119, Case no.409, answer, William Blanchard
[16] *Ibid,* replication
[17] *Ibid*, rejoinder

Frances, Duchess Dowager of Richmond and Lennox, Yorkshire, 1626

A case brought in Yorkshire by Frances Duchess Dowager of Richmond and Lennox in 1626 had a balance between active choice and residual male influence. Born Frances Howard in 1578, she was orphaned at an early age and was married three times before her death in 1639. She was one of the better-known women in the sample. In 1592, aged fourteen, Frances married Henry Prannell, the son of a wealthy wine merchant and patron of the Virginia Company. Two years after Henry's death in 1599, Frances married Edward Seymour, Earl of Hertford in secret, which supposedly led to the suicide of her other suitor at the time, Sir George Rodney. They were married for twenty years until Edward's death in 1623. Frances then married Ludovic Stewart in the same year, the 2nd Duke of Lennox, Privy Councillor and cousin of King James, who was created Earl of Newcastle and Duke of Richmond. A year later in February 1624, Ludovic died suddenly, and Frances remained a widow until her death. She had no children from any of her marriages, and in her will she asked that her money be used for charitable purposes.[18] She was involved in multiple cases brought by her to the Exchequer, some originating in London and the Northwest as well as in Yorkshire. There was evidence to suggest that Frances was the anonymous writer who responded to Joseph Swetnam's 1617 misogynistic pamphlet, and a number of her private correspondences have survived. It appeared that not only was Frances wealthy, she was also 'ambitious, a shrewd business woman and beautiful, as well as apparently vain and greedy, she inevitably inspired rumour and the unfriendly darts of Jacobean wags'.[19]

Frances was acting as the administratrix of her third husband's affairs in this suit brought by her to the Exchequer, a case which concerned the sale of cloth and her role as a business owner.[20] Before Ludovic's death, he and his wife had been granted a patent for the production of draperies and woollen stockings. The clothes were produced in York and commonly sold in London by merchants or traders on behalf Frances and her husband. In the suit heard at the Exchequer, Frances brought a case against two traders, Thomas Dawson and Ambrose Appleby, claiming that she was yet to receive payment for

[18] Canterbury Cathedral Archives, CCA-DCc-ChAnt/W/217A
[19] Susanna Hoe and Derek Roebuck, *Women in Disputes: A History of European Woman in Mediation and Arbitration* (Oxford: Holo Books, 2018), p.217
[20] TNA, E 112/263, Case no.: 297, Bill

the clothes taken by them from York to sell in London. According to her account, Thomas and Ambrose had come to an agreement with Walter Raycock in London at a standard rate, but the payment to Frances had been left for four years and the cloth had remained in their possession during that time rather than being passed on to Walter Raycock. In addition, the two defendants had been avoiding the payment of duties for the clothes that they had taken from York. The purpose of Frances' involvement in litigation was to be granted the money owed, and unjustly kept from her.

The incident itself had originally transpired during the life of her husband Ludovic, but interestingly this was also before she had married him in 1623. It therefore appeared that Frances, two years after the death of her husband and four years since the incident in question, brought a suit that did not directly concern her, but touched on her authority and power as a business owner. Frances did not speak about the money owed as being owed to her late husband, nor was Ludovic mentioned in relation to the issue. Frances' case in the Exchequer was an independent pursuit to reclaim money that was owed to the business, and subsequently owed to her. The matter had not been raised by her husband during his lifetime and was something that directly related to a patent that her husband had rights to, which she had inherited. Following Ludovic's death, Frances continued to rent the patent in her own name and pay for the right to it. It is worth noting that this incident was an example of two traders ignoring the authority of a male business owner but being held accountable by his female replacement.

Dame Mary Gee, Yorkshire, 1636-1640

The cases brought to the Court by Dame Mary Gee demonstrated a different example of women's legal rights in practice. Mary was involved in numerous cases in the Exchequer, all originating in Yorkshire, between 1636 and 1641, as a sole plaintiff and as a co-defendant.[21] Little was available regarding the case brought by Sir Henry Constable against Mary and five other defendants concerning tithes, but other depositions have survived. Each of them concerned the manor of Bishop Burton and Mary's rights to either the land or the payable rents within the manor, and in each instance it was her authority over them that was in question. The case that will be the focus here was Mary's suit

[21] TNA, E 112/265, Case no.422; E 112/267, Case no.550; E 134/12Chas1/Mich14; E 134/12Chas1/Mich26; E 134/13Chas1/East27; E 134/13Chas1/Mich23; E 134/17Chas1/Mich7

against Marmaduke Langdale and his mother Anne. In comparison with Mary's other appearances in the Court, this case was not only complete with a bill, answer and depositions, it also revealed the joint involvement of titled mother and heir in another court.

Mary was born Mary Crompton in 1582, one of the many children of Sir Thomas Crompton of Hounslow, Middlesex and Bennington (an auditor of the Queen) and his wife Mary. The family estate was in Bishop Burton and after Thomas' death in 1601, the lands were sold to Sir William Gee in 1603. The nineteen-year-old Mary had married William just before her father's death, and William was made one of the two executors of Thomas Crompton's will. Mary was William's second wife and together they had eight children before William's death in 1612. The lands in Bishop Burton remained in the Gee family until 1783 and were Mary's central concern after becoming a widow up until her death in 1649. Alongside their eldest son John Gee, born in 1603, Mary managed the family estate in Bishop Burton, purchasing the wardship of John for £750, just after William's death. John died unexpectedly in 1627, leaving behind his wife Frances and a son. During John's lifetime, he had been involved in disputes with Marmaduke Langdale in the Court of Wards and Liveries, the same Marmaduke who Mary appeared against in the Exchequer, following the death of her son. In addition to the case brought to the Exchequer, Mary was involved in a range of other suits across different courts, all of which concerned family lands.[22]

In the case brought by Mary against Marmaduke Langdale and his widowed mother Anne, a recent history of the owners of the lands in Bishop Burton was provided, concluding with the sale of the lands to William Gee.[23] Mary stated that the lands were transferred to her for life following William's death, but that prior to this, William and Mary held the lands and collected rent together before 1612. At the time of the case, Mary was in sole control of the said lands, paying free farm rent of £52 7s 1/2d a year, but the rents and profits that she was due by Marmaduke and Anne, 6s 8d a year, had ceased to be paid shortly after she took control of the family estate. Marmaduke's late father and Anne's late husband, Peter Langdale, had paid the rents to Mary prior to his death and Mary stated that both Marmaduke and Anne had it in writing that they were liable for the

[22] In Chancery cases for example, such as one in the Court of Chancery against a relative, Thomas Gee: TNA, C 8/125/75
[23] TNA, E 112/265, Case no.: 422, bill of complaint, Dame Mary Gee

rent, but that they had both repeatedly refused to pay. Mary could not take the case to the common law courts, as she could not produce the necessary deeds. The defendants claimed that they had been paying rent to the Crown in the same manner as Mary did and that she did not own the land.[24] In Mary's replication she argued that the rent paid to the Crown was a fee paid by the tenants of Molescroft, but that the money owed to her in her capacity of land owner was separate and had been owed for the past 18 years.[25] According to Mary, the suit in the Court of Wards and Liveries, which had been instigated by Mary through her son John, had ended because of an informal agreement from Marmaduke to pay the money owed, which had yet to happen in the years following John's death.[26]

Despite Mary initially accepting this arrangement, she was well aware of her right to personally sue Marmaduke and Anne Langdale in order to secure the money owed to her, failing the success of an informal agreement. As witnesses to the case, Mary called her rent collectors who corroborated that the rents had been demanded of the two defendants, on Mary's orders, and that they had repeatedly refused to pay.[27] The witnesses called by the defendants argued that the rents were due only to the Crown and that the previous owner before the Langdales, Henry Rosse, had instructed them that no rents were due to the Gee family. In the case brought by Marmaduke against Mary, the focus was on Mary's lack of authority over the corresponding tithes of the land, arguing that she was owed nothing and that she was subject to the Crown in the same way that they were.[28] They noted the violent way in which Mary's servants demanded the tithes supposedly owed, and made mention of another female land owner, widow Isabel Smailes, arguing that she paid to the township in the same way that Mary should have to, rather than money being owed to her. In a similar vein as Mary's case against Marmaduke and Anne, Mary as a defendant argued that she had been owed tithes for the past eight years, and that she had held them since her husband's death.

[24] TNA, E 112/265, Case no.: 422, answer, Marmaduke Langdale and Anne Langdale
[25] *Ibid*, replication
[26] *Ibid*, bill of complaint, Dame Mary Gee
[27] TNA, E l34/12Chas1/Mich14
[28] TNA, E 134/12Chas1/Mich26 and E 134/13Chas1/East27

Dame Margaret Pollard, Devon, 1652

The role of continuing and ultimately concluding the affairs of a husband was shared by widows of varying social statuses. Some affairs, of course, were not firmly settled following a decree or mediated conclusion, and in some instances became a widow's full responsibility. Such issues that were managed by titled women such as Dame Margaret Pollard could have a significant impact on the local community, with future proceedings providing evidence as to how widows could embrace and embody the legal rights left to them, making them their own rather than minding them in the absence of a male head.

Margaret was born around 1582 in Bruton. From her mother's will, we know that her family, the Berkleys, were wealthy. A great deal of jewellery, property and sums of money were left by Margaret's mother, including what had been left following the death of Margaret's father, Sir Henry Berkley of Bruton.[29] Margaret's husband, Sir Lewis Pollard, was the 1st Baronet of the Manor of King's Nympton in Devon. They had eight children together, three daughters and five sons. Their eldest son, Hugh, inherited the family manor, which had originally been acquired by Sir Lewis Pollard of Grilstone, Bishop's Nympton, a Justice of the Common Pleas, in the late fifteenth century. Hugh supported the Royalist cause during the Civil Wars and was Comptroller of the Household for Charles II before his death in 1666.[30]

The case brought by Margaret in 1652, seven years after the death of her husband, documented a long-standing issue that her husband had similarly brought to the Exchequer fourteen years earlier, according to her bill.[31] The background detail provided in the original bill was evidence of Margaret's knowledge of the issue and the local community. From the bill, we learn that in 1614 Robert Sherland granted the custom of the borough of South Molton and the customary mill known as 'Mole Mills' to Sir Lewis Pollard, his wife Margaret, and their son, Hugh. In 1638, Lewis brought a case against five local men concerning the grinding of corn in the borough – Lewis appeared as the sole plaintiff.[32] Margaret's bill detailed her husband's argument, that all residents of the borough should be grinding their corn and grain at the customary mill, and that the customary toll should be paid to the Pollard family because they paid a yearly rent to the

[29] TNA, PROB 11/129/781
[30] J. L. Vivian, *The visitations of the county of Devon: Comprising the herald's visitations of 1531, 1564, & 1620 (John Lambrick) (Exeter: H. S. Eland, 1895),* p.598
[31] TNA, E 112/295, Case no.17, bill of complaint, Dame Margaret Pollard
[32] TNA, E 134/13and14Chas1/Hil28

Crown as owners. Collectively, the defendants held numerous mills in the borough, many of which had recently been built. Lewis argued that the mills were drawing people away from the customary mill, as well as being swayed by the fact that the defendants lent local people money to encourage their custom, to the point where Lewis was 'disabled to pay the said yearly rent of eight pounds and uphold and maintain the said customary mills'.[33] The Court found in favour of Sir Lewis Pollard, stating that all residents should follow ancient custom and make use of Mole Mill and no other, unless something was taken to Mole Mill and not ground within twenty-four hours.

Following her husband's death, Margaret gained control of the mill, and held it by freehold, paying the customary rent to the Crown. The details of her case were noticeably shorter than the details regarding the case brought by her husband. The bill documented how, after the original decree was served in 1638, Bartholomew Lincombe, his wife Mary and their son John sought to divert residents to their mill, Hatch Mills. Margaret argued that they were aware of the decree, and that they were therefore in contempt of court, as well as noting that as a result of the loss of custom, Margaret could not pay the yearly rent or repair the water damage in the mill, leading to its gradual decay. She requested an injunction to prevent their activity, and uphold the ancient custom.

The answer from the Lincombe family, presented as a collective narrative from the perspective of husband and wife, as well as an image of titled landowner versus local community.[34] Whilst the defendants in the original case brought by Sir Lewis Pollard argued that they acted based on the desire and need of local residents, defending their actions by stating that they did not know that an ancient custom existed, the defendants argued that such a custom was damaging to residents in the community, and that the decree should not be applied to all households. In contrast with the defendants from the 1638 case, they argued that the Pollard family were strangers in the community and that Mole Mills had long been unable to grind the quantities required for the community, some 250 families, to the point where the Pollard family decided to build more mills in the area. Some of the mills were let by Margaret to Bartholomew, indicating that she controlled all property once owned by her husband. As a result of the number owned by the Pollard family, the Lincombes argued that there were increasingly fewer copyholders in the area.

[33] TNA, E 112/295, Case no.17, bill of complaint, Dame Margaret Pollard
[34] *Ibid,* answer, Bartholomew Lincombe, Mary Lincombe and John Lincombe

Nevertheless, there was plenty of business for multiple mills in the borough, and Mole Mills was unable to handle the demand, so the Lincombes were therefore not attempting to lessen the profits of Margaret Pollard or acting against the decree but meeting local demand.

Margaret's replication focused on the decree from the earlier Exchequer case, and the legal weight of it. She also noted that there was no reason why the Lincombes should not also be bound to the same decree, and that their attempts to revoke the decree were done in an unusual manner. Margaret also defended the building of additional mills, stating that her husband had done this 'by consent of the millers and tenants of the said customary mills and of the inhabitants for their speedier dispatch'.[35] The customary mill, she argued, had the benefit of the law, and others need to seek consent before acting against this custom. The rejoinder from Bartholomew, Mary and John Lincombe provided a greater insight into the situation from the local community perspective. It was argued that even if Mole Mill was running day and night, it was 'not sufficient to grind half the corn and grain which is spent in the said town and borough'.[36] The rejoinder went on to state that residents were encouraged to use Grifton Mills, a selection of mills built by Sir Lewis Pollard shortly following the decree, despite this being erected in another parish. The Lincombes stated that following the decree 'it was never intended that Sir Lewis Pollard should draw that custom to any other mills to be by him erected for this particular and private advantage and to the ruin and destruction of other men'.[37]

Wealth and Widowhood

The presence of titled widows was one part of the varied and complex arrangement of widows in the early modern period. No single experience of widowhood was the same, but for all, financial resources were a need and source of concern. Flather has noted not only that the position of widows 'was in many ways comparable to that of male heads of household', but also that this was especially true for wealthy widows.[38] The rich widow stereotypes found within early modern literature and culture were not entirely divorced from those associated with widowhood in general. Access to money and higher society

[35] TNA, E 112/295, Case no.17, replication
[36] *Ibid*, rejoinder
[37] TNA, E 112/295, Case no.17, rejoinder
[38] Flather, *Gender and Space in Early Modern England*, p.150

were not an assumed detriment to the seventeenth-century woman, and the likely education that served as a foundation for elite women made them less susceptible to some of the qualities that were tagged onto womankind as a whole. General stereotypes about women with power are still worth noting, such as the comic treatment of a woman with 'a temporary period of dominion, which is ended only after she has said or done something to undermine authority or denounce its abuse'.[39] The most common stereotypes were those of the good widow, the merry widow, and the poor widow.[40] In general, images of widows were negative, often 'portrayed as ugly old crones or as greedy and sexually rapacious women looking for their next husband (or sometimes both)'.[41] Stereotypical images reached into courts, with some plaintiffs and defendants suggesting that a widow was 'load, immodest and sexually incontinent, or that they were bad mothers guilty of shaming the memories of their late husbands'.[42] As historians have noted, widows and their counsel could also make use of stereotypes surrounding widowhood, such as the good and poor widow.[43]

There was no doubt that the economic standing and familial wealth of a widow had a significant impact her experience of widowhood. As Beatrice Moring discusses however, wealth did not guarantee stability for widows, noting that 'over time, widows of the middling groups seem to have had better chances of continuing as before than did those higher up in the social hierarchy'.[44] The notion of security was relational: one woman's surety for life was another's inability to carry on. Every woman who appeared in the Court valued their future security, and many of them were fighting to ensure or protect it when they appeared. Each widow was experiencing a legal freedom that had not been their norm, perhaps by a large degree, or perhaps only minimally. The similarities in circumstance then, not a shared experience, is what these women had in common, for wealth of any amount couldn't fully purchase equality in early modern England.

There was a disparity between Jane Countess of Shrewsbury and Katherine in terms of social class, and there was no evidence to suggest that they were related. There

[39] Natalie Zemon Davis, 'Women on top', in Robert Shoemaker & Mary Vincent (eds.) *Gender & History in Western Europe* (London: Arnold, 1998), p.292
[40] Cavallo and Warner, 'Introduction', p.6
[41] Wiesner-Hanks, *Women and Gender in Early Modern Europe*, p.102
[42] Stretton, 'Widows at law in Tudor and Stuart England', p.205
[43] *Ibid,* p.205
[44] Moring, 'Widows and economy', p.220

were no indications as to the nature of the relationship between Jane and Katherine, and this ambiguity prompts questions related to security as a widow and companionship in later life. We can wonder how they came to know each other and why they felt the need to appear together when it was primarily Jane's concern. The notion of security could be relevant here, as well the complexities of mutual interest, or even evidence of a relationship shared during widowhood. Whilst this life stage has been associated with independence and heading the household, this did not necessarily mean loneliness and living alone. Two female litigants appearing as the only plaintiffs or defendants was uncommon in this sample: this happened in eight cases for plaintiffs and four cases for defendants. The female litigants involved were either widows or unspecified, but Jane and Katherine were the only example of a titled female litigant appearing alongside an untitled female litigant.

Wealth in Jane's case was not simply the ability to purchase the right to the tolls, but the subsequent authority she exercised over the passageways and people's use of them. Mary Harrington's wealth and status were close enough to royalty to not only be chosen to receive some of Queen Elizabeth's clothes and jewellery, but also for a portrait of Mary to long be confused for a painting of the Queen herself.[45] Mary's wealth was both social and material. The gulf in class and prestige was immense when compared to other cases in this thesis, and yet Mary's framing of her legal right, facilitated by her allowed power, was no different. The money and land behind the claim made her stand out, but in the eyes of the law, she was the same as any other female litigant, or any other litigant for that matter. Mary spent almost twenty years as a widow, choosing to remain unmarried and make her eldest daughter her heir, leaving large quantities of landed wealth to descend down the female line.

Frances, Duchess Dowager of Richmond and Lennox, like Mary Harrington, was associated with the highest echelons of society, with each marriage bringing her into new and increasingly elite circles of early modern society – from the realm of a businessman to Earl and finally to Duke. Three times married and three times widowed, Frances' movement between covered and independent is a topic less often discussed. Rebecca Mason has discussed remarried women in the Glasgow court context and argues that 'a woman's transition from widowhood back to wifehood, and her resubjugation within the

[45] Edwards, 'A New Portrait of Mary Rogers, Lady Harington', pp. 54–57

marital household, clearly raises pertinent issues surrounding her property and status'.[46] There were two notable qualities about Frances' case that complicated this further – her social status, and the fact that she did not have any children. The case brought by Frances to the Exchequer provided no information as to her earlier marriages, or indeed her earlier widowhoods. We know that she married up the social spectrum on each occasion, and that she did not spend long as widow after her first or second husband, although she did remain a widow for fifteen years after the death of her third husband. Frances' eagerness to remarry may have been driven by numerous factors, including security and stability, but regardless of her motivations it was apparent that she did not value the freedom of widowhood enough to remain within it, at least until her third and final experience of it. However, this should not be thought of as an active choice between independence and subjugation with security. To imagine it as a binary would be to misrepresent the context in which these women lived.

Unlike Frances, Dame Mary Gee had the welfare of her children to consider during her widowhood, followed by that of her daughter-in-law and grandchildren. Mary's involvement in numerous Exchequer suits was uncommon in the sample, as was a mother litigating on her son's behalf following his death. Her wealth and widowhood were therefore centred on the family and her role within it. The same could be said for Dame Margaret Pollard, although the suit she brought to the Exchequer was a continuation of litigation instigated by her husband. For both Mary and Margaret, their widowhood was burdened by the responsibility of their wealth and the issues that it ultimately embroiled them in. They were the issues of the family and the estate and concerned a collective of securities rather than a single, personal one. Alongside this added responsibility, wealth also influenced the ability to hold power over others and this complicated the idea of allowed power. It encourages us to see social status and gender as related to one another but not dependent, separating out the power bestowed by class and wealth, and the power given by widowhood. However, titled widows were not doubly powerful, 'receiving' power from both their class and their gender. They were instead an example of its construction, and of the contradictions of patriarchy regarding the womanhood. The necessity of household control was even more pressing for titled women, and the estates

[46] Mason, 'Property Over Patriarchy?', p.137

that they were left to manage were of importance to many more people than the average untitled female litigant.

Managing a Landed Estate as a Wealthy Widow

It was in the interest of all women to 'not only to be knowledgeable about the law but also to be actively involved in the maintenance and protection of that property'.[47] This was especially true for elite women, given the wealth and property that may have been at stake. Cases involving the wealthy were more likely to involve much larger sums of money than the majority of other cases heard by the court. By extension, larger quantities of land, property and produce were also likely to be at the heart of these suits. As McDonagh has noted, 'widowhood was an important route to landownership for many women amongst the gentry and aristocracy, providing opportunities for independent action outside the bounds of marriage and coverture'.[48] Shepard, in her extensive work on social expressions of worth and value, has argued that widows, in comparison to other women, 'exerted more extensive claims to the ownership of goods'.[49] By extension then, we would assume that the same was even more true for wealthy widows. Yet in the sample cases, worth and value were not as central as we might expect. Instead, the cases in this chapter revealed titled female litigants displaying knowledge of their rights and holdings, both only fully realised upon entry into widowhood.

The importance of land in terms of wealth, opportunity and status has been noted as one of the reasons why women's business opportunities were limited.[50] Alongside buildings, they were the most valuable for the purposes of inheritance for those named in any will. Titled women were more likely to have greater access to large amounts of land and property, which could be used for a variety of means during their lifetime. Closely associated with this were connections to or the affairs of businesses, local, regional, national, or potentially international, which were, at least on paper, much broader concerns than some of the disputes that entered the Court. An important connection can be drawn between the ability and decision to make a will and the exercise of a legal identity that recognise rights over goods and property. In Erickson's

[47] Moore, *Women Before the Court,* p.105
[48] McDonagh, *Elite Women and the Agricultural Landscape, 1700-1830*, p.21
[49] Shepard, *Accounting for Oneself,* p.54
[50] Wiesner-Hanks, *Women and Gender in Early Modern Europe*, p.146

cornerstone 1995 work, she noted that gradually across the early modern period wealthy men became less likely to name their wife as sole executrix of his affairs and estate, a trend which was not mirrored for ordinary, non-titled, men and women.[51] In regards to women's own wills, Froide has argued that widows often used their wills 'as a means to balance out the inheritances of their children….usually [favouring] younger children over older ones, and daughters over sons'.[52] The ability to make a will was not shared by all women, and was therefore another aspect of allowed power. The transfer of land and property was vital to early modern society, and so the exercise of this power served a clear purpose. Therefore, rather than being indicative of female agency, it was an example of widows being brought further into the system that had restricted them.

Wills could be impacted and made more complex as a result of remarriage. Whether a widow chose to remarry was down to a range of factors. Elizabeth Foyster has commented on the rarity of wealthy widows remarrying in early modern England: 'Most gentry widows valued their economic independence too highly to risk remarriage'.[53] For more middling women, remarriage was the most common amongst widows, but men still had to contend with the experience that widows had gained in legal and financial affairs during their widowhood, possibly, in men's eyes, making them 'formidably assertive marriage partners'.[54] The role of women in relation to men then, was a constant – women were continually held to this assumption and ideal of being brought under male control. The precedent and foundation of gender relations, whilst perhaps not overbearing in the everyday, was still the rule on which other rules and beliefs were based. Stretton has noted that the chance that widows might choose to remarry 'and cede independent control to their husbands served as an argument against them holding the administrative and political offices that attached to certain interests in land, such as manors or political boroughs'.[55] For titled widows, this argument was somewhat different. Upon entering widowhood, some elite women became responsible for extensive estates by necessity, and this was not something that discouraged remarriage and the re-covering of her status. Remarriage for the elite could lead to a joining of large estates and titles and was less likely to be undertaken by a widow due to financial necessity – she could likely afford

[51] Erickson, *Women and Property*, p.157
[52] Froide, *Never Married*, p.119
[53] Foyster, 'Marrying the experienced widow', p.112
[54] *Ibid*, p.117
[55] Stretton, 'Law, Property and Litigation', p.204

to remain single. In this chapter, the majority of elite widows remained widowed, some for many years. Frances, the exception, was first widowed young, and still spent a notable portion of her life as a widow. We do not know whether she remarried twice by choice or necessity, nor whether she wanted to remain childless. What her case at the Exchequer does tell us is that during her third widowhood she had a business to manage, and so her position was somewhat different to her earlier brief periods of widowhood.

Frances' right as a businessperson were central in her case, and the role that she played seemed devoid of any need to consider the fact she was a woman. Her right was not reliant on the role that her husband played in the same way as the Countess of Shrewsbury's was, and the extent of male influence in both cases simultaneously differed and shared similarities. Frances' access to the patent was facilitated by her late husband, and no doubt his own work prior to their marriage was something that Frances benefitted from, in the same way that Jane benefitted from the land improvements carried out by her late husband. One marked difference was the context behind the two widows' actions: Jane acted on her own accord whilst Frances was acting as an administratrix. Their motives, therefore, at least on the surface, were somewhat different. Yet the nature of the rights being claimed and enforced was the most notable difference between the two. In contrast to Jane, Frances invoked a right exercised between business and trader, a financial obligation and legally recognised arrangement that was an innate aspect of commercial enterprise. This was also a right that was additionally supported through a patent, given by the King to her late-husband and maintained by Frances, a right that was paid for and commercially valuable. Jane's right to tolls and profits, whilst also a right that had been paid for and of financial importance to the direct parties involved, was local and exercised within a community, rather than nationally. Both Frances and Jane had obtained their rights through some kind of male influence. However, this in no way detracted from the fact that both women made those rights their own, to the point where male influence seemed irrelevant. This was once again an example of allowed power at work, sanctioned by widowhood and wealth, and requiring both in order to be realised.

Mary Harrington's appearance in the Court demonstrated another aspect of allowed power and estate management – the responsibility to continue to claim a legal right in the place of a husband. Mary's defence of an action taken by her husband many years earlier was brought to Court to secure her own legal right. William's claim that John

had leased, or sold, a larger amount of the manor to him was believed to be untrue by at least some in the community, and certainly by tenants of St. Catherine, who supported Mary's claim and authority. We do not know what exactly encouraged William to begin making claims of ownership, but deponents suggested that within the community it started almost six years earlier, rather than the three years that Mary stated. Unlike the case of Margaret Pollard, we see a positive relationship between community and wealthy widow in Mary's case. This may have been in part influenced by the closer relationship that Mary had with the community, living local for all her life, with a husband who helped and supported the community prior to his death. Certainly, a husband's relationship with a community impacted the reception of his wife after his death, especially if a wife sought to continue the legacy of her husband. This case could be followed further, by looking at decrees and orders. Following the depositions, William was ordered by the court to pay all the money owed from the past three years and stated that he was not entitled to any rents from the land. The court also ordered he pay £6 13s 4d to Mary for court costs, and any attempts to stall payment would lead to the sum increasing. Documents also revealed that Mary had taken William to Common Pleas for trespass on lands that he claimed to own. Further court records indicated that William was taken to prison because money had not been paid.

The social standing of titled widows had implications within and beyond the local community in which they lived, or within which parts of their estates resided. Given that widows could act independently and control their own properties, they were often the wealthiest women within their local communities.[56] For legal suits touching on communal concerns, such social status could be social recognition, whether known by face or by name. What came with that could depend on family name, community relationship or politics, to name but a few, and could positively or negatively influence those involved in the cases in question. Wiesner-Hanks has argued that titled and aristocratic widows 'were often active managing their families' business affairs and identified the rights and privileges attached to their position as *theirs*, not simply belonging to them in trust for their sons'.[57] A woman known by many in her community for reason of wealth and social stature may have more people she could call on to appear as witnesses, or more chance of persuading those below her to speak in her defence. The

[56] Fairchilds. *Women in Early Modern Europe*, p.104
[57] Wiesner-Hanks. *Women and Gender in Early Modern Europe*, p.103

opposite could also be true of course, and a local elite lady of the house may not find many who would rush to her aid when faced with a local dispute. What we find tells a variety of stories about relationships between the elite and those who lived near, if not alongside, them. Linked closely to this is the question of how far social status equated to power and control within communities and during cases.

In the case brought by Dame Margaret Pollard on both sides we see a family fighting for their livelihood and place of importance within a local community. Margaret's situation was considerably different of course, fighting for an ancient right allowed directly by the Crown, as a wealthy widow with large amounts of land and property at her disposal, living on the edge of a community rather than at the heart of it. The fact that Mary Lincombe was fighting alongside her husband, when Margaret had not in the earlier Exchequer case, could be as a result of social status, family makeup or something much more personal. Bartholomew and Mary clearly worked alongside each other daily as mill workers, and it was the family business and livelihood that was at stake in this case. For Margaret and Lewis perhaps, this was not the case, and the protection of an ancient right may not have featured highly for the Pollard family, or for Margaret more specifically, until the responsibility became her own. This could indicate a lack of involvement from Margaret prior to her husband's death, although her knowledge and surety during the proceedings suggested otherwise. The interrogatories from Margaret focused on which residents Mary and John Lincombe had taken corn from and where they had then taken that corn to, and whether they had taken most of it to Hatch Mills, rather than Mole Mills.[58] Numerous deponents attested to the fact that the Lincombe family, mainly the two children, had taken corn from them, ground it, and returned it, since the injunction, with Bartholomew and Mary mostly being at the mill. The outcome of the case was unknown.

In the case of Jane, Countess of Shrewsbury, it was ultimately an argument over whether common passage had been rescinded and whether local people and merchants respected Jane's authority, an authority that predominantly originated from her husband's efforts of improvement. His past work acted as the foundation for her contemporary right to benefit from it, and her ownership of the tolls and profits were a direct result of his previous involvement, even though her husband never benefitted from the same. In the absence of an inherited right, here we see an active claiming of right,

[58] TNA, E 134/1652/Trin1

presented as a protection of benefit, and as something for which the plaintiffs were deserving of if, not directly responsible for. It should also be noted that this issue had not been pursued during Edward's lifetime, and therefore the initiative came from Jane, and possibly also Katherine, following his death. This case then, was an example of a woman taking and claiming a right, rather than inheriting it by some means, but also of a woman attributing further importance to a right that she lawfully holds. In bringing the case to the Exchequer, she not only made clear her legal right but also her social right, and that taken together these are partly dependent on male influence. By contrast, Mary Harrington's interrogatories revealed a community response to the suspect behaviour of William Blanchard. Every deponent who appeared confirmed Mary's argument that William only legally held a small part of the manor of St. Catherine that he owed yearly rent for and that he did not have the right to collect rents for his own use from tenants of the manor.

Challenge of an elite widow's authority by the local community was central in the case brought by Dame Mary Gee. The issues of right in regards to Mary centred on the rejection of her authority and the fact that she was deserving of taking money from the land that she was left by her husband. Whilst it was undeniable that her access to that right was made possible by her marriage and her subsequent inheritance, the nature of her right was disputed in a way that was not experienced by her husband during his lifetime, and does not appear to have been an issue when Mary's father, Sir Thomas Crompton, had held the same land. It was, therefore, a problem in regards to her right and whether her control over the land was accepted by the tenants that lived there. Mary's involvement of her son prior to his death shows the family element to this case, and it appeared that she did secure the family lands to be passed on down the Gee family line. Her claim that she was due monies in her own right, and that she had the power to sue those who did not acknowledge her right, was evidence of her awareness of her position within the community and embrace of the responsibilities left to her by her husband, responsibilities which were linked with the family as a whole, not just her financial security. She appeared as a widow and a mother and took on an issue that demanded the recognition of the right that she had taken over.

The Titled Widows of the Exchequer

Pursuing litigation in order to assert, protect or defend rights associated with an estate and security was a central aspect of the widowhood of female litigants. In this way, titled widowed litigants were no different from untitled – their motivation to appear at law was the same, and their ability to do so came from the same consequence of being made a widow. Yet the difference in status did impact the size of the estate in question and its value beyond the immediate household. Elite women, more so than the vast majority of untitled women, had a larger role to play in their local communities, and responsibility over land, property and potentially a stake in commerce. Whilst their wealth and status impacted their ability to interact directly with tenants, farmers and the local community, there were other relevant factors as well: 'age, health, personality and aptitude also impacted upon women's involvement in estate management. So too did women's presence or absence on the estate'.[59] The nature of their cases at law then were more situated within a wider community, as with cases involving titled men, and their status played a part in the framing of their right and how it was received.

The cases in this chapter have revealed another side to the Court, one dealing with much larger concerns, amounts of money and extent of property. Frances Duchess Dowager of Richmond and Lennox brought a case that spanned between Yorkshire and London, concerned a royal patent and the commercial production of goods. Jane Countess of Shrewsbury's case would have implications for local people for potentially decades to come, and made a mark, albeit a small one, on the landscape within her estate. The widows discussed here were similarly left to continue and conclude the affairs of the husbands' whose death had granted them a freedom even wealth could not fully bestow. Dame Margaret Pollard was left to deal with the fallout of her husband's treatment of local millers, whilst Dame Mary Harrington sought to conclude an affair started by her son. Their gender and status combined to give them the most independence of any early modern women, but they were still confined by the same rules and contradictions of patriarchy. Their power and authority were contingent upon them remaining at the head of a household that was founded on collections of male titles and prestige. The category of titled widows as landowners and estate managers was by no means a small one though, and their need to appear at law was just as pressing, if not more so, than others lower

[59] McDonagh. *Elite Women and the Agricultural Landscape,* p.64

down the social scale. Dame Mary Gee chose to appear on more than one occasion to secure her right to tithes within her estate. Wealth and status undoubtedly had an impact on widowhood, but the impact on litigation and legal right was still most notably influenced by gender. The power and authority exercised by titled widows was still sanctioned and temporary, and still at odds with patriarchal ideals, despite the necessity of the responsibility they had taken on.

Chapter Seven

Widows Litigating During the English Civil War and Interregnum

The English Civil War of the mid-seventeenth century has an important place in the country's history, not only for its battles and execution of a king, but also for its influence in drawing women into political, religious, and cultural discourse. This thesis was intentionally structured to place the Civil War in the middle of the chosen timeframe of 1620-1670, initially to capture the impact of the conflict on litigation in the Court of Exchequer. As this project evolved, so too did an appreciation for the value of the cases themselves, and the individual stories that lay beneath every case brought to the Court, especially those that were brought at such a turbulent time in early modern England. The cases for this chapter have been chosen because of the extent of the material available for each of them and due to the quality of the surviving documents. These cases have been explored in more detail than other cases in the thesis as a result of this wealth of information, and in order to situate them more fully within the Civil War and Interregnum context.

The English Civil War and Litigation

Prior to 1637, England did not appear to be a country on the brink of Civil War.[1] The conflict, split over three phases between 1642 and 1651, led to the death of almost 7 per cent of the English population in fighting or war-related disease, and was 'one of the most destructive conflicts in British history'.[2] Royalists fought against Parliamentarians in a series of major battles across the country, before the execution of the King Charles I in January 1649, and the eventual victory of the Parliamentarians over new King Charles II

[1] Richard Cust, 'The Collapse of Royal Power in England, 1637-1642', in Michael J. Braddick (ed.) *The Oxford Handbook of The English Revolution* (Oxford: Oxford University Press, 2015), p.60
[2] Imogen Peck, 'The Great Unknown: The Negotiation and Narration of Death by English War Widows, 1647-60', *Northern History,* Vol. LIII, No. 2, (2016), p.221

at Worcester in September 1651. It was a war, arguably a collection of wars, that rested on 'a complex variety of structural faults and broader social, cultural, and political developments'.[3] It would have a lasting impact on English culture, politics, and the economy – and on the women who had taken on a role or been left behind.

The Scottish victory in the Bishops Wars of 1639 and 1640 was a vital moment in the build-up to the Civil War, proof that a rebellion against the monarch could succeed.[4] The events that followed were fuelled by this rebellious spirit, and this 'proliferation of public comment and debate' prompted discussions and struggles around ideas of liberty, authority, and religion.[5] As Ann Hughes has noted, in terms of politics 'the civil war was initially and primarily a struggle amongst elites, largely but not exclusively male, over political power and religious reform'.[6] On both sides, Crown supporters or those of Parliament, the idea of liberty was key, with opinions divided on its meaning and how it should be achieved, as well as protected. [7] The connection between political and familial authority, the 'series of familial or bodily analogies that were inextricably bound up with understandings of gendered hierarchies, of the proper natures, roles, and relationships of men and women' was shaken. [8]

The need for litigation persisted, in some instances even increased, during the upheaval of the Civil War. The impact of the conflict varied across time, locale, and jurisdictions, and it is therefore worth considering what access there was to law courts for women during the war years. Church courts, commonly used by women for slander and defamation cases, were suspended in 1642, 'when the Civil War brought the disestablishment of the Church of England'.[9] Meanwhile, the Court of Requests and the Councils in the North and in Wales were abandoned at the start of the Civil War, and Star Chamber was abolished.[10] Manorial courts, already diverse in terms of their use and authority, struggled on occasion with the deliberate destruction of court rolls during the

[3] Cust, 'The Collapse of Royal Power in England', p.74
[4] *Ibid*, p.64
[5] David Lemmings, 'Introduction: Law and Order, Moral Panics, and Early Modern England', in David Lemmings & Claire Walker (eds.) *Moral Panics, the Media and the Law in Early Modern England* (London: Palgrave Macmillan, 2009), p.4
[6] Ann Hughes, *Women, Men and Politics in the English Civil War* (Keele: Keele University, 1999), p.4
[7] Ted Vallance, 'Political Thought', in Michael J. Braddick (ed.) *The Oxford Handbook of The English Revolution* (Oxford: Oxford University Press, 2015), p.431
[8] Ann Hughes, '"Gender Trouble": Women's Agency and Gender Relations in the English Revolution', in Michael J. Braddick (ed.) *The Oxford Handbook of The English Revolution* (Oxford: Oxford University Press, 2015), p.348
[9] Gowing, *Common Bodies,* p.12
[10] Erickson, *Women and Property,* p.31

conflict. [11] Of those courts that did continue to hear cases, Exchequer being one of them, numbers were unsurprisingly lower. Demand for legal redress did not cease, and for women this demand could be fuelled by the same conflict limiting their access to legal intervention. Widows continued to be drawn to litigation during this period. Hannah Worthen has discussed the petitions of Royalist widows, noting their skilful engagement with the political process and their employment of language to communicate loyalty and need. Worthen notes that whilst some widows were indeed living on the verge or in poverty, some 'may have been using elements of fiction for the sake of persuasion'.[12]

The equity courts of Chancery and Exchequer were a crucial avenue for redress during the war years and the start of the Interregnum. For the Court of Exchequer, cases heard by commission outside of London continued, with records originating from across the country. The extent of litigation varied across regions, all subject to the changing tides and battles of the Civil War. Whilst not attracting high levels of litigation, it was still accessed across the country, with the quietest period aligning with the height of the conflict, 1645-49. There were 168 cases that reached deposition between August 1642 and September 1651, mostly concerned with land, property, and tithes. The division of depositions across regions is shown in Figure 49. As with general trends across the sample, Yorkshire, the Northeast, and Cumbria saw the highest numbers, with most depositions originating from Yorkshire. Of the forty-three English counties listed in Exchequer records, thirty-five had at least one case reach deposition during the Civil War. Of the eight that did not, the most notable were Cornwall and Dorset. Across the Southwest the figures from during the Civil War years were distinctly at odds with wider trends for the Southwest across the period and were much lower than elsewhere in the country. Regionally however, patterns are not replicated everywhere. Given the Royalist leanings of the Southwest, especially in the early years of the war, people may have been dissuaded from taking cases to a Court. Some areas of the country, such as Yorkshire, the Northeast, and the East Midlands, saw a gradual decline in the number of cases across the

[11] Erickson, *Women and Property,* p.30
[12] Hannah Worthen, 'Supplicants and Guardians: the petitions of Royalist widows during the Civil Wars and Interregnum, 1642–1660', *Women's History Review*, Vol. 26, No. 4 (2017), p.535

period, recovering from the sudden decline in suits brought on by the Civil War, but never reaching the same levels as before the 1640s.

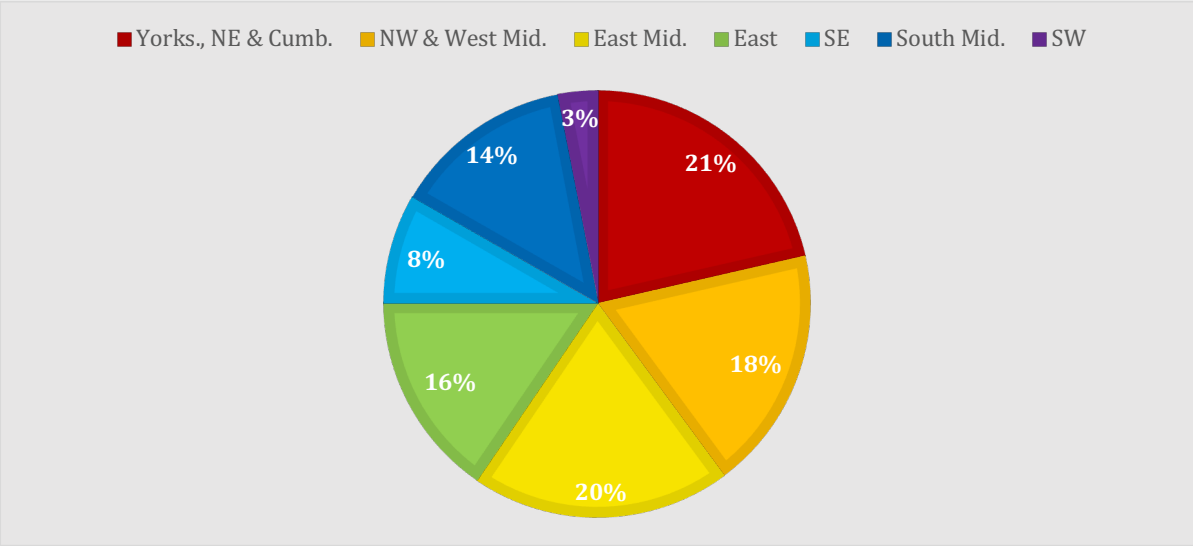


Figure 24 - The distribution of depositions across regions, 1642-1651

The recovery of other English law courts after the war varied. Church courts resumed in 1660, and although they were not as frequented as before the war years.[13] Faramerz Dabhoiwala has argued that the Civil War and Interregnum 'wrecked ecclesiastical jurisdiction without successfully putting much in its place'.[14] King's Bench and Common Pleas saw increasing levels of business between 1650s-1670s, but a steady decline towards the end of the seventeenth century.[15] Chancery, the only rival equity court of the Exchequer post-1651, experienced national disfavour following the Civil War, but no decrease in business.[16] As Garside has noted, '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'.[17]

During the Civil War and Interregnum, there were 313 plaintiffs and 678 defendants, as well as 1,680 deponents. A nine-year period of 1642 to 1651 accounted for just under 5 per cent of plaintiffs and defendants, and less than 4 per cent of

[13] Gowing, *Common Bodies, h*p.13
[14] Faramerz Dabhoiwala, 'Sex, social relations and the law in seventeenth- and eighteenth-century London', in Michael J. Braddick and John Walter (eds.) *Negotiating Power in Early Modern Society: Order, hierarchy, and subordination in Britain and Ireland* (Cambridge: Cambridge University Press, 2001), p.100
[15] Michael Braddick, *State Formation in Early Modern England, c.1550-1700* (Cambridge: Cambridge University Press, 2000), p.160
[16] Bryson, *The Equity Side of the Exchequer,* p.5
[17] Garside. *Women in Chancery,* p.23

deponents. These small numbers are of course not surprising. We know from work on other courts, common and equity, that far fewer cases, if any at all, were brought and heard in English law courts during the Civil War. The cases that did reach them though, and those that continued to deposition, are all potentially interesting case studies giving an insight into legal redress in the midst of conflict. Within the already small numbers were female litigants and deponents: 32 plaintiffs, 32 defendants, and 89 deponents. They too were spread across counties, and property cases were the most common. The majority were untitled, and there was a split between wives and widows. Sole female litigants were infrequent, and all were widows – eight plaintiffs and two defendants. Of the ten women, three will be discussed in this chapter.

The cases of all ten widows were investigated in the process of this selection, but these three cases have been chosen for some key reasons: the amount of information available about them; the quality of the documents; the fact that they were sole litigants; and the variety of perspectives that they collectively offered. Helen Hustler, the only untitled widow of the three considered in this chapter, brought a case in Yorkshire, a consistently litigious region over the period and during the war years. Her case was of particular interest due to its relative distance, geographically and contextually, from the Civil War, and the fact that allegiances were not mentioned during the court narratives. Dame Penelope Dynham was one of the few people, and the only woman, litigating in Buckinghamshire during the later war years and start of the Interregnum. Her hereditary family were Parliamentarians whose lands were seized by Royalists, and whilst her husband did not embroil himself in the Civil War, the lands she inherited from him were destroyed and rebuilt during her tenure. Katherine Lady Brooke's widowhood was even more profoundly influenced by the Civil War: she lost her husband in battle and was forced to flee her home. Her actions during the aftermath of the conflict helped to secure her family's estate for generations to come. Together, the cases demonstrated the varying degrees to which the Civil War impacted the lives of widows and how legacies became that of the widows themselves, rather than them acting as minders of their husband's legacy.

The overarching themes of their cases were not dissimilar to those of earlier chapters: family, security and estate management were still central. The context of these cases however was inevitably marked by the Civil War, although to varying degrees.

Whilst they shared a desire to bring a case to the Exchequer during a time of war and its aftermath, their motivations for doing so were their own. At a time of upheaval and uncertainty, women continued to exercise their legal identity just as men did. In doing so, we see a further highlighting of the innate contradictions of patriarchal ideals, at a time when the fabric of known rule, authority and power were being tested. These widows, far from the preferred heads of household, were defending their homes and their interests during a conflict that touched every corner of the country is some way or another.

Women and Gender, 1642-1651

A woman's status, locality and aspirations influenced her experience of the Civil War, but the most obvious association with the conflict, and the most common impact, was the resulting changes to the family dynamic, whether a wife running a household with her husband away at war or being left as a widow following his death in battle. Geoffrey Hudson has argued that the state's provision for war widows 'was indeed a recognition of their participation in the political nation during horrific civil war'.[18] The country's war pension scheme, following an ordinance in May 1647, allowed the widows of Parliamentarian soldiers to apply for a pension with their local Justice of the Peace. Royalist widows could, by contrast, petition the Parliamentarian administration for return of estates.[19] Imogen Peck reminds us to consider the issue at the centre of this: women dealing with the death of their husband.[20] This leads us to reflect on the long-term impact on women, who may suddenly have entered the role of head of household and business owner.

The conflict and the women who ultimately became female heads of household had an impact on gender relations. There was a belief, according to Bernard Capp, 'that the upheavals of civil war had seriously damaged authority within the family as well as in the State and society'.[21] Women across the country and social strata 'were involved in the nuts and bolts of war, raising money and troops, organising local defences and

[18] Geoffrey L. Hudson, 'Negotiating for blood money: war widows and the courts in seventeenth-century England', in Jenny Kermode and Garthine Walker (eds.) *Women, Crime and the Courts in Early Modern England* (London: UCL Press, 1994), p.147
[19] Worthen, 'Supplicants & Guardians', pp.528-540
[20] Peck, 'The Great Unknown', p.222
[21] Capp, 'Separate Domains?', p.122

sometimes fighting themselves'.[22] Just as the conflict was an opportunity for men to reimagine power and authority in the political realm, the conflict and subsequent destabilization provided a chance to challenge traditional patriarchal assumptions.[23] It 'provoked the largest mass demonstrations by women in the period', as women petitioned for peace, to decry the impact of the war on trade and to ask for an end to religious animosity.[24] Such initiatives tapped into enduring stereotypes of disruptive women, adding to fears around gender disorder.[25] An interesting example of gendered discourse during the Civil War was the increased use of the term whore in the titles of political tracts, effectively 'embedding negative femininity in political discourse'.[26]

It is worth noting here the impact of the publication of Charles' letters with Henrietta in *The King's Cabinet Opened*, which 'connected the king's failure as a ruler with his inadequacy as a husband and a man'. [27] Comments on manhood such as this tied into national divisions by 1653 about ideal demonstrations of masculinity. [28] Charles' severe limitations as a signifier of masculinity centred on 'the swelling anxiety about his wife and her influence on him'.[29] In addition to rhetoric around liberty, Royalists and Parliamentarians also developed opposing rhetoric on masculinity. Diane Purkiss has noted that whilst Royalists 'created a new political idea of what masculinity might be, an idea which endorsed abjection, even feminisation (though emphatically not effeminacy) in the leader', Parliamentarians by contrast talked of a masculine republic 'maintained by constant and repeated exclusion of the feminine through dragging disorderly women and their machinations into the cold hard light of print culture and public scrutiny'.[30]

The Civil War years and Interregnum that followed were also important times for women's writing and publication, most notably the surge in women's publication in 1649.[31] The Wars presented an opportunity for women to take on unaccustomed roles and engage in debates around politics and social order in ways that had previously been

[22] Hughes, *Women, Men and Politics in the English Civil War*, p.9
[23] Eales, *Women in Early Modern England,* p.24
[24] *Ibid,* p.55
[25] Hughes, '"Gender Trouble"', p.348
[26] Capern, *The Historical Study of Women,* p.315
[27] Hughes, '"Gender Trouble"', p.347
[28] Diane Purkiss, *Literature, gender and politics during the English Civil War* (Cambridge: Cambridge University Press, 2005), p.2
[29] *Ibid*, p.105
[30] *Ibid,* p.2
[31] Amanda L. Capern, 'Visions of monarchy and magistracy in women's political writing, 1640-80', in Janet Clare (ed.) *From Republic to Restoration: Legacies and Departures* (Manchester University Press, 2018), p.105

uncommon.[32] Despite the absence of practical political experience, the Civil War encouraged some women '[to print] their views on a broad range of issues, offering practical advice and showing their understanding of political and religious theories'.[33] Religion was an important component of women's understanding of the Civil War. Hughes has suggested that prophecy was 'perhaps the most extraordinary aspect of women's intervention in the political and religious conflicts of the 1640s and 1650s', with women such as Elizabeth Poole having a notable political impact, if temporary.[34] Despite the prominence of women in separatist sects however, their debated spiritual equality did not impact women's overall status, nor did it encourage structural changes in law. Similarly, the demonstrations and involvement of women in the 1640s were not used as a platform to argue for women's political and legal rights. Even the Leveller movement, which involved many women and 'fiercely resisted the notion that headship of the household and its economic status were what legitimated citizenship', was ultimately led by men and maintained basic assumptions about masculinity as a key part of that citizenship.[35]

It is however worth considering the longer-term impact of women's writing and religious involvement during the Civil War. The 1650s have been argued to have been important in the development of a 'feminine doctrinal legacy, not only because more women were prompted into publication by the regicide but also because once Charles I was removed – along with any last authority of his church ministry – women's writing became a very powerful weapon in the resulting battle for souls'.[36] The Civil War left England a politically and religiously fragmented realm, where systems of hierarchy had been brought into question. It had 'made possible – even necessitated – dramatic activity by women'.[37] The legitimation of masculine power became a key political issue, and the 'centrality of the head of household to republican thinking and the contestations that developed around the instability of this figure in representations remained a problem even for a reformed monarchy'.[38] For all the upheaval of the conflict, a transformation in

[32] Patricia Crawford, 'Women's published writings 1600-1700', in Mary Prior (ed.) *Women in English Society, 1500-1800* (London: Routledge, 1985), p.213
[33] Schwoerer, 'Women's public political voice in England', p.73
[34] Hughes, *Women, Men and Politics in the English Civil War*, p.9
[35] Purkiss, *Literature, gender and politics during the English Civil War*, p.57
[36] Capern, 'Visions of monarchy and magistracy in women's political writing', p.111
[37] Hughes, *Women, Men and Politics in the English Civil War*, p.18
[38] Purkiss. *Literature, gender and politics during the English Civil War*, p.234

gender relations had occurred, and one which relied on women's agency as part of this historical process. [39]

Helen Hustler, Yorkshire, 1648

Whilst Yorkshire saw two major battles in the English Civil War, Adwalton Moor in June 1643 and Marston Moor in July 1644, there were a surprisingly number of cases that reached the deposition stage of the Exchequer in the northern counties in the 1640s. The majority of the cases originated from Yorkshire, in-keeping with general trends for the county across the period. Of the 26 depositions heard, seventeen involved female litigants, and one of them appeared as a sole widowed litigant in 1648: Helen Hustler. There was limited information on Helen before her marriage to William Hustler, who was a wealthy draper from Bridlington who rented Acklam Grange in 1612 and purchased it in 1637. Records are available on William and the wider Hustler family, as well as numerous documents touching on the Acklam estate at the Hull History Centre, such as a record of sale adding to William Hustler's estate and a deed of partition between William and Helen's sons.[40] A local study of Bridlington noted that William paved the town during his lifetime, founded a grammar school and was the town's wealthiest resident.[41] By the time of his death in 1644, William had purchased Acklam Manor, which would become the base of the Hustler family, and had ensured that it would be settled onto Helen for the remainder of her life.[42] It was unclear whether William died in the 1642-1646 phase of the Civil War, and the manner of his death did not appear to have been recorded. The manor would be passed down the family line and their grandson, Sir William Hustler, who would ultimately build Acklam Hall in 1683. Helen would later marry Edward Beaucock M.D., and little was known of their life together. Helen did not appear in Exchequer or Chancery court records after the 1640s, and there was no evidence of her making a will. Her second husband died around 1665, and named Helen in his will, as well as members of the Hustler family. Large amounts of money and land were left to her and other

[39] Capern. *The Historical Study of Women: England,* pp.257-258
[40] Hull History Centre, U DDLG/30/153; U DDSQ4/2/1
[41] David Neave, *Port, Resort and Market Town: A History of Bridlington* (Hull: Hull Academic Press, 2000), pp.76-78
[42] 'Parishes: Acklam', in William Page (ed.) *A History of the County of York North Riding: Volume 2*. *British History Online* (London, 1923), pp. 221-223

members of her extended family, suggesting that she had married into wealth during her second marriage.

The case brought by Helen in 1648 concerned three parcels of land in the manor of Nafferton and her right over them as private land as opposed to common land, as the defence suggested.[43] Nafferton, a parish in the East Riding of Yorkshire covering around twenty-one square miles, lies northeast of Driffield and over thirty miles east of York, and saw no conflict during the Civil War. The Hustler lands in Acklam were over twenty miles away, and although closer to York, were similarly undisturbed by Civil War skirmishes. Helen appeared as the plaintiff against eight male defendants, and in her bill documented the past owners and the authority that they had exercised before the land was purchased by her husband William and subsequently passed to her following his death. A previous owner, Robert Franke, had been involved in litigation against the tenants of the three parcels of land, who had claimed that the land was common. Ultimately, the decree issued by 'the Court of York', according to Helen's testimony, confirmed Robert's right over the land (and therefore dismissed the notion that it was common land), compensated him for damages done by the tenants and set out conditions to be followed by both Robert and the tenants of the land. Following the conclusion of the case, all other suits ceased, unless the decree was violated. Robert enclosed the land and there had been no further issues when the land was sold to William. Helen lived with her husband on the land for many years (no dates were given) and they took profits from the land during that time. Upon her husband's death, Helen was given the land for the remainder of her life to do as she wished, but the inhabitants in and around the land in Nafferton, many of whom were also involved in the case against Robert years earlier, had questioned her right as well as rioted and trespassed onto the land. Helen had taken the matter to a common law court, but the court had closed down during the proceedings, and she had therefore brought the case to the Exchequer, 'but your oratrix being but a weak woman will rather be drawn to be found unjust and undue composition than stand out in contention with them'.[44] Helen sought intervention, even during a time of upheaval and risking an unfavourable outcome, as opposed to allowing local unrest to continue. It could be argued that the behaviour of the tenants was timely, to take advantage of civil unrest and once again dispute the land use and authority over it. Challenges to enclosure such as this one were

[43] TNA, E 112/268, Case no.662
[44] *Ibid,* bill of complaint, Helen Hustler

common across the country during the 1640s.[45] If it was customary land, the tenants may have looking for some means of subsistence during difficult and trying times. The right of the owner of the land had already been acknowledged and approved in a court of law, and the matter had not been raised until a time of unrest and when a widowed woman had authority over it.

The response by the defendants argued that the land was common pasture belonging to the manor of Nafferton, and that the land had always been in part common on certain days at set times.[46] They also argued that the township was large, with around 200 families, many of whom were freeholders, and that they relied on common land for tillage and arable land, as well needing access to a passage through which to drive their sheep, which was made impossible by how the lands had been enclosed. The topic of enclosure in early modern England is particularly pertinent in discussions concerning land and its usage. Joseph Bettey has commented that 'tenants could be subjected to considerable pressure from stewards and landowners to agree to the introduction of new customs such as enclosures, changes to common grazing rights and arable rotations'.[47] Such pressures inevitably caused friction, which women were commonly involved in within the local community.[48] Conversely, enclosure records can provide us with a valuable insight into female land ownership in early modern England.[49]

The matter of whether the land was common had only become an issue during the ownership of Robert Franke, and the inhabitants believed that he had not received a decree but had instead taken advantage of knowing someone in the Court of York, and that the petition that had been produced had not been consented to by the inhabitants. Helen's replication reiterated that the land was not common and stated that she could prove that 'all and every of these defendants and every of those persons who be particularly in the Award in the bill of complainant mentioned were privy and gave their consent to the petition to the Lord of the Privy Council'.[50] Helen's interrogatories focused

[45] See, Andy Wood, *The 1549 Rebellions and the Making of Early Modern England* (Cambridge: Cambridge University Press, 2007)
[46] TNA, E 112/268, Case no.662, answer, Sidenham Lukins, Seth Hobson, Joseph Gibson, Thomas Gott, Edward Porter, Christopher Jennett, Christopher Laborne and Robert. Key
[47] Bettey, '"Ancient Custom Time out of Mind"', p.315
[48] Nicola Whyte, '"With a Sword Drawne in her Hand": Defending the Boundaries of Household Space in Seventeenth-Century Wales', in Bronach Kane and Fiona Williamson (eds.) *Women, Agency and the Law* (London: Taylor and Francis, 2015) p.150
[49] McDonagh, *Elite Women and the Agricultural Landscape,* p.28
[50] TNA, E 112/268, Case No.662, replication

on the suit and order that had already been concluded by Robert in another court of law, noting that consent had been given by the inhabitants to the resulting petition.[51] She also noted that her husband had enjoyed the land without disturbance, and questioned why the matter had been raised by the inhabitants so soon after the right became hers. In the questions posed to the defendant's witnesses, the focus was on the importance of the land being common for the welfare of the inhabitants and the fact that the enclosure prevented the passage of their cattle.

Helen's interaction with equity law appeared to be limited to this single case. Her role as a litigant was primarily as someone who was reasserting authority over land and attesting to the use and purpose of that land. This is a growing focus in the field of women's history, with works demonstrating the control and influence of elite women and women's interaction with property and the land.[52] It was a right that had been defined and argued by others, and a right that she had been passed following the death of her husband. To a certain extent, Helen was fighting for the recognition of another man's right over the land, which then would subsequently impact her own right. The family lands in Acklam were a significant distance from Nafferton, so it is possible that Helen was managing both estates herself, most likely alongside her children. If this was the case, she would have had authority over a large portion of land, especially for an untitled widow. She displayed a clear knowledge of the land in Nafferton and the history of its owners. Her land management was impacted by the prospect of the land being common. This case also provided evidence of community/local relations, and the tensions between landowners and inhabitants, particularly around land use that was allegedly crucial to the local economy. Helen chose to bring a case to the Exchequer during the Civil War and before her remarriage. This decision speaks to the role of the widow as head of household and showed a desire for legal redress despite limitations of the time.

Dame Penelope Dynham, Buckinghamshire, 1650

There were only three cases that reached deposition between 1642-1651 in Buckinghamshire, and Dame Penelope Dynham's was the only case involving a female litigant or female deponents. By contrast with Helen, information about Dame Penelope

[51] TNA, E 134/24Chas1/Hil4
[52] See McDonagh, *Elite Women and the Agricultural Landscape*; and Capern, McDonagh & Aston, *Women and the Land*

Dynham was more readily available. Whilst the date of her birth is unknown, we do know that she was the daughter of Sir Richard Wenman, 1st Viscount Wenman, knighted by the Earl of Essex in the late 1590s.[53] Penelope's brother Thomas, the eldest son of Richard, became 2nd Viscount Wenman, a politician and landowner who sided with the Parliamentarians following the outbreak of the Civil War. With his estate seized by Royalists, he was one of the commissioners who met Charles at Colnbrook in November 1642, and in 1644 at Uxbridge.[54]

Richard was married four times before his death in 1640. He married his first wife, Agnes, daughter of Sir George Fermor, in 1595, and they had four children together, including Penelope. Agnes was a Roman Catholic who was examined twice regarding her potential involvement in the Gunpowder Plot.[55] This was largely due to her friendship with Elizabeth Vaux, sister-in-law of Anne Vaux, a devotee of Father Henry Garnett and cousin of Francis Tresham, both known for their involvement in the failed 1605 Plot.[56] Although the charges against Agnes were dropped Jane Griffiths has commented that 'it is clear that Wenman had some knowledge of illegal Catholic activities, even if not of the Gunpowder Plot itself'.[57] Richard reportedly testified that he felt Elizabeth had tried to pervert his wife and 'disliked their intercourse'.[58] The question of religious and political allegiance rarely featured in the sample of cases analysed in this thesis. Court narratives made little mention of wider social concerns and were instead snapshots of specific issues, at a specific time, in a specific place. Nevertheless, the religious leaning of Penelope's mother and her entanglement, even if not involvement, in an act of political protest serve as a reminder of the context outside of the cases, as well as how family loyalties and leanings differed and changed over time. Had Agnes been alive during the Civil War, she would likely have been a Royalist.

Dame Penelope Dynham was the second wife of Sir John Dynham of Boarstall, with whom she had three children: Mary, Alicia, and Margaret. The wills of both Penelope and John have survived, revealing an estate of considerable wealth and charitable leanings.

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[53] E. I. Carlyle, 'Wenman, Thomas, second Viscount Wenman (1596–1665)', *Oxford Dictionary of National Biography*. Oxford University Press
[54] *Ibid*
[55] Jane Griffiths, 'Wenman [née Fermor], Agnes, Lady Wenman (d. 1617), translator', *Oxford Dictionary of National Biography.* Oxford University Press
[56] Mark Nicholls, 'Vaux, Anne (bap. 1562, d. in or after 1637), recusant', *Oxford Dictionary of National Biography.* Oxford University Press
[57] Griffiths, 'Wenman [née Fermor], Agnes, Lady Wenman'
[58] Carlyle, 'Wenman, Thomas, second Viscount Wenman'

John's will named her as the sole executrix of his estate and left her with almost all his worldly possessions, as well as responsibility over ensuring that the household servants received sums of money and the poor of the surrounding parishes were aided.[59] He also gave £5 to both his father-in-law and brother-in-law so that they might purchase a ring following his death. To his son-in-law, the husband of his eldest daughter Mary, he left £200 and stated that 'if my estate would have borne it to have showed my mighty affection unto him by a far greater legacy'.[60] Acting as Lady of the Manor of Boarstall, Penelope managed the family estate and continued to care for their children, two of whom were under the age of eighteen at the time of John's death in 1634.

Boarstall, a village in the Aylesbury Vale, Buckinghamshire, lies on the county boundary with Oxfordshire. The manor and surrounding areas had long been held by the Crown, and therefore a case destined for the Exchequer, but was in the hands of John Dynham by the early seventeenth century.[61] The nearby village of Brill was still held by the Crown by the start of the Civil War. The role of Boarstall in the Civil War context 'is a straggling, shapeless story, with an ending but no climax'.[62] The village itself, along with nearby Brill, saw a regular flow of troops at the start of the Civil War and in 1643 Boarstall house, owned by Penelope, was seized by Royalists. The county of Buckinghamshire was strategically crucial for Charles I during the war, a necessary stronghold in order to protect the Royalist court at Oxford. Boarstall house was part of this strategic plan, until it was surrendered by the Royalists in 1646, by which point Charles was losing to the New Model Army. The damage done to the village of Boarstall was severe, 'not merely deserted but destroyed'.[63] During this time Penelope, a Parliamentarian sympathiser, was an occasional resident, at least during Parliamentarian occupation. The case brought by Penelope some years later, whilst not driven by Civil War grievances, was influenced by the conflict and by the Crown actions prior to 1642. In contrast with Helen's case then, here we see how small repercussions of the Civil War could make their way into the Exchequer.

[59] TNA, PROB 11/165/341, will of Sir John Dynham
[60] *Ibid*
[61] 'Parishes: Boarstall', in William Page (ed.) *A History of the County of Buckingham: Volume 4. British History Online* (London, 1927), pp. 9-14
[62] Barbara Donagan, *War in England 1642-1649* (Oxford: Oxford University Press, 2008), p.295
[63] *Ibid,* p.298

When Penelope brought her case to Exchequer during the Interregnum in 1650, she had been a widow for almost sixteen years. She appeared as sole plaintiff against six men: John Brown, Thomas Alden, Henry Parker, Edward Murren, Thomas Brown, and Thomas Perry. The suit concerned the collection of tithes in Boarstall, Brill and Ackley in the county of Buckinghamshire, which Penelope claimed had not been delivered by the defendants since 1640. In her bill, she documented how the right to the tithes and patronage over the vicarage, in addition to other lands, had come into her hands: first from King James I to her father-in-law, Sir John Dynham in 1610; then, on his death, to his son, Sir John Dynham her husband; before being given to her by indenture in October 1632.[64] She also noted that part of the lands were conveyed to her father, brother and soon to be son-in-law. Her rights not only included tithes out of the woods and pastures in Boarstall, Brill and Ackley, but also tenements and many acres of pasture and woodland, given solely to her for jointure and for her life. Lands occupied and used by the defendants, including meadows, pastures, and woodland, she argued, were all within the bounds of the parish of Boarstall, Brill and Ackley, and therefore subject to tithes. Penelope noted that they had been reaping corn and grain, mowing, and cutting down trees between 1640 and 1647, converted all for their own use, and had not paid tithes due to her by law, 'well knowing your oratrix's title to the said tithes both great and small in the said parish'.[65] Between her husband's death and 1640, her demand of tithes had been duly answered, but now they were ignored. She claimed that the defendants were conspiring with other members of the parishes, and 'taking advantage of your oratrix's weakness being a lone woman and of the troubles of the times' had taken, or come across, her deed of jointure which proved her right to tithes and the rectory.[66] This statement drew on both emotive language and the Civil War context, but also aligned with a common claim of lost documents preventing a speedy remedy at law. The absence of such a document meant she was unable to take the case to common law. The relative flexibility of equitable justice therefore provided a viable alternative in such instances, but there was of course no way to know whether this inability to go to common law was true or fabricated, and therefore whether the decision to bring the case to the Exchequer was by choice or necessity.

[64] TNA, E 112/162, Case no.83, bill of complaint, Dame Penelope Dynham
[65] *Ibid*
[66] *Ibid*

As detailed in the answer from the defendants, and subsequent depositions, there were two main points of contention in this case. The first, and most pivotal, concerned the nature of the lands themselves. Whilst not mentioned by Penelope, the lands occupied by the defendants were once part of Bernwood Forest, a hunting forest held by the Crown since Edward the Confessor. In 1633, it was agreed between the King and John Dynham, as lord of Boarstall Manor, that Bernwood would be disafforested. Such a decision was often unpopular with local tenants in that it prevented the ability to farm wood by growing trees. This transformed the landscape of Boarstall and Brill and resulted in a decline in inhabitants.[67] The second, related issue was whether the lands in question resided within the parish of Brill, and thus subject to tithes as per Penelope's legal right. This point was Penelope's focus, whereas the defendants asserted that the disafforestation had brought about changes in how the land was recognised and used.

The defendants questioned the extent and reach of Penelope's control, asking for clarification as to what parts of the estate she had rights over.[68] They argued that the lands in question, varying in size and type, were not within the parish of Brill and were not subject to tithes or her authority: 'she the complainant hath no right or title thereunto'.[69] Each parcel of land was located where Bernwood Forest had once been before disafforestation and, following a decision by the Crown and commissioners, these lands were free from tithes. Penelope's exception to the answer reiterated her right over the lands, detailed the authority she held in other townships and reiterated that the lands were within the parish of Brill and subject to tithes. Cases related to tithes saw a significant increase across most of the country between the 1650s and 1670. It was the most common case type in Buckinghamshire and they drew the most female litigants alongside land cases. Penelope also demanded to know how much corn and grain had been collected, and for how many years, acknowledging that between 1642 and 1645 the lands 'being near unto several garrisons' were unlikely to have made a profit, therefore asking for such information for 1640, 1641, 1646 and 1647.[70] Further answers only repeated the original defence, and claimed the response to be sufficient to her allegations. This case was clearly marked by the Civil War, when many cases across the sample lacked

[67] Stephen Porter, 'The Civil War Destruction of Boarstall', *Records of Buckinghamshire*, Vol. 26 (1984), p.90
[68] TNA, E 112/162, Case no.83, answer, John Brown, Thomas Alden, Henry Parker, Edward Murren, Thomas Brown and Thomas Perry
[69] *Ibid*
[70] *Ibid,* exception

recognisable time stamps that contextualised the events in everyday life. Penelope's awareness of the impact of the conflict on the local production of goods implied that she was a present or at least an informed landowner during the war years.

The depositions provided more information about the land in question and revealed some confusion regarding control over the land and what parish it was part of. Witnesses appearing for Penelope claimed that tithes had been paid in the past. A servant for the Dynham family, Alice Ford, appearing alongside her husband Robert, deposed that she had collected tithes of hay from one of the parcels of land without issue.[71] Edmund Gray and Robert Spencer alluded to the same. Thomas Hunt, a yeoman and tithe collector for John Dynham during his lifetime, recalled that the inhabitants of Brill 'could agree for the tithe of their cattle going within the lands of the said forest', but since the disafforestation all demands for tithes had been denied.[72] Taking the witness testimonies for the plaintiff together, it appears that whilst tithes were taken prior to 1633, since then all attempts to collect them were ignored even though some tenants still assumed they were due.

Witnesses called by the defendants confirmed that tithes had been collected from the lands in question during John Dynham's lifetime, but that this had changed following the disafforestation of Bernwood Forest. An elder of the community, seventy-year-old Edward West, was called on as a witness, a common practice of drawing on the authority of memory in cases concerning the affairs of a community. He deposed that agreement made between the Crown, freeholders and John Dynham improved the Dynham estate by £500 to £600 per annum:

> '…the said Sir John Dynham should have and hold unto him and his heirs twelve hundred acres of land…and believeth that in case any of the said lands lying within the said forest should appear to lie or be within the limits of the said parish of Brill, Boarstall and Ackley that then his majesty…and any of their tenants, farmers and occupiers of

[71] TNA, E 134/1650/East9, depositions on behalf of Dame Penelope Dynham, Alice Ford
[72] *Ibid*, Thomas Hunt

> the said lands should be exempt and free from payment of all manner of tithes to the person or proprietor of the said rectory'.[73]

Richard Frankley's and William Edward's depositions were much the same, reiterating that following the disafforestation the land became common land and, for the benefit of commoners, was free of tithes. Neither deponents for the plaintiff or defendants commented on which parish the lands lay within, but they all noted that they were the same lands once known as Bernwood Forest.

Depositions also revealed that Penelope had been embroiled in litigation prior to the Exchequer case regarding the same lands. Penelope was no stranger to litigation: she appeared in the Exchequer on at least four occasions as both a plaintiff and a defendant and was recorded at least twice in Chancery as a plaintiff and a defendant, concerning various lands in Buckinghamshire, Oxfordshire, and Wales. The suits discussed by two witnesses in the depositions did not mention which courts they had appeared in. Clement Gregory, a gentleman in his sixties, appeared as a witness for Penelope and recalled a case between the Dame and Sir Robert Dormer concerning the non-payment of tithes some years earlier, resulting in Penelope receiving 6 acres of land in lieu of the outstanding payments.[74] Alexander Shiftbury, a seventy-year-old yeoman, deposed that Penelope had sued him ten years earlier, along with other farmers and tenants on the land of Sir Gerrard Fleetwood for the non-payment of tithes on the same disafforested land. Whilst Alexander did not know whether Penelope had received anything following the case, he also recalled a conversation twenty years earlier between Sir Thomas Fanshome, the mayor of the Crown Office and Penelope's husband, John Dynham, that had taken place at an inn known as The George in Aylesbury:

> "…did seal a release as was then declared of all his the said Sir John Dynham's right and title of and in the forest of Bernwood to his late majesty and his successors and that the said Sir John Dynham did weep immediately after the sealing of the same and having so done the said Sir John Dynham said he should never live to enjoy it".[75]

[73] TNA, E 134/1650/East9, depositions on behalf of John Brown, Thomas Alden, Henry Parker, Edward Murren, Thomas Brown, & Thomas Perry, Edward West
[74] TNA, E 134/1650/Trin2, depositions on behalf of Dame Penelope Dynham, Clement Gregory
[75] *Ibid,* depositions on behalf of John Brown, Thomas Alden, Henry Parker, Edward Murren, Thomas Brown, & Thomas Perry, Alexander Shiftbury

The recounting of an act such as weeping was uncommon in this sample, especially from the perspective of a deponent. Such a response tells us, if it were true, that Bernwood forest was a matter of concern for John and had likely plagued him for many years of his life. The act of releasing his hold over it, and the disafforestation, would impact his successors more than it would him, given his age at the time of the supposed discussion.

There was no response or decree following the depositions, and it was unclear from other sources what the resolution was to this case, formal or informal. What was apparent however, was that Penelope's choice to embark on litigation regarding the lands on more than one occasion suggests that they were an important part of her estate and the legacy that she would pass on to her family. By 1650, she would have seen countless Royalist and Parliamentarian soldiers, fled her home on at least one occasion, and witnessed the destruction of her village and church. The Boarstall estate was initially passed to Penelope's granddaughter, Margaret, shortly after the Exchequer case in 1651, and she retained it when she became a widow herself in 1661, before passing it to her son Edward, who died without issue in 1672. Before her death, Penelope had rebuilt the Church destroyed during the Civil War and restored the grounds of Boarstall house.[76] The village was not refurbished, replaced instead by pasture fields. The impact of the Civil War on Boarstall then was lasting: 'Although military activity in the Civil War caused much destruction of property, there are few other places where it led to such a marked change in the pattern of settlement'.[77] Perhaps more than any other case in this thesis, the legacy of Dame Penelope Dynham showed the true extent of the allowed power of the wealthy widow, fully exposing the contradiction between ideals of womanhood and the reality of living as a titled widow through a national conflict.

Despite her status, Penelope appeared to have a close relationship, and a seemingly more amicable one with some members of the local community than other titled widows in the sample. From witness depositions, on both sides, we know that Penelope was not only known but had been known by some of the older residents of Boarstall and surrounding parishes for over thirty years. By contrast with Helen, Penelope appeared to reside predominantly in her Boarstall residence and was therefore a present landowner which may have influenced people's opinion of and attitude towards

[76] Donagan, *War in England 1642-1649*, p.310
[77] Porter, 'The Civil War Destruction of Boarstall', p.91

her. Penelope's efforts to secure her rights, and by extension the rights of her family, to tithes in and around Boarstall and Brill was part of her responsibility as lady of the manor, not just as head of household. Her decision to bring a case to the Exchequer when she did suggested that she was looking to secure her holding before passing it to her granddaughter. The timing of this case in relation to the Civil War was coincidental rather than driven by a specific wartime grievance, but did reflect a desire, and indeed the ability, to continue on with affairs where possible. As we see from the case itself, the narratives of the defendants and the testimonies of the deponents did not mention the Civil War directly. This possibility of sustained legal redress during a time of significant disruption, in an equity court working as an extension of monarchical monitoring and conscience no less, was an important aspect of the Exchequer's history as an early modern court of law. This fact, alongside a continued desire by members of society, across the social spectrum, speaks to the nature of litigation during this period, and perhaps goes some way to helping us understand why the legal space was one where womanhood did not always hold the same limitations as elsewhere in the early modern context.

Penelope wrote her will on 11th September 1670, and it was proved in December 1672. She named her two grandsons, William Soane and Thomas Millington as her executors, and in total left over £2000 to her family and servants, especially her granddaughters.[78] Most notably however, was the instruction to take a yearly rent-charge of £8 from the Boarstall estate to provide poor children in the parish with aid and apprenticeship, an arrangement that was updated in 1913 by which 'the income of the charity is made applicable in apprenticing poor children to some useful trade or occupation, or in assisting persons under twenty-one years of age upon entering such trade or occupation'.[79] Whilst so many cases in this sample considered the legacy left by men, good and bad, this case demonstrated a female legacy in a community that she had helped to rebuild.

Katherine Lady Brooke, Warwickshire, 1650

Only one case reached deposition in Warwickshire between 1642 and 1651: it was brought by Katherine Lady Brooke on behalf of her son, Francis Lord Brooke. Born in

[78] TNA, PROB 11/340/483, will of Dame Penelope Dynham
[79] 'Parishes: Boarstall', pp. 9-14

1618 to Francis Russell, 4th Earl of Bedford and Catherine Bridges, Katherine was the eldest of ten siblings and one of four daughters, all of whom married members of the elite, 'just about [boxing] the political compass'.[80] A 'politically and theologically eclectic character', Katherine's father Francis was a politician frequently nominated to committees and a Parliamentarian at heart. His estate and wealth were evident in his will, and he left portions of between £3000-£5000 to his daughters.[81] He also stated that if 'any difference shall happen to arise…between any of children amongst themselves that they cast it all at their own mother's feet as the supreme judge'.[82] This delegation of authority to his wife, and Katherine's mother, was indicative of the ability and knowledge that Francis believed she held, as well as a trust that speaks to the idea of allowed power in a different way: sanctioned by a husband directly rather than just written into the realm of widowhood.

In 1631, Katherine married Robert Greville, 2nd Baron Brooke of Beauchamps Court, who had inherited his title from his father's first cousin, Fulke Greville in 1628, as well as Warwick Castle and 'a landed income of more than £4000 p.a. with lands in twelve counties and London'.[83] Robert split his time between Warwick and a residence in Holborn. They had five sons between 1637 and 1643, and it was their youngest, Fulke, who would later inherit his father's title. A radical Puritan activist, Robert 'was a prominent and determined opponent of royal government from the first meeting of the Long Parliament'.[84] He paid large sums out of his estate to assist in raising forces for Parliament in the early stages of the Civil War. In 1642, he also raised the garden walls of Warwick Castle, created bulwarks, and bought gunpowder.[85] He was killed at Lichfield by a Royalist sniper on 2 March 1643, leaving Katherine a widow until her death in 1676.

Despite expending large sums of money during the Civil War and for colonial enterprises, such as his contributions to the Providence Island colony in 1630, Robert left a large estate and fortune to Katherine following his death. Records showed that Katherine was involved in an array of litigation across courts, especially Chancery,

[80] Conrad Russell, 'Russell, Francis, fourth earl of Bedford (bap. 1587, d. 1641), politician', *Oxford Dictionary of National Biography.* Oxford University Press
[81] *Ibid*
[82] TNA, PROB 11/188/141
[83] Ann Hughes, 'Greville, Robert, second Baron Brooke of Beauchamps Court (1607–1643), parliamentarian army officer and religious writer', Oxford Dictionary of National Biography. Oxford University Press
[84] *Ibid*
[85] 'The borough of Warwick: The castle and castle estate in Warwick', in W B Stephens (ed.) *A History of the County of Warwick: Volume 8, the City of Coventry and Borough of Warwick*. *British History Online* (London, 1969), pp. 452-475

regarding leases and her guardianship over her son, Francis.[86] She has been remembered as a Parliamentarian war widow, and religious radical in her own right, whose efforts helped to protect Warwick Castle during and after the Civil War. She returned to the Castle in 1652.[87] Like many elite women, Katherine 'took decisive steps to defend…[property] from siege and capture, or, less dramatically, lobbied the authorities to limit the impact of enemy exactions on family property'.[88] Examples such as this bring to mind Antonia Fraser's observations regarding elite women: 'The potential strength in the position of the wealthy widow … may stand as one example of those possibilities which did exist for womankind in the real world, outside the dram or nightmare of her theoretical weakness'.[89] Whilst Anne Laurence has argued that social status gave women less power than men, the power that was exercised, and had been allowed because of both gender and wealth, still confirmed women's ability to act and prosper within the confines of patriarchy.[90] Whilst a widow gained status through wealth, her power was still mediated through the patriarchal paradigm, and was still 'allowed' in the same way as it was for untitled widows.

The case brought to the Exchequer in 1650 concerned a more modest landholding than Warwick Castle: the Manor of Knowle on the boundaries of Warwickshire. Appearing as mother and guardian of thirteen-year-old Francis Lord Brooke, Katherine's suit against defendants John Catesby, Lawrence Evetts and Sarah Evetts concerned a water corn mill and pond. According to her bill, the mill was ancient, set within the nine acres estate, and the pond had long been a feature of the manor – made of stone, it was three hundred yards long and seven foot high, and would have cost £500 to rebuild in 1650. Her husband Robert had purchased the mill during his lifetime along with covenants to repair the mill, its floodgates, and banks, passing it to his eldest son following his death. Katherine claimed that the defendants had sought to damage the floodgates and had threatened the miller, Samuel Hill, saying that they 'will not suffer the said miller to keep the water of the said mill according to the ancient gage'.[91] They were also claiming false ownership, according to Katherine, of four acres of meadow near the

[86] TNA, C 6/31/20; C 6/44/33; C 6/107/12; C 6/128/81; C 7/129/7; C 7/398/26; C 7/396/12
[87] 'The borough of Warwick: The castle and castle estate in Warwick'
[88] Hughes, '"Gender Trouble"', p.351
[89] Antonia Fraser, *The Weaker Vessel: Woman's Lot in Seventeenth-Century England* (London: Phoenix Press, 1999), p.6
[90] Laurence, *Women in England,* p.15
[91] TNA, E 112/340, Case no.4, bill of complaint, Katherine Lady Brooke

mill. Her bill documented how the defendants had taken Samuel to court at Assizes, 'for raising the said water and gage whereby the said meadow of four acres hath been surrounded with water'.[92] Whilst the case was settled in Samuel's favour, the defendants threatened further suits and said 'that they will pull down the floodgate…of the mill and turn the said water course of the said mill out of the ancient channel'.[93]

The defendants' grievance, according to Katherine and seen in their answer, was that the pond had overflowed and flooded their meadow.[94] Whilst the defendants' argued that this had damaged their land, Katherine claimed since the mill had been repaired and maintained, over time the soil of the meadow and its value had been improved, 'not worth above fifty shillings per annum twenty or thirty years last past, but now the said meadow is set for eight pounds per annum'.[95] Her case against them in Exchequer was in response to their threats of pulling down the mill and draining the pond, and she expressed a sense of urgency as many of the witnesses who had knowledge of the mill, pond and its history were 'very aged and not likely to live long', even asking if their testimonies could be taken separately and kept on record.[96] In their answer, the defendants' documented John Catesby's longstanding ownership of the meadow and denied any wrongdoing towards the miller, the pond or the mill. They argued that following recent alterations to the pond and floodgates, the water was on average much higher than it had been over a number of years, and that it was poorly maintained which resulted in the flooding of the meadow.[97]

A wide variety of witnesses were called by Katherine, from across professions and many over the age of sixty. Of those who commented on the pond and floodgates, most notably one of the past millers Thomas Ashurst, all agreed that whilst improvements had been made in terms of repairs, nothing had been changed and the height of the water was the same as it had been under the previous owners of the manor.[98] Henry Collys, amongst others, deposed that whilst the defendant's meadow had once been boggy and low in value, it was now firmer with better quality soil.[99] Thomas Clarke, a local blacksmith, commented that not only had the land much improved, but that the defendants had

[92] TNA, E 112/340, Case no.4, bill of complaint, Katherine Lady Brooke
[93] *Ibid*
[94] *Ibid,* answer, John Catesby, Lawrence Evetts and Sarah Evetts
[95] *Ibid,* bill of complaint, Katherine Lady Brooke
[96] *Ibid*
[97] *Ibid,* answer, John Catesby, Lawrence Evetts and Sarah Evetts
[98] TNA, E 134/1650/Mich10, depositions on behalf of Katherine Lady Brooke, Thomas Ashurst
[99] *Ibid*, Henry Collys

gained an additional acre of usable meadow.[100] The defendant's witnesses, by comparison, were younger on average and mostly gentleman. The witnesses claimed that the flooding had happened on more than one occasion and that the pond and stream were poorly maintained, with overgrown bushes disrupting the flow of water.[101] In cases that concerned the history of the land and memory of its use, age and gender influenced a deponent's power and authority in the court. Older men who had worked on the land and witnessed the short- and long-term impact of agricultural changes held greater weight. This would explain the composition of deponents called. The defendants also called Katherine Edes as a witness, a widow of seventy-two. Her testimony recounted what her husband and his male associates had said about the land and its worth, but offered very little from her own recollection. Nevertheless, in choosing to appear as a witness in a society that 'regularly discredited women's words', women like her '[asserted] a verbal agency over domestic, sexual, and marital events that had, one way or another, disempowered them'.[102] Here too, power was allowed to women in this court setting.

The depositions also revealed that a case had been heard in the Court Baron of Knowle eighteen years earlier between Mrs Anne Catesby and Sir John Nicholas concerning the boundary of the mill pond. The outcome of this case had resulted in a new black stake being placed as a boundary, with members of the local community called to act as jury and decide where the stake should be placed. Richard Carter and Richard Perks, both called by Katherine as witnesses, were members of that jury, but neither recalled a black stake prior to the new one being placed.[103] The court decree, issued on 20th June 1653, placed great weight on the depositions and the memory of the witnesses called, decreeing that as it had existed in that way for forty years, it should remain the same.[104] Whether the issue reached a law court again is unclear, but this was a satisfactory conclusion for Katherine. According to a witness called for both sides the mill was worth around £30 per annum at the time of the suit because of the dear rates of corn.[105] It was therefore an important source of revenue, and a valuable asset to the estate following the Civil War.

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[100] TNA, E 134/1650/Mich10, depositions on behalf of Katherine Lady Brooke, Thomas Clarke
[101] *Ibid,* depositions on behalf of John Catesby, Lawrence Evetts and Sarah Evetts, Richard Eedes and Thomas Ellis
[102] Shepard, *Accounting for Oneself,* p.261
[103] TNA, E 134/1650/Mich10, depositions on behalf of Katherine Lady Brooke, Richard Carter and Richard Perks
[104] TNA, E 126/5, pp.340-341
[105] TNA, E 134/1650/Mich10, Oliver Wheigham

Imogen Peck has commented on the complexity of a husband dying during the Civil War and the lasting impact of the war on their lives, '[marking] the start of a complex set of negotiations and decisions, the results of which could have as much impact on their future destiny as the initial loss of a spouse'.[106] For Katherine, she was left as a widow with five sons in their minority and extensive lands to control and protect, all during a time of conflict and uncertainty. Just as in the cases of Helen and Penelope, Katherine's role in the context of the English Civil War was an extension of an already broad array of responsibilities, influenced by her gender, status and locality. The importance of estate management and family security was complicated by the Civil War and Interregnum, and altered the context of her widowhood.

Widowhood in England, 1642-1651

The continuation of Exchequer proceedings during the Civil War provided an important avenue for litigation at a time when security and estates may have been at the highest risk. Whether the cases touched directly on the conflict, they were all informed by it. Whilst it is unsurprising that so few cases reached deposition, we do not know how many records have been lost, nor how many cases were interrupted or prevented by the Civil War. Nevertheless, this continued pursuit of legal redress by men and women was not only evidence of the litigiousness of early modern England, but testament to the strength of law in the eyes of the populace, as well as their trust in it.

The three cases discussed in this chapter demonstrated a colliding of worlds – the constructed narrative world within the court and the real concerns of a widow during a bloody conflict. They were a stark reminder that every woman in the Court predominantly resided outside of it, and that concerns were entangled with one another in day-to-day life. As a result, any conclusions drawn were bound by this context of war and unrest. In contexts such as Katherine's and Penelope's, as landed elite widows, their authority and legal identity could more easily exist in society, and indeed, the former's success at protecting Warwick Castle and the latter's efforts to rebuild following the destruction brought about by the conflict is evidence of their abilities and the authority that they commanded. Helen's role outside of her court identity, whilst not supported by

[106] Peck, 'The Great Unknown', p.235

any titled status, was strengthened by the wealth and respect garnered by her husband, and then settled when she re-entered marriage. Only Katherine Lady Brooke was a war widow, but they each had to navigate a time of uncertainty as the head of their own household, with children and land to protect. Whilst easy to overlook, it should also be noted that all three of the widows in this chapter were the plaintiffs, and aggressors, at law and had taken people poorer than themselves to court during a time of unrest. They had every right to do so, such was the power that they had been allowed given their widowed status and their legal claim. Yet in doing so, they were demonstrating another side of womanhood that patriarchal ideals did not give room for – the ability to survive and prosper without male influence, even when the system around them was falling to its knees.

Conclusion

This thesis has explored widowed litigants in the Court of Exchequer in the seventeenth century, and in doing so has offered a new perspective on both. The Court of Exchequer has even more to offer the early modern historian than the nineteen cases of this thesis could ever hope to fully capture, but alongside a database with a wide reach and many stories yet to tell, the Exchequer is on its way to firmly residing within all major discussions of women's access to the law. This thesis joins a handful of other projects that not only demonstrate the richness of Exchequer court narratives, but the value of them in adding to our growing understanding of women's relationship with the law, pursuit of legal redress and gender history more widely. As Chapter Two demonstrated, the continued evolution of the field requires new projects and approaches, to not only fill gaps in our understanding but to allow for some conclusions to be re-examined.

It is evident from their prevalence in the Court that widows made regular use of the Exchequer in this period, more so than any other group of female litigants, indicating that their concerns not only brought them to law, but within the remit of a less popular early modern equity court. Over the course of its lifetime, the Court of Exchequer brought legal resolution and defeat to thousands of women from across the social spectrum, life stages and the country. It was not, however, a court for everyone. Despite its accessibility and flexibility, there remained barriers for entry into its space: the ability to pay the necessary legal fees and suitability of the case for the Exchequer's jurisdiction. Even after the prerequisite of being a debtor to the Crown was dropped in 1649, the remit of the Court remained largely unchanged, and defendants still argued that some did not have the right to bring a case within its jurisdiction. Nevertheless, the Exchequer was an important avenue of redress for early modern men and women.

The original database that has formed the foundation of this thesis and the focus of Chapter Three demonstrated how the Court was used between 1620 and 1670 and identified patterns in litigation. It has also quantified the Court's usage across this period. Within the 3,968 cases that reached deposition, there were 6,306 plaintiffs and 12,359 defendants, bringing 44,162 deponents. There are no suitable comparisons to further

situate the number of depositions, litigants, or defendants beyond this fifty-year period, since other works focus on a selection of cases or the number of bills submitted over a longer, or later, period. However, these findings do support conclusions about the continued presence and use of the Court during the seventeenth century as noted by Bryson, as well as Exchequer's role as an alternative to Chancery, as noted by Horwitz. The richness and detail of Exchequer records, as observed by Hunt, is similarly shown in this thesis, and their value as examples of access to early modern legal redress is evident for both legal and gender history.

Yorkshire, the Northeast, and Cumbria were the origin of the most depositions, plaintiffs, defendants, and witnesses, accounted for a fifth of all Exchequer business. The dominance of this region that has been found in other courts is similarly apparent in the Exchequer. The regional element of this project offers a starting point for focused geographical discussions and demonstrates that the Exchequer was impacted by regional contexts in the same way as other courts were. The prevalence of property, land, and tithes cases confirm the preferred business of the Court concerning Crown lands and the payment of tithes following the Exchequer's absorption of the Court of First Fruit and Tenths during the reign of Queen Mary in 1554. Despite the clear remit of the Court, the variety of cases heard and the mixture between titled and untitled litigants reflected the Court's accessibility for many as an avenue for legal redress for those whose cases suited its remit. It was therefore not as accessible as Chancery, and so the two courts offered different avenues for different needs. The relative lack of emotive language in Exchequer records in comparison to Chancery furthers this point, suggesting that whilst they have been labelled as sister courts, their business and narratives differed. In addition, despite the focus on women in this project, the quantitative findings presented here function as a foundation for any research on the Court in this period, and a similar process could be followed for the duration of the Court's existence to fully document its use.

The reciprocal relationship between early modern English society and the law informed ideals of both patriarchy and womanhood. This relationship also influenced the allowed power that women accessed through the cracks of structural patriarchy. Widows were supposedly the 'free' women of the early modern period. The fact that this freedom challenged patriarchal order was more than just evidence of how 'remarkably ineffective [it was] in forcing them to accept male tutelage' – it was evidence of an intentional

patriarchal contradiction with ideals of womanhood on one side, and the needs of social order and family on the other.[1]

Whether as a plaintiff, a defendant, or a witness, and whether alone or with a combination of other men and women, widows entered a discussion about their rights and their opinions or beliefs about rights of others upon participation in the Court of Exchequer. It was only through those negotiations of allowed power, ownership, and control, that their rights and the rights of others, were made manifest. As an equity court, the cases considered in the Exchequer existed within a different space than common law, and the degree of flexibility afforded to these cases, the arguments involved and their outcomes, made legal discussions of rights less rigid and more open to negotiation. The Exchequer, as an equity court, allowed married women to appear despite the restrictions of coverture, and it was therefore a space where women's legal personality was present in the most basic sense. More women appeared in equity courts because of this absence of restriction, rather than freedom. This process was still restricted, as well as mediated, but it was a process that acknowledged a female legal persona considerably more than elsewhere. This of course did not mean that married women appeared as sole litigants, or indeed that they appeared in greater numbers than other jurisdictions. In this sample, married women still appeared almost always alongside their husbands, but the practice of the Exchequer to allow this kind of power of legal identity is still notable.

The cases chosen for this thesis have not only given an insight into the lives of some early modern women but have also been a starting point for considering widowhood and legal identity in practice amidst ideals of womanhood suggested by patriarchy. The widows in Chapter Four were prime examples of allowed power at work, appearing alone as widows against male litigants, acting as heads of household to protect their future security. Whether laying claim to profits of wine farming and imports, defending the practice of Freebench, acting as property owner and evicting a violent tenant, attempting to regain a security during later years, concluding the affairs of her mother or denying money owed, the widows of this chapter provided a snapshot of the business of the Court, and the array of issues that led widows there.

[1] Hubbard, *City Women*, pp.261-262

The female litigants who met in the Court, the topic of Chapter Five, were a testament to what allowed power could lead to, women appearing against one another and challenging the rights of each other in an attempt to secure their own estate. In almost every case, the past affairs or actions of men were central: the lands and debts of Richard Estmond; the tithes owed out of John Lambert's estate; the conflicting wills of Robert and George Parkinson; and the legacies left by Thomas Perry. The importance of gender in these cases was therefore continued gender relations between men and women, rather than unique legal interactions between women. This supported the idea that widows took the place of their husbands, vessels of legal identity rather than simply women at law.

Chapter Six explored the impact of wealth on allowed power, showing that whilst it was predominantly influenced by gender, social status and the scale of elite women's estate or concerns gave them a power more readily accepted and with wider reach. The requirements of estate management aligned widows in this chapter even more closely with male heads of household, continuing their affairs and furthering interests started or stalled. Land improvements were capitalised on and monetised; lands were reclaimed; business agreements were finalised; the collection of tithes was maintained; and the continued use of customary mills was encouraged. Their title placed a larger burden of responsibility on their shoulders, but their legal identity too was determined by their widowhood.

The continued business of the Court of Exchequer between 1642 and 1651 reflected not only a need for litigation but the importance of the Court during the seventeenth century. The three cases analysed in Chapter Seven considered widows litigating during and following the Civil War, reflecting on the impact of the conflict on everyday lives and security during widowhood. Each case demonstrated a different connection with the Civil War, and only one widowed litigant of the chapter entered widowhood because of the conflict. These widows brought cases out of necessity, as all widows in this thesis did, but they did so in the midst of hardship brought on by war. Their responsibility as heads of household included the defence and rebuilding of their estates, and physical as well as financial security. Their survival and security as independent women was tested during a time of social upheaval.

Through this analysis, four key things emerge in relation to the research questions that have driven this project. The first, that even during widowhood, women were more

likely to litigate alongside others in the Court of Exchequer. The infrequency of sole female litigants in comparison with sole male litigants, even in an equity court, reflected wider gender norms. The second point to note was the importance of estate management for widows bringing a case to the Exchequer. This was entangled with the responsibility of widowhood itself, and the role of head of household. Whilst many of widows considered in this project demonstrated knowledge of their estate, large or small, not all displayed experience at managing it prior to their husband's death, reminding us of the difficulties and burdens associated with widowhood. Thirdly, the persistent presence of husbands in the court narratives of widows, which whilst expected to a certain degree supports the notion of allowed power, and the purpose of a widow's legal identity, as far as patriarchy was concerned. The fourth and most substantive point to note is the need for widowhood's alignment with freedom to be re-examined.

Women moved through stages of identity in a way men did not. These had both social and legal meanings and impacted them differently throughout their lives. The majority of women spent a large portion, if not all of their lives, without something that would fundamentally change their interactions with society and the law. Historiography so often talks of widows as free, but this is an oversimplification, hiding something crucial and innate to our struggle against patriarchy – the supposed 'freedom' specific widowhood, distinct from singlehood, was still something given not gained, originating from the same system that oppressed. It was not, therefore, a recognised entitlement and was still ultimately dependent on a marriage, so much so it was inseparable from it. This in part explains why a widow re-entered subjugation when she remarried – she had not proven herself worthy of independence or power, she had borrowed it from her husband. Her legal identity at law was his masked as her own, and the power she exercised was allowed. The exercise of this specific kind of legal identity has been at the heart of this thesis. It was the result of womanhood and widowhood meeting the law in a patriarchal society, where family was central, and power was masculine. The female litigants of this project appeared in the Exchequer as women gifted with the legal independence of a deceased husband. This was a temporary privilege, only available to her because she had outlasted the man meant to hold domain over her. It was not her own power. These cases were examples of how widows made use of this allowed power, and how their management of both the affairs left to them and their own showed them as more than capable than patriarchal ideals would let us believe. From a variety of circumstances,

newly widowed, left with children, on the verge of poverty or simply trying to create a stable foundation on which to make a life, the widows of this thesis were proof of women's strength and independence, as well as their confinement.

Widows did not simply hold rights given or left to them, they acted and made changes to their benefit and to the benefit of their families. They were estate managers, not minders; they were business owners, not simply the widow left to handle her husband's affairs. Allowed power came to them because of a fundamentally gendered relationship, but what happened beyond that was not dictated in the same way as before her widowhood. The Court of Exchequer is not a unique location for these considerations – this project could be done in a variety of other early modern courts. Additional projects would further our understanding of widows litigating at law and the complexities of this, even given their *relative* freedom as early modern women. This project is both a contribution to the field and a starting point for a focused analysis on the legal identities of widows that recognises the duality of their independence and their continued oppression. The fact that they were given some freedom and power, but only filtered and sanctioned, further demonstrated the pervasiveness of the patriarchal system. Allowed power was an evolution of coverture, with a husband's legal authority and identity continuing to cover his wife, but becoming permeable following his death, and a vehicle for her to use.

The process of realising women's history is far from over. With new history added every day, progress made, battles won and lost, the tide ever so steadily changing, a great deal remains indistinguishable in women's past across the globe. This project illuminates a small part of that past and adds to a growing field of gender history that uses the master's tools to examine the master's house, lest we dismantle it before we reflect on how it was built, maintained, and how it has survived for so long.[2]

[2] Audre Lorde, *The Master's Tools Will Never Dismantle the Master* (New York: Penguin, 2017)

Bibliography

Manuscripts

Canterbury Cathedral Archives

Extract from Will, CC, DCc-ChAnt/W/217A (ND, mid seventeenth century)

Gloucestershire Record Office

GDR/R8/1661/29, Will of Francis Merryweather (1661)

Hull History Centre

Bargain and Sale, HHC, DDLG/30/153 (12 October 1620)

Copy Settlement, HHC, U DDSQ4/2/1 (29 September 1678)

Nottinghamshire Archives

157 DD/P Series

The National Archives

Chancery Records:

C 2: Six Clerks Office: Pleadings, Series I, Elizabeth I to Charles I

C 5: Court of Chancery: Six Clerks Office: Pleadings before 1714, Bridges

C 6: Court of Chancery: Six Clerks Office: Pleadings before 1714, Collins

C 7: Court of Chancery: Six Clerks Office: Pleadings before 1714, Hamilton

C 8: Court of Chancery: Six Clerks Office: Pleadings before 1714, Mitford

C 21: Court of Chancery: Six Clerks Office: Pleadings: Country Depositions, Series I, 1538-1670

Exchequer Records:

E 107: Court of Exchequer: King Remembrancer's Office: Appearance Books. Elizabeth I – Victoria

E 112: Court of Exchequer: King Remembrancer's Office: Bill Books. Elizabeth I – Victoria

E 125: Court of Exchequer: King Remembrancer's Office: Entry Books of Decrees and Orders (Orders only). Charles I – Charles II

E 126: Court of Exchequer: King Remembrancer's Office: Entry Books of Decrees and Orders (Decrees only). James I – Victoria

E 127: Court of Exchequer: King Remembrancer's Office: Entry Books of Decrees and Orders (Orders only). Charles II – 1841

E 128: Court of Exchequer: King Remembrancer's Office: Decrees and Orders. Elizabeth I – 1663

E 130: Court of Exchequer: King Remembrancer's Office: Decrees, Original. 1663-1841

E 131: Court of Exchequer: King Remembrancer's Office: Orders, Original. 1663-1842

E 134: Court of Exchequer: King Remembrancer's Office: Depositions taken by Commission. Elizabeth I – George II

IND 1/16822: Court of Exchequer: King Remembrancer's Office: Bill Books. James I

IND 1/16824: Court of Exchequer: King Remembrancer's Office: Bill Books. Charles I

IND 1/16826: Court of Exchequer: King Remembrancer's Office: Bill Books. Commonwealth

Star Chamber Records:

STAC 8/209/13, Murray v Musgrave (July 1616)

Wills:

PROB 11/113/149, Will of Richard Pearce, Founder of London (13 February 1609)

PROB 11/129/781, Will of Dame Margaret Barkley, Widow of Bruton, Somerset (28 June 1617)

PROB 11/131/263, Will of Edward Talbot Earl of Shrewsbury of London (28 February 1618)

PROB 11/165/341, Will of Sir John Dynham (17 April 1634)

PROB 11/173/385, Will of Dame Mary Harrington, Widow of Kelston, Somerset (23 February 1637)

PROB 11/188/141, Will of The Right Honorable Francis Earl of Bedford Lord Russell Baron Russell of Thornhaugh of Saint Martin in the Fields, Middlesex (8 February 1642)

PROB 11/221/886, Sentence of Frances Reade, Widow of All Hallows Barking, City of London (10 July 1652)

PROB 11/340/483, Will of Dame Penelope Dynham (11 December 1672)

Printed Primary Sources

Edgar, Thomas & Doddridge, Sir John, *The lawes resolutions of womens rights* (London: 1632: Text Creation Partnership, 2011) Available online at: https://quod.lib.umich.edu/e/eebo/A21071.0001.001?rgn=main;view=fulltext

Gouge, William, *Of Domestical Duties* (London, 1622: Text Creation Partnership, 2011) Available online at: https://quod.lib.umich.edu/e/eebo/A68107.0001.001?rgn=main;view=fulltext

Shakespeare, William, *The Taming of the Shrew* (from *The Norton Shakespeare, Second Edition*, New York & London: W.W. Norton & Company, Inc., 2008)

Vivian, J. L., *The visitations of the county of Devon: Comprising the herald's visitations of 1531, 1564, & 1620* (John Lambrick) (Exeter: H. S. Eland, 1895) Available online at: https://babel.hathitrust.org/cgi/pt?id=yale.39002002213917&view=1up&seq=9&skin=2021

Secondary Sources

Alsop, J. D., 'The Structure of Early Tudor Finance, c.1509-1558', in C. Coleman and D. Starkey (eds.) *Revolution Reassessed: revisions in the history of Tudor government and administration* (Oxford: Clarendon Press, 1986)

Amussen, Susan D., *An Ordered Society. Gender and Class in Early Modern England* (Oxford: Blackwell, 1988)

Amussen, Susan D., 'The Contradictions of Patriarchy in Early Modern England', *Gender & History,* Vol. 30, No. 2 (2018), pp.343-353

Bailey, Joanne, 'Voices in court: lawyers' or litigants'?', *Historical Research,* Vol. 74, No. 186 (2001), pp.392-408

Barrett, Nick, 'Finance on a Shoestring: The Exchequer in the Thirteenth Century', in Adrian Jobson (ed.) *English Government in the Thirteenth Century* (Woodbridge: Boydell & Brewer, 2004), pp.71-86

Barrett, Nick, 'Another Fine Mess: Evidence for the Resumption of Exchequer Authority in the Minority of Henry III', in Louise J. Wilkinson & David Crook (eds.) *The Growth of Royal Government Under Henry III* (Woodbridge: Boydell Press, 2015), pp.149-165

Beale, Stewart, '"Unpittyed by any"? Royalist widows and the Crown, 1660-70', *Historical Research,* Vol. 92, No. 258 (2019), pp.737-753

Beattie, Cordelia, 'Your Oratrice: Women's Petitions to the Late Medieval Court of Chancery', in Bronach Kane and Fiona Williamson (eds.) *Women, Agency and the Law, 1300-1700* (London: Taylor and Francis, 2015), pp.17-30

Beier, A. L., *Social Thought in England, 1480-1730: From Body Social to Worldly Wealth* (Taylor & Francis, 2016)

Bennett, Judith M., 'Feminism and History', *Gender & History,* Vol. 1, No. 3 (1989), pp.251-272

Bennett, Judith M., 'Women's history: a study in continuity and change', in Pamela Sharpe (ed.) *Women's Work: The English Experience 1650-1914* (London: Arnold, 1998), pp.58-68

Bennett, Judith M., *History Matters: Patriarchy and the Challenge of Feminism* (Philadelphia: University of Pennsylvania Press, 2006)

Bettey, Joseph, '"Ancient Custom Time out of Mind": Copyhold Tenure in the West Country in the Sixteenth and Seventeenth Centuries', *The Antiquaries Journal*, Vol. 89 (Cambridge University Press: 2009), pp.307-322

Binczewski, Jennifer, 'Power in vulnerability: widows and priest holes in the early modern English Catholic community', *British Catholic History,* Vol. 35, No. 1 (2020), pp.1-24

Bonfield, Lloyd, *Devising, Dying and Dispute: Probate Litigation in Early Modern England* (Oxon: Routledge, 2016)

Boydston, Jeanne, 'Gender as a Question of Historical Analysis', in Alexandra Shepard and Gatherine Walker (eds.) *Gender and Change: Agency, Chronology and Periodisation* (Chichester: Wiley-Blackwell, 2009), pp.133-165

Braddick, Michael, *State Formation in Early Modern England, c.1550-1700* (Cambridge: Cambridge University Press, 2000)

Brooks, Christopher W., *Law, Politics and Society in Early Modern England* (Cambridge; New York: Cambridge University Press, 2008)

Brooks, Christopher W., 'Law and Revolution: The Seventeenth-Century English Example', in Michael Lobban, Joanne Begiato and Adrian Green (eds.) *Law, Lawyers and Litigants in Early Modern England: Essays in Memory of Christopher W. Brooks* (Cambridge: Cambridge University Press, 2019), pp.292-326

Bryson, W. H., *The Equity Side of the Exchequer* (Cambridge: Cambridge University Press, 1975)

Bryson, W. H., 'The court of Exchequer comes of age', in Delloyd J. Guth and John W. McKenna (eds.) *Tudor Rule and Revolution: Essays for G. R. Elton from his American Friends* (Cambridge: Cambridge University Press, 1982), pp.149-158

Bryson, W. H., *Cases Concerning Equity and the Courts of Equity* (London: Selden Society, 2001)

Capern, Amanda, *The Historical Study of Women: England, 1500-1700* (Basingstoke: Palgrave Macmillan, 2008)

Capern, Amanda, 'Emotions, Gender Expectations, and the Social Role of Chancery, 1550-1650' in Susan Broomhall (ed.) *Authority, Gender and Emotions in Late Medieval and Early Modern England* (Palgrave Macmillan, 2015), pp.187-209

Capern, Amanda L., 'Visions of monarchy and magistracy in women's political writing, 1640-80', in Janet Clare (ed.) *From Republic to Restoration: Legacies and Departures* (Manchester University Press, 2018), pp.102-123

Capern, Amanda L., 'Maternity and Justice in the Early Modern English Court of Chancery', *Journal of British Studies*, Vol. 58, No. 4 (2019), pp.701-716

Capern, Amanda, McDonagh, Briony and Aston, Jennifer (eds.), *Women and the Land, 1500-1900* (Woodbridge: Boydell & Brewer, 2019)

Capp, Bernard, 'Separate Domains? Women and Authority in Early Modern England', in Paul Griffiths, Adam Fox and Steve Hindle (eds.) *The Experience of Authority in Early Modern England* (Basingstoke: Macmillan, 1996), pp.117-145

Capp, Bernard, *When Gossips Meet: Women, Family, and Neighbourhood in Early Modern England* (Oxford: Oxford University Press, 2003)

Cavallo, Sandra and Warner, Lyndan, 'Introduction', in Sandra Cavallo and Lyndan Warner (eds.) *Widowhood in medieval and early modern Europe* (Harlow: Longman, 1999), pp.3-23

Chaytor, Miranda, 'Husband(ry): Narratives of Rape in the Seventeenth Century', *Gender & History,* Vol. 7, No. 3 (1995), pp.378-407

Churches, Christine, 'False Friends, Spiteful Enemies: a Community at Law in Early Modern England', *Historical Research,* Vol. 71, No. 174 (1998), pp.52-74

Churches, Christine, 'Women and property in early modern England: A case-study', *Social History,* Vol. 23, No. 2 (1998), pp.165-180

Churches, Christine, 'Putting Women in Their Place: Female Litigants at Whitehaven, 1660-1760', in Nancy Wright, Margaret W. Ferguson and A. R. Buck (eds.) *Women, Property, and the Letters of the Law in Early Modern England* (Toronto; Buffalo: University of Toronto Press, 2004), pp.50-65

Cioni, Maria L., 'The Elizabethan Chancery and women's rights', in Delloyd J. Guth and John W. McKenna (eds.) *Tudor Rule and Revolution: Essays for G. R. Elton from his American Friends* (Cambridge: Cambridge University Press, 1982), pp.159-182

Crawford, Patricia, 'Women's published writings 1600-1700', in Mary Prior (ed.) *Women in English Society, 1500-1800* (London: Routledge, 1985), pp.211-282

Crawford, Patricia and Gowing, Laura, 'Introduction', in Patricia Crawford and Laura Gowing (eds.) *Women's Worlds in Seventeenth-Century England* (London: Routledge, 2000), pp.1-12

Cressy, David, *Travesties and Transgressions in Tudor and Stuart England: tales of discord and dissension* (New York: Oxford University Press, 2000)

Cust, Richard, 'The Collapse of Royal Power in England, 1637-1642', in Michael J. Braddick (ed.) *The Oxford Handbook of The English Revolution* (Oxford: Oxford University Press, 2015), pp.60-76

Dabhoiwala, Faramerz, 'Sex, social relations and the law in seventeenth- and eighteenth-century London', in Michael J. Braddick and John Walter (eds.) *Negotiating Power in Early Modern Society: Order, hierarchy, and subordination in Britain and Ireland* (Cambridge: Cambridge University Press, 2001), pp.85-101

Daly, James, *Sir Robert Filmer and English political thought* (Toronto: Toronto University Press, 1979)

Daybell, James, 'Gender, Obedience, and Authority in Sixteenth-Century Women's Letters', *The Sixteenth Century Journal,* Vol. 41, No. 1 (2010), pp.49-67

Dialeti, Androniki, 'Patriarchy as a Category of Historical Analysis and the Dynamics of Power: The Example of Early Modern Italy', *Gender & History,* Vol. 30, No. 2 (2018), pp. 331–342

Dolan, Frances E., *True Relations: Reading, Literature, and Evidence in Seventeenth-Century England* (Philadelphia: University of Pennsylvania Press, c.2013)

Donagan, Barbara, *War in England 1642-1649* (Oxford: Oxford University Press, 2008)

Eales, Jacqueline, *Women in Early Modern England, 1500-1700* (London: UCL, 1998)

Edwards, John Stephen, 'A new portrait of Mary Rogers, Lady Harington', *The British Art Journal*, Vol. 12, No. 2 (Autumn 2011), pp.54-57

Elton, G. R., 'VIII – The Elizabethan Exchequer: War in the Receipt', in Stanley Thomas Bindoff (ed.) *Elizabethan Government and Society: essays presented to Sir John Neale* (London: Athlone Press, 1961), pp.213-248

Erickson, Amy Louise, *Women and Property in Early Modern England* (London: Routledge, 1995)

Erickson, Amy Louise, 'Property and widowhood in England, 1660-1840', in Sandra Cavallo and Lyndan Warner (eds.) *Widowhood in medieval and early modern Europe* (Harlow: Longman, 1999), pp.145-163

Amy Erickson, 'Mistresses and Marriage: or, a Short History of the Mrs', *History Workshop Journal*, Vol. 78 (2014), pp.39-57

Fairchilds, Cissie, *Women in Early Modern Europe, 1500-1700* (Harlow: Pearson/Longman, 2007)

Filmer, Robert, *Patriarcha and other political works of Sir Robert Filmer*. Edited by Peter Laslett (Oxford: Blackwell, 1949)

Flather, Amanda, *Gender and Space in Early Modern England* (Woodbridge: Boydell Press, 2011)

Fletcher, Anthony, *Gender, Sex and Subordination in England, 1500-1800* (New Haven: Yale University Press, 1995)

Fortier, Mark 'Equity and Ideas: Coke, Ellesmere, and James I', *Renaissance Quarterly*, Vol. 51, No. 4 (1998), pp.1255-1281

Fortier, Mark, *The Culture of Equity in Restoration and Eighteenth-Century Britain and America* (Farnham: Ashgate Publishing Ltd, 2015)

Foucault, Michel, *Discipline and Punish: The Birth of Prison* (London: Allen Lane, 1977)

Foucault, Michel, *Power/Knowledge: Selected Interviews and Other Writings 1972-1977* (London: Harvester Press, 1980)

Fosyter, Elizabeth, 'Silent Witnesses? Children and the breakdown of domestic and social order in early modern England', in Anthony Fletcher and Stephen Hussey (eds.) *Childhood*

in question: children, parents and the state (Manchester: Manchester University Press, 1999), pp.57-73

Foyster, Elizabeth, 'Marrying the experienced widow in early modern England: the male perspective', in Sandra Cavallo and Lyndan Warner (eds.) *Widowhood in medieval and early modern Europe* (Harlow: Longman, 1999), pp.108-124

Fraser, Antonia, *The Weaker Vessel: Woman's lot in seventeenth-century England* (London: Weidenfeld and Nicolson, 1984)

Frith, Valerie, 'Introduction', in Valerie Frith (ed.) *Women & History: Voices of Early Modern England* (Toronto, Canada: Coach House Press, 1995), pp.i-xxiii

Froide, Amy M., *Never Married: singlewomen in early modern England* (Oxford; New York: Oxford University Press, 2005)

Froide, Amy M., *Silent Partners: Women as Public Investors during Britain's Financial Revolution* (Oxford: Oxford University Press, 2017)

Garside, Charlotte. *Women in Chancery: An Analysis of Chancery as a Court of Redress for Women in Late Seventeenth Century England*. PhD Thesis (University of Hull, 2019)

Gowing, Laura., *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford: Clarendon Press, 1996)

Gowing, Laura, '"The freedom of the streets": women and social space, 1560-1640', in Paul Griffiths and Mark S. R. Jenner (eds.) *Londinopolis: essays in the cultural and social*

history of early modern London (Manchester: Manchester University Press, 2000), pp.130-151

Gowing, Laura, 'Ordering the body: illegitimacy and female authority in seventeenth-century England', in Michael J. Braddick and John Walter (eds.) *Negotiating Power in Early Modern Society: Order, hierarchy, and subordination in Britain and Ireland* (Cambridge: Cambridge University Press, 2001), pp.43-62

Gowing, Laura, *Common Bodies: Women, Touch and Power in Seventeenth-Century England* (London: Yale University Press, c2003)

Gowing, Laura, *Gender Relations in Early Modern England* (Hoboken: Taylor and Francis, 2014)

Gowing, Laura, *Ingenious trade: women and work in seventeenth-century London* (Cambridge: Cambridge University Press, 2022)

Griffiths, Paul, Fox, Adam and Hindle, Steve, 'Introduction', in Paul Griffiths, Adam Fox and Steve Hindle (eds.) *The Experience of Authority in Early Modern England* (Basingstoke: Macmillan, 1996), pp.1-9

Hannan, Leonie, 'Making Space: English women, letter-writing, and the life of the mind, c.1650-1750', *Women's History Review,* Vol. 21, No. 4 (2012), pp.589-604

Harris, Barbara J., *English Aristocratic Women, 1450-1550: Marriage and Family, Property and Careers* (Oxford: Oxford University Press, 2002)

Harriss, G. L., 'Budgeting at the Medieval Exchequer', in C. Given-Wilson, A. Kettle and L. Scales (eds.) *War, Government and Aristocracy in the British Isles, c.1150-1500: Essays in Honour of Michael Prestwich* (Woodbridge: Boydell & Brewer, 2012), pp.179-196

Harvey, Karen, *Reading Sex in the Eighteenth Century: Bodies and Gender in English Erotic Culture* (Cambridge: Cambridge University Press, 2004)

Harvey, Karen, *The Little Republic: Masculinity and Domestic Authority in Eighteenth-Century England* (Oxford: Oxford University Press, 2012)

Haskett, Timothy S., 'The Medieval English Court of Chancery', *Law and History Review,* Vol 14, No. 2 (1996), pp.245-313

Henning, Basil Duke, 'Dering, Sir Edward, 2nd Bt. (1625-84), of Surrenden Dering, Kent and Bloomsbury, Mdx.', in *The History of Parliament: British Political, Social and Local History*

[https://www.historyofparliamentonline.org/volume/1660-1690/member/dering-sir-edward-1625-84, last accessed 16 October 2021]

Herzog, Don, *Household Politics: Conflict in Early Modern England* (Yale University Press, 2013)

Hoe, Susanna and Roebuck, Derek, *Women in Disputes: A History of European Woman in Mediation and Arbitration* (Oxford: Holo Books, 2018)

Hollister, Warren, 'The Origins of the English Treasury', *The English Historical Review,* Vol. 93, No. 367 (1978), pp.262-275

Horwitz, Henry, 'Chancery's "Younger Sister": the Court of Exchequer and its Equity Jurisdiction, 1649-1841', *Historical Research,* Vol. 72, No. 178 (1999), pp.160-182

Hoyle, R. W., 'Fountains of Justice: James I, Charles I and Equity', in Michael Lobban, Joanne Begiato and Adrian Green (eds.) *Law, Lawyers and Litigants in Early Modern England: Essays in Memory of Christopher W. Brooks* (Cambridge: Cambridge University Press, 2019), pp.79-113

Hubbard, Eleanor, *City Women: Money, Sex and the Social Order in Early Modern London* (Oxford: Oxford University Press, 2012)

Hudson, Geoffrey L., 'Negotiating for blood money: war widows and the courts in seventeenth-century England', in Jenny Kermode and Garthine Walker (eds.) *Women, Crime and the Courts in Early Modern England* (London: UCL Press, 1994), pp.146-169

Hughes, Ann, *Women, Men and Politics in the English Civil War* (Keele: Keele University, 1999)

Hughes, Ann, '"Gender Trouble": Women's Agency and Gender Relations in the English Revolution', in Michael J. Braddick (ed.) *The Oxford Handbook of The English Revolution* (Oxford: Oxford University Press, 2015), pp.347-362

Hunt, Margaret, 'Wife Beating, Domesticity and Women's Independence in Eighteenth-Century London', *Gender & History,* Vol. 4, No. 1 (1992), pp.10-33

Hunt, Margaret R., 'Wives and marital 'rights' in the Court of Exchequer in the early eighteenth century', in Paul Griffiths and Mark S. R. Jenner (eds.) *Londinopolis: essays in the cultural and social history of early modern London* (Manchester: Manchester University Press, 2000), pp.107-129

Hunt, Margaret R., 'Relations of Domination and Subordination in Early Modern Europe and the Middle East', *Gender & History,* Vol. 30, No. 2 (2018), pp.366-376

Ingram, Martin, *Church Courts, Sex, and Marriage in England, 1570-1640* (Cambridge: Cambridge University Press, 1987)

Jack, Sybil M., 'In search of the custom of the exchequer', *Parergon,* Vol. 11, No. 2 (1993), pp.89-105

Kane, Bronach, 'Women, Memory and Agency in the Medieval English Church Courts', in Bronach Kane and Fiona Williamson (eds.) *Women, Agency and the Law* (London: Taylor and Francis, 2015), pp.43-62

Kent, Stephen A., 'Seven Thousand "Hand-Maids and Daughters of the Lord": Lincolnshire and Cheshire Quaker Women's Anti-Tithe Protests in Late Interregnum and Restoration England', in Sylvia Brown (ed.) *Women, Gender and Radical Religion in Early Modern Europe* (Leiden: Brill, 2007), pp.65-96

Klinck, Dennis R., *Conscience, Equity and the Court of Chancery in Early Modern England* (Farnham: Ashgate Publishing Ltd, 2013)

Laqueur, Thomas, *Making Sex: Bodies & Gender from the Greeks to Freud* (USA: Harvard University Press, 1990)

Lanza, Janine M., *From Wives to Widows in Early Modern Paris: Gender, Economy, and Law* (London & New York: Routledge, 2007)

Larson, Peter L., 'Widow-right in Durham, England (1349-1660)', *Continuity and Change*, Vol. 33 (2018), pp.173-201

Laurence, Anne, *Women in England, 1500-1760: A Social History* (London: Weidenfeld and Nicolson, 1994)

Lee, Catherine and Logan, Anne, 'Women's agency, activism and organisation', *Women's History Review,* 28:6 (2019), pp.831-834

Lefevre, Peter and Thrush, Andrew, 'Dering, Sir Edward (1598-1644), of Surrenden Dering, Pluckley, Kent', in *The History of Parliament: British Political, Social and Local History*

[https://www.historyofparliamentonline.org/volume/1604-1629/member/dering-sir-edward-1598-1644, last accessed 15 October 2021]

Lemmings, David, 'Introduction: Law and Order, Moral Panics, and Early Modern England', in David Lemmings and Claire Walker (eds.) *Moral Panics, the Media and the Law in Early Modern England* (London: Palgrave Macmillan, 2009), pp.1-21

Lerner, Gerda, *The Creation of Patriarchy* (Oxford: Oxford University Press, 1986)

Lorde, Audre, *The Master's Tools Will Never Dismantle the Master* (New York: Penguin, 2017)

Mansell, Charmian, 'Beyond the Home: Space and Agency in the Experiences of Female Service in Early Modern England', *Gender & History,* Vol. 33, No. 1 (2021), pp.24-49

Mason, Rebecca, 'Property Over Patriarchy? Remarried Widows as Litigants in the Records of Glasgow's Commissary Court, 1615-1694', in Teresa Phipps and Deborah Youngs (eds.) *Litigating Women: Gender and Justice in Europe, c.1300-1800* (London: Routledge, 2022), pp.133-151

McDonagh, Briony, *Elite Women and the Agricultural Landscape, 1700-1830* (London: Routledge, 2018)

Mendelson, Sara and Crawford, Patricia, *Women in Early Modern England, 1550-1720* (Oxford: Clarendon Press, 1998)

Milhous, Judith and Hume, Robert D., 'Notes and Documents: Eighteenth-century Equity Lawsuits in the Court of Exchequer as a Source for Historical Research', *Historical Research,* Vol. 70, No. 172 (1997), pp.231-246

Moore, Lindsay R., *Women Before the Court: Law and Patriarchy in the Anglo-American World, 1600-1800* (Manchester: Manchester University Press, 2019)

Morgan, Sue, 'Introduction: Writing Feminist History: Theoretical Debates and Critical Practices', in Sue Morgan (ed.) *The Feminist History Reader* (Oxon: Routledge, 2006), pp.1-48

Moring, Beatrice, 'Widows and economy', *The History of the Family,* Vol. 15, No. 3 (2010), pp.215-221

Muldrew, Craig, 'Credit and the Courts: Debt Litigation in a Seventeenth-Century Urban Community', *The Economic History Review*, Vol. 46, No.1 (1993), pp.23-38

Murphy, Jessica, 'Feminine Virtue's Network of Influence in Early Modern England', *Studies in Philology,* Vol. 109, No. 3 (2012), pp.258-278

Neale, David, *Port, Resort and Market Town: A History of Bridlington* (Hull: Hull Academic Press, 2000)

O'Day, Rosemary, *Women's Agency in Early Modern Britain and the American Colonies* (Harlow: Pearson Longman, 2007)

Orlin, Lena Cowen, *Locating Privacy in Tudor London* (Oxford: Oxford University Press, 2007)

Pateman, Carole, 'Conclusion – Women's writing, women's standing: theory and politics in the early modern period', in Hilda L. Smith (ed.) *Women Writers and the Early Modern British Political Tradition* (Cambridge: Cambridge University Press, 1998), pp.365-382

Peck, Imogen, 'The Great Unknown: The Negotiation and Narration of Death by English War Widows, 1647-60', *Northern History,* Vol.53, No.2 (2016), pp.220-235

Phipps, Teresa and Youngs, Deborah, 'Introduction' in Teresa Phipps and Deborah Youngs (eds.) *Litigating Women: Gender and Justice in Europe, c.1300-1800* (London: Routledge, 2022), pp.1-13

Pollock, Linda A., 'Rethinking Patriarchy and the Family in Seventeenth-Century England', *Journal of Family History,* Vol. 23, No.1 (1998), pp.3-27

Porter, Stephen, 'The Civil War Destruction of Boarstall', *Records of Buckinghamshire*, Vol. 26 (1984), pp.86-91

Poska, Allyson M., 'The Case for Agentic Gender Norms for Women in Early Modern Europe', *Gender & History*, Vol. 30, No.2 (2018), pp.354-365

Prall, Stuart E., 'The Development of Equity in Tudor England', *The American Journal of Legal History*, Vol. 8 (1964), pp.1-19

Prior, Mary, 'Wives and wills 1558-1700', in John Chartres and David Hey (eds.) *English Rural Society, 1500-1800: essays in honour of Joan Thirsk* (Cambridge: Cambridge University Press, 1990), pp.201-225

Purkiss, Diane, *Literature, gender and politics during the English Civil War* (Cambridge: Cambridge University Press, 2005)

Raymond, Joad, *Pamphlets and Pamphleteering in early modern Britain* (Cambridge: Cambridge University Press, c2003)

Reay, Barry, 'Popular Hostility Towards Quakers in Mid-Seventeenth-Century England', *Social History,* Vol. 5, No. 3 (1980), pp.387-407

Richardson, Catherine, *Domestic Life and Domestic Tragedy in Early Modern England: The Material Life of the Household* (Manchester: Manchester University Press, 2006)

Rushton, Peter, 'Local Laws, Local Principles: The Paradoxes of Local Legal Processes in Early Modern England', in Michael Lobban, Joanne Begiato and Adrian Green (eds.) *Law, Lawyers and Litigants in Early Modern England: Essays in Memory of Christopher W. Brooks* (Cambridge: Cambridge University Press, 2019), pp.185-206

Sbaraini, Ella, '"Those that Prefer the Ripe Mellow Fruit to Any Other": Rethinking Depictions of Middle-aged Women's Sexuality in England, 1700-1800' *Cultural and Social History,* Vol. 17, No. 2 (2020), pp.165-187

Schwoerer, Lois G., 'Women's public political voice in England: 1640-1740', in Hilda L. Smith (ed.) *Women Writers and the Early Modern British Political Tradition* (Cambridge: Cambridge University Press, 1998), pp.56-74

Sharpe, Pamela, 'Survival strategies and stories: poor widows and widowers in early industrial England', in Sandra Cavallo and Lyndan Warner (eds.) *Widowhood in medieval and early modern Europe* (Harlow: Longman, 1999), pp.220-239

Shepard, Alexandra, *Accounting for Oneself: Worth, status, and the social order in early modern England* (Oxford; New York: Oxford University Press, 2015)

Shepard, Alexandra, 'Worthless Witnesses? Marginal Voices and Women's Legal Agency in Early Modern England', *Journal of British Studies,* Vol. 58, No. 4 (2019), pp.717-734

Shepard, Alexandra and Stretton, Tim. 'Women Negotiating the Boundaries of Justice in Britain, 1300–1700: An Introduction', *Journal of British Studies,* Vol. 58, No. 4 (2019), pp.677-683

Shoemaker, Robert Brink, *Gender in English Society, 1650-1850: The Emergence of Separate Spheres* (New York: Longman, c1998)

Smith, Hilda L., *All Men and Both Sexes: Gender, Politics, and the False Universal in England 1640-1832* (Pennsylvania: Pennsylvania State University Press, 2002)

Sommerville, Margaret R., *Sex & Subjection: Attitudes to Women in Early-Modern Society* (London: E. Arnold, 1995)

Spicksley, Judith., '"Fly with a Duck in Thy Mouth": Single Women as Sources of Credit in Seventeenth-Century England", *Social History,* Vol. 32, No. 2 (2007), pp.187-207

Stephens, Isaac, *The Gentlewoman's Remembrance: Patriarchy, Piety, and Singlehood in Early Stuart England* (Manchester University Press, 2016)

Stevens, Matthew Frank, 'London Women, the Courts and the 'Golden Age': A Quantitative Analysis of Female Litigants in the Fourteenth and Fifteenth Centuries', *The London Journal,* Vol. 37, No. 2 (2012), pp.67-88

Stretton, Tim, 'Women, custom and equity in the court of requests', in Jenny Kermode and Garthine Walker (eds.) *Women, Crime and the Courts in Early Modern England* (London: UCL Press, 1994), pp.170-189

Stretton, Tim, *Women Waging Law in Elizabethan England* (Cambridge: Cambridge University Press, 1998)

Stretton, Tim, 'Widows at law in Tudor and Stuart England', in Sandra Cavallo and Lyndan Warner (eds.) *Widowhood in medieval and early modern Europe* (Harlow: Longman, 1999), pp.193-208

Stretton, Tim, 'Marriage, separation and the common law in England, 1540-1660', in Helen Berry and Elizabeth Foyster (eds.) *The Family in Early Modern England* (Cambridge: Cambridge University Press, 2007), pp.18-39

Stretton, Tim, 'Written Obligations, Litigation and Neighbourliness, 1580-1680', in Steve Hindle, Alexandra Shepard and John Walter (eds.) *Remaking English Society: Social relations and social change in early modern England* (Woodbridge: Boydell, 2013), pp.189-210

Stretton, Tim and Kesselring, Krista J., 'Introduction: Coverture and Continuity', in Tim Stretton and Krista J. Kesselring (eds.) *Married Women and the Law: Coverture in England and the common law world* (Montreal: MQUP, 2014), pp.3-23

Stretton, Tim, 'Women, Legal Records, and the Problem of the Lawyer's Hand', *Journal of British Studies*, Vol. 58, Vol. 4 (2019), pp.684-700

Stretton, Tim, 'Law, Property and Litigation', in Amanda Capern (ed.) *The Routledge History of Women in Early Modern Europe* (Oxon: Routledge, 2020), pp.199-216

Thomas, Lynn M., 'Historicising Agency', *Gender & History,* Vol. 28, No. 2 (2016), pp.324-339

Thompson, P., 'Women in Fishing: The Roots of Power Between the Sexes', *Comparative Studies in Society and History*, Vol. 27, No. 1 (1985), pp.3-32

Todd, Barbara, 'Freebench and free enterprise: widows and their property in two Berkshire villages', in John Chartres and David Hey (eds.) *English Rural Society, 1500-1800: essays in honour of Joan Thirsk* (Cambridge: Cambridge University Press, 1990), pp.175-200

Todd, Barbara J., 'Demographic determinism and female agency: the remarrying widow reconsidered…again', *Continuity and Change,* Vol. 9, No. 3 (1994), pp.421-450

Todd, Barbra J., '"To be some body": married women and *The Hardships of the English Laws*', in Hilda L. Smith (ed.) *Women Writers and the Early Modern British Political Tradition* (Cambridge: Cambridge University Press, 1998), pp.343-361

Todd, Barbara J., 'The virtuous widow in Protestant England', in Sandra Cavallo and Lyndan Warner (eds.) *Widowhood in medieval and early modern Europe* (Harlow: Longman, 1999), pp.66-83

Todd, Barbara J., 'Property and a Woman's Place in Restoration London', *Women's History Review,* Vol. 19, No. 2 (2010), pp.181-200

Todd, Barbara J., 'Written in Her Heart: Married Women's Separate Allegiance in English Law', in Tim Stretton and Krista J. Kesselring (eds.) *Married Women and the Law: coverture in England and the common law world* (Montreal: MQUP, 2014), pp.163-191

Vallance, Ted, 'Political Thought', in Michael J. Braddick (ed.) *The Oxford Handbook of The English Revolution* (Oxford: Oxford University Press, 2015), pp.430-446

van der Heijden, Manon, Schmidt, Ariadne and Wall, Richard. 'Broken families: Economic resources and social networks of women who head families', *The History of the Family*, Vol. 12, No. 4 (2007), pp.223-232

Vickery, Amanda, 'Historical Review: Golden Age to Separate Spheres? A Review of the Categories and Chronology of English Women's History', *The Historical Journal,* Vol. 36, No. 2 (1993), pp.383-414

Walker, Garthine and Kermode, Jenny, 'Introduction', in Jenny Kermode and Garthine Walker (eds.) *Women, Crime and the Courts in Early Modern England* (London: UCL Press, 1994), pp.1-25

Wall, Richard, 'Widows and unmarried women as taxpayers in England before 1800', *The History of the Family*, Vol. 12, No. 4 (2007), pp.250-267

Wallach Scott, Joan, *The Fantasy of Feminist History* (Durham & London: Duke University Press, 2011)

Wallach Scott, Joan, *Gender and the Politics of History, 30th Anniversary Edition* (New York: Columbia University Press, 2018)

Walter, John, '"Law-Mindedness": Crowds, Courts and Popular Knowledge of the Law in Early Modern England', in Michael Lobban, Joanne Begiato and Adrian Green (eds.) *Law,*

Lawyers and Litigants in Early Modern England: Essays in Memory of Christopher W. Brooks (Cambridge: Cambridge University Press, 2019), pp.164-184

Whittle, Jane, 'Land and People', in Keith Wrightson (ed.) *A Social History of England 1500-1750* (Cambridge: Cambridge University Press, 2017), pp.152-173

Whyte, Nicola, '"With a Sword Drawne in her Hand": Defending the Boundaries of Household Space in Seventeenth-Century Wales', in Bronach Kane and Fiona Williamson (eds.) *Women, Agency and the Law* (London: Taylor and Francis, 2015), pp.141-155

Wiesner-Hanks, Merry E., *Gender in History: Global Perspectives* (Chichester: Wiley-Blackwell, 2011)

Wiesner-Hanks, Merry E., *Women and Gender in Early Modern Europe* (Cambridge: Cambridge University Press, 2019)

Williamson, Fiona, 'Public and Private Worlds? Social History, Gender and Space', *History Compass*, Vol. 10, No. 9 (2012), pp.633-643

Williamson, Fiona, 'Space and the City', *Cultural and Social History,* Vol. 9, No. 2 (2012), pp.169-185

Wood, Andy, *The 1549 Rebellions and the Making of Early Modern England* (Cambridge: Cambridge University Press, 2007)

Wood, Andy, *The Memory of the People: custom and popular senses of the past in early modern England* (Cambridge: Cambridge University Press, 2013)

Worthen, Hannah, 'Supplicants and Guardians: the petitions of Royalist widows during the Civil Wars and Interregnum, 1642–1660', *Women's History Review*, Vol. 26, No. 4 (2017), pp.528-540

Wright, Danaya C., 'Coverture and Women's Agency: Informal Modes of Resistance to Legal Patriarchy', in Tim Stretton and Krista J. Kesselring (eds.) *Married Women and the Law: Coverture in England and the common law world* (Montreal: MQUP, 2014), pp.240-263

Wright, Nancy and Ferguson, Margaret W., 'Introduction', in Nancy Wright, Margaret W. Ferguson and A. R. Buck (eds.) *Women, Property, and the Letters of the Law in Early Modern England* (Toronto; Buffalo: University of Toronto Press, 2004), pp.3-22

Wrightson, Keith, 'The Politics of the Parish in Early Modern England', in Paul Griffiths, Adam Fox and Steve Hindle (eds.) *The Experience of Authority in Early Modern England* (Basingstoke: Macmillan, 1996), pp.10-46

Wrigley, E. A., 'Rickman Revisited: The Population Growth Rates of English Counties in the Early Modern Period', *The Economic History Review*, Vol. 62, No.3 (2009), pp.711-735

Youngs, Deborah, '"A Besy Woman … and Full of Lawe": Female Litigants in Early Tudor Star Chamber', *Journal of British Studies,* Vol. 58, No. 4 (2019), pp.735-750

Zemon Davis, Natalie, '"Women's History" in Transition: The European Case', *Feminist Studies*, Vol. 3 No. 3/4 (1976), pp.83-103

Zemon Davis, Natalie, 'Women on top', in Robert Shoemaker and Mary Vincent (eds.) *Gender & History in Western Europe* (London: Arnold, 1998), pp.285-305

Deputy Keeper of the Public Records (access provided by The National Archives)

The Thirty-Eighth Annual Report of the Deputy Keeper of the Public Records (London: George E. Eyre and William Spottiswoode, Printers to the Queen's Most Excellent Majesty, 1877)

The Thirty-Ninth Annual Report of the Deputy Keeper of the Public Records (London: George E. Eyre and William Spottiswoode, Printers to the Queen's Most Excellent Majesty, 1878)

The Fortieth Annual Report of the Deputy Keeper of the Public Records (London: George E. Eyre and William Spottiswoode, Printers to the Queen's Most Excellent Majesty, 1879)

The Forty-First Annual Report of the Deputy Keeper of the Public Records (London: George E. Eyre and William Spottiswoode, Printers to the Queen's Most Excellent Majesty, 1880)

Exchequer Deponents (published by The Society of Genealogists, access provided by The National Archives)

Exchequer Deponents: Volume 1, 1559-1620 (The Society of Genealogists, 1916)

Exchequer Deponents: Volume 2, 1621-1667 (The Society of Genealogists, 1917)

Exchequer Deponents: Volume 3, 1668-1695 (The Society of Genealogists, 1918)

Selected References from the Oxford Dictionary of National Biography

Oxford Dictionary of National Biography, Oxford University Press

[https://www.oxforddnb.com/, last accessed 20 December 2021]

Carlyle, E. I., 'Wenman, Thomas, second Viscount Wenman (1596–1665)', *Oxford Dictionary of National Biography*. Oxford University Press

[https://doi.org/10.1093/ref:odnb/29046, last accessed 11 September 2021]

Griffiths, Jane, 'Wenman [née Fermor], Agnes, Lady Wenman (d. 1617), translator', *Oxford Dictionary of National Biography.* Oxford University Press

[https://doi.org/10.1093/ref:odnb/29044, last accessed 11 September 2021]

Hughes, Ann, 'Greville, Robert, second Baron Brooke of Beauchamps Court (1607–1643), parliamentarian army officer and religious writer', *Oxford Dictionary of National Biography.* Oxford University Press

[https://doi.org/10.1093/ref:odnb/11518, last accessed 27 August 2021]

McConnell, A., and Brown, R., 'Garway [Garraway], Sir Henry (bap. 1575, d. 1646), merchant and politician', *Oxford Dictionary of National Biography.* Oxford University Press

[https://doi.org/10.1093/ref:odnb/10405, last accessed 17 November 2021]

Nicholls, Mark, 'Vaux, Anne (bap. 1562, d. in or after 1637), recusant', *Oxford Dictionary of National Biography.* Oxford University Press

[https://doi.org/10.1093/ref:odnb/28159, last accessed 19 June 2021]

Russell, Conrad, 'Russell, Francis, fourth earl of Bedford (bap. 1587, d. 1641), politician', *Oxford Dictionary of National Biography.* Oxford University Press

[https://doi.org/10.1093/ref:odnb/24307, last accessed 8 November 2021]

Selected References from the Victoria County History

Baggs, A. P., Jurica, A. R. J. and Sheils, W. J., 'Bisley: Manors and other estates', in N. M. Herbert, and R. B. Pugh (eds.) *A History of the County of Gloucester: Volume 11, Bisley and Longtree Hundreds. British History Online* (London: Victoria County History, 1976), pp.11-20

[http://www.british-history.ac.uk/vch/glos/vol11/pp11-20, last accessed 21 February 2020]

'Parishes: Acklam', in William Page (ed.) *A History of the County of York North Riding: Volume 2*. *British History Online* (London, 1923), pp. 221-223

[http://www.british-history.ac.uk/vch/yorks/north/vol2/pp221-223, last accessed 19 February 2021]

'Parishes: Boarstall', in William Page (ed.) *A History of the County of Buckingham: Volume 4*. *British History Online* (London, 1927), pp. 9-14

[http://www.british-history.ac.uk/vch/bucks/vol4/pp9-14, last accessed 20 December 2021]

‘Parishes: Kingsbury’, in L. F. Salzman (ed.) *A History of the County of Warwick: Volume 4, Hemlingford Hundred. British History Online* (London: Victoria County History, 1947), pp.100-114

[http://www.british-history.ac.uk/vch/warks/vol4/pp100-114, last accessed 5 March 2020]

'The borough of Warwick: The castle and castle estate in Warwick', in W B Stephens (ed.) *A History of the County of Warwick: Volume 8, the City of Coventry and Borough of Warwick*. *British History Online* (London, 1969), pp. 452-475

[http://www.british-history.ac.uk/vch/warks/vol8/pp452-475, last accessed 22 December 2021]