

1-1-1992

The Chancery Court of Nova Scotia: Jurisdiction and Procedure 1751-1855

Jim Cruickshank

Follow this and additional works at: <https://digitalcommons.schulichlaw.dal.ca/djls>



Part of the [Law Commons](#)



This work is licensed under a [Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 License](#).

Recommended Citation

Jim Cruickshank, "The Chancery Court of Nova Scotia: Jurisdiction and Procedure 1751-1855" (1992) 1 Dal J Leg Stud 27.

This Article is brought to you for free and open access by the Journals at Schulich Law Scholars. It has been accepted for inclusion in Dalhousie Journal of Legal Studies by an authorized editor of Schulich Law Scholars. For more information, please contact hannah.steeves@dal.ca.

The Chancery Court of Nova Scotia: Jurisdiction and Procedure 1751-1855

Jim Cruickshank*

The Court of Chancery in Nova Scotia enjoyed a history that may best be described as a progression from obscurity to infamy. During its first half-century, the Court operated with an intermittent caseload and remained out of the public eye. During its final years, the Court came under increasing public criticism as an unnecessary and inefficient institution. This criticism began as early as 1829, with Haliburton's *History of Nova Scotia*.¹ Joseph Howe contributed scathing editorials against the Chancery in the popular press² and in 1833 Beamish Murdoch reviewed the Court and concluded in his *Epitome of the Laws of Nova Scotia*:

Anyone who will deliberately read through the long, unmeaning, but expensive forms of bills and answers in Chancery, and the absurd and unnecessary processes of contempt, as they are called, must be blinded by a reverence for antiquity, if he does not think them unreasonable. Those who are (as clients) made acquainted with the dilatory and unsatisfactory progress of any business which goes into Chancery, will feel convinced that there is something wrong in a system productive of such results.³

Twentieth Century historians have also focused on the shortcomings of the Court, although with a more detached perspective.⁴ This paper seeks to delve behind these criticisms to ask two questions: what did the Court do and how did it do it? This inquiry into jurisdiction and procedure is undertaken with the criticisms of the Court in mind. Indeed, I hope that an enhanced knowledge of the Court will bring its shortcomings into historical focus.

The research for this paper involved an examination of the original case files of the Court, along with various records kept by court officials. From this data base, I have attempted to draw certain conclusions about the Court's internal workings. This is a very narrow focus and I readily concede that at times the analysis will (of necessity) proceed in a historical vacuum. I have not attempted to compare the workings of this court with the Supreme Court of Nova Scotia at the time, nor with contemporary courts of equity in other jurisdictions. Such a comparative analysis will be necessary before broad conclusions with respect to the Court of Chancery can be made with any certainty.

DALHOUSIE JOURNAL OF LEGAL STUDIES

Therefore, the results of this paper can best be characterized as a series of interim hypotheses.

The paper begins with an overview of the Court of Chancery, based on the work of historians to date. The results of my examination of original court documents follows, separated into jurisdictional and procedural categories. Finally, some conclusions and hypotheses will be drawn and ideas for future research will be suggested.

The Court of Chancery 1751 - 1855

The court of Chancery was established coincident with the common law courts in Nova Scotia upon the foundation of Halifax in 1749.⁵ The Court sat only in Halifax, hearing some 1900 cases until its abolition in 1855. The Governor of the province also held the status of Chancellor and until the appointment of the first Master of the Rolls in 1825,⁶ the Governor actually presided over all cases. The Governors had no legal training, but were assisted by the Justices of the Supreme Court.⁷

The Court's history can be divided into several phases. Until 1814, the Court heard relatively few cases. A dramatic increase in the Court's caseload began after 1814, which may have been the reason for the Master of the Roll's appointment in 1825. The criticisms of Chancery, noted earlier, led to modest procedural reforms in 1833.⁸ The period which followed was one of relative stability for the Court, both in terms of volume of work and public criticism.

Renewed calls for reform were heard beginning in the 1840s, this time in the form of an abolitionist movement. This movement culminated in the fusion of the Court of Chancery with the common law courts in 1855.⁹ The reform movement was not unique to Nova Scotia. The inherent inefficiency of a dual system of justice led to radical procedural reforms in England in 1852¹⁰ and to the abolition of the New Brunswick Court of Chancery in 1854.¹¹

Existing Historical Studies

The first historical account of the Chancery Court is a paper prepared by Charles Townshend in 1900.¹² Townshend was a Justice of Nova Scotia's Supreme Court and his essay is a valuable outline of the history of the Court. His paper explores a few of the cases heard by the Court, but for the most part focuses on a chronological overview of the major events in its history. Townshend explicitly avoids delving into the minutiae of the Court's procedure and jurisdiction, noting:

How [its] jurisdiction was exercised, what practice was adopted, and the nature of the litigation coming before the Court, it may safely be said, is at the present time unknown.¹³

Townshend was the grandson of Alexander Stewart, the last Master of the Rolls in Nova Scotia. Stewart was the defender of the Court

CHANCERY COURT

of Chancery during the abolition debates of the 1850s and his own fate as Master was the subject of considerable debate prior to passage of the 1855 fusion bill.¹⁴ As a result of this family connection, Townshend brings a certain bias to the later history of the Court. His view of Stewart's reforms is certainly optimistic¹⁵ and he openly cheers his grandfather's defence of the Court.¹⁶ Despite his bias with respect to the final phase of the Court's history, Townshend's essay remains a useful foundational history of the Court.

After Townshend's essay in 1900, historians did not focus on the Court until a 1989 paper by Barry Cahill.¹⁷ Cahill is a Manuscripts Archivist at the Public Archives of Nova Scotia and his paper provides an excellent supplement to Townshend's work. Cahill focuses on the Chancery records as an archive collection, providing an in-depth examination of their sources, context, and usefulness. His work also provides helpful biographical background with respect to many of the principal figures in the Court's history.

A third work that touches on the Court is Philip Girard's paper on Nineteenth Century law reform in Nova Scotia.¹⁸ Girard focuses on the demise of the Court in the context of law reform and thus brings its history into relief against a larger backdrop of contemporary socio-political trends.

In summary, historians to date have examined the Court in a variety of contexts, but never with a focus on procedure and jurisdiction. A substantive inquiry into the cases heard by the Court has to date not been attempted. As a result, this research paper should provide an inroad into an uncharted area of the Court's history.

Primary Sources

Historical studies of the Court of Chancery are facilitated by the existence of a fairly complete collection of all of the actual case files of the Court, along with a series of minute books and other memoranda.¹⁹ Barry Cahill's article provides an exhaustive description of the collection, which will not be repeated here. My research utilized a variety of the documents in the collection, but principally relied on three sources. Each of these is considered in turn.

The principal source for my investigation of Chancery jurisdiction was the Court's Chronological List of Causes.²⁰ This list records all 1917²¹ Chancery cases in chronological order. The listing indicates the names of the parties to each action, the nature of the suit, and the date the action was started. This information is the basis for my analysis of the annual case volume of the Court and the subject matter of cases heard by the Court.

The Chronological List was prepared in 1837, and later updated to 1855. Both the 1837 listing and update were prepared by a court official, John McGregor, at the request of the Master of the Rolls.²²

As historical evidence, McGregor's listing is very useful. Cahill concludes that the listing was originally prepared for use by the Court as an inventory of files and as a tool for scheduling current and semi-

DALHOUSIE JOURNAL OF LEGAL STUDIES

current records.²³ As a contemporary document prepared for actual use by the Court, the List is inherently reliable, accurate, and complete. While McGregor's classification of cases is not always consistent, it is nonetheless sufficiently accurate for the purposes of my summary of the Court's jurisdiction.

The case files of the Court constitute my second major research resource. Almost all of the 1,900 cases heard by the Court are available for review.²⁴ These provide a highly reliable source for examination of the procedures of the Court. The completeness of many files cannot be assured, however, as most files do not contain a trail of documents from first complaint to final decree. Thus it is difficult to determine whether an action was simply discontinued or whether documents have gone missing. Two sources suggest that the former is most likely the case. First, a Chancery practitioner's notebook indicates that a large number of his cases were settled out of court.²⁵ Second, a Court record of the disposition of causes from 1832 to 1835 indicates a substantial number of discontinued suits.²⁶

My third major research source is the Chancery *Rules of Practice*.²⁷ This is a bound manuscript volume in three parts. The first part contains the Irish "Rules & Practice of the High Court of Chancery". The date and source of this listing is unknown, but it would appear to have been used as a reference source for court officials. Both Townshend²⁸ and Cahill²⁹ speculate that the Nova Scotia Court simply adopted these *Irish Rules*, as a complete set of domestic Nova Scotia rules was never created.³⁰ As part of my procedural inquiry, I have attempted to determine whether the actual procedure of the Court corresponds with these rules.

The second part of the *Rules of Practice* is a 'digest' of Irish chancery law, including rules with commentary, as well as case reports from 1640 to 1722. The third part contains the "Rules of Practice" promulgated in Nova Scotia by the Chancellor pursuant to the Chancery reform statute of 1833.³¹

The Jurisdiction of the Chancery Court

My inquiry into Chancery jurisdiction has two general branches. The first is an assessment of the annual caseload handled by the Court. The second considers the subject matter of those cases.

The annual volume of cases is summarized in *Table I*. A review of these statistics suggests that three distinct volume phases can be isolated. From 1751 to 1813, the Court heard very few cases. No more than fourteen cases were heard in any one year and the average caseload for this period was only four cases per year. After 1813, the volume of cases rose sharply. The period from 1814 to 1828 was the busiest in the Court's history, averaging forty-six cases per year, with a peak of eighty-four in 1822. Finally, the years from 1829 to 1855 proved to be a period of stability and eventual decline in case volume, averaging thirty-seven cases per year.

CHANCERY COURT

An obvious conclusion arising from these statistics is that the Court was never overworked. In all but a few years, the Court's work could be heard at the leisurely pace of less than one case per week. Critics of the Master of the Rolls, whose annual salary (£600) equalled that of the Chief Justice of the province,³² were perhaps justified in questioning the value of this position.

Table I
Annual Number of Causes in Chancery

1751	2	1786	10	1821	55
1752	2	1787	7	1822	84
1753	4	1788	7	1823	58
1754	0	1789	3	1824	45
1755	2	1790	5	1825	43
1756	0	1791	7	1826	53
1757	1	1792	10	1827	57
1758	0	1793	2	1828	52
1759	0	1794	0	1829	37
1760	0	1795	2	1830	36
1761	2	1796	2	1831	29
1762	0	1797	3	1832	28
1763	1	1798	4	1833	44
1764	2	1799	4	1834	43
1765	4	1800	0	1835	55
1766	0	1801	4	1836	34
1767	0	1802	3	1837	49
1768	3	1803	6	1838	43
1769	4	1804	10	1839	42
1770	1	1805	5	1840	30
1771	2	1806	2	1841	26
1772	1	1807	8	1842	51
1773	0	1808	3	1843	34
1774	4	1809	8	1844	27
1775	2	1810	5	1845	35
1776	2	1811	9	1846	33
1777	5	1812	14	1847	44
1778	5	1813	6	1848	54
1779	4	1814	11	1849	58
1780	5	1815	25	1850	42
1781	4	1816	20	1851	31
1782	3	1817	38	1852	40
1783	4	1818	42	1853	28
1784	1	1819	54	1854	25
1785	4	1820	46	1855	<u>13</u>

Total Number of Causes

1,917

The volume statistics also lead to the surprising conclusion that the volume of cases did not increase steadily over time. As the economy of the province grew, and particularly with the onset of Nova Scotia's 'Golden Age' in the 1840s, one would have expected the volume of litigation to increase correspondingly. Townshend appears to proceed on this assumption when he concludes that "...in its latter years [the Court] was kept busily employed."³³ To the contrary, the peak of annual case

DALHOUSIE JOURNAL OF LEGAL STUDIES

volume occurred in 1822 and the final years of the Court saw a marked decline in case volume. Several hypotheses can be advanced to explain these volume patterns. The first is an economic analysis and the second relates to litigation psychology.

Because some seventy-six per cent of causes heard in Chancery were mortgage foreclosures (see *Table II*), the volume of cases in any one year should be inversely related to the prosperity of the province. In difficult times, the number of foreclosures would be expected to increase. Analysis of the data from the Chronological List supports this assertion.

The peak volume era of the Court, from 1814 to 1828, corresponds to a period of worldwide financial uncertainty. In particular, the years of 1811, 1820, and 1826 saw economic downturns.³⁴ Postulating a one or two year lag between a downturn (when debtors would stop payments) and the start of foreclosure actions, one would expect to find a surge in the number of Chancery causes in the years following these economic downturns. The caseload statistics support such a correlation. 1812 was the Court's busiest year to date, 1822 was the highest volume year ever, and 1827 was the second busiest year of the peak 1819 to 1828 decade.

This explanation of case volumes can be further tested by examining the increase in the proportion of foreclosure actions in each of the high volume years noted above. While the historical proportion of mortgages was seventy-six per cent, the proportion in 1822 was eighty-nine per cent, and in 1827 was eighty-three per cent. This suggests that high volume years were the result of a surge in foreclosure actions. However, in 1812, only fifty per cent of the actions were foreclosures. This contradicts my thesis, but the relatively small sample size in 1812 may explain the deviation in that year.

A 'litigation psychology' theory can also be advanced to explain certain unique caseload fluctuations. The two major reforms of the Court in 1833 and 1855 were both preceded by vigorous public attacks on the Court and by a decline in case volume. I would hypothesize that litigants were avoiding the Court when its shortcomings were on the public agenda.

The nature of Chancery litigation was such that cases could be kept out of Court. Mortgagees, for example, could be more tolerant of indigent debtors. One case file indicates that litigants were mindful of the cost of a Chancery action. In *Annand v. McHeffey*,³⁵ the executors of a disputed will state, in their Bill for Settlement, that they had pleaded with the beneficiaries to settle their differences so that the expense of a Suit of Settlement could be avoided. Given the discretionary nature of Chancery litigation, it is possible that the parties moved to more informal dispute settlement mechanisms during the periods of public criticism of the Court.

The second branch of my jurisdictional research examines the subject matter of cases litigated in Chancery. I have summarized the 1,917 entries of the Chronological List by major subject categories in *Table II*. A further breakdown of miscellaneous cases is provided in *Table III*.

CHANCERY COURT

The most apparent conclusion arising from a review of *Table II* is the predominance of foreclosure actions as the major business of the Court. The percentage of foreclosure actions rose steadily from sixty-eight per cent of all causes prior to 1822, to a high of eighty-three per cent of cases heard after 1845. The high proportion of foreclosure actions leads to a further conclusion that criticism of Chancery as an unnecessary duplication of common law litigation was overstated. Foreclosure actions originated in Chancery and involved no duplication of the

Table II
Analysis of Causes by Subject Matter

	1751 to <u>1821</u>	1822 to <u>1833</u>	1834 to <u>1845</u>	1846 to <u>1855</u>	<u>Total</u>
<u>Foreclosures</u>	350	446	355	309	1460
<u>Injunctions</u>					
Injunctions	58	24	11	7	100
Specific Performance	3	2	5	8	18
<u>Accounts</u>					
Unspecified	14	31	12	1	58
In Partnership	10	1	2	--	13
Miscellaneous	13	2	4	2	21
<u>Probate</u>					
Settlement of Estate	2	13	17	5	37
Intestate Distribution	--	1	1	1	3
Miscellaneous	--	4	2	3	9
<u>Property</u>					
Trustee Appointment	--	1	1	3	5
Action Against Trustee	2	--	1	1	4
Dower	1	--	2	--	3
Redemption	6	--	--	1	7
Partition	--	2	2	2	6
Settle Partnership	--	2	--	2	4
<u>Family</u>					
Inquiry into Lunacy	11	3	7	1	22
Possession of Children	--	--	1	--	1
Guardian Appointment	--	--	3	2	5
<u>Interim Relief</u>					
Certiorari/Prohibition	1	--	--	1	2
Discovery	3	5	5	--	13
Ne Exeat Regno	8	1	--	--	9
Directions	--	3	1	--	4
<u>Procedure</u>					
Cross Bill	2	5	5	--	12
Revivor	2	2	5	1	10
Amended Bill	1	--	2	2	5
<u>Other (see Table III)</u>	<u>27</u>	<u>19</u>	<u>20</u>	<u>20</u>	<u>86</u>
Total	<u>514</u>	<u>567</u>	<u>464</u>	<u>372</u>	<u>1917</u>

DALHOUSIE JOURNAL OF LEGAL STUDIES

common law. The same was true for several other frequently litigated heads of Chancery jurisdiction in Nova Scotia. In short, these statistics suggest that only a handful of cases each year actually resulted in duplication of common law litigation.

After foreclosures, the second largest group of cases heard in Chancery is injunctions, generally consisting of a Writ of Injunction to halt a common law proceeding.³⁶ The frequency of injunction actions showed a marked decline after 1833.³⁷ Rule 17 banned injunctions restraining a common law action unless applied for at least ten days prior to the start of the Supreme Court term in which the common law action was to be heard.³⁸ This rule appears to have been aimed at the use of injunctions as a stalling tactic in common law actions. The relative scarcity of injunction actions after 1833 (less than one per year) suggests that the rule was a success. This also adds further weight to the assertion that a separate Court of Chancery did not lead to a serious duplication of common law litigation.

The traditional equitable remedy of specific performance was litigated quite rarely as an independent action, appearing only eighteen times during the entire history of the Court. However, specific performance may have been a collateral remedy sought in conjunction with suits labelled by McGregor as some other form of action.

Actions for an account of profits saw a marked decline after 1833. This decline may be explained by the thirty year hiatus between McGregor's cataloguing sessions. McGregor may have forgotten the classification subtleties used in first effort, resulting in a slightly different classification for cases from 1837 to 1855. As actions for an accounting are often combined with other remedial requests, the category is particularly susceptible to such misclassification.

The Court's jurisdiction over probate matters was a varied one. A separate system of Probate Courts was operating at the time³⁹ and the Chancery apparently acted as a form of probate appeal court.⁴⁰ However, the bulk of 'probate' work by the Chancery Court related to actions to settle estates which originated in Chancery. The jurisdiction might best be described as one of concurrent original jurisdiction with the Probate Courts. For example, an 1833 will granting a life estate was proved in Colchester Probate Court in 1835 with respect to the life estate, but came before the Court of Chancery in 1840 to be settled with respect to the residual estate.⁴¹

There was surprisingly little work for Chancery in the traditional equitable jurisdiction of trusts. Only nine actions appointing trustees were heard. I can only speculate as to reasons for this inactivity. In a relatively young colony, there may have been little accumulated wealth to be held in trust. However, the number of actions settling estates of significant value contradicts this theory.⁴²

Another traditional head of equity jurisdiction was the action for discovery. While used infrequently as an independent action (only thirteen such cases are noted), requests for discovery were an almost routine adjunct to every action in Chancery. The standard pleading would include the boilerplate plea:

CHANCERY COURT

[Your Orator is] unable to obtain the necessary proof required by the strict rules of evidence in [the Common Law] Courts and hath no relief but a Court of equity where matters of this kind are cognizable and where your Orator is entitled to a discovery of facts on the oath of the Defendant.

Discovery took the form of written Interrogatories, discussed below under the procedure of the Court.

The *Writ of Ne Exeat Regno* operated as an equivalent to the modern Mareva Injunction. If a creditor suspected that a debtor was about to leave the jurisdiction, an application for the writ would be heard

Table III

Analysis of Other Causes by Subject Matter

	1751 to <u>1821</u>	1822 to <u>1833</u>	1834 to <u>1845</u>	1846 to <u>1855</u>	<u>Total</u>
Unclassified Relief	18	--	3	--	21
Missing	2	10	5	2	19
Unknown	--	3	3	2	8
Appoint Auditors	1	1	--	--	2
Relief from Contract	1	--	--	--	1
Relief Against Fraud	1	1	--	--	2
Relief from Payment	2	1	--	--	3
Relief from Note	--	1	--	--	1
Complaint	--	--	3	4	7
Receiver	1	--	--	--	1
Guardian to Account	--	--	1	--	1
Account/Set Aside Sale	--	--	1	--	1
Compel Payment	--	--	--	1	1
Sciri Faci	--	--	--	1	1
Sell Lunatic's Stock	--	--	--	1	1
Recognizance of Faith	--	--	--	1	1
Mortgage as Evidence	--	--	--	1	1
Compel Annuity Payment	--	--	--	1	1
Establish Partnership	--	--	--	1	1
Payment of Surplus	--	--	--	1	1
Perpetuate Testimony	1	--	1	--	2
Petition of Probate	--	--	--	1	1
Set Aside Award	1	--	--	--	1
Cancel Mortgage	--	--	--	1	1
Maintenance Petition	--	--	--	1	1
Insurance Money	2	--	--	--	2
Petition for Priority	--	--	--	1	1
Deliver Possession	2	--	--	--	2
Contribution to Surety	1	--	--	--	1
Retain Realty	1	--	--	--	1
Executor for Security	--	--	1	--	1
Set Aside Conveyance	--	--	1	--	1
Annuity	--	--	1	1	2
Restore Possession	--	--	1	--	1
Cancel Deed	--	--	1	--	1
Set Aside Title	--	1	1	--	2
Account of Rents	--	1	--	--	1
Information	--	--	1	--	1
Total	<u>27</u>	<u>19</u>	<u>20</u>	<u>20</u>	<u>86</u>

DALHOUSIE JOURNAL OF LEGAL STUDIES

ex parte on the affidavit of the creditor. If the application was successful, the debtor would be imprisoned until the writ was answered and security filed with the Court.⁴³ The writ was used quite frequently in the early years of the Court, but only once thereafter. I would hypothesize that as litigants became confident in the Court's ability to proceed with actions in the absence of the Defendant,⁴⁴ the perceived need for the writ declined.

The committal of insane persons (Inquiry into Lunacy) was a relatively frequent action in the early years of the Court. The decline of this action in later years may have resulted from some statutory alternative to an action in Chancery, although I am not aware of any specific legislation on this point.

The broad range of the Court's jurisdiction is demonstrated in *Table III*, which lists those actions which were only infrequently litigated in Chancery. No particular trends can be noted here, although it is perhaps surprising that the 'variety' of causes did not increase as the province's society became more complex. In fact, the number of 'other causes' heard in Chancery remains quite static over the century.

Procedure of the Court

The primary source for my study of the procedure of the Court is a sample of twenty case files.⁴⁵ This source is supplemented by various records and memoranda prepared by Court officials. My objectives in reviewing the case files are to develop a sense of the Court's methodology, to determine the consistency of practice over time, and to assess the criticisms of the Court in light of its actual practice.

While I did not focus on the actual substance of the matters litigated in the twenty cases sampled, a synopsis of the cases is presented in *Appendix A*. The most obvious pattern that emerges from the synopsis is that large sums of money were usually at stake in Chancery litigation. In those cases in my sample which involved a monetary sum, the average amount at issue was over £700.

One interesting aspect of my procedural inquiry is the source of procedural norms for the Court. As discussed earlier,⁴⁶ historians have speculated that Ireland's Chancery *Rules of Practice* were adopted as the basis for Nova Scotia procedure. This speculation is buttressed by the fact that the province's first two Chief Justices were the Irish bar.⁴⁷ However, there is no explicit historical evidence to prove that the *Irish Rules* were in fact adopted. Therefore, in reviewing the case files I have attempted to correlate actual court procedure with the *Irish Rules*⁴⁸ as a means of verifying their use in Nova Scotia.

My review of procedure can be grouped into two areas: pleadings and court practice.

Pleadings

Actions in Chancery were initiated by filing a Bill of Complaint. The Bill describes the complaint, the remedy sought, and the factual

CHANCERY COURT

background to the case. The Answer of the Defendant is usually a mere formal denial of the Bill, although it sometimes presents an alternative view of the facts. The basic form of these pleadings is familiar to a modern lawyer, with a recital of facts followed by a claim for relief. The style of cause is typically noted in a 'backer' to the pleadings, a practice which continues to this day in Nova Scotia.

The language and form of pleadings changed little in the 105 year history of the court. This consistency suggests some norm of pleadings was adhered to. Standard phraseology recurs throughout the years and between different draftsmen. For example, each Bill concludes with the plea that the Complainant "...hath no relief but a Court of Equity where matters of this kind are cognizable and where your Orator is entitled to..."⁴⁹

The structure and classification of pleadings is completely consistent with the *Irish Rules*.⁵⁰ One aspect of the *Irish Rules* which did not survive in Nova Scotia was the terminology for the 'complainant'. The *Irish Rules* explicitly state that the "persons complaining are normally called plaintiffs."⁵¹ However, Chancery practice in Nova Scotia consistently avoids this term, referring only to 'complainants' and in the pleadings themselves to 'Your Orator'.

A troublesome rigidity in Chancery pleadings was the practice of stating accusations in the Bill as alleged facts and then repeating the allegation in the form of interrogatories to be asked on Discovery. This practice led to Bills which routinely ran to a length of forty or more large manuscript pages.⁵² The practice may have been considered necessary by cautious practitioners to ensure that all necessary interrogatories were allowed at Discovery. However, I was unable to find any *Irish Rule* which restricted interrogatories to those questions explicitly stated in the Bill.

The Court attempted a reform of Pleadings in its *1833 Rules*. Rule 9 clarified that one general interrogatory is sufficient to compel an answer to every material allegation in the Bill.⁵³ Some practitioners complied with the Rule, as in the following pleading:

[Plea that the] Defendants may upon their several and respective corporal oaths true full and perfect answers muster to all and singular the premises as if the same were herein again repeated and they [were] thereto particularly interrogated...⁵⁴

However, many pleadings continued to detail individual interrogatories, although the particular questions are generally restricted to matters not already alleged in the Bill.⁵⁵

Practitioners' compliance with the new rule is understandable, as the Court refused after 1833 to tax costs for unnecessarily lengthy pleadings:

...useless repetitions and prolixity in the Pleadings to be avoided in all cases, and no allowance to be made for them in the taxation of costs [Rule 13].⁵⁶

DALHOUSIE JOURNAL OF LEGAL STUDIES

It is noteworthy that the *Irish Rules* contain a similar prohibition against 'useless repetition',⁵⁷ although the enforcement mechanism of refusing to tax costs is not mentioned.

The form of Defendants' Answers was as consistent over time as the Bills of Complaint. The Answers universally began with the standard phrase:

The Defendants now and at all times hereafter saving and reserving to themselves all and all manner of benefit of advantage and exception to the manifold errors, imperfection, uncertainties and insufficiencies in the said Bill of Complaint contained for answer thereunto or unto or so much thereof as these Defendants are advised it is adjudged material or necessary for them to make answer unto answering say that...⁵⁸

This form may have been a convenient response to the *Irish Rules*, which require the Defendant to answer each charge in the Bill or risk conceding the charge.⁵⁹

Early pleadings generally allege fraud and conspiracy,⁶⁰ although no such prerequisite can be found in the *Irish Rules*. The allegation was likely included so that unnamed parties could be Discovered after the close of pleadings. As well, an allegation of fraud may have been perceived as a prerequisite to equitable jurisdiction. This anomaly in pleading was addressed in the *1833 Rules*, which ordered "No averment of combinations or pretence shall be made in any Bill, except in cases where an actual combination took place."⁶¹

Court Practice

The Court's involvement in a case begins with the issue of a subpoena to compel the appearance of the Defendant. The *Irish Rules* with respect to subpoenas⁶² appear to have been adopted in Nova Scotia. It is interesting that the *Irish Rules* grant extra time for response to a subpoena for Defendants living more than twenty miles outside Dublin⁶³ and an identical twenty mile zone was established in Nova Scotia in the 1833 reform.⁶⁴

Virtually every court file contains a subpoena, which generally required an appearance to answer the Bill within fourteen days. Many of the subpoenas appear to have been ignored with impunity. Files which I examined often indicate a long delay from service to the appearance date of the Defendant and there was no apparent penalty imposed by the Court.⁶⁵

The *1833 Rules* attempted to address the subpoena problem by setting clear deadlines for a response to service.⁶⁶ However, Defendants continued to delay. In an 1840 Action, an August 24 subpoena was responded to by a Solicitor's Appearance the following January 30, and Answers were not filed until Contempt of Court proceedings were started in September of 1841.⁶⁷ Similar delays are noted in other cases.⁶⁸

CHANCERY COURT

While formality of pleadings was maintained, there was apparently some room for flexibility. In one case, a mortgagor succeeded in delaying foreclosure proceedings by a direct appeal to the Chancellor. Master Cogswell responded on the Chancellor's behalf:

Notwithstanding the irregularity and impropriety of addressing papers to His Excellency in his Capacity as Chancellor relative to the merits of a suit placed in a course of judicial investigation in the Court of Chancery, His Excellency has been induced in consideration of your alleged distress and inability to fee Counsel at the time to suspend proceedings until you could have a reasonable time for the purpose.⁶⁹

Cogswell continues on to advise the Defendant of the risk of defending the suit too strenuously, as the "expense of litigation will fall upon you."⁷⁰

The procedure for Interrogatories in Nova Scotia appears to have followed the *Irish Rules*.⁷¹ Independent Commissioners were appointed to administer the written questions and record the answer of the witness. The *Irish Rules* appear to forbid general Interrogatories,⁷² however, Nova Scotia did not follow this practice. An 1814 case required fourteen Interrogatories, the last in the following form:

Do you know of any other matter or Thing which can tend to the Benefit of or advantage of the Complaint in the above cause, if [so] you [are to] relate the same especially and particularly as if the same were herein set down, and you thereto [were] particularly interrogated.⁷³

The Chancery reform legislation of 1833 allowed for examination of witnesses *viva voce* "when and as the said Court shall think proper",⁷⁴ but did not ban the use of Interrogatories. None of the post-1833 files which I examined included written Interrogatories, although each Bill continued the practice of requesting them. Therefore the extent of oral examination of witnesses after 1833 is unclear.

The final ruling of the court in each cause takes the form of a decree. These are often lengthy⁷⁵ because a thorough recital of the allegations of the parties is included. Unfortunately the decrees do not provide any reasoning to support the judgment of the Court.

A sense of the nature of Chancery hearings is obtained from a review of the various minute books kept by the court's officials. The records note in outline form the matters heard at each sitting of the Court. A review of the 1847 Minute Book⁷⁶ indicates that the court sat on only thirty-five days during that year. The hearings were often scheduled for Tuesdays, on an as needed basis. Sittings were held in every month of the year except March, with the autumn months being the busiest. On a typical hearing day motions might be heard on as many

DALHOUSIE JOURNAL OF LEGAL STUDIES

as six cases. I would speculate that the sittings might have resembled a modern day Supreme Court Chambers session.

The Court's practice in a number of specific areas indicates a clear correlation to the *Irish Rules*. Each of these areas is examined in turn.

The *Irish Rules* required the Answer of the Defendant to be provided upon oath.⁷⁷ This was the general practice in all Nova Scotia cases, but in *Storey v. Wallace* the Answer was provided without oath. The irregularity of this occurrence is evidenced by the Complainant's certification that he would accept the Answer without Oath.⁷⁸

When a Complainant seeks relief because a note evidencing a debt has been lost, *Irish Rule* 30 required an affidavit swearing to the truth of the circumstances surrounding the loss of the note. In *McElhinney v. Dickson*,⁷⁹ such an affidavit is attached to the Bill of Complaint, the only case of the twenty which I reviewed in which such an affidavit was filed.

Further evidence of compliance with the *Irish Rules* is the use of Appearance Notices by Counsel to seek leave of the Court for additional time to prepare the Defendant's Answer, as required by *Irish Rule* 50.⁸⁰ Final evidence of a correlation is found in *Wood v. Sparrow*⁸¹, where a *Writ of Ne Exeat Regno* was issued following procedure exactly in conformity with *Irish Rule* 73.

Much has been made of the prominence of the lawyers who appeared before Chancery. Townshend observed that many were prominent politicians or future Judges. His conclusion:

The well-known reputation of these lawyers is a sufficient guarantee that, especially in later times, the matters litigated in the Court of Chancery must have been tried with learning and accurate knowledge of equity jurisprudence.⁸²

A less benevolent conclusion is that a small clique of Halifax lawyers had monopolized the Chancery practice. Contemporary criticism on exactly this point is documented in Professor Girard's paper.⁸³

The monopoly of Chancery practice manifested itself in a distinction made in Chancery between 'solicitors' and 'counsel'. While Nova Scotia never had a 'split bar' in which solicitors would refer court work to barristers, a specialized practice approaching such a split bar appears to have developed in Chancery. Pleadings were typically signed by both a solicitor and Counsel⁸⁴ and the records of a Chancery practitioner note a referring solicitor for each case.⁸⁵ This formally recognized specialist bar does not appear to have been emphasized by previous historians.

A recurring criticism of the Court was the cost of litigation.⁸⁶ Of my sample of twenty cases, only three included the taxed solicitor's costs. Of these three (all foreclosures), the average solicitor's taxed fee was £ 70, representing about ten per cent of the value of the property being foreclosed.⁸⁷ Legal fees of this magnitude appear high by today's standards and the basic foreclosure and sale process in Chancery appears similar to that in use in Nova Scotia today. In addition to lawyer's fees, parties were required to pay court fees. These were typically about £ 6,

CHANCERY COURT

with approximately £ 2 allocated to each of the Chancellor, Master, and Registrar.⁸⁸

Another criticism of the Court was the delay which it imposed on litigation. However, case file data does not support this criticism. Eight of the twenty case files I examined proceeded to final decree, and the average time from Bill of Complaint to Decree was just over twelve months.⁸⁹ Another sample of cases can be drawn from the Return of Causes prepared by the Registrar of the Court for 1832,⁹⁰ which indicates that twenty-four of twenty-nine causes were brought to a conclusion, at an average duration of seven months. The Registrar noted an explanation beside most causes delayed for more than a year. Typical explanations were that the Court's costs had not been paid or that the matter remained outstanding in the hands of the litigants. Excluding those causes with such an explanation, the average duration of cases drops to five and one-half months.

The statistics on case duration do not indicate an unduly protracted litigation system. In light of the time allowed for Defendants to respond to service (thirty days within Halifax and sixty days otherwise), a five and one-half month case duration does not justify the criticism levelled at the Court.

Certain actions by Chancery litigants might today be perceived as delaying tactics, but these were actually intrinsic to the Court's procedure. Townshend's comment on one case illustrates this misconception:

The defendants appear to have invoked all sorts of devices to delay the complainant and to impede the progress of the cause. Demurrer was filed, motions made, examiners appointed, evidence taken under interrogatories, references made to the Master, reports thereon, exceptions thereto; but finally the [Plaintiff] prevailed....⁹¹

What Townshend viewed as delaying tactics were, of course, typical proceedings in almost any Chancery action.

Conclusion

Because the focus of research for this paper was quite narrow, it is appropriate that my conclusions be temperate. In general, the data surveyed has produced a reliable picture of Chancery practice and jurisdiction, however, this picture will only be brought into proper focus after additional comparative research is completed. In the same sense, the historical significance of my findings will only be measurable after this additional research has been completed.

With respect to the criticisms of the Court, I would hypothesize that these were justified with respect to the costs of litigation and the inherent inefficiency of an institution that simply did not have a large volume of work. However, I would suggest that the criticisms as to delay and duplication were overstated. The nature of cases litigated in Chan-

DALHOUSIE JOURNAL OF LEGAL STUDIES

cery indicate that duplication was not a widespread problem, and the time required to complete most cases suggests that the Court was relatively effective in managing its modest caseload. Again, these conclusions need to be tested in a comparative analysis with other tribunals, particularly the Supreme Court of Nova Scotia.

In the area of practice and procedure, I would conclude that the *Irish Rules of Practice* were the basis for Nova Scotian practice and were followed consistently throughout the history of the Court. This conclusion is based on the empirical evidence obtained by comparison of actual procedure to the rules themselves. This evidence is persuasive, but not completely conclusive. While a strong correlation with the *Irish Rules* exists, it is unclear whether other potential sources for rules would also correlate strongly with Nova Scotian practice. However, the bulk of historical evidence supports the Ireland connection.

With respect to the jurisdiction of the Court, the predominance of actions that did not stem from a common law suit supports the hypothesis that criticism of this duplication of common law proceedings may have been overstated. In addition, the predominance of foreclosure actions and the scarcity of actions under other traditional equitable heads of jurisdiction suggests that the Court's development was curtailed at a stage of relative immaturity.

Suggestions for Further Research

As discussed above, the research reported in this paper should serve as a foundation for a number of divergent inquiries, each of which could test and explore my hypotheses. Some particular areas of research are noted here for future reference.

1. A comparative analysis of Nova Scotian Chancery procedure with the procedure of equity courts in other jurisdictions (and with Nova Scotia's Supreme Court) will place my research into context. Particular areas to focus on would include the duration and expense of litigation.

2. A comparison of the practice and pleadings of the Nova Scotia Chancery to those in Ireland after 1751 would be an interesting comparative analysis. An interesting question is the extent to which Ireland's practice developed in new directions after its export to Nova Scotia.

3. A comparison of the substantive decisions of Chancery to those of other jurisdictions may well be impossible. Unfortunately, most Chancery files give no information about the legal reasoning that supports a Decree. Any analysis in this area would have to proceed on a deductive approach, surveying a large number of cases on one topic, and imputing a rule of law from the case results. Given the limited number of cases under most heads of jurisdiction, there may be insufficient data available to complete this kind of analysis in Nova Scotia.

4. Analysis of the legislative debates leading to fusion may well be enhanced by the findings in this paper. The arguments advanced by both sides may be more critically assessed in light of the empirical data provided by my research.

CHANCERY COURT

5. A comparison of the Chancery jurisdiction before and after fusion could be undertaken. Professor Girard notes that there are unanswered questions surrounding the post-fusion period⁹² and these questions could be explored in the context of a procedural comparison to the pre-fusion era.

6. Further studies of the correlation between foreclosure actions and the provincial economy would serve as a test of my hypothesis on this point and could shed light on the utility of foreclosures as a debt collection mechanism.

7. The background and training of Chancery lawyers could be investigated. While the volume of litigation could not have supported full-time equity practitioners, the degree of specialization could be assessed. As well, the ties between generations of Chancery lawyers could be examined to determine how equity practices evolved.

8. Analysis of litigants would provide an interesting profile of economic and commercial relations in the province. One hypothesis could query the extent to which litigation is restricted to the commercial classes of Halifax and the rural propertied class.

9. The procedure and practice of the Masters in Chancery was not a focus of my research, but could be profitably reviewed.

Appendix A

Synopsis of Cases Examined (Chronological Order)

Turnbull v. Smith (1782) PANS 57. Action to compel payment of a debt. Paymaster of Halifax Garrison advances £1,100 in lieu of payment owing by a Halifax banker. Banker dies and his heirs refuse to honour the debt owing to the Garrison. Solicitors: Attorney General Gibbons, Solicitor General Uniacke.

Wood v. Sparrow (1782) PANS 58. Application for *Ne Exeat Regno*. Halifax merchant agreed to advance £200 to an artillery regiment at a discount rate of two per cent. Market rates increased to ten per cent, and the merchant planned to leave Nova Scotia without advancing the loan. The merchant was imprisoned pursuant to the Writ for one month, and released after filing security with the Court. Solicitors: Mr. Fitzgerald, R.J. Uniacke.

Roach v. Converse (1810) PANS 186. Foreclosure of lands in Cumberland county mortgaged for £800. Solicitors: Lewis Wilkins, Crofton Uniacke.

Foreman v. Campbell (1810) PANS 188. Foreclosure of mortgaged lands in Guysborough. The debt secured by the mortgage was for £3,000. Solicitor: Thomas Ritchie.

Wollenhauht v. Webster et al. (1811) PANS 188. Injunction to stop a common law debt action, and for an account. A Lunenburg merchant purchased goods from a London merchant for £700, giving a note in

DALHOUSIE JOURNAL OF LEGAL STUDIES

payment to the London merchant's agent, and guaranteeing the payment by the London merchant to third party suppliers in England. The London merchant went bankrupt, defaulting on his payment to third party suppliers, and the Lunenburg merchant made good on his guarantee. The Halifax agent now seeks to collect the original note on behalf of the bankrupt. Solicitor: Crofton Uniacke.

Delesdernier v. Stanner (1812) PANS 197. Action for Dower. The Complainant's husband mortgaged a Windsor property which was foreclosed in 1773 despite the Complainant's Dower interest. The Complainant now seeks compensation for her Dower interest. The deed evidencing her husband's ownership of the property was lost during the American attack on Fort Cumberland in 1776. Solicitor: R.J. Uniacke.

Creighton v. Schner (1814) PANS 212. Bill to perpetuate testimony. A witness to a disputed Lunenburg will was near death. A commission was appointed to take interrogatories and file the responses with the Court. Solicitors: T.B. Robie, J.A. Stewart.

McElhinney v. Dickson (1824) PANS 643. Action seeking relief from the common law and discovery. A Londonderry farmer loaned money to the Defendant's father, an Onslow shipbuilder. The Defendant was a member of the provincial House of Assembly. The Complainant lost the note evidencing the debt of £400, and the Defendant denies existence of the debt, which is now not provable at common law. Solicitors: W. Johnson, William Hill.

Chipman et al. v. Beckwith (1825) PANS 644. Foreclosure of mortgaged lands in Cornwallis. The Defendant had borrowed £485 from the Plaintiffs, who were Cornwallis merchants. Solicitor: W. Johnson.

The King v. Leaver (1825) PANS 1897. Action of *Scire Faci* to revoke Letters Patent. A Crown grant of land in Sydney was conditional upon the land being used for a school. As the school did not transpire, the province sought revocation of the grant. Solicitors: Attorneys General Uniacke (1825) and Archibald (1832).

Re Eleanor Francis (1836) PANS 1902. Petition for a new commissioner to act as guardian for Eleanor Francis, who has been an 'idiot' since 1824.

Donaldson v. Davis (1837) PANS 1179. Bill for Directions from the Court. The creditor has a lien on the Pictou house of an absconded debtor, in the amount of £500, and seeks to eject the current occupants of the house. Solicitors: Thomas Akins, Henry Blackader.

Harvie v. Chandler et al. (1837) PANS 1206. Action to settle the estate of a Halifax landowner. The will had left a life estate to the deceased's

CHANCERY COURT

wife and the remainder to seven children. Two issues were decided by the Court. (1) One son predeceased his mother, leaving a wife and six children. Their interest in the remainder is contested, as the estate had not vested at the time of his death. The Court ruled in favour of the son's heirs. (2) A daughter and her husband had assigned her interest in the remainder to a trust for their children to evade an assignment made by the husband to a creditor under the *Insolvent Debtors Act*. The Court ruled that the daughter's interest in the remainder was a legal interest which vested in her husband upon their marriage, and that the assignment to the trust was a fraudulent conveyance. The Court upheld the trust corpus, but ruled that the assignee under the *Insolvent Debtors Act* had a first claim on the income of the trust. Solicitors: James F. Gray, Charles Young.

Annand v. McHeffey (1840) PANS 1331. Settlement of the estate of a Shubenacadie farmer. This was the only case examined in which parties settled out of court and filed a Settlement Agreement with the Court. Solicitor: George Young. Counsel: William Young, James Stewart, Charles Twinning.

Bernardi et al. v. Heckman (1841) PANS 1348. Action against the administrator of an Estate for an accounting. Complainants are the heirs in Italy of a Lunenburg merchant. The administrator was a creditor of the deceased. The case includes two competing wills, one drawn under Italian civil law, and the other in Nova Scotia. Solicitor: William Young. Counsel: George Young, James Gray.

Storey v. Wallace (1842) PANS 1367. Bill of Revivor to continue an action, which had abated on the death of the Complainant. Solicitors: James Gray (also of Counsel), Charles Twinning.

Re Joanna Herbert et al. (1846) PANS 1530. Petition for guardianship. A widow in Dartmouth seeks a guardian for her children so that their interest in the family home (received on intestacy of their father) can be mortgaged to pay the debts of the father's estate.

Uniacke v. Eustace (1846) PANS 1531. Foreclosure of a Halifax property for a debt of £170. The Complainant is James B. Uniacke, who is acting as his own solicitor, but with other counsel (J.W. Ritchie, James Gray).

Chisholm v. Johnston (1847) PANS 1547. Injunction to stop a common law debt action. Complainant purchased land in Sydney from the Defendant, and issued a £320 note in consideration therefore. Defendant did not have good title to the property, yet still sought to collect on the note at common law. Solicitor: Mr. Sawers.

DALHOUSIE JOURNAL OF LEGAL STUDIES

Goldsmith v. Slocumb (1849) PANS 1640. Foreclosure of land in Wilmot. The underlying debt of £100 was owed to a mortgagee in Annapolis. Solicitor: George Milledge. Counsel: J.W. Ritchie.

* 1991 law graduate, Dalhousie University.

¹ T.C. Haliburton, *History of Nova Scotia* (Halifax, Nova Scotia: Joseph Howe, 1829) [quoted in Townshend, *infra*, note 12, at 64 - 65].

² J. Howe, *Nova Scotian* 18 Apr., 22 Aug., 20 Sept. 1832 [cited in Girard, *infra*, note 18, at 109].

³ B. Murdoch, *Epitome of the Laws of Nova Scotia*, volume 4, (Halifax: Joseph Howe, 1833) [cited in Townshend, *infra*, note 12, at 80].

⁴ These works are discussed *infra*, beginning at note 12.

⁵ Townshend, *infra*, note 12, at 63.

⁶ Four Masters of the Rolls presided during the remainder of the Court's existence: Simon Bradstreet Robie (1825-1834); Charles Rufus Fairbanks (1834-1841); Samuel G. W. Archibald (1841-1846); and Alexander Stewart (1846-1855).

⁷ Townshend, *infra*, note 12, at 76.

⁸ *An Act for Amending the Practice of the Court of Chancery and Diminishing the Expenses Thereof*, S.N.S. 1833, c. 52.

⁹ *An Act for Abolishing the Court of Chancery, and Conferring Equity Jurisdiction on the Supreme Court*, S.N.S. 1855, c. 23.

¹⁰ *Chancery Procedure Acts of 1852* [cited in Girard, *infra*, note 18, at 111].

¹¹ *An Act Relating to the Administration of Justice in Equity*, S.N.B. 1854, c. 18 [cited in Girard, *infra*, note 18, at 109].

¹² Hon. C. J. Townshend, *History of the Court of Chancery in Nova Scotia* (Toronto: Carswell Co. Ltd., 1900) at 63-98.

¹³ *Ibid.*, at 65.

¹⁴ Girard, *infra*, note 18, at 111.

¹⁵ Townshend, *supra*, note 12, at 81, writes that his grandfather worked "assiduously" and "...continued from year to year to promulgate new rules, doing away with many of the old and cumbersome ones, and generally improving the mode of procedure."

¹⁶ Townshend, *supra*, note 12, finds Stewart's defence of the Court "...very decisive and the facts in support strong" [at 95]. In contrast, the critical attack of Attorney General William Young does not show "that profound and practical knowledge which we should expect from a legislator and lawyer of his experience" at 94.

¹⁷ *Bleak House Revisited: The Records and Papers of the Court of Chancery of Nova Scotia, 1751-1855*, Archivaria 29 (Winter 1989-90) at 149-167.

¹⁸ "Married Women's Property, Chancery Abolition, and Insolvency Reform: Law Reform in Nova Scotia 1820-1867", in *Essays in the History of Canadian Law*, volume 3, ed., P. Girard and J. Phillips (Toronto: Osgoode Society, 1990), at 80.

¹⁹ The collection is stored at the Public Records Office of the Provincial Archives of Nova Scotia [hereinafter PANS] in Halifax.

²⁰ PANS Microfilm Ref RG 36 VOL 72.

²¹ Cahill, *supra*, note 17, describes the uncertainties in determining the exact number of cases on file [at 156]. 1904 case reference numbers are recorded in the Chronological List, but thirteen of these include two cases — hence the total of 1917.

²² Cahill, *supra*, note 17, at 154.

²³ Cahill, *supra*, note 17, at 156.

²⁴ PANS Reference RG 36. See *supra*, note 17, at 156, where Cahill concludes that more than ninety-nine per cent of the 1900 cases in the List have survived as part of the current PANS collection.

²⁵ *Nutting & Sawyer's Precipe Book in Chancery 1819-1832* [RG 36 Vol 76(j)].

²⁶ *Return of the Causes in Chancery (1832-1835)* PANS RG 36 VOL 76(i).

²⁷ PANS RG 36 VOL 76(g).

²⁸ *Supra*, note 12, at 79.

²⁹ *Supra*, note 17, at 167 [Cahill footnote 57].

³⁰ The reforms of 1833 led to the drafting of twenty-two Rules of Court, but these related to specific issues only, and are not a complete code.

³¹ *Supra*, note 8.

CHANCERY COURT

32 *An Act to Provide for the Master of the Rolls in the Court of Chancery*, S.N.S. 1826, c. 11 [cited in Townshend, *supra*, note 12, at 84].

33 Townshend, *supra*, note 12, at 82.

34 E. Kolisch, "Imprisonment for Debt in Lower Canada, 1791-1840" (1986-87) 32 McGill L.J. 603 at 620.

35 (1840), PANS 1331.

36 Both the injunctions that I examined were actions to stop a common law suit [no. 188 and no. 1547].

37 *Rules of Practice* (1833) RG 36 VOL 76(g).

38 *Ibid*. An exception was available when the injunction was based on material facts or circumstances that did not exist or were not known to the complainant at the start of the term.

39 C.J. Townshend, *Historical Account of the Courts of Judicature in Nova Scotia* (Toronto: Carswell Co., 1900) at 59 [this is a companion volume to Townshend's paper on the Chancery Court].

40 Cahill, *supra*, note 17, at 149.

41 *Annand v. McHeffey* (1840), PANS 1331.

42 For example, *Harvie v. Chandler* (1837), PANS 1206 involved the settlement of an estate valued at £1,400.

43 This procedure was followed in *Wood v. Sparrow* (1782), PANS 58.

44 For example, in *Foreman v. Campbell* (1810), PANS 186, substituted service on the agent of the Defendant was granted, and a Decree for Foreclosure was granted *pro confesso* (in the absence of a defence).

45 A brief synopsis of the cases is presented in Appendix A of this paper.

46 See *supra*, notes 28 and 29.

47 Jonathan Belcher (1754-1776) and Bryan Finucane (1776-1785), as noted by Cahill, *supra*, note 17, at 167 [Cahill note 57].

48 The Irish Rules are Assessed as a historical source *supra*, note 27.

49 *McElhinney v. Dickson* (1824) PANS 643.

50 Rules 1-29 of the *Irish Rules of Practice* detail the various types of pleadings and their purpose. These Rules were followed consistently in the files which I reviewed.

51 *Irish Rules of Practice* # 10.

52 For example, *McElhinney v. Dickson* (1824) PANS 643.

53 *Rules of Practice* (1833) # 9.

54 *Goldsmith v. Slocumb* (1849) PANS 1640.

55 *Chisholm v. Johnston* (1847) PANS 1547; *Bernardi v. Heckman* (1841) PANS 1348.

56 *Rules of Chancery* (1833) # 13.

57 *Irish Rules of Practice* # 116.

58 *Harvie v. Chandler* (1837) PANS 12

59 *Irish Rules of Practice* # 112-116.

60 For example, *Roach v. Converse* (1810) PANS 184.

61 *Rules of Practice* (1833) # 13.

62 *Irish Rules of Practice* # 44-49.

63 *Ibid*, # 44.

64 *Rules of Practice* (1833) # 4-5.

65 For example, *McElhinney v. Dickson* (1824) PANS 643.

66 *Rules of Practice* (1833) # 4-7.

67 *Annand v. McHeffey* (1840) PANS 1331.

68 For example, in *Donaldson v. Davies* (1837) PANS 1179, three months from service to Appearance.

69 *Chipman v. Beckwith* (1824) PANS 644.

70 *Ibid*.

71 *Irish Rules of Practice* # 150-165.

72 *Ibid*, # 152.

73 *Creighton v. Schner et al.* (1814) PANS 212.

74 *Supra*, note 8, s.12.

75 For example *Chipman v. Beckwith* (1824) PANS 644.

76 *Docket and Minute Book* 1844-1851, PANS RG 36 VOL 75(i).

77 *Irish Rules of Practice* # 17.

78 *Storey v. Wallace* (1842) PANS 1367.

DALHOUSIE JOURNAL OF LEGAL STUDIES

79 (1824) PANS 643.

80 For example PANS 1206, PANS 184, PANS 1331.

81 (1782) PANS 58.

82 Townshend, *supra*, note 12, at 82.

83 Girard, *supra*, note 17, at p.108.

84 For example in *Goldsmith v. Slocumb* (1849) PANS 1640, solicitor for the Complainant was George Milledge, and counsel was J.W. Ritchie; in *Uniacke v. Eustace* (1846) PANS 1531, James B. Uniacke was solicitor in his own cause but counsel was James Gray.

85 *Nutting & Sawyer's Precipe Book in Chancery* (1819-1832) PANS RG 36 VOL 76(j).

86 See, for example, the remarks of Joseph Howe cited by Girard, *supra*, note 18, at 106.

87 PANS 186, PANS 644, PANS 1206.

88 For example., *The King v. John Leaver* (1825) PANS 1897.

89 Excluding the six year time span in *The King v. John Lever* (1825) PANS 1897, which was due to delay by the Crown in pursuing the matter to a conclusion.

90 *Return of Causes (1832-1835)* PANS RG 36 VOL 76(i)

91 Townshend *supra*, note 12, at 70.

92 Girard, *supra*, note 18, at 112-113.