

Research Reports/Rapports de recherche

The Legal Records of Atlantic Canada as a Resource for Material Historians*

As part of the National Museum of Man's continuing programme to develop documentary sources for the study of the material culture of Atlantic Canada, a project was undertaken to locate and survey extant legal documents which contain useful information for the pre-1900 period.** One of the most numerous and informative of such sources are probate court records, those documents relating to the estates of the deceased.

In the period under consideration, the colonial legislative assemblies of the Atlantic provinces were strongly influenced by their British parent. Major legislative reform did not seem to be a concern. Instead, they supplemented and adapted British statutes to suit the colonial situation. Many of their deviations from the British example were procedural, such as longer time limits to take account of inadequate roads and far-flung settlements. One special concern was the protection of land and landholder's rights. The treatment of debtors, orphans, lunatics, indigents, and other individuals at the mercy of society was considered. Slow steps towards the emancipation of women appear by the turn of the nineteenth century. Women, for example, were able to buy, sell, and own land and make their own wills, though with numerous restrictions. Business protections developed with the passage of the Mechanic's Lien acts, the Sale of Goods acts, the Factor's acts, the Bill of Sale acts and the Conditional Sales acts. One of the chief values of the abundance of statute law is this: by 1900, provincial statutes required the recording of a person's life at birth, marriage, and death. Between these milestones, if one bought or sold property, took out a mortgage, absconded to escape debt, broke a criminal law, sued or was sued, went insane or went broke, records were created.

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** This study is one of a number pertaining to documentary sources on Atlantic Canada material culture which began with a computer-based archival research project in Newfoundland (see *Material History Bulletin* 10 [Spring 1980]: 31-61) and will continue to be published in future issues of the *Bulletin*.

Probate law, though largely inherited from the British system, was an early concern of the colonial legislatures. Newfoundland passed its first Probate Act in 1859, while Prince Edward Island, New Brunswick, and Nova Scotia created Wills acts in 1781, 1786, and 1758 respectively. These acts confirmed the British view of who could not make valid wills (idiots, persons of unsound mind, persons under 21, married women). The acts also all required the filing of an inventory, which was to contain "a true and perfect description and estimate" of all real estate, goods, chattels, and credits of the deceased. It was also to specify the names of all known debtors, the nature of their debt or security, payments made, and bad debts. Initially, administrators (those appointed to handle the estates of people dying without valid wills) were not required to file inventories; however, this was changed in 1837 in New Brunswick, in 1843 in Prince Edward Island, and in 1790 in Nova Scotia. The problem was not considered in Newfoundland. Where the personal assets of the deceased were insufficient to satisfy the payment of debts and legacies, provision was made for auctioning off the real and personal property contained in the estate.

Despite the legal requirements, statutory provisions requiring record making were not always followed, particularly in the early period of colonial government. Inventories exist for fewer than half the probated estates, for various reasons. Inventories are far more frequent for the estates of wealthy individuals than for paupers. Perhaps judges felt that estates of small value did not require the observance of the formalities of the law. Moreover, in other cases oral listings of the possessions of the deceased may have satisfied the judge. Although interested parties could compel the filing of inventories, and occasionally did, and although executors and administrators often signed standard-form oaths promising to file inventories, unless there was some dispute the judges accepted the disposition of an estate in whatever manner the relatives agreed to. The exception was the estates of insolvents, where careful record was kept of the amount raised by the sale of items contained in the estate and the extent to which debts were thereby reduced.

Probate files vary from a single piece of paper (usually a standard-form bond signed by the administrator) to files containing a bond, an executor's oath, a will, an inventory, a final accounting, and related correspondence. Unfortunately, files in the latter category comprise a small minority of the total. Taken singly, probate files sometimes contain fascinating glimpses of early lifestyles or personal peculiarities. Religion figured prominently in the thoughts of testators: the typical will began with the phrase, "In the name of

God, Amen." The next phrases often committed the soul of the writer to "Almighty God the Father from whence it came."

His eternal welfare looked after, the testator could turn to earthly considerations, such as directions for interment. These range from the mundane to the bizarre. Imagine the shock of the executors of one New Brunswick man whose will commanded them to keep his body as long as possible before burial "so that I may not be buried alive as have so many before me."

Wills reveal a great deal about the character and family of the individuals making them. Many took advantage of this opportunity to have the last word. Beneficiaries were sometimes left a single penny to show the deceased's contempt for them. Supporting documentation sometimes elaborates the story told in the will. One of the most interesting files encountered was that of a Halifax doctor. Though his will seemed straightforward enough, petitions in the file seeking to have the will overturned reveal that the chief beneficiary was not his wife (as the will implied) but his mistress with whom he had lived for many years and who was the mother of his children. The doctor's friends felt this immoral woman had no right to benefit from his estate.

Files of intestates are sometimes equally revealing. Dalhousie University became involved in one such estate when a recently hired European professor for whom transatlantic passage had been paid died on arrival. The university felt it should be able to claim the cost of the voyage from his estate (which included such finery as velvet pantaloons). One lengthy file related the story of a young Nova Scotian woman through correspondence her father conducted with probate court officials. The daughter had married a man in Halifax who drank excessively and beat her. The couple moved to Boston where they separated, and the girl went to live with relatives. Subsequently, she found employment as a maid with a couple about to leave for Oregon. Though a regular letter-writer until that time, the daughter's correspondence ceased, and twenty years had passed during which her father heard nothing from her. He was forced to conclude she had died on the way to Oregon and wished her declared dead so that her few possessions in Nova Scotia could be distributed.

But it is the inventories that offer the most information about an individual's economic and social status. These documents vary from sixteen-page folios in meticulous handwriting detailing the sumptuous contents of a merchant's home, including several pages listing the volumes in his library, to a scrap of paper on which the words "1 scythe, 1 ax, 1 cow" are scrawled. Diverse levels of competence for both inventories and their makers are revealed and are one of the variables historians must measure in using probate records. In Nova Scotia, for example, it was

primarily the executor or administrator who had to compile the inventory and value the contents of the estate. Executors of the estates of wealthy gentlemen may have employed outside evaluators to aid in cataloguing and valuing of each item in the estate, and such documents are quite precise. By contrast, where a fisherman appointed his son or brother to be executor, the inventory often displays an awkward hand and numerous spelling errors, suggesting no more than semi-literacy on the part of its author. The accuracy of the valuations shown on the inventories is not always certain, although a sale price at public auction indicates an item's "fair market value" in that particular year.

Perhaps the most useful information is that gleaned by surveying and comparing data found in the inventories. For example, one can choose a specific year and note the relative development of selected cities at that time. Halifax and Fredericton lend themselves to this type of comparison since both Nova Scotia and New Brunswick record probate documents by county. Such information as types of employment, value of possessions at time of death, type of possessions, size of landholdings, etc. reveals an amazing disparity between the average citizen of York County, New Brunswick, and Halifax County, Nova Scotia. From the records sampled for York County, one would assume that one of every two male adults there were farmers. In contrast, while "farmer" or "yeoman" was the most common occupation listed in Halifax County until 1900, there were almost as many listing their occupation as "merchant." A number of Halifax citizens left multi-page inventories that revealed a scale of wealth far greater than the most prosperous Fredericton resident. Indeed, a preliminary survey suggests that the image of the well-to-do Loyalists of Fredericton should be discarded. Halifax, with its far broader range of occupations, would seem to exhibit a more complex society than the New Brunswick capital. Though such extrapolations would have to be confirmed by further information such as census data, the raw information provided by a probate survey gives the researcher a tremendous starting point for comparative social history.

Comparisons need not be between colonies. Much is to be learned by examining records within the county itself. Was an average blacksmith in 1820 more or less prosperous than one in 1870? How much had tools changed within that period? Had innovations that were developed elsewhere arrived in the county? Where probate inventories are plentiful, occupational studies in upward mobility and technological change may be conducted. Changes in clothing style are also fascinating to note, particularly the fussy styles adopted by many of the fashionable gentlemen. Inventories of wealthy households often give detailed information on the china pattern, place settings, silver, and other housewares. Types and styles of furnishings are revealed not only for the wealthy but for the average person. The researcher is given an indication of the room in which an object was

used, the era in which it was used, its value, and the socio-economic class of the user.

As the survey was designed to give an overview of what was contained in the probate records of Atlantic Canada, it was impossible to examine every file. The initial determination of the number of files to be considered was based primarily on time constraints and the total number available. Since the study was conducted from a base in Halifax, the largest sampling came from Halifax County where one in every twenty files was examined in the pre-1842 period and one in fifty up to 1900. (The registry system in Nova Scotia was revised in 1842 and the method of indexing changed.) In Newfoundland the survey included one in every 300 files. One in every 150 files was considered in Prince Edward Island, while in York County, New Brunswick, the survey was one in twenty. The files were identified by using index books and were selected at regular intervals in the proportions outlined above. It should be noted that in York County and in Newfoundland the probate records are indexed chronologically, while in Prince Edward Island and Halifax the filing was done alphabetically. Although the probate record for all four jurisdictions contained useful and interesting information, the frequency of probate records containing wills and/or inventories is much higher in Nova Scotia and New Brunswick. In the 1842-1900 period, only 10 per cent of the Halifax County probate records contain neither will nor inventory and the inventory frequency is 70 per cent. This suggests New Brunswick and Nova Scotia are the most fruitful locales for anyone wishing to do specialized research based on probate materials.

The limitations of probate data for such research, however, must be kept in mind. Several of these limitations have already been suggested. In some cases, the number of useful files is too low to draw statistical conclusions based on the information contained therein. The area covered by the survey may have changed geographical boundaries. The method of indexing may change, and the persons eligible to be included in probate files can alter, as in the case of married women. Then there are the problems of valuations: how qualified were the appraisers? How does one compare a 1763 pound with an 1883 dollar? Some method of developing an inflation factor must be devised. Care must also be taken to determine the relation of probate information to the society as a whole as reflected in census information: what is the percentage of upper-class citizens leaving records as compared to the lower class? These factors do not render probate data unworkable. They must, however, be considered so that the conclusions reached are as accurate as possible.

Finally, a word or two must be said about the problems of access. Anyone tracing legal documents will soon find that there is no uniform system by which they have been pre-

served. Many early documents are still located within the court or registry where they were originally filed, often in unindexed boxes. Where this is the case, the researcher confronts two problems. First, unindexed boxes stored unsystematically take a great deal of effort to cull. Secondly, court and registry personnel are sometimes reluctant to allow researchers unconnected with the legal profession to examine materials. Often they do not have the facilities to allow private research. Though some legal documents now exist on microfilm, other records were destroyed long before microfilming techniques were developed. People associated with the legal profession and its record-keeping are not prone to destroying out-of-date materials, but nature has sometimes intervened. Older documents have faded and crumbled. In Fredericton, numerous registry documents, such as mortgages, were lost when the Saint John River flooded the basement of the Legislative Buildings, their storage place, early in this century. Other New Brunswick documents were destroyed by fire.

Probate documents have not suffered the same fate, although their place of storage varies with every province. New Brunswick's probate records are the most accessible since most have become archival property. The Provincial Archives of New Brunswick in Fredericton has original documents from all counties except Albert and Westmorland (documents from these two counties are in Moncton). Probate materials are microfilmed and available on loan by mail from the archives.

The Public Archives of Nova Scotia in Halifax has some files on microfilm, but there has been no systematic attempt to collect probate materials. The original documents are to be found in each county seat (and one must be careful to note that county boundaries change). The records for Halifax County are kept at the Probate Court in the Law Courts building and are located in the same vault with probated estates up to the present. Files of intestates are not separated from those who died testate. Although once probated an estate becomes part of the public domain, to do a systematic survey requires special permission. Anyone outside the legal profession may normally request specific files only, and the general public is not allowed in the vault. A search fee of \$1.00 per file is levied. Anyone wishing to do a random survey requires special permission from the registrar of probate.

Prince Edward Island has a centralized system, and all probate records for the Island are kept in the Law Courts in Charlottetown where no distinction is made between counties. Testate and intestate estates are filed and indexed separately. Although special permission need not be sought by a researcher unconnected with the legal profession, work-space is virtually nonexistent. Only staff members have access to the vaults, and a researcher must request materials using the index books.

At present, the probate court records of Newfoundland are the least accessible, although this is being corrected. The original documents are housed in the Court of Appeal Building in St. John's, and the Probate Court is not equipped to handle research. Only probate court staff are allowed in the vaults, and only specific files can be requested. For some time persons interested in wills and administrations referred to volumes in which these categories of documents were transcribed. The staff of the Provincial Archives of Newfoundland is currently engaged in an ambitious project of microfilming and indexing all the original probate materials which they are expected to finish in 1984. Though sketchy, these materials involve estates from all over the island.

Other legal sources which researchers may wish to consult include mortgages of both real and personal property; marriage, birth, and death records; lists of indigents and insolvents; land grants, legal proceedings and related documents. These can be found by contacting archives, court houses, county seat offices, registry offices, and government buildings. By studying these records, much information can be gained on individuals who go unrecognized in conventional historical sources. Citizens whose activities did not make newspaper headlines form the majority of every society yet little is often known of their everyday life. Their personal papers were rarely considered important enough to retain. Historians have become increasingly aware that no picture of an era is complete if it does not include a view of every segment of society. The use of legal sources to develop this picture is a recent trend that continues to grow in popularity for despite its limitations, the possibilities it provides for augmenting our historical knowledge are truly exciting.

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New Brunswick Newspaper Study of Imports, 1800-1860

During the summers of 1982 and 1983 the National Museum of Man in cooperation with the New Brunswick Museum sponsored a major survey of newspapers for data relating to the material history of the province. The study recorded information from New Brunswick newspapers pertaining to goods arriving at Saint John during the period 1800-60. The project was modelled on the computer-based format for newspaper advertisements developed by the Newfoundland Museum. (See V. Dickenson and V. Kolonel,

"Computer-Based Archival Research Project: A Preliminary Report," *Material History Bulletin* 10 [Spring 1980]: 31-61). The information provided by advertisements in New Brunswick newspapers was transcribed according to categories outlined on a data sheet for later computer entry and easy access by researchers. The project employed students interested in historical research and museology and was funded by the federal government's Career-Oriented Summer Employment Programme.

Rules and procedures were determined during the first summer to ensure that all data sheets would be compatible. No services were entered unless such a service was included within an advertisement mentioning imported goods. If the researcher was able to assume that an advertised product was an import (by having seen the product previously listed as such, by having reason to suspect the product was an import because of its name [for example, Cuban sugar], or because the advertiser was known to the researcher as an importer) then this advertised product was recorded even if the advertisement itself did not specifically say that the item was an import.

The order of classification for an import advertisement (including ships for sale) was determined to be as follows: prime term, adjectives, quantity, price (specific prices only, not general remarks such as "low price" or "for sale cheap"). The description of a commodity was always transcribed in the format of general to specific. For example, "one hundred pounds of large lemons" was transposed to the data sheet as "lemons, large, one hundred pounds." The order in which the adjectives were recorded did not really matter. If "yellow" had been added to the foregoing description, the phrase would have been recorded as either "lemons, large, yellow, one hundred pounds," or "lemons, yellow, large, one hundred pounds." General remarks, such as "for sale at reduced prices," the name of the ship's captain, or descriptions of what commodities were carried by what ships, were recorded in the "remarks" field on the data sheet for clarification and accuracy.

Commodities were also recorded in a data file known as the Any Files similar to that compiled by the Newfoundland project. Any new terms were looked up in the *Oxford English Dictionary* and nineteenth-century lexicons to ensure that these words would be defined in their nineteenth-century sense. The advertisements were recorded exactly as they appeared including any oddities in spelling or punctuation. No attempt was made to use twentieth-century place names or to transcribe written or Roman numerals to Arabic.

Newspapers were provided by the New Brunswick Museum Archives and included the following: *New Brunswick Courier*; *Saint John Gazette and General Advertiser*; *Royal Gazette*; *City Gazette and General Advertiser*. Most papers were read for the period 1800-28. The *New*