"These kind of flesh-flies shall not suck up or devour their husbands' estates:" Married Women's Separate Property Rights in England, 1630-1835

by

Courtenay Mercier
Bachelor of Arts, University of British Columbia, 2001
Juris Doctor, University of Manitoba, 2004

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Supervisory Committee

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Abstract

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During the long eighteenth century, married women in England were subject to the rules of coverture, which denied them a legal identity independent of their husbands and severely curtailed their acquisition, possession and disposition of property. There is a consensus among historians that married women circumvented the restrictions of coverture both in their daily lives and by use of the legal mechanism of the separate estate. This study reviews contemporary legal and social attitudes towards women's property rights in marriage to examine the extent to which married women had economic agency under coverture. Through a review of reported cases, treatises on the law of property, and a contemporary fictional representation of pin-money, I assess the foundations justifying the law of coverture, and the challenges presented to coverture by the separate estate. I argue that there is a distinction between the theory and practice of the separate estate; the separate estate must be understood as a type of property set aside for a special purpose rather than a type of property separated from a husband's control. More precisely, the existence of the separate estate generally, and pin-money in particular, did little to advance married women's economic agency.

Table of Contents

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Dedication

This thesis is dedicated to my two exceptional daughters, Imogen and Juneau: may you always know the joy of learning, and may every adventure you take be a ministrant to your feminine independence.

Introduction

Women "are understood [as] either married or to be married and their desires are subject to their husband, I know no remedy though some women can shift it well enough."[1] These words from a seventeenth-century English legal manual describe coverture, a legal doctrine whereby, upon marriage, a woman's legal identity was subsumed by her husband. She came under his authority and control and, in doing so, forfeited her rights to the acquisition, retention and disposition of property. The words of the legal manual suggest that women modified or alleviated the restrictions imposed by coverture and, in theory, they did: married women were permitted to hold a form of title in property by way of the separate estate held in trust, which allowed them to shift the restrictions of coverture. In its simplest form, the separate estate was created by placing assets into a trust for a married woman's sole and separate use. Separate estates were most often created prior to marriage when a woman, her family or, occasionally, her intended husband, would provide her with land or moveable goods for her own use during the marriage. Distinct categories of the separate estate emerged between the years 1630 – 1855 in England, a time in which, in the words of Margaret Hunt, the nation "was profoundly hierarchical, [and] explicitly committed to male supremacy."[2] The underlying contemporary legal attitude respecting a married woman's separate estate was that "it was against common right," because a wife should not have separate property from her husband when they were both in law the same person.[3]

This thesis will explore the foundations of coverture with respect to married women's property, the parameters of the separate estate as decreed by legal precedent, and two categories

[1] *The Lawes Resolutions of Womens Rights: Or, The Lawes Provision for Women* (London, 1632), 6.
[2] Margaret Hunt, " 'The great danger she had reason to believe she was in,' Wife-Beating in the Eighteenth Century," in *Women and History: Voices of Early Modern England*, ed. Valerie Frith (1995), 86.
[3] *Powell v. Hankey and Cox* (1722), 24 Eng. Rep. 649.

of the separate estate – gifts and pin-money – to determine if the separate estate truly constituted a distinct category of property to which coverture only marginally applied, and, therefore, to which the seventeenth-century English legal manual referred when asserting that "some women can shift [coverture] well enough."[4] I am particularly interested in determining the extent to which either the practice and concept of the separate estate, or both, provided married women with some form of agency. A review of contemporary attitudes towards the married woman's separate estate generally, and pin-money specifically, as parsed from treatises on the law of property as they related to married women, reported cases out of the Court of King's Bench and the equitable jurisdiction of the Court of Chancery, and a contemporary fictional representation of the separate estate in the novel *Pin Money* (1831) will determine whether categorising property into a separate estate truly partitioned property to a married woman's sole use and direction so that she can be said to have shifted the legal disability of coverture. I will argue that, while the separate estate, and pin-money in particular, was available and used extensively, the overwhelming judicial and social response to its function demonstrates that it was never a device effectively disengaged from the reach of a husband. That is, the separate estate did not translate into truly separate property. Property that could be described as existing within a married woman's separate estate was not strictly detached from her husband since the property remained subject to his authority. Therefore, the separate estate must be understood as a type of property set aside for a special purpose subject to a husband's discretion rather than a type of property separated from a husband's overarching control. More precisely, the existence of the separate estate generally, and pin-money in particular, did little to advance married women's economic agency.

[4] *Lawes Resolutions*, 6.

The restrictions coverture placed upon married women are far greater than access to property. They also had criminal and social implications not addressed in this thesis. My research incorporates contract law, as well as social and economic issues in a consideration of how coverture affected married women's entitlement to real property (freehold land and the profits therefrom) and personal property (moveable goods such as clothing, jewelry, and ready money). This study incorporates concepts of gender and is premised on the theory that gender is an evolving cultural process that signifies relationships of power, and one of several ways in which power is articulated. When applied to coverture, gender is the means by which power in a marital relationship is signified and articulated. Only men can acquire, retain and pass on control of property; a woman loses that control the moment she marries, by virtue of her gender. Under coverture, the personal property a woman brought into marriage was absolutely vested in her husband, to be disposed of as he pleased; the real property a woman brought into her marriage was transferred into her husband's control and management, with all income from that property going to him, though she retained rights to the real property to be enjoyed after her husband's death. The husband also owned all property acquired during the marriage. Thus, coverture buttressed the gendered power structure inherent in marriage: those who benefitted (husbands) were reluctant to give up such power and feared the social implications of married women possessing property and becoming legitimate actors in the economy.[5]

As will be explored within, the gendered nature of coverture derived from the notion of the divinely ordained patriarchal household, a concept of significant importance in Restoration

[5] Joanne Bailey, "Favoured or Oppressed? Married Women, Property and 'Coverture' in England, 1660-1800," in *Continuity and Change* 17, no. 3 (2002): 351-72.

England that remained consistent into the nineteenth century.[6] There is evidence of continuity with respect to the patriarchal justifications for coverture, but that continuity is disturbed slightly by minor differences. The legal treatises of the late seventeenth century emphasised the family unit with one head of the household and a subordinate wife as decreed by God to ensure peaceful family alliances in perpetuity. By the eighteenth century, the patriarchal ideas that justified coverture had shifted to emphasise the best interests of a civil, industrious, land-inheriting society. And in the early nineteenth century, coverture was justified by patriarchal concepts that had to balance the introduction of the separate estate.

Historiography

Susan Staves recognises an overarching patriarchal motive in maintaining coverture throughout the long eighteenth century when she writes that "the legally established relationship of husband and wife should seem fair, so it was an important function of the courts to provide legitimation for the dominance of husbands and the subordination of wives in the family."[7] She includes the changing social construction of gender as one of five important variables in determining a woman's actual experience of property law.[8] Craig Muldrew's work on debt litigation also recognises the gendered nature of coverture. He argues that a shift in judicial attitudes occurred in the late eighteenth century as flexibility in the law allowed women to gain greater responsibility for maintenance contracts during marital separation; however, by the early nineteenth century, the courts decided "that too much masculine power had been relinquished …

[6] Craig Muldrew, " 'A Mutual Assent of her Mind'? Women, Debt, Litigation and Contract in Early Modern England," *History Workshop Journal* (No. 55, Spring 2003), 64.
[7] Susan Staves, *Married Women's Separate Property in England, 1660-1833* (Cambridge, Massachusetts: Harvard University Press, 1990), 7.
[8] *Ibid*, 198.

[and] more restrictive practices were again introduced."[9] Muldrew acknowledges married women's roles in the emergent credit economy, but he asserts that "their legal agency was curtailed in the interest of maintaining patriarchal authority within the household."[10] In contrast, Allison Anna Tait approaches the gendered power structure of coverture by arguing that, despite its restrictions, married women's use of the separate estate "truly benefitted" them, and she goes so far as to label married women "economic agents within the household."[11]

Foucault's scholarship on the power/knowledge relationship is usefully applied to coverture. To Foucault, "power is not an institution, and not a structure; neither is it a certain strength we are endowed with; it is the name that one attributes to a complex strategical situation in a particular society."[12] In assessing power, one must search for instances of discursive production, how power is produced, and how knowledge is propagated.[13] Discourse is thus critical: discourse is the "way that a topic can be meaningfully talked about and reasoned about … [and] influences how ideas are put into practice and used to regulate the conduct of others."[14] Therefore, an analysis of coverture must consider not only that which is talked about, but also that which is relevant but *not* talked about. The study of coverture must include rules concerning property, maintenance, agency, and independence; how knowledge of coverture is disseminated, and gains authority; and social practices. Moreover, since knowledge is always inextricably linked to power, a study of coverture must consider how the combination of discourse and power produced a certain conception of property rights and restrictions for women, had certain effects

[9] Muldrew, " 'A Mutual Assent,'" 64.
[10] *Ibid*.
[11] Allison Anna Tait, "The Beginning of the End of Coverture: A Reappraisal of the Married Woman's Separate Estate*," Yale Journal of Law and Feminism* 26, (165), 2014: 168.
[12] Michel Foucault, *The History of Sexuality, Volume 1: An Introduction*, trans. Robert Hurley (New York: Vintage Books, 1990), 93.
[13] *Ibid*, 12.
[14] Stuart Hall, "Foucault: Power, Knowledge, and Discourse," in *Discourse Theory and Practice: A Reader*, ed. Margaret Wetherell (London, 2001), 72.

for husbands and beneficiaries, and how such effects were applied in specific contexts such as pre-marital contracts, and consumption practices.[15] Staves recognises the discursive nature of the law when she claims that ideology influenced judicial decisions. If law is a form of social communication, then judicial decisions have the power/knowledge relationship at their core, with judges rendering decisions based on political decisions that reflected their ideological leanings, and which in turn influence those affected directly and indirectly by their decisions. Staves defines ideology as "explicit public ideas people have about human relationships, especially those ideas that serve to justify the power relationships between people, and to explain why it is right and good that different people should have different roles and different entitlements."[16] Muldrew's analysis of *Manby v. Scott* – a key case justifying coverture that was clearly influenced by patriarchal considerations (discussed in detail in Chapter 1) identifies the judges as "key players in the political events of the Commonwealth and Restoration," with the language of the judgment itself reflecting "the language of patriarchy and contract" so prevalent in the era.[17]

Coverture as a legal principle is unique to English common law. I intend to map out the social meaning behind coverture's function as a gendered legal mechanism regulating women's economic rights by exploring legal treatises that explicate coverture along with judicial rulings that clarify the practical workings of coverture. This map uses three key themes – justification, challenge, and preservation – to examine the ways in which coverture affected the property rights of married women. Legal treatises published during the seventeenth century establish the patriarchal foundations of, and justifications for, coverture; those foundations are consistently applied in judicial rulings throughout the same century. The case law in the eighteenth and early

[15] Hall, "Foucault," 76.
[16] Staves, *Married Women's Separate Property*, 6.
[17] Muldrew, " 'A Mutual Assent'," 61.

nineteenth century attaches practical meaning to the legal tenets established by earlier treatises and reaffirms patriarchal principles. When the separate estate, particularly pin-money, is introduced upon this foundation of patriarchal values, such a legal mechanism represented a challenge to the law of coverture. The response to that challenge reflected an ongoing regulation of female financial independence instead of an emerging acceptance of it: the preservation of the law of coverture.

To assess judicial attitudes towards married women and property, I have examined reported cases. Staves identifies reported cases as the best evidence for how the legal profession publicly represented its rules and rationales.[18] However, litigation invariably involves an adversarial process, not an impartial one. Courts focussed primarily on settling disputes, not on determining the truth of a matter. The number of claims initially commenced, let alone those claims that actually proceeded through the system, was small. Tim Stretton has observed that, while litigation records are "by definition, exceptional and obviously not representative of what actually happened" in the court system, legal documents nonetheless reflect the law under pressure, which helps to determine how the legal system worked for all parties involved.[19] Tait agrees, arguing that, even if "concentrating solely on litigated cases undoubtedly introduces a certain bias into the analysis," the reported cases are instructional in that they "highlight what legal claims and questions were the most contentious and therefore posed the greatest obstacles to property ownership for married women."[20] Staves is more cautious, calling reported cases "crucial" but having "significant limitations," because early modern reports were unofficial and

[18] Staves, *Married Women's Separate Property*, 13.
[19] Tim Stretton, "Women, custom and equity in the court of requests," in *Women, Crime and the Courts in Early Modern England*, ed. Jennifer Kermode and Garthine Walker (Chapel Hill: University of North Carolina Press, 1994), 179.
[20] Tait, "The Beginning of the End," 169.

selective, with reporters choosing the juicier cases upon which to report.[21] Such cases are helpful in that they reveal what contemporary legal minds felt were significant changes in the law, but they were also harmful in that such a method tends to "downplay cases in which existing rules were applied in ways that resolved controversy."[22]

The historiography of the interpretation of legal records as historical sources is rich, and an exhaustive review is beyond the scope of this thesis. However, an identifiable area of caution is relevant to the subject at hand: historians should refrain from unquestioningly accepting legal records as reflective of women's voices when crafting a narrative of married women's experience. Hunt asserts that "[p]eople routinely lie in court, and they lie even more when the financial and emotional stakes are high." In one case, Hunt characterises the wife's evidence as "probably exaggerated," while the husband's "luxuriant allegations" are "likewise somewhat implausible."[23] Staves addresses the judges themselves, recognising the influence of shifting contemporary public policy in judicial rulings when she describes judges as making "idiosyncratic" rules in their decisions and being "provoked" by factors beyond the plain facts of the case.[24] Stretton reflects upon the "obscuring filters created by male counsel, male scribes and male judges."[25] Erickson argues that the "historical records themselves are obstructive."[26] Her response to this obstruction is to acknowledge biases inherent in the legal system that muffled female voices. The laws to which women responded, the procedures they used, and the courts in which they appeared were all created and operated by men. As Margaret Hunt has shown with respect to domestic abuse, courts in this era "were very loathe to interfere in 'family matters' and

[21] Staves, *Married Women's Separate Property*, 12.
[22] *Ibid*.
[23] Hunt, " 'The great danger'," 87.
[24] Staves, *Married Women's Separate Property*, 154.
[25] Tim Stretton, *Women Waging Law in Elizabethan England* (Cambridge: Cambridge University Press, 1998), 13.
[26] Amy Erickson, *Women & Property In Early Modern England* (London: Routledge, 1993), 18.

even less willing to do anything that, in that staunchly hierarchical society, might be construed as usurping a husband's rightful authority over his wife."[27]

Additionally, Stretton explains that "extracting reliable information from legal records is rarely a straightforward task" because legal documents emerge from an adversarial system in which "conflict and debate are at the heart."[28] Joanne Bailey's work demonstrates how "the legal system depended upon story-telling," [29] which echoes Stretton's contention that judges decided "which of the versions offered to them by competing lawyers was more compelling."[30] Both Bailey and Stretton emphasise that the law was dispensed using a formulaic approach that relied on concise determinations to meet the goal of dispute resolution. Advocates tailored their argument by picking evidence that best served their desired outcome. To paraphrase Bailey, litigation was a process of selection, reordering and reshaping of evidence.[31] Hunt's suggestion that "the job of the historian is less to catch witnesses in lies and distortions than to ask what general truths about a particular time and place can be gleaned from their testimony, whether or not it is 'true' in every detail" is useful.[32]

Historians agree that interpretations of legal records must take into account more than the document itself. In *Women Waging Law in Elizabethan England*, Stretton's approach is to critically analyse the language of legal records, arguing that words "used to attack the integrity of male and female opponents harbour a wealth of information about contemporary perceptions."[33] He follows a method introduced by Natalie Zemon Davis, who looks "not at the truth in each

[27] Hunt, " 'The great danger'," 83.
[28] Stretton, *Women Waging Law*, 13; 14.
[29] Joanne Bailey, "Voices in court: lawyers' or litigants'?" *Historical Research* 74, 186 (2001), 408.
[30] Stretton, *Women Waging Law*, 14.
[31] Bailey, "Voices in court," 392.
[32] Hunt, " 'The great danger'," 87.
[33] Stretton, *Women Waging Law*, 9.

case, but at contemporary representations of the truth."[34] In "On the Lame,"[35] Davis goes beyond the legal records to embed the history of the trial of Martin Guerre in sixteenth-century French village life. She presents the primary characters' attitude towards their world "so that they are understandable in terms of the range of values in their day."[36] She urges an historical analysis that applies the beliefs and ideas of ordinary people to yield a deeper interpretation of the material evidence. Recent legal scholarship borrows heavily from the insights, methods and approaches of cultural history. In *Women & Property in Early Modern England*, Erickson examines early modern attitudes towards married women's separate property as reflected in contemporary periodicals and literature. Stretton dedicates an entire chapter in his monograph to the culture of litigation, in which he considers contemporary attitudes towards women in Elizabethan courts as reconstructed from representations of litigating women in advice manuals, dramas and literature. Muldrew's conclusions are drawn only after a careful consideration of the political context within which the married women he examined lived, which emphasised patriarchal representations of the family.

Shannon McSheffrey characterises legal documents as agents in the historical process in that they were "written precisely because they were meant to *do* something" and are therefore "not just inert and transparent accounts of a legal proceeding."[37] She reconstructs a lawsuit by employing similar methods to those used by Davis, Stretton, Erickson and Bailey, and discovers a less than straightforward case. The historiography collectively urges historians to draw on clues emerging from contemporary use of the evidence rather than hoping to determine truth within the evidence. Approaches such as those used by legal-cultural historians may disclose women's

[34] Stretton, *Women Waging Law*, 19.
[35] Natalie Zemon Davis, "On the Lame," *American Historical Review* 93, (3) (1988): 572-603.
[36] *Ibid*, 598.
[37] Shannon McSheffrey, "Detective Fiction in the Archives: Court Records and the Uses of Law in Late Medieval England," *History Workshop Journal*, 65 (Spring 2008), 66.

experience through how a woman is represented, how she seeks to have herself represented, and how her representation is perceived by others. Therefore, it is not only the origins of the lawsuit that should be examined but also the methods, and the litigant's desired outcome, as interpreted from the way she is represented in, and presented to, the court system.

Contemporary Treatises & Case Law

In 1632, an anonymous author's work was published as *Lawes Resolutions of Womens Rights,* in which is written the opening quote.[38] Though the printer who published the tract was unaware "by whom this following Discourse was Composed,"[39] it was said to be printed for the "publique Advantage and peculiar Service to that Sexe generally beloved, and by the Author had in venerable estimation."[40] The text endeavoured to set out all laws concerning women by way of "reasons, opinions, Cases and resolutions of Cases."[41] The printer intended to "make this scattered part of Learning, in the great Volumes of the Common-Law-Bookes, and there darkly described, to be one entire body, and more ready, and clearer."[42] Similarly, in 1660, J. Phillips published *The Principles of Law Reduced to Practice* to explicate the method by which the law operated since the law itself was unwritten and based on custom. Phillips followed precedent and set out a number of "particular Cases, under generall Rules" that were helpful to lawyers.[43] Many of the tenets in his "Table of the Maxims" explain how coverture applied to property, but one of primary significance is "man and wife are two souls in one flesh."[44] A separation between spouses would invite "implacable discord, and dissension, betwixt the Husband and Wife, and a

[38] *Lawes Resolutions*, 6.
[39] *Ibid*, Epistle.
[40] *Ibid*, A5.
[41] *Ibid*, Epistle.
[42] *Ibid*.
[43] J. Phillips, *The Principles of Law Reduced to Practice* (London: 1660), A3.
[44] *Ibid*, table, 62.

mean of great inconvenience."[45] By ordering the family unit so that one person is the head, it is presumed that the family will run smoothly.

The text *Baron and Feme, A Treatise of the Common Law Concerning Husbands and Wives*, published anonymously in 1700, advertised itself as the first of its kind on the law of coverture. Claiming that "something or other" relating to the law of coverture was found "in almost every Folio of our Law-Books," the author "Methodized, Explained or Corrected, as occasion lead me to it," the law of coverture in all its forms. [46] *Baron and Feme* emphasised the importance of marriage in its greater social context, as can be seen in this statement contained in the first chapter: "There is no Consideration respected in the Law so much as the Consideration of Marriage, in regard of the Establishment of Families by Alliances, and the Continuance of them by Posterity."[47] The value placed on the establishment and continuation of families into posterity must be read to include rights to pass on property. Having established the importance of the family secured by marriage, the text establishes the subordinate role of women. The placement of this tenet as first in the text stresses its importance and introduces the concept of patriarchy as the principal foundation of coverture. William Blackstone's voluminous tract, *Commentaries on the Laws of England*, originally published between 1765 and 1769, dedicates a chapter to the law of husband and wife in which the concept of coverture is explained in reasoned terms. Blackstone characterises marriage as a contract, stating that "our law considers marriage in no other light."[48] He observes married women to be favoured by the law when he writes "that even the disabilities, which the wife lies under, are for the most part intended for her

[45] Phillips, *Principles*, 62-63.
[46] Anonymous, *Baron and Feme. A Treatise of the Common Law Concerning Husbands and Wives* (London: 1700), A4.
[47] *Ibid*, Chapter 1.
[48] William Blackstone, *Commentaries on the Laws of England*, 4 vols., vol. 1 (Boston: 1799), 459.

protection and benefit. So that a favourite is the female sex of the laws of England."[49] From his perspective, the law protects a married woman. She is "separately considered as inferior to [her husband], and acting by his compulsion" if she devises real property to him, for example.[50]

The emphasis on the patriarchal family structure as set out in the foregoing texts remains consistent in subsequent legal writing. In *The Laws Respecting Women: As They Regard Their Natural Rights or Their Connections and Conduct*, published anonymously in 1777, marriage is described as "an institution calculated to promote the private happiness of individuals, and the most essential interest of civil society."[51] Family is the backbone of an industrious civilisation stratified by property ownership: family is "necessary to the very being of human society: for without the distinction of families there can be no encouragement to industry, nor any foundation for the care of acquiring riches."[52] Peregrine Bingham's 1816 text, *The Law of Infancy and Coverture*, carries these principles into the nineteenth century. However, in contrast to earlier treatises on the subject, Bingham's analysis expands beyond the laws of God and nature; he asserts that "it is only by an accurate conception of the *reason* of the law, that we can ever argue consistently on the law itself."[53] To Bingham, the justification for coverture is simple: maintaining a power imbalance in marriage ensures its success over the length of two persons' lives. Human nature endows individuals with personal will, so it is "absolutely necessary for the preservation of peace, that where two or more persons are destined to pass their lives together,

[49] Blackstone, *Commentaries*, vol. 1, 471.
[50] *Ibid*, 470.
[51] Anonymous, *The Laws Respecting Women, as They Regard Their Natural Rights, Or Their Connections and Conduct in which Their Interests and Duties as Daughters, Wards, Heiresses, Spinsters, Sisters, Wives, Widows, Mothers, Legatees, Executrixes, &c. are Obligations of Parent and Child and the Condition of Minors. The Whole Laid Down According to the Principles of the Common and Statute Law...and the Substance of the Trial of Elizabeth, Duchess Dowager of Kingston on an Indictment for Bigamy Before the House of Peers, April 1776* (London: 1777), 23.
[52] *Ibid*, 23.
[53] Peregrine Bingham, *The Law of Infancy and Coverture* (London: 1816), 163.

one should be endued with such a pre-eminence as may prevent or terminate all contestation."[54] Bingham explains that pre-eminence belongs to the man in the relationship, for two reasons: first, "because he is the stronger. In his hands the power allotted him at once supports itself without external interference; give but the legal authority to the wife, and every moment would produce a revolt on the part of the husband, only to be quelled by assistance from without;"[55] and second, "it is always probable that the man, by his education and manner of life, has acquired more experience, more aptitude for business, and a greater depth of judgment than the woman."[56]

Bingham warns against the "dangerous snare" of equality between spouses.[57] The wife would be released "from that necessity of pleasing which is at present imposed upon" her, which would, "instead of strengthening, only subvert the empire [she] now enjoy[s]." This would occur because the husband's "jealousy of rival power" would emerge, and, with "continually wounded pride … the stronger party would soon rouse up in him a dangerous antagonist for the weaker." The husband would look only upon what he had lost, not what he may have gained, and all his efforts would turn "to the forcible establishment of that prerogative which is now subdued by the dominion of female influence."[58] If a wife retained the power in the relationship, she would be unable to contain her husband's will as expressed in physical outbursts against her and would require outside help. A husband would never succumb to his wife's authority when he believed it belonged to him in the first place. In any case, to Bingham, men were better equipped mentally to manage the legal responsibilities of the family.

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[54] Bingham, *The Law of Infancy and Coverture*, 162.
[55] *Ibid.*
[56] *Ibid*.
[57] *Ibid*, 162-163.
[58] *Ibid*, 163.

Bingham's explanations fall nicely into what Susan Staves calls the patriarchal code, which "justified the dominance and privilege of men by reference to their superior abilities to create good order in families and their duty to provide protection and support for subordinated women and children."[59] Bingham's ultimate justification of male dominance remains identical to that found variously in *Lawes Resolutions, Principles, Laws Respecting Women*, and *Baron and Feme*. He focusses on the peaceful coexistence of two persons accustomed to the established patriarchal foundations of family, dissuading married women from disrupting the status quo and claiming male superiority in experience and intelligence.

In 1819, James Clancy published his second edition of *An Essay on the Equitable Rights of Married Women,* a lengthy treatise that included a section specifically addressing pin-money. Clancy's purpose was to clarify married women's property rights, including "the advantages that her separate estate confers upon her, and the distinct interests that flow from her husband's contract with her for a separate provision."[60] In particular, Clancy expected *An Essay* to provide "a digest of the exceptions, which the course and practice of our Courts of Equity furnish to that rule of the Common Law, which denies to a married woman separate property, or a separate character."[61] His focus on the separate estate, particularly pin-money, distinguishes his treatise from the others and suggests the emergence of a new interest in the separate estate among legal minds in the early nineteenth century.

The foregoing treatises interpret the law of coverture as it was laid out by judicial decisions over the long eighteenth century, mostly from the equitable jurisdiction of the Court of

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[59] Staves, *Married Women's Separate Property,* 25-26.
[60] James Clancy, *An Essay on the Equitable Rights of Married Women, with respect to their separate property, and also on their claim to a provision, called The Wife's Equity, to which is added, the law of pin-money, separate maintenance, and of the other separate provisions of married women, Second edition* (Dublin: 1819), v.
[61] *Ibid,* vi.

Chancery, whose purview it was to determine interests in real and personal property.[62] The patriarchal principles upon which judicial reasoning was founded are easily recognisable in the case law emerging in this era. The seminal cases respecting the law of coverture and its impact on married women's property rights include *Manby v. Scott* (1663), *Strathmore (Countess of) v. Bowes* (1797) and *Howard v. Digby* (1834). Each has been examined in detail in this thesis. Other less prominent decisions have been explored to illustrate the overall picture of the judicial attitude towards married women's property rights. A common theme of these cases is the concept that marriage was an economic exchange, with a woman bringing property and funds to the marriage in exchange for lifelong maintenance by her husband. Finally, in an effort to complement the foregoing legal writings, this thesis will review the sentimental novel *Pin Money* (1831) to assess the social and cultural impact of married women's separate property in an era of increasing conspicuous consumption.

With elements of court intrigue, marital separation and attempted reconciliation, expectations of maintenance, and stirrings of women's consumption, the seminal 1663 case of *Manby v. Scott* illustrates the context within which coverture denied married women property rights. The case demonstrates the parameters within which husbands controlled marital property and the reasons why such parameters were deemed to be essential. Set in the context of the Restoration, the judiciary used the case to demonstrate expectations within a newly reunified monarchical society. The concept of consent on the part of a husband was paramount in the decision, reflecting the authoritarianism appreciated by royalists and signifying a concern with the husband as head of the household. The concept of appropriate moral behaviour on the part of

[62] George Spence, *The Equitable Jurisdiction of the Court of Chancery. Comprising Equitable Estates and Interests; Their Nature, Qualities and Incidents; in which is incorporated, so far as relates to those subjects, the Substance of "Maddock's Treatise on the Principles and Practice of the High Court of Chancery*, Vol. II (Philadelphia: 1850), 2.

a married woman was secondary but still critical in the decision, which insisted on a married woman's responsibility to obey her husband and to respect his social position and the sanctity of marriage. Invoking religious tenets binding a wife to her husband that are not found in later decisions, *Manby v. Scott* assumes that questions of maintenance and provision belong in the ecclesiastical courts and disregards the central importance of those concepts for the wife involved in the case. *Manby v. Scott* represents judicial attitudes at the time of Restoration, creating a foundation for authoritarian rule in marriage that shifted in the years to come, yet remained tied to a patriarchal authority extending to rights over marital property.

As the separate estate became a common legal mechanism by the nineteenth century, the Chancery, by way of case law, established a legal rule wherein a woman was not entitled to a separate estate unless she had notified her intended husband of its existence and obtained his consent to its creation prior to their marriage. This rule was founded upon marriage as an economic exchange. A man acquires financial gain by marrying a woman and receiving her property, and he should not have to marry her if that financial gain has been appropriated to his wife's separate use without his knowledge or consent. The focus of early judicial decisions that contemplated the issue of consent and knowledge, such as *Howard v. Hooker* (1672), was the husband's dispossession of marital property rights and not the wife's need or desire for independent financial security. The focus shifted slightly by the late eighteenth century, when the sensational case of *Strathmore (Countess of) v. Bowes* (1797) was decided. The judiciary found in favour of a noblewoman who had been tricked into marriage by a soldier seeking her immense fortune. The court confirmed the rule that a wife's entitlement to a separate estate required her husband's pre-marital consent and knowledge. However, the court did not find this to be a *general* rule of law and exercised its discretion to find against the husband because of egregious

circumstances of abuse and deceit. Subsequent nineteenth-century cases exercised a similar discretion and considered the circumstances of each case to find in favour of a married woman; however, prior to the exercise of such discretion, the judiciary specifically reaffirms the foundational principle of disclosure of the separate estate prior to marriage.

When pin-money became commonly used in the nineteenth century, the judiciary was motivated anew to respond and to lay out specific rules restricting a married woman's property rights. The judicial response once again precluded married women from express financial independence. Clancy's definition of pin-money as an annual stipend "allowed" by a husband for a wife's "personal and private expenditure" epitomises the difference between the theory of law and its practical application.[63] Clancy demonstrates that, while pin-money was ostensibly intended for a wife's personal use and enjoyment, it was not separate property of which the wife could dispose as she pleased. Set against the backdrop of a changing commercial world in which women were rapidly becoming active consumers, pin-money was of strategic importance to husbands and wives. Moralists defined many of the newly-available consumables as luxuries and "associated their consumption with women, who were criticized for their profligacy in purchasing unnecessary items."[64] A cultural anxiety associated with women's influential role in the new economy emerged, impacting societal attitudes towards women's financial independence.

Popular sentiment against woman's consumption directly affected, and was reflected in, judicial reasoning. Lord Brougham's disposition in the 1834 case of *Howard v. Digby* reaffirms the patriarchal doctrine outlined two centuries earlier in *Manby v. Scott* and demonstrates the

[63] Clancy, *Essay*, 375
[64] Bailey, "Favoured or Oppressed," 358.

foundational – though hypocritical – principles upon which pin-money, and thus married women's financial independence, rested. In this case, the judiciary reacted violently against pin-money, expressing its contempt for married women's financial independence in a House of Lords decision that is so effusive as to be repetitive, suggesting that the principles espoused within were intended to be taken seriously and have far-reaching impact. Lord Brougham's inflexible commentary on a married woman's financial independence establishes the limitations married women faced.

Questioning Agency

Even if the law *"demanded* that married women leave their legal affairs to their husbands," married women had opportunities, such as the separate estate, to shift the confining restrictions of coverture.[65] However, questions remain to be explored. As Erickson queries, what effect did the explicit letter of the law have, practically speaking? While the work already done in this area provides an understanding of the position of the parties themselves, and much can be drawn from those representations, the judicial decisions are important pieces of the equation that will expand our understanding of contemporary attitudes. Staves writes that, while the instrument creating a separate estate may have been drafted, the rest is "up to the judges; a new role is not established until it receives judicial sanction."[66] Queries about coverture's influence on married women are complicated when one considers the extent to which married women realised their legal rights. Staves contends that "most women appear to have been quite ignorant of the subject" because property issues were men's business.[67] Erickson's work demonstrates that a wife was more likely to negotiate a marriage settlement on her second marriage because she was

[65] Stretton, *Women Waging Law*, 129.
[66] Staves, *Married Women's Property*, 198.
[67] *Ibid*, 205.

"older, perhaps wealthier, and wiser at least in the ways of legal coverture."[68] Stretton shows how litigants were "uncertain about the workings of the doctrine until 'learned counsel' put them straight." [69] Bailey notes that wives were "unaware of the extent to which they were technically economically dependent upon their husbands."[70]

Walter Johnson cautions historians against the "master trope" of agency.[71] He urges a disentangling of the terms agency, humanity and resistance. While Johnson writes in the context of the scholarship of slavery, his argument is valuable when applied to coverture. He calls for "a history of slavery which sees the lives of enslaved people as powerfully conditioned by, though not reducible to, their slavery."[72] Erickson and Stretton's approaches reflect Johnson's outlook, but I suggest that historians like Finn, Bailey, Wright and Tait place too much emphasis on, for example, possessory language or uses of the separate estate, than was ever technically allowed by the legal rules of the day. Bailey and Wright's approaches are problematic in that they conflate activity with resistance, something against which Johnson warns.[73] In contrast, Shepard rejects the construction of female agency as a type of resistance, arguing rather that routine economic management by married women, both independently and with their husbands, was a major part of everyday household enterprise. Instead of attributing the negotiation of coverture solely to "acts of female resistance," Shepard argues that they are instances of "the routine *centrality*" of married women in economic life.[74] I assert that the overlooking of coverture in daily life does not translate into practical economic agency – if married women had asserted

[68] Erickson, *Women & Property*, 123.
[69] Stretton, *Women Waging Law*, 131.
[70] Bailey, "Favoured or Oppressed," 367.
[71] Walter Johnson, "On Agency," *Journal of Social History*, Vol. 37, 1 (Fall 2003): 115.
[72] *Ibid*.
[73] *Ibid*.
[74] Alexandra Shepard, "Minding Their Own Business: Married Women and Credit in Early Eighteenth-Century London," *Transactions of the RHS* 25 (2015): 73.

what they believed were their rights of possession over property in a court of law, their claims would not only have been decisively defeated but might have been made exemplary in order to ensure that the patriarchal ramifications of coverture persisted and were recognisable. I agree with Karen Pearlston's contention that married women's "manipulations of the rules of coverture should come as no surprise, but neither should the limits set out by the judiciary in an era where all family life was organized around its principles."[75] True, as Wright argues, the historiography of coverture demonstrates that "legal rights and obligations do not always map neatly onto the lived experiences of people's lives."[76] Coverture could be manipulated. However, as Stretton and Kesselring suggest, coverture operated "as a remarkably efficient mechanism in the maintenance of marital inequality," and the "yawning gulf between laws and lived reality" should not downplay coverture's impact.[77]

[75] Karen Pearlston, "Married Women Bankrupts in the Age of Coverture," *Law & Social Inquiry*, Vol. 34, No. 2 (Spring 2009): 295.
[76] Danaya Wright, "Coverture and Women's Agency: Informal Modes of Resistance to Legal Patriarchy," in *Married Women and the Law: Coverture in England and the Common Law World*, Tim Stretton and Krista J. Kesselring, eds. (Montreal & Kingston: McGill-Queen's University Press, 2013), 241.
[77] Tim Stretton and Krista Kesselring, "Introduction: Coverture and Continuity," in *Married Women and the Law: Coverture in England and the Common Law World*, Tim Stretton and Krista J. Kesselring, eds. (Montreal & Kingston: McGill-Queen's University Press, 2013), 9.

Chapter 1 – "He is obliged to find her necessaries, as meat, drink, clothing, &c:" Justifying the Law of Coverture

> *Whether this or that apparel, this or that meat or drink, be most necessary or convenient for any wife, the law makes no person judge thereof but the husband himself.*
>
> *Manby v. Scott* (1662)

1.1 The Framework of the Law of Coverture as Related to Property

The law of coverture demanded that a wife figuratively merge with her husband into one person. Thus, marriage stripped a woman of her own legal identity. One of the main effects of denying a married woman her own identity was that anything she possessed prior to marriage came under her husband's control upon marriage. The legal maxims of *The Lawes Resolutions of Womens Rights* (1632) – "*That which the Wife hath is the Husbands*" – [1] and J. Phillips' *Principles* (1660) – "All she hath is her husband's" – describe this tenet.[2] However, there was "a very considerable difference in the acquisition of [the] species of property by the husband," as personal property and real property were distinguishable from each other with respect to the way in which each was treated under coverture, as I explain below.[3] Personal property refers to all moveable items, including those "which may be annexed to or attendant on the person of the owner, and carried about with him from one part of the world to another"[4] such as "Horses, Peate, Sheepe, Corne, Wool, Money, Plate and Jewels," whereas real property refers to freehold land.[5] The specific treatment of each category of property brought to the marriage by a woman depended on its form. While a husband gained control over both his wife's real and personal possessions, this did not necessarily translate into his absolute legal title over them.

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[1] *The Lawes Resolutions of Womens Rights: Or, The Lawes Provision for Women* (London, 1632), 130 (emphasis in original).
[2] J. Phillips, *The Principles of Law Reduced to Practice* (London: 1660), 141; table, 80.
[3] William Blackstone, *Commentaries on the Laws of England*, 4 vols., vol. 2 (Boston: 1799), 433.
[4] *Ibid*, 387.
[5] *Lawes Resolutions*, 130.

With respect to personal property, the 1700 text *Baron and Feme* explains that, for a husband, "[m]arriage is an absolute gift of Chattels Personal in Possession in her own Right."[6] The concept is further clarified by *The Lawes Resolutions:* personal property in a woman's possession before marriage "is presently by conjunction the husbands, to sell, keepe or bequeath if he die; And though he bequeath them not, yet are they the Husbands Executors and not the wives which brought them to her Husband."[7] With respect to personal property, it is not just management and control the husband achieves during the marriage, but the rights of possession, which he retains even after his death. In contrast, only the profits (such as rents, dividends and interest) of real property in a woman's possession before marriage are vested in her husband after marriage. The real property itself "upon feodal principles, remains entire to the wife after the death of her husband."[8] A husband acts as a manager of the real property during the marriage, with the wife losing control over the land while married but retaining an interest to be assumed in widowhood. The 1777 text *Laws Respecting Women*, drawing from Blackstone, categorises the management of real property as "a kind of joint-tenancy," although it is clear that, during the marriage itself, the husband dictated the treatment of the property.[9]

Because it was "a general rule of the common law of England that a married woman can have no separate property," a married woman was considered by the law to be under a

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[6] Anonymous, *Baron and Feme. A Treatise of the Common Law Concerning Husbands and Wives* (London: 1700), 53.
[7] *Lawes Resolutions*, 130
[8] Anonymous, *The Laws Respecting Women, as They Regard Their Natural Rights, Or Their Connections and Conduct in which Their Interests and Duties as Daughters, Wards, Heiresses, Spinsters, Sisters, Wives, Widows, Mothers, Legatees, Executrixes, &c. are Obligations of Parent and Child and the Condition of Minors. The Whole Laid Down According to the Principles of the Common and Statute Law...and the Substance of the Trial of Elizabeth, Duchess Dowager of Kingston on an Indictment for Bigamy Before the House of Peers, April 1776* (London: 1777), 149.
[9] *Ibid*, 151.

disability.[10] *The Lawes Resolutions* is pithy on this topic, stating that "Every Feme Coverte is [in a certain way] an infant, for bee her power, even in that which is most her owne."[11] This is further demonstrated in the treatises when femes covert are lumped in among other incapacitated entities. For example, in Phillips' text, the law "tendreth the weaknesse and debilities of others, As of men … in prison, femes-Covert, … infants, … Ideots, &c."[12] This categorisation of married women further justified their unfair position in marriage. When a person is categorised as disabled under the law, it follows that she needs assistance under the law. As such, there is a distinct paternalism with respect to femes covert. In *Commentaries*, a wife is represented as needing her husband, "under whose wing, protection and cover, she performs everything." In this sense, she is "under the protection and influence" of her husband.[13] In his 1816 treatise, Peregrine Bingham initially writes that a feme covert's disability is unrelated to protection and instead is to recognise the "sole authority" of the husband.[14] However, he later references a desire to protect married women, writing that the courts restrict a husband's use of power, for "it cannot be the object of sound legislation to reduce to a state of passive slavery that sex which, from its weakness and softness, stands most in need of legal protection."[15] James Clancy's 1819 text explains that, in marriage, all property of both spouses "is placed under the control and management of one of them, and the law has selected the husband, as being the more worthy of

[10] James Clancy, *An Essay on the Equitable Rights of Married Women, with respect to their separate property, and also on their claim to a provision, called The Wife's Equity, to which is added, the law of pin-money, separate maintenance, and of the other separate provisions of married women, Second edition* (Dublin: 1819), 1.
[11] *Lawes Resolutions*, 141 (interpolation in original).
[12] Phillips, *Principles*, 127.
[13] Blackstone, *Commentaries*, vol. 1, 468.
[14] Peregrine Bingham, *The Law of Infancy and Coverture* (London: 1816), 162.
[15] *Ibid*, 163-164.

this trust."[16] His words are a reflection of legal decisions that are distrustful of a married woman's motives with respect to the use of household monies.

A chief justification for allocating the possession and control of a wife's property to her husband was the economic exchange presumed in marriage. It was believed that a wife gave up any right to acquire, control or dispose of property (personal or real) during marriage in exchange for her husband providing her with necessary maintenance during her lifetime and taking on all of the debts she incurred prior to and during the marriage. As Margaret Hunt argues, marriage in this era was "more overtly a financial partnership than most people are used to today," and "many people married, at least in the first instance, for money."[17] In *Laws Respecting Women,* the debt component of the marital economic exchange is justified as follows: "The husband is liable to the wife's debts contracted before marriage...and this the law presumes reasonable, because by the marriage the husband acquires an absolute interest in the personal estate of the wife."[18] Further, during the marriage, a wife could not enter into contracts independently, for she did not possess her own legal identity, but, with her husband's consent, she could enter into contracts on her husband's behalf – as his agent – to secure necessary household provisions. In *Laws Respecting Women*, the maintenance component of the marital economic exchange is set out as follows: "If a woman cohabit with her husband, he is obliged to find her necessaries, as meat, drink, clothing, physic, &c. suitable to his rank and fortune."[19] The concept of maintenance not only provided a woman with items she needed for daily living but also incorporated elements of her appropriate physical presentation as a reflection of her husband's social position.

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[16] Clancy, *Essay,* 2.
[17] Margaret Hunt, " 'The great danger she had reason to believe she was in,' Wife-Beating in the Eighteenth Century," in *Women and History: Voices of Early Modern England*, ed. Valerie Frith (1995), 85.
[18] *Laws Respecting Women*, 152.
[19] *Ibid*, 66.

The scholarship on the law of necessaries diverges with respect to how enforceable such a law truly was. Amy Erickson emphasises that, while marriage was "ostensibly an economic exchange," it was complicated by the denial of legal remedies to a wife whose husband did not uphold his part of the bargain.[20] Erickson argues that a husband "owed her nothing *in law* in return for gaining her property."[21] A husband's failure to dutifully maintain his wife had "no bearing on his right to the property in her possession at any point during their marriage."[22] Margot Finn refers to the law of necessaries as "the so-called law," acknowledging its uncertain legal application.[23] Margaret Hunt calls the law of necessaries an "ancient entitlement" and asserts that it related mostly to the reluctance of the parish to support another man's wife if he failed to provide for her himself.[24] Craig Muldrew identifies the law of necessaries as a natural law concept wherein "self-preservation was a natural right which preceded human laws, and therefore to maintain civil society the goods necessary to survival (if available) should be provided to those in need."[25] He points to the case of *Manby v. Scott*, examined in detail below, in which the law of necessaries was argued but rejected by judges subscribing to "much more straightforwardly conservative" principles, which asserted patriarchal authority.[26] Joanne Bailey and Danaya Wright assert more unequivocally that the law of necessaries existed. Bailey writes that "a wife was entitled to be maintained," arguing that she made her own purchase of

[20] Amy Erickson, *Women & Property In Early Modern England* (London: Routledge, 1993), 100.
[21] Amy Erickson, "Coverture and capitalism," *History Workshop Journal* 59 (2005), 4.
[22] Amy Erickson, "Possession -- and the other one tenth of the law: assessing women's ownership and economic roles in early modern England," *Women's History Review* 16:3 (2007), 370.
[23] Margot Finn, "Women, Consumption and Coverture in England, c. 1760-1860," *The Historical Journal* 39 (3) (Sept. 1996), 707.
[24] Hunt, " 'The great danger'," 86.
[25] Craig Muldrew, " 'A Mutual Assent of her Mind'? Women, Debt, Litigation and Contract in Early Modern England," *History Workshop Journal* (No. 55, Spring 2003), 60.
[26] *Ibid*, 62.

necessaries as her husband's agent.[27] Wright argues that the "law of coverture required husbands to support their wives in exchange for full control over their wives' property."[28]

Hunt argues that, although the law of necessaries had as its purpose the easy regulation of household management alongside a married woman's security in provisioning for her family, it "inadvertently endowed women with considerable powers in the realm of consumption."[29] She goes so far as to contend that the law of necessaries was "one component in wives' economic armoury, allowing many women a degree of authority and discretion" in household purchases.[30] Similarly, Bailey proposes a model of distinctive gendered roles in the marital economy, with husband as provider and wife as consumer – each dependent upon the other.[31] She asserts that wives felt that their contribution to marriage gave them a say in what was bought with the household income.[32] Her examination of eighteenth-century legal treatises, a significant number of legal cases involving marital disputes, and newspaper advertisements concerning marital debt, demonstrates that married women commonly purchased household goods by acting as their husbands' agents and retained a sense of ownership over those goods, which evaded the legal strictures of coverture. In contrast, Muldrew recognises married women's involvement in contracting with tradesmen for household provisioning but stresses that a wife still had to negotiate "the power imbalance created by the fact that all final legal decisions were under the

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[27] Joanne Bailey, "Favoured or Oppressed? Married Women, Property and 'Coverture' in England, 1660-1800," in *Continuity and Change* 17, no. 3 (2002), 352.
[28] Danaya Wright, "Coverture and Women's Agency: Informal Modes of Resistance to Legal Patriarchy," in *Married Women and the Law: Coverture in England and the Common Law World*, Tim Stretton and Krista J. Kesselring, eds. (Montreal & Kingston: McGill-Queen's University Press, 2013), 244.
[29] Margot Finn, "Women, Consumption and Coverture in England, c. 1760-1860," *The Historical Journal*, 39 (3) (Sept. 1996)," 709.
[30] *Ibid*, 720.
[31] Bailey, "Favoured or Oppressed."
[32] *Ibid*, 363.

authority of the husband."[33] Similarly, Karen Pearlston refers to "the wife's agency of necessity," invoking the idea that a wife had the implied authority to make contracts for necessary purchases. However, she elaborates on the number of ways in which this implied authority could be restricted and concludes that "the agency of necessity was of no great practical importance to the vast majority of separated wives."[34]

1.2 The Case of *Manby v. Scott* (1659-1662)

The case of *Manby v. Scott*, with three separate judgments spanning the years 1659-1662, is an example of the practical application of coverture under patriarchal principles and is underpinned by the economic exchange presumed in marriage, with the concepts of maintenance and debt-acceptance at its heart. The central matter at issue was whether a husband was responsible for a debt incurred by his wife while she lived separate and apart from him, with the more detailed story, involving a husband who specifically forbade merchants to trade with his wife, impacting the ultimate decision. The case is described as "the meanest that ever received resolution in this place" – in other words, the most unfair (to the husband) – and "of as great consequence to all the King's people of this realm, as any case can be" because of its importance to the relationship between husband and wife. [35] *Manby v. Scott* was reported in three separate versions and is precisely the type of case Staves identifies as significant to contemporary jurists. It is described in *Baron and Feme* as "that great Case (in point of Consequence) … which was solemnly debated and setled in the *Exchequer*-Chamber by as Learned Judges as ever sat at one time in *Westminster*."[36]

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[33] Muldrew, " 'A Mutual Assent,'", 48.
[34] Karen Pearlston, "At the Limits of Coverture: Judicial Imagination and Women's Agency in the English Common Law," (PhD diss, York University, 2007): 138; 140.
[35] *Scott v. Manby*, 86 Eng. Rep. 781 (hereafter *Hyde's Judgment*), 782.
[36] *Baron and Feme*, A5

As Shannon McSheffrey argues, evidence beyond the facts set out in a reported case often reveals that a case is not as straightforward as the reported version would have you believe.[37] The facts of *Manby v. Scott* consist of much more than can be gleaned from the reported cases alone. In 1632, Katherine Goring, the daughter of the Earl of Norwich and co-heiress to his fortune, married Edward Scott, son of Sir Edward Scott of Scott's Hall in Kent. Their married life was "infelicitous and unfortunate."[38] The couple were "from the first … unsuited by their dissimilarity of character, tastes, and pursuits."[39] First and foremost, they differed in their political views, with Katherine being an active Royalist who joined the royal court in Oxford during the Civil War. The words Katherine wrote to her husband in 1637 suggest that the couple were separated at the time. She tells her husband "that 'whensoever a happy agreement shall be made for us both' she would be ready to return to him 'on a day's warning.'"[40] Katherine wrote to her mother-in-law in 1642 seeking permission for her husband to travel, which suggests that the couple had reunited. Her words reveal the challenges in her marriage. She wrote, "I will go with him myself, I will leave all my friends, and when we return again, I will live where he will have me to live, for I am confident that a little sight of the world would do him so much good, that I shall not be unwilling to obey him in any thing that he shall command me. As things stand now we are both most unhappy."[41] Around 1643, Katherine gave birth to a son, Thomas. It was alleged that her son's father was not her husband but rather Prince Rupert, based on her presence in Oxford without her husband at the approximate time of the child's assumed conception.

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[37] Shannon McSheffrey, "Detective Fiction in the Archives: Court Records and the Uses of Law in Late Medieval England," *History Workshop Journal*, 65 (Spring 2008): 65-78.
[38] James Renat Scott, *Memorials of the family of Scott, of Scot's-hall, in the County of Kent. With An Appendix of Illustrative Documents* (London: 1876), 231.
[39] *Ibid*.
[40] J.T. Cliffe, *The World of the Country House in Seventeenth-Century England* (New Haven and London: Yale University Press, 1999), 79.
[41] Scott, *Memorials*, xxxvii-xxviii.

The reported cases of *Manby v. Scott* mark 1646 as the year in which Katherine separated from her husband, allegedly without his consent. She filed a petition on June 18, 1646, to which Sir Edward replied on October 24, 1648, denying all charges brought against him and praying that the petition be dismissed. In November of that same year, Katherine filed another petition and is described in the Parliamentary records as "the unfortunate wife of Edward Scott."[42] In 1656 Sir Edward began proceedings against his wife in the ecclesiastical jurisdiction. His petition alleged that "his wife had deserted him many years before and that at Oxford and elsewhere she had given birth to children by other men," though the records suggest Katherine only had one child.[43] Sir Edward sought a divorce and a declaration that the children were illegitimate.[44] In 1662, once ecclesiastical courts had been reinstituted under Charles II, Katherine began an action for the restitution of conjugal rights in the Court of Arches. However, Sir Edward died in May 1663, and her action did not proceed. Her petition for restitution of conjugal rights was filed concurrently with the final hearing of the debt case, suggesting that either she was compelled to return to the marriage by the debt hearing or, conversely, that she sought to return to the marriage but was rejected.

The foregoing information was not conveyed in the reported decisions of *Manby v. Scott*, with the final decision rendered in 1663. The omission of such critical facts is instructive, providing a background that colours the judicial comments and final decision within the reported cases. According to the facts set out in the reported cases, Katherine returned to her husband in

[42] Parliamentary Archives, Main Papers: HL/PO/JO/10/1/276.
[43] Cliffe, *The World of the Country House*, 79.
[44] Many years later, he withdrew the claim respecting the children and acknowledged Thomas as his son and heir. Samuel Pepys' writes of Mrs. Scott in his diary: Mrs. Scott is a woman "that was so long in law, and at whose triall I was with her husband; he pleading that it was unlawfully got and would not own it, she, it seems, being brought to bed of it, if not got by somebody else at Oxford, but it seems a little before his death he did own the child, and have left him his estate, not long since." Henry V. Wheatley ed., *The Diary of Samuel Pepys*, Vol. 3, Part II (New York: 1893), 231.

1658, seeking reconciliation. Sir Edward refused to welcome her back into his house, so she continued living apart from him. During this period of separation, Sir Edward specifically told Mr. Manby and Mr. Richards, who were mercers in the City of London, not to trade with his wife. In the reporter's words, Sir Edward forbid Manby and Richards "from trusting her with any wares."[45] Despite Sir Edward's demand, Katherine purchased various goods from Manby and Richards, which were delivered to her on credit. She could not pay for the goods. When the sum due for the goods remained unpaid, Manby and Richards sought payment from Sir Edward on the basis of coverture: Katherine could not have contracted with the mercers in her own capacity but only as her husband's agent. The case was first heard around 1659 before Justice Mallet and a special jury in the Court of King's Bench, a common law jurisdiction, as it was a claim for debt. However, when coverture was invoked, the jury was unable to make a finding with respect to Sir Edward's liability for the debt. The jury sought the court's advice to determine whether Sir Edward assumed upon himself the debt of the goods ordered by his estranged wife.

Around 1659, the case was reportedly argued three times at the Bar by lawyers, and then a fourth time by a group of five judges, suggesting that the issue was not only of grave importance but was also controversial. Disagreement arose among the judges with respect to whether a husband was responsible for a debt incurred by a wife while she lived separate and apart from him. The timing of the case, coming in the wake of the Interregnum, assumes political affiliations would be a factor. Were some judges resolved to put the world to rights after the Civil Wars and reinstate hierarchy in all its forms, starting with the subordination of wives within the family, which would foster the re-establishment of subservience to state? Were some judges influenced by Katherine's dedicated role to the Royalist cause and seeking to side with her? All

[45] *Manby and Richards v. Scott*, 83 Eng. Rep. 268 (hereafter *Jury's Judgment*).

of the justices were Royalists – some more vocal than others – and Katherine herself played an active role in the Royalist cause, yet the majority found against her, suggesting that the re-establishment of hierarchy may have played a greater role in the final decision than any political connections.

The judges involved in the decision were a distinguished lot: Chief Justice Sir Orlando Bridgman, Sir Robert Foster, Sir Wadham Wyndham, Sir Thomas Twysden and Mr. Justice Mallet. The decision was split. The members of the bench who decided in favour of Katherine were Twysden and Mallet. Twysden had continued his legal practice and served as an MP during the Interregnum; he was counsel for "those who had run afoul" of the regime. For instance, he and his judicial colleague, Wyndham, had represented a man who had been imprisoned for refusing to pay a duty that had been imposed without parliamentary authority. As a result of their involvement in that case, the two were imprisoned in the Tower for some days. After Restoration, Twysden was knighted and appointed to the King's Bench.[46] Mallet had also served time in the Tower, having been imprisoned in 1642 for his part in aiding a petition in Kent that argued against Parliament's militia ordinances. Twysden and Mallet's decision held that Sir Edward be charged with his wife's debt because he had refused to maintain her even after she returned to him. If Katherine could not charge her husband with goods that she required for her maintenance, "she must starve, for she cannot earn her living by her labour, for whatever she gains by her labour the husband shall have."[47] Sir Edward should be prevented from prohibiting a tradesman from trading with his wife since that would deprive her of her ability to preserve her

[46] Paul D. Halliday, "Twisden , Sir Thomas, first baronet (1602–1683)," in *Oxford Dictionary of National Biography* (Oxford University Press, 2004) http://www.oxforddnb.com.ezproxy.library.uvic.ca/view/article/27930 (accessed 15 Nov 2017).
[47] *Jury's Judgment*, 268.

life. Therefore, "of necessity she must be trusted, and the things being necessary for her living, the husband ought to be charged for them."[48]

The opposite decision was reached by Bridgman, Foster and Wyndham. Bridgman was a "committed and outspoken royalist" and Laudian, whose father had been James I's chaplain and later became bishop of Chester. Bridgman was appointed "steward of the liberties of Archbishop Laud" in 1639, became the Prince of Wales' solicitor-general the following year, and was knighted in 1643. During the Civil War, Bridgman and his father took control of Chester and governed it on behalf of the king. During the Interregnum, he was prohibited from practising law but wrote several treatises on conveyancing and was considered an expert in property law. After the Restoration, due to his "legal reputation and his favour with the restored monarchy," he presided over the trial of the Regicides. He became known for his "sharply worded dictum of non-resistance" in finding that no authority and no person, whether collective or alone, had any coercive power over the king. Shortly after the trial of the Regicides ended in 1660, he was appointed Chief Justice of the Court of Common Pleas, his position when the decision of *Manby v. Scott* was delivered.[49] Foster was an ardent Royalist who had followed the King to Oxford in 1642, although he is said to have taken "judicial neutrality very seriously."[50] At the time of *Manby v. Scott*, Foster was the Chief Justice of King's Bench, having received that appointment in October 1660 after displaying "considerable zeal" at the trial of the Regicides. Wyndham had also participated in the trial of the Regicides and was named to the King's Bench in November

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[48] *Jury's Judgment*, 268.
[49] Howard Nenner, "Bridgeman, Sir Orlando, first baronet (1609-1674)," in *Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2004) http://www.oxforddnb.com.ezproxy.library.uvic.ca/view/article/3392 (accessed 6 Nov 2017).
[50] D. A. Orr, "Foster, Sir Robert (1589–1663)," in *Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2004) http://www.oxforddnb.com.ezproxy.library.uvic.ca/view/article/9967 (accessed 15 Nov 2017).

1660.[51] These judges, who found in favour of Sir Edward, held that he should not be charged with the debt because a husband was under no obligation to maintain a wife who had been absent for such a length of time. If such a circumstance were allowed, "wives might leave their husbands in their youth, and return in their old age, when they cannot be so assisting to their husbands as before."[52] Further, a married woman under coverture had no power to make a contract on her own, and any contract she makes is absolutely void, otherwise husbands "shall (be forced) against their will to trade with such as their wives please."[53]

The Court "being thus divided, the cause for the great weight thereof" was adjourned out of King's Bench into the Exchequer Chamber for advice around 1662. The case was heard there before eleven judges, but only three held that Sir Edward should be charged with the debt. The binding decisions of Bridgman and, both finding in support of Sir Edward and against Katherine, were separately reported. Analysed concurrently, these decisions richly display the justifications for coverture generally and for a prohibition against married women's independent property possession specifically. Significantly, despite the decision being rendered at a propitious time for Royalists, patriarchal considerations to justify coverture prevailed over any political attachments the judges may have had with Katherine, clearly an ardent and supportive Royalist. The judiciary decided in favour of a man whose political affiliations likely placed him at odds with them because maintaining patriarchal control of property by way of the law of coverture was of greater importance.

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[51] Stuart Handley, "Wyndham, Sir Wadham (1609–1668)," in *Oxford Dictionary of National Biography* (Oxford University Press, 2004) http://www.oxforddnb.com.ezproxy.library.uvic.ca/view/article/30148 (accessed 15 Nov 2017).
[52] *Jury's Judgment*, 269.
[53] *Ibid.*

Bridgman's decision identified two questions, one general and one specific. First, can a husband who does not maintain his wife be charged with her contractual debts where the contract was entered into without his consent? Second, if a wife is entitled to enter into contracts to provide for herself where her husband will not, does such a principle apply to a situation where "the wife departed from her husband against his will, and so continued absent from him divers years, and … the [husband] prohibited the plaintiffs to trust her?"[54] The answer to both of Bridgman's questions focus on consent, with the second question introducing elements of morality and appropriate wifely behaviour. Under coverture, a married woman had "neither a legal will, nor power to contract without her husband's consent."[55]A married woman could make contracts for necessaries for her family, but "the law looks upon it no other than as the contract of a servant, which is good so far as the authority is given, but no farther."[56] Bridgman's focus on consent, and the reasons that consent is necessary, reveals his position as moral arbiter. He determined that allowing a wife to make contracts without consent was detrimental because otherwise a wife would "take her husband's money without his consent … or she may sell and pawn his goods, and without his consent raise money to buy necessaries."[57]

Another significant concern in Bridgman's reasoning was the "mischiefs and inconveniences" that might arise if a wife is allowed to use her husband's money without consent.[58] To do otherwise would allow a misbehaving wife, whose fault alone resulted in her living apart from her husband without maintenance, the right to demand maintenance for the entirety of her voluntary absence from the marital abode and condone marital separation generally. He was concerned with a wife making imprudent financial decisions without consent.

[54] *Manby v. Scott* (1662), 124 Eng. Rep. 561 (hereafter *Bridgman's Judgment)*, 562.
[55] *Ibid*.
[56] *Ibid*.
[57] *Ibid*, 563.
[58] *Ibid*, 574.

He gives the following example: "The wife having taken up apparel from the mercer, she wants money for play, and to raise it sells or pawns the apparel which, perhaps, the week before, she took up upon trust. Well, now she is in a condition again to want apparel convenient to her degree; this mercer, or another mercer, furnishes her again; and so I may put this question from time to time, *ad infinitum*."[59] If this scenario took place in the case of a wife who had chosen to separate from her husband, it was the more dangerous. Bridgman questioned who was at fault where a wife voluntarily departs from a marriage, choosing starvation over satisfaction. The end result of such a foolish principle was a husband who is forced to maintain his wife, even though she has left him, which would involuntarily – and endlessly – punish a husband while condoning marital separation.

Bridgman dismissed counsel's argument that a married woman may contract for necessaries, stating that he found no authority to support that proposition. This statement corresponds to arguments made by Erickson and Hunt about the weakness of the legal application of the law of necessaries. However, Bridgman admitted that a wife in charge of household management may make contracts on her husband's behalf where her husband consents. In making this admission, he referred both to Scripture's commands "that the wife guide the house" and to the commonplace practice of a wife administering and managing the household.[60] But Bridgman refused to concede any implied presumption of permission derived from such a conventional practice. Rather it would only be construed as *prima facie* evidence of permission from the husband to the wife, rebuttable by the husband. Bridgman recognised a husband's duty to maintain his wife during marriage, stating that a husband is bound "not by the common law, but by a superior law; the law of God – of nature – of reason – the consent of all

[59] *Bridgman's Judgment*, 564.
[60] *Ibid*, 574.

nations," to maintain his wife during marriage.[61] As such, he relinquished jurisdiction over this type of quarrel to the ecclesiastic courts.

In his concluding remarks, Bridgman exhibited pride in what he believed was a legal system that favoured wives: "there is so much provision, care, and indulgence for [wives] by the laws, and the genius, custom, and constitution of the people, which gives them more freedom of converse than in other nations, where the wife hath a peculiar estate, that it hath been called the Women's Island; that is was no less than a proverb, that if a bridge were made over the sea, all the wives in Europe would come hither."[62] In notes of the reported decision, Bridgman provided a sketch of his likening master/servant to husband/wife, which "it seems proper to be published, so far as to introduce" the analogy.[63] To Bridgman, "the law makes no difference … between the contract of a servant and of a wife."[64] Again, the focus was consent – a wife was akin to a servant, for "it is the master's command or assent that gives …influence to it, and makes it his contract."[65] Bridgman advised his brethren on the bench to give judgment for Sir Edward, for the "contract of the wife shall not charge her husband (any) more than the contract of the servant."[66]

Within Bridgman's decision, there are elements of paternalism, scepticism as to a wife's ability to make appropriate decisions with her husband's money, distrust of a wife's motives with respect to the purchases she makes, and disregard for an estranged wife's vulnerable economic position after separation. Despite Katherine being the co-heiress to her father (the Earl of Norwich)'s fortune, there is no discussion of the fortune that she likely brought into the marriage or that she may have forfeited to her husband upon marriage. Closing the door on

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[61] *Bridgman's Judgment*, 575.
[62] *Ibid*, 585.
[63] *Ibid*, 582.
[64] *Ibid*, 584.
[65] *Ibid*, 583.
[66] *Jury's Judgment*, 269.

future consideration of this significant issue, Bridgman is acutely concerned with the nuisance of changing a long-held law when he states that "the inconvenience would be exceeding great if such a law should be now introduced."[67]

The background of Bridgman's colleague, Hyde, who was also a Royalist, bears consideration. Though he was at one point imprisoned in the Tower for the royalist cause, he was much less publically devoted to it than Bridgman. He returned to legal practice in London in 1653. He was knighted at the Restoration, served as a judge to the Court of Common Pleas in 1660, and as a result of the influence of his cousin, the Earl of Clarendon, was appointed Chief Justice of King's Bench in 1663.[68] Hyde's decision largely concurred with that of Chief Justice Bridgman, also emphasising a representation of married women founded in patriarchy. Hyde recognised the significance of a case that "toucheth the man, in point of his power and dominion over his wife."[69] He identified one prominent question before the court: whether a husband is chargeable "for the wares thus sold and delivered to the wife, against the will, and contrary to the prohibition of the husband?"[70] Hyde's decision espoused the importance of family, as derived from the holy state of matrimony ordained by God, and signifying two persons joined to become one flesh.[71] His highlighting marriage in this way reflected the principles of coverture set out in legal treatises written both before and after his decision.

Hyde found in favour of Sir Edward on two separate grounds. First, a contract between a married woman and a third party lacks the meeting of minds necessary to form a legal contract: a

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[67] *Bridgman's Judgment*, 585.
[68] Wilfrid Prest, "Hyde, Sir Robert (1595/6-1665)," *Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2004) http://www.oxforddnb.com.ezproxy.library.uvic.ca/view/article/14334 (accessed 6 Nov 2017).
[69] *Hyde's Judgment*, 782.
[70] *Ibid*.
[71] *Ibid*.

"*feme covert* cannot give a mutual assent of her mind, nor do any act without her husband; for her will and mind, as also herself, is under, and subject to the will or mind of her husband….consequently she cannot make any bargain or contract, of herself, to bind her husband."[72] Second, the law of God justified the prohibition of a married woman making any such contract. A woman was created by God as helpmate and subordinate to her husband: "the judgment of God upon woman was, 'Thy desire shall be to thy husband, for thy will shall be subject to thy husband, and he shall rule over thee.'"[73] The laws of England followed the laws of God, and a woman who was subordinate to her husband was disabled from making contracts without his consent, for only "the command or license of the husband … makes it the contract or bargain of the husband."[74] Again, the emphasis is placed upon the husband's consent, which is derived from his God-given control over his wife.

Like Bridgman, Hyde commented on the "inconveniences which would follow if the law were otherwise."[75] He gives as example the wife who takes it upon herself to contract on her own; she would "rule over her husband, and undo him, maugre his head … [t]he wife shall be her own carver, and judge of the fitness of her apparel, of the time when it is necessary for her to have new cloaths, and as often as she pleaseth."[76] A wife who makes contracts embarks upon the slippery slope of independence in all things, taking from her husband all authority with respect to, for example, her presentation. Hyde questioned the intelligence of allowing a married woman to buy her own apparel because it is likely she would sell it "to furnish herself with money to go abroad to Hyde-park, to score at *gleeke*, or the like."[77] He feared the repetitive cycle of such an

[72] *Hyde's Judgment,* 783.
[73] *Ibid*.
[74] *Ibid*.
[75] *Ibid*.
[76] *Ibid,* 783-784.
[77] *Ibid,* 784.

economic disruption, which would further indebt her husband, "and where this will end no man can divine or foresee."[78] Also like Bridgman, Hyde equated a wife to a servant: "if I forbid a butcher, or other victualler, to sell to my servant without ready money, and he deliver meat to my servant afterwards upon trust, it is at his peril; he shall have no action against me for it."[79]

When Hyde addressed the argument that a wife must make contracts where her husband did not maintain her, he returned to patriarchal concerns. To Hyde, the basis for the principle of maintenance is that "she is 'bone of his bone, flesh of his flesh,' and no man did ever hate his own flesh so far as not to preserve it."[80] Hyde saw no logic in applying the principle to the case where the wife voluntarily separated from her husband, choosing to leave his protection, although he does not mention the husband's refusal to welcome his wife back. A husband was bound to maintain his wife within matrimony only "so long as she keeps the station wherein the law hath placed her; so long as she continues a help-meet to him."[81] Where a married woman without sanction of the church "depart[s]from her husband against his will, be the pretence what it will, she doth thereby put herself out of the husband's protection; so that during this unlawful separation she is not part of her husband's care, charge or family."[82] Katherine's reasons for quitting the marriage, and Sir Edward's refusal to reunite, are of no moment, for "the law doth not allow a wife to depart from her husband in any case, or for any cause whatsoever of her own head."[83] Instead of leaving her husband, she should seek recourse from the Chancery for protection from abuse, or from the ecclesiastical court for maintenance.

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[78] *Hyde's Judgment*, 784.
[79] *Ibid*, 791.
[80] *Ibid*, 784.
[81] *Ibid*.
[82] *Ibid*.
[83] *Ibid*, 785.

In his final comments, Hyde's bias against Katherine was evident. He concludes, "I wish, with all my heart, that the women of this age would learn thus to obey, and thus to command their husbands: so will they want for nothing that is fit, and these kind of flesh-flies shall not suck up or devour their husbands estates by illegal tricks."[84] He believed his decision would show the kingdom that a wife may not leave her husband against his will and charge him for her debts, and as a result "all the wives shall give to their husbands honour, both great and small."[85]

This case was considered significant, laying down a precedent that would be followed for decades.[86] The importance of the case can be seen from extracts of poetic verse written about the decision centuries later, as found in David Murray's *Lawyers' Merriments* (1912). Murray explored law reports written in verse, arguing that this type of reported case was considered useful by contemporaries in that it meant the legal principles established in the cases were likely to be remembered and become less obscure. Further, it was thought more amusing to recite verse than to drone on in the usual dull way in which lawyers cited cases in court. A verse on *Manby v. Scott*:

I am the wife of Edward Scott,
That walked full daintily I wot,
With silk and samite clothed upon.
The worth of it by ells was told
To forty pound of the fine gold,
All in my lord's derision.
By mighty argument was found

[84] *Hyde's Judgment,* 790.
[85] *Ibid*, 791.
[86] See also Sir Matthew Hale's decision in *Manby v. Scott* in Matthew Bacon, *A New Abridgement of the Law*, Vol. 1 (London: 1832), 713-719. Hale's decision reiterates a number of the principles elucidated by Bridgman and Hyde by referring to the wife as her husband's servant, assuming that a husband would never "be so barbarous as to deny his assent to have the necessities of his family supplied," (page 715) identifying the husband as the best manager of household affairs, and dismissing the inconvenience of changing the law by suggesting that it would lead to uncertainty.

His credit might not so be found,
The mercer had confusion.[87]

The key to the case, as interpreted by this verse, was Sir Scott's lack of consent for his wife's extravagant and unnecessary clothing.

1.3 Judicial Rulings after *Manby v. Scott*

The final decision in *Manby v. Scott* was rendered in 1662. Cases coming before the Court of Chancery in the subsequent years followed, or at least considered, the precedent established thereby. While the issues at play within each case were related to the economic exchange contemplated by marriage, each case can be categorised as either debt or maintenance litigation, reflecting the two components of the marital exchange. The 1676 Chancery decision of *Freeman v. Goodham* confirms the recognised law respecting debts incurred during ongoing marriage: that is, marriage in which the parties were cohabiting and were not separated.[88] Before marrying her second husband, Mary incurred debt for the purchase of goods from Mr. Freeman. She died before her second husband, Charles Goodham, who then took ownership of the goods upon which stood the outstanding debt. Freeman, as creditor, sought payment of the debt from Goodham, who refused to pay, claiming the debt was incurred prior to his marrying Mary, and always remained hers. The Lord Chancellor disagreed, setting the matter down for trial, and "with some Earnestness he said he would change the Law in that Point."[89] The matter never made it to trial; the reported decision states that Goodham settled with the plaintiff by paying the debt, though he continued to uphold his position. However, the reporter's comments reflect the principle of economic exchange likely held by the court: "it is very probable that the defendant

[87] David Murray, *Lawyers' Merriments* (Glasgow: 1912), 86.
[88] *Freeman v. Goodham* (1676), 1 Chan. Cas. 295.
[89] *Freeman v. Goodham.*

perceiving which way the opinion of the Court inclined…was induced to make the abovementioned offer."[90]

The 1706 Chancery case of *Powell v. Bell* reaffirms and expands upon the foregoing principles concerning the presumed economic exchange with respect to debt.[91] Anne Hanson, a widow, received a portion of her first husband Anthony's estate upon his death; although their exact relationship is not defined, Thomas Bell was entitled to receive a portion of Anthony Hanson's estate as well. Anne wasted a great part of the Hanson estate, diminishing the value of the land by spoiling or destroying the lands, after which she married John Powell. After Anne died, Bell brought a bill against Powell, seeking an account of the Hanson estate and a satisfaction of Bell's portion of it. The reported decision lacks detail and there is no indication why Bell did not receive his portion immediately after Hanson's death, and before Anne wasted the estate. However, the judicial ruling reflects the concept that a wife's debt incurred during marriage belongs to the husband. With respect to that part of the Hanson estate that had come into Powell's hands *during* the marriage, Bell received absolute satisfaction and Powell was compelled to pay him. With respect to that part of the estate that was in the Anne's hands *before* the marriage, Bell only received satisfaction in an amount equivalent to that which Anne had brought to the marriage. The Court held that "where a man marries a woman, without stipulating for any particular fortune, or making any settlement, if, after the death of the wife, debts of hers appear, the husband … shall be answerable for the debts of the wife in equity, so far as he had any money or other personal estate of hers."[92] The court considered the acquisition of debt as an

[90] *Streatfield v Streatfield*, Cases T. Talbot, 175.
[91] *Powell v. Bell* (1706), 24 Eng. Rep. 124.
[92] *Powell v. Bell*, 124.

exchange between spouses: a husband took on his wife's financial responsibilities only to the value of what she had brought into the marriage. In other words, Anne paid her own debt.

The Court of King's Bench decision in *Robinson v. Gosnold* was rendered by John Holt during his term as the Lord Chief Justice of England (1689-1710). According to the reported decision, Gosnold learned his wife was "a very lewd woman" and left her.[93] Mrs. Gosnold then lived for several years with her lover. During this time, she was entertained in the house of Robinson as if she was still Gosnold's wife. Mrs. Gosnold then returned to her husband and they cohabited, whereupon Robinson sued Gosnold seeking repayment from him "for lodging and dieting the wife." Chief Justice Holt found in favour of Robinson as creditor, holding that, though "the woman be ever so vicious, while she will cohabit with her husband he is bound to provide her necessaries, and is liable to the actions of such persons as furnish her with them." Holt's decision focussed on the cohabitation of the couple; however, unlike the majority in *Manby v. Scott*, Holt held that, even if the husband "turns her away for her wickedness," he remains bound by the same maintenance obligations as if the couple were cohabiting. He agreed with *Manby v. Scott* that a husband was not liable for his wife's necessaries if *she* left the marriage, but he held that if a wife returned – even if her conduct remained morally questionable during the ensuing cohabitation – her rights to maintenance were revived because "his bargain on the marriage was to take his wife for better for worse." Holt went so far as to assert that, "if a wife had run away and contracted debts and after the husband received her, or came after and lay with her but for a night, that would make him liable to the debts."[94] Unlike the strictness of Hyde and Bridgman's judgments in *Manby v. Scott*, wherein a husband is not responsible for a wife

[93] *Robinson v. Gosnold*, 90 Eng. Rep. 956.
[94] *Ibid*.

during separation whatever reason the separation came about, Holt prefers the reasoning of Tweedham, which retains protection for a wife who may be deserted.

In contrast, take the 1725 decision out of the Court of King's Bench in *Child v. Hardyman*.[95] The wife was alleged to have acted in a "lewd manner" after which, she separated from her husband. During her time away, she did not live lewdly. After some time, her husband agreed to her return but only on the condition that "she should never sit at the upper end of his table, nor have the government of the children, but should live in a garret." After returning to her husband under these conditions, the wife purchased linen on credit. The merchant sought her debt from the husband. The court disallowed the merchant's claim, holding that "if a woman elopes from her husband, though she does not go away with an adulterer, or in an adulterous manner; the tradesman trusts her at his peril, and the husband is not bound." It mattered little that the wife had returned to her husband because, even so, "she had only been kept in a garret and she deserved no better usage."[96] The wife's behaviour – and the husband's punishment of that behaviour – overshadowed their cohabitation and affected her entitlement to maintenance even during ongoing marriage.

The issues of a wife's fortune and her pre-marital debt merge in the 1736 Chancery decision of *Heard v. Stanford*.[97] The decision reports that prior to her marriage, Elizabeth became indebted to William Stanford for £50. When she married David Heard, Elizabeth brought "a fortune with her in the amount of £700."[98] However, despite such a fortune, Elizabeth did not enter into a settlement nor was any arrangement made for her £50 debt. Upon her death, Stanford brought a bill against Heard to recover Elizabeth's debt, claiming that the husband was

[95] *Child v. Hardyman* (1725), 93 Eng. Rep. 909.
[96] *Ibid.*
[97] *Heard v. Stanford* (1736), 25 Eng. Rep. 723.
[98] *Ibid.*

responsible for his wife's debt, "having received a great fortune with her, and never having made any settlement upon her."[99] In defence, Heard argued that much of the fortune his wife had brought into the marriage had been "reduced into possession by him during the coverture."[100] Lord Chancellor Talbot held that a husband is liable for his wife's debts during coverture even if she did not bring any funds to the marriage. However, it was also necessary to examine the *timing* of the debt, as this was determinative of the husband's liability for it. Significantly, this case held that a creditor had to recover the debt during coverture as a husband was only chargeable while his wife lived and "by her death is discharged from all her debts." In reaching his decision, Talbot called the law "hard" but "equal on both sides" and it was "the proper work of the Legislature" to change it.[101] Although the debt at issue was incurred by a wife prior to marriage, the reported decision does not refer to the timing of the debt's incurrence, suggesting that it did not form part of Talbot's reasoning. Instead, Talbot focussed on the timing of the creditor's claim and referred to the balance of obligations and restrictions during coverture.

In 1792, the Court of King's Bench case of revisited the principles of *Robinson v. Gosnold* – a husband's liability towards debts incurred by his wife during separation, where the wife returned to the marital abode – but found differently in *Gilchrist v. Brown*.[102] According to the reported decision, Mrs. Timiss separated from her husband and lived in adultery, during which time she entered into contracts on her own credit with Gilchrist, who then sought to collect on his debt from Mr. Timiss. The court ruled in favour of the creditor, finding that Mrs. Timiss – who never returned to the marital abode – remained covert to her husband as long as he did not provide maintenance during their separation. Because Timiss had failed in his obligations

[99] *Heard v Stanford*, 723.
[100] *Ibid.*
[101] *Ibid.*
[102] *Gilchrist v. Brown* (1792), 100 Eng. Rep. 1290.

towards his wife, he had not discharged his duty to her and remained liable to her debts, despite the couple never again cohabiting.

The Court of King's Bench 1800 decision of *Marshall v. Rutton* reflects the foregoing legal concepts with a focus on marital and family unity.[103] The reported decision states that after agreeing to live separate and apart, Isaac Rutton promised to provide his wife Mary with £200 annually for his entire life as "a competent separate maintenance suitable to [her] estate and degree."[104] The terms of their agreement included Mary maintaining "chaste due and becoming conduct" and caring for their two youngest children.[105] During the separation, Mary contracted with John Marshall for goods, work, and labour.[106] Marshall sought payment of Mary's debt from Rutton. The question before the court was whether "by any agreement between a man and his wife she may be made legally responsible for the contracts she may enter into" by virtue of marital separation.[107] The case was twice argued before all of the judges "on account of the magnitude of the question."[108] Counsel for Marshall argued that, "where the husband ceases to be the protector of his wife, and is not liable to have any claim made on him for her support and maintenance, it necessarily follows that she herself must be her own protectress, make contracts for herself, and be responsible for them."[109] The court disagreed with this articulation of the mechanisms of coverture, however, and found that a contract for separate maintenance was "made between two parties, who … being in law but one person, are on that account unable to

[103] *Marshall v. Rutton* (1800), 101 Eng. Rep. 1538.
[104] Charles Durnford and Edward Hyde East, *Reports of Cases Argued and Determined in the Court of King's Bench, from Michaelmas Term, 39th George III. 1798, to Trinity Term, 40th George III. 1800. Both inclusive,*. Vol. VIII (Dublin: 1800), 545.
[105] *Ibid*.
[106] *Ibid*.
[107] *Ibid*, 546.
[108] *Ibid*.
[109] *Marshall v. Rutton,* 1539.

contract with each other."[110] Further, the jurisprudence established that the only recourse for a married but separated woman was either to apply to the court for maintenance or to create a trust from which she could secure maintenance. Mary had done neither, and thus she and Rutton remained bound by marital ties. The court identified a worrying reason for separation agreements, which have for their "object the contravention of the general policy of the law in settling the relations of domestic life." That is, the court disapproved of any agreements that condoned the destruction of marriage and put into disarray the principles of coverture. Without actually dissolving marital ties, a separation agreement purported to make a husband and wife single in some respects, and leave them in others still married, "which would introduce all the confusion and inconvenience which must necessarily result from so anomalous and mixed a character."[111]

1.4 Conclusion

The decision of *Manby v. Scott* translated the patriarchal principles set out in seventeenth-century English legal treatises into a practical application of the law. On the surface, this case demonstrates that the very foundation of coverture lies within a patriarchal regime in which a married woman, immediately upon marriage, becomes subordinate to her husband to such a degree that she cannot make agreements with third parties for goods without her husband's knowledge and permission, even where those goods are necessary for her subsistence. Under the surface, however, the facts at play demonstrate a judiciary quick to dismiss the principle of spousal maintenance where a woman voluntarily left a mutually unhappy marriage (and almost certainly committed adultery). *Manby v. Scott* was seminal, and its effects were long-lasting. In

[110] *Marshall v. Rutton,* 1539.
[111] *Ibid,* 1538.

subsequent decisions, which applied the reasoning from *Manby v. Scott*, the judicial attitude towards married women's independent purchasing decisions remained strictly linked to the law of necessaries and the economic exchange contemplated by marriage. While it is problematic to make sweeping conclusions based on one significant case and less than ten decisions rendered in its wake, it is clear from the legal treatises, the case of *Manby v. Scott*, and the handful of subsequent decisions explored above, that the judiciary strictly applied the law of coverture to married women's ability to make her own purchases and justified the law of coverture by way of the patriarchal representation of the household prevailing at the time.

Chapter 2 – "Every man knows, that a woman may settle her property so that a future husband shall not be able to touch it": Challenging the Law of Coverture

> *The law conveys the marital rights to the husband, because it charges him with all the burthens, which are the consideration he pays for them; therefore it is a right, upon which fraud may be committed. Out of this right arises a rule of law, that the husband shall not be cheated, on account of his consideration.*
>
> *Strathmore (Countess of) v. Bowes* (1797)

2.1 Challenging Coverture: A Historiographical Discussion

The law of coverture dispossessed married women of their legal identities and thus of their rights to own property independent of their husbands. In the introductory chapter of his 1819 treatise, James Clancy succinctly introduces the primary effect of the law of coverture in relation to property: "a married woman can have no separate property."[1] He justifies this deprivation of rights with reference to its long precedent: "so far back as the history of English jurisprudence can be traced, it appears that marriage conferred upon the husband the dominion over the possessions of his wife."[2] The scholarship on coverture, however, has established that married women negotiated a space between the legal theory of coverture and its actual practice, so that "many, perhaps most, English families found perfectly legal ways to get around" coverture.[3] Margot Finn argues that, in daily life, "the law of coverture is best described as existing in a state of suspended animation" because it could be circumvented yet remained influential.[4] Alexandra Shepard claims that coverture had "a very selective, and not entirely

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[1] James Clancy, *An Essay on the Equitable Rights of Married Women, with respect to their separate property, and also on their claim to a provision, called The Wife's Equity, to which is added, the law of pin-money, separate maintenance, and of the other separate provisions of married women, Second edition* (Dublin: 1819),1.
[2] *Ibid.*
[3] Amy Erickson, "Coverture and capitalism," *History Workshop Journal* 59 (2005), 13.
[4] Margot Finn, "Women, Consumption and Coverture in England, c. 1760-1860," *The Historical Journal*, 39 (3) (Sept. 1996), 707.

debilitating, impact" on women's commercial enterprise.[5] One of the most prevalent ways in which married women eluded the strictness of coverture with respect to their property rights was the separate estate: a married woman could hold a form of legal title by way of property held in trust to which she was the beneficiary. Allison Anna Tait argues that the separate estate, "in theory," permitted married women to control and spend their own incomes, disregarding coverture altogether.[6]

There is thus a consensus among scholars that married women shifted coverture, which confirms the statement (quoted in my introduction) that women "are understood [as] either married or to be married and their desires are subject to their husband, I know no remedy though some women can shift it well enough."[7] However, historians have approached the question of how this was accomplished in differing ways, and few have assessed the impact of judicial decisions as a way of assessing the practical implications of the law. Much of the scholarship on coverture argues that women had a sense of possession over certain items on the basis of patterns of ownership of goods among women as recorded in probate inventories and household records. The earlier work in this area was limited to unmarried women and therefore did not expand the body of knowledge on women's experiences under coverture. For example, Lorna Weatherill's 1993 work on probate inventories focuses entirely on unmarried women who acted as heads of household.[8] Despite admitting that her statistics do not cover married women, Weatherill does not even mention coverture. Maxine Berg explores wills and probate inventories left by widows

[5] Alexandra Shepard, "Minding Their Own Business: Married Women and Credit in Early Eighteenth-Century London," *Transactions of the RHS* 25 (2015), 72.
[6] Allison Anna Tait, "The Beginning of the End of Coverture: A Reappraisal of the Married Woman's Separate Estate*," Yale Journal of Law and Feminism* 26, 165 (2014), 215.
[7] *The Lawes Resolutions of Womens Rights: Or, The Lawes Provision for Women* (London, 1632), 6.
[8] Lorna Weatherill, "The Meaning of Consumer Behaviour in late seventeenth- and early eighteenth-century England," in *Consumption and the World of Goods*, eds. John Brewer and Roy Porter (London and New York, 1993), 206-227.

and spinsters to determine if the consumption patterns of middle-class women in industrial towns "fit the models set out for them by elite women as leaders in … consumption."[9] She discovered that, based on the highly descriptive language used in those documents, specific items including clothing "were for women personal and expressive goods, conveying identity, personality and fashion."[10] Berg concludes that the ways in which certain items were described demonstrates that a woman's role was "more than that of bearers of household and family well-being."[11] But again, Berg's sampling included only unmarried women unrestricted by coverture.

Later scholarship introduces concepts of possession among married women, arguing that women felt ownership over goods despite the denial of that ownership through coverture, thereby suggesting that married women's daily lives were unaffected by coverture. Many historians discussed herein are interested in how married women felt about possession of material goods and seek to draw conclusions about coverture's effects from what they can infer about these feelings. Amanda Vickery's review of the household records left by a Lancashire gentlewoman during two marriages appreciates the difference between married and unmarried women but does not delve deeply into that difference. While Vickery reports no evidence of financial conflict between spouses or issues with the woman's "independence as a consumer," there is little discussion on the restrictions of coverture.[12] Vickery identifies the wife as the main organiser of household consumption, with the husband retaining "ultimate sanction over extraordinary purchases."[13] In her conclusion, Vickery speculates that "a custodial attitude to property might be peculiar to the experience of widowhood and trusteeship," without further examination of

[9] Maxine Berg, "Women's Consumption and the Industrial Classes of Eighteenth-Century England," *Journal of Social History*, (Winter 1996), 30, 2, 416.
[10] *Ibid*, 421.
[11] *Ibid*, 429.
[12] Amanda Vickery, "Women and the world of goods: a Lancashire consumer and her possessions, 1751-1781," in *Consumption and the World of Goods*, eds. John Brewer and Roy Porter (London and New York, 1993), 279.
[13] *Ibid*, 281.

why that would be.[14] Joanne Bailey's analysis of coverture focusses on the law of agency as expressed by women's consumption habits.[15] Agency in this sense is a quasi-contractual relationship whereby a person is authorised by another person to enter into contractual relations on their behalf with a third person. Bailey introduces a model of division in the marital economy, which entitled a wife "to act as her husband's economic agent in the domestic and business spheres," thus giving married couples "gendered marital economic roles, dividing husbands and wives into male provisioners and female consumers."[16] Through case studies of eighteenth-century gentlewomen, demonstrating that women used pronouns importing possession when referring to items taken from them, Bailey argues that women had a sense of possession about the material things they had acquired before marriage.[17] Similarly, Danaya Wright locates "informal modes of resistance" revolving largely around control of property.[18] Like Bailey, she identifies possessory language in documents. Wright suggests that such language was a private act performed by a wife who "chafed at the legal straitjacket produced by the law of coverture."[19]

Shepard's 2015 study uses evidence that trial witnesses assigned ownership of goods to wives, and not to their husbands, to argue that coverture could be circumvented. She contends that married women's display of wealth on their person by way of fashionable garments and jewelry signified their true ownership of the goods despite coverture. As will be examined in Chapter 3, however, married women's feelings about such items did not correspond to legal

[14] Vickery, "Women and the world of goods," 293.
[15] Joanne Bailey, "Favoured or Oppressed? Married Women, Property and 'Coverture' in England, 1660-1800," in *Continuity and Change* 17, no. 3 (2002): 351-72.
[16] *Ibid,* 354.
[17] *Ibid,* 363.
[18] Danaya Wright, "Coverture and Women's Agency: Informal Modes of Resistance to Legal Patriarchy," in *Married Women and the Law: Coverture in England and the Common Law World*, Tim Stretton and Krista J. Kesselring, eds. (Montreal & Kingston: McGill-Queen's University Press, 2013), 242.
[19] *Ibid,* 258.

rights over such items. Shepard examines the estates of two married women pawnbrokers after their respective deaths. At issue was to whom belonged certain types of property, allegedly purchased or earned by the women during their commercial endeavours. While Shepard argues that the lives of the two women illustrate how well the women circumvented coverture, she does not provide details of the litigation or of any judgment rendered. Instead, Shepard's focus is on the women's actions during their partnership, and immediately afterwards, as well as the roles their husbands played in the business. The women used proxies when loaning money thus "remaining flexible about to whom debtors were legally obliged" and sidestepping their husbands' creditors' claims.[20] She argues that such a system was "undoubtedly part of the culture of popular legalism that could be exploited by spouses working together, as well as manipulated by women alone in attempts to reduce their legal disadvantage."[21] She concludes that the women used coverture only when it was in their personal interest – after their partnership broke down and they wanted each other's property. However, it is arguable that coverture only significantly impacted these women when they were forced to seek legal remedies and were suddenly confronted by the practical realities of a legal system with coverture as a core principle.

Allison Anna Tait's 2016 study advances even further the contention that coverture had little practical application within the economic sphere of marriage. To Tait, the emergence and prevalence of the separate estate as a legal device, as described in detail below, was a "marker of destabilized gender roles … and the disruption of absolute sovereignty within the household."[22] A wife with a separate estate was an "autonomous economic actor," which undermined coverture and "helped to entrench in the legal imagination the idea that married women could act, invest,

[20] Shepard, "Minding Their Own Business," 71.
[21] *Ibid*.
[22] Tait, "The Beginning of the End," 216.

spend, and litigate as individuals separate from their husbands."[23] Tait credits precedents emerging from Chancery with the transformation of married women's property rights in the mid-nineteenth century.

This thesis tests the assertion that married women were economic agents, and accepts and expands upon work done by Amy Erickson in her 2005 comparative study of pre-marital contracts, which references the expression 'possession is nine-tenths of the law'. Erickson compares English women's experiences to women's experiences in northern Europe, where coverture did not exist. She contends that married women in England bought, sold and moved property about daily, and therefore, looked upon that property as their own.[24] English women had a greater propensity than Scandinavian women to make wills; their affinity for material items, their care taken in describing goods, and their favouring of female beneficiaries may have been "the result of dissatisfaction with the rules of marital property and the rules of [intestate] distribution:" in other words, the rules of coverture.[25] Erickson's assertions accord with the conclusions reached by historians mentioned above. However, Erickson ends her piece with a query: if married women *felt* ownership of the property in their physical possession, how were they affected by the remaining one-tenth of the law – coverture? She concludes: "that final tenth of legal structure could make a considerable difference" without offering further comment, thus suggesting that women's agency has its limits.[26] This thesis explores that question and challenges conclusions reached by others.

2.2 Introducing the Separate Estate

[23] Tait, "The Beginning of the End," 194; 215.
[24] Amy Erickson, "Possession -- and the other one tenth of the law: assessing women's ownership and economic roles in early modern England," *Women's History Review* 16:3 (2007), 370.
[25] *Ibid,* 380-81.
[26] *Ibid,* 382.

By the late seventeenth century, most separate estates took the form of a trust - the relationship that arises when a person (the trustee) holds real or personal property in equity for the benefit of another person (the beneficiary). The legal ownership of the property always remains in the trustee, but the benefit of the property accrues only to the beneficiary. The separate estate was most often created prior to marriage when a woman, her family or her intended husband (the trustees) settled property in trust upon her (the beneficiary) for her separate use during the marriage, although Erickson has demonstrated that many widows created separate estates for themselves prior to subsequent marriage.[27] Staves contends that the separate estate evolved out of the avoidance of dower – a married woman's right to a life estate in one-third of her husband's real property after his death for her maintenance in widowhood – and was thus inextricably linked to maintenance. Staves argues that a husband's family had "dynastic motives" for offering a separate estate, since it was permissible to grant a separate estate at a considerably lower monetary value than the value of one-third of the husband's property. Dower rights were comprised of such a significant portion of a husband's property that a husband's family was loathe to surrender it. Agreements were therefore entered into between intended spouses, which provided the intended wife with a specific amount of property or sum of money if she waived her dower rights.

Staves asserts that a wife retained bargaining power in negotiating her separate estate; a wife was only willing to give up her substantial rights of dower if she was secured with certain property to her separate use.[28] Similarly, Tait argues that the separate estate "gave the wife some

[27] Amy Erickson, *Women & Property In Early Modern England* (London: Routledge, 1993), 123.
[28] Susan Staves, *Married Women's Separate Property in England, 1660-1833* (Cambridge, Massachusetts: Harvard University Press, 1990), 160.

economic bargaining power within the marriage."[29] Based on her examination of reported cases on married women's property rights relating to marital separation, creditors rights, and testamentary obligations, Tait asserts that the separate estate was a "guaranteed source of income that was not reachable by a husband or his creditors."[30] She identifies the benefits of the separate estate in cases in which a wife's separate estate was permitted to be a creditor against the husband, which prevented a husband from "taking financial advantage of his wife."[31]

Prior to the introduction of the separate estate, married woman's property law had largely focused on property rights acquired in widowhood. Staves identifies 1660 as the date on which "major changes" in married women's property law began.[32] She asserts that the separate estate established new areas of doctrine, with the focus shifting to rights acquired and employed in the course of marriage rather than only after a spouse's death.[33] Staves identifies a more general "sea change in the understanding of the purpose of property," with two specific issues playing against each other: the ancient theory of natural ownership of certain items; and a "more modern, general, abstract category of 'property' and stress on alienability or the right to exchange one kind of property for another as the fundamental sign of ownership." Catherine Ingrassia recognises changes in the categorisation of property itself, arguing that "paper credit and the mechanisms of speculative investment shifted the nature of property from a material, immovable, and stable form such as land to fluid, immaterial, and multiples ones."[34] The shift meant that real property (land) was losing significance in the face of more readily available and easily commodified personal property (goods).

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[29] Tait, "The Beginning of the End," 205.
[30] *Ibid*.
[31] *Ibid,* 194.
[32] Staves, *Married Women's Separate Property*, 131.
[33] *Ibid,* 132.
[34] Catherine Ingrassia, *Authorship, Commerce, and Gender in Early Eighteenth-Century England: A Culture of Paper Credit* (Cambridge: Cambridge University Press, 1998), 5.

I challenge Staves' characterisation of the transformation as a "sea change."[35] While there was a notable shift in definitions of property, such phrasing implies a significant and rapid transformation that belies the slow development of new definitions. Staves' characterisation also disregards the cultural, social and legal responses to changing definitions of property, which hindered the change itself. Changing definitions of property were only accepted after the legal and social response towards women owning property had also changed in such a way as to ensure the continuing preservation of coverture's restrictions on property acquisition, retention and disposition.

In 1684, the Court of Common Pleas rendered its decision in *Palmer v. Trevor*.[36] The reported decision described how Elizabeth Palmer left the marital home of her second husband, William Palmer, and was well known to be "much straightened for want of maintenance."[37] Palmer found his wife at her daughter Elizabeth Trevor's home "and then and there required the said John [Trevor, his son-in-law] to deliver to him his wife" but Trevor refused. Palmer alleged that Trevor "with force and arms" kept him from "the comfort and company of his wife … and other outrages." According to the reported case, a testator had devised Mrs. Palmer £100 and her husband wanted it. As the suit is said to relate to the personal estate of William Morley, Mrs. Palmer's first husband, the £100 may have come from him. In any case, Mrs. Palmer's position appears to have been represented by her son-in-law, John Trevor, who argued that an inference should be drawn that the testator intended his bequest to be for Mrs. Palmer's sole and separate use because she was separated from her husband. The court disagreed and held that any payment to a married woman belonged to her husband because a wife cannot, during coverture, acquire

[35] Staves, *Married Women's Separate Property*, 209; 147.
[36] *Palmer v. Trevor* (1684), 23 Eng. Rep. 456.
[37] *Ibid.*

property distinct from her husband. It is noteworthy that Palmer accused his wife of taking pearls and diamonds valued at £500 and alleged damages of £5000. *Palmer v. Trevor* strictly interprets the law of coverture as applied to the acquisition of property for a married (though separated) woman, which reflects the patriarchal principles that established the law of coverture in the first place. This assertion is strengthened when consideration is given to the fact that Mrs. Palmer left her husband but retained valuable personal goods, which would not have elicited sympathy from the court.

In 1700, when *Baron and Feme* was published, the separate estate was contemplated in reference to maintenance after marital separation or bequests to married women in third party wills, suggesting that the separate estate – in terms of securing a wife with a separate income – continued to be uncommon legal practice.[38] By 1750 the characterisation of property held as a separate estate was the central issue of several cases, demonstrating an increased frequency in the use of this legal mechanism.[39] In the 1770s Richard Wooddeson, counsel to the University of Oxford, conducted a series of lectures on English law, one of which specifically addressed coverture's application to property. Wooddeson's reference to the separate estate – "in these our days, her portion … is nearly as often put out of [her husband's] absolute power, by a strict settlement" – suggests its regular usage by this time.[40] In the 1797 case of *Strathmore v. Bowes*, examined in detail below, counsel argued that "every man knows, that a woman may settle her

[38] Anonymous, *Baron and Feme. A Treatise of the Common Law Concerning Husbands and Wives* (London: 1700), 199.
[39] *Churchill v. Dibben* (1750), 96 Eng. Rep. 1310.
[40] Richard Wooddeson, *Systematical View of the Laws of England; as Treated in a Course of Vinerian Lectures, Read at Oxford, during a Series of Years, Commencing in Michaelmas Term, 1777*, Vol. 1 (Dublin: 1795), cclvi.

property so that a future husband shall not be able to touch it," suggesting that the separate estate was commonplace by the start of the nineteenth century.[41]

In theory, the separate estate was an efficient way in which a married woman could retain property rights separate and apart from her husband. The legal language used in provisions for the separate estate clearly demarcated it as property separate from him. However, the married woman's separate estate "depriv[ed] her intended husband of any share in it, or controul over it" and thus challenged the rights a husband was supposed to acquire upon marriage, which suggests that husbands would not lightly tolerate their wives' independent retention of property.[42] As a result, in practice, the separate estate did not strictly detach property from a husband, as he continued to exercise control over his wife's property. This is best demonstrated by the necessity for a husband's consent before a separate estate could be created in the first place. With her husband's vital dispossession of property at stake, a woman was not entitled to her separate estate unless she had informed her husband of its existence first. If she failed to do so, she was guilty of fraud against him. Clancy states the rule as follows: "a settlement made by a woman of her own fortune, before her marriage, for her separate use, without her intended husband's privity, shall not bind the husband, it being in derogation of the right of marriage."[43] In other words, a husband's right to take and maintain control of his wife's property was of paramount importance and was bound up with the entitlements he acquired upon marriage.

A husband's consent to create a separate estate remained an essential legal condition throughout the long eighteenth century; however, the practical application of this consent changed. The 1672 Chancery case of *Howard v. Hooker* exemplifies the issue of consent in the

[41] *Strathmore (Countess of) v. Bowes*, 30 Eng. Rep. 211 (hereafter *Thurlow's Judgment).*
[42] Clancy, *Essay*, 25.
[43] *Ibid*.

seventeenth century. Elizabeth was the daughter and sole heir of Sir Robert Newton when she married Sir John Baker prior to 1660. According to the reported decision, upon marriage, in consideration of a £4000 marriage portion provided to Sir John by Sir Robert, estates were conveyed in trust from Sir John's father to Sir Robert as trustee, with the income from the estates payable to Elizabeth during her lifetime. The Bakers had five daughters. In 1658, Sir Robert devised a further estate to Elizabeth for life, with remainder to her children. When Sir John died in March 1661, Elizabeth had £400 per year settled upon her for separate maintenance of herself and her children during widowhood, likely derived from the income from Sir John's estates. In 1666, the widowed Elizabeth assigned her estates into trust for her separate use, although the amounts at issue may have been minimal. According to later litigation (1692) between Elizabeth's estate and her son-in-law, Sir John's estates were "insufficient to carry out the settlement" because the estates were "worth only 2,000*l.* a year" and were seized to pay off debts of £30,000.[44]

In April 1668, Elizabeth married Sir Philip Howard, a soldier, MP, and brother to the Earl of Carlisle. Just prior to the marriage, Sir Philip settled a jointure of £500 per year upon Elizabeth for her widowhood. In addition, Sir Robert, knowing Elizabeth had earlier assigned her inheritances into a separate estate to provide for her and her daughters, bestowed his own personal estate plus £700 per year on his future son-in-law, Sir Philip.[45] When Sir Robert died in 1670, he left a will in which he bequeathed Elizabeth (and, after her death, her daughters) all of his Kent manors for life. The decision of *Howard v. Hooker* was rendered in 1672, suggesting that the bill was filed shortly after Sir Robert's death in 1670.

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[44] *Journals of the House of Commons From December the 3d 1697, in the Ninth Year of the Reign of King William the Third to October the 24th 1699, in the Eleventh Year of the Reign of King William the Third, Volume 12* (1803).
[45] *Howard v. Hooker* (1672), 21 Eng. Rep. 622.

The bill was brought in Elizabeth's name and in Sir Philip's name in right of his wife. The parties sought a declaration that Sir Philip should have all of his wife's benefit and interest in property, and that the separate estate was fraudulent because Sir Philip did not learn of it until after Sir Robert died, which was well into the marriage. Sir Philip claimed he never would have settled his wife with the jointure had he known he was not receiving her inheritance. The evidence suggested that, prior to marriage, Elizabeth had told Sir Philip "that whoever did marry her should have no Benefit of any Estate that she had by her former Husband, and that Sir Philip did agree to bar himself thereof, and take no Benefit thereby."[46] Further evidence suggested that Sir Philip had broken off their initial engagement because of "Intimation that Elizabeth intended to dispose of her Interest in her former Husband's Estate, from such Husband as she should marry."[47] Despite the evidence – which suggested that Sir Philip was not only aware of the separate estate and had married Elizabeth anyway, but was also set to receive a considerable inheritance from his father-in-law by virtue of the separate estate's existence – the court sided with Sir Philip and held that the latter was not "privy nor consented to the making" of the separate estate. He had been "induced to marry" Elizabeth "upon the Hopes and Confidence of having the Interest she had in the Estate" of her first husband, "without which he would never have married her."[48] The separate estate was a fraud against Sir Philip, and thus it was set aside. The judgment is clear that Sir Phillip's intention in marrying Elizabeth was to secure extensive property rights. The court considered the evidence in the context of Sir Philip being dispossessed of his marital property rights, not in the context of Elizabeth's preservation of independent financial security by way of the separate estate. However, Elizabeth was party to the claim alongside her husband, suggesting that they sought the declarations in unity, and it is unlikely

[46] *Howard v. Hooker*, 623.
[47] *Ibid.*
[48] *Ibid.*

that she would have made arguments in favour of her own independent financial security. There are no details respecting the other parties, but their names suggest they were creditors. Bringing Elizabeth's separate estate under coverture may therefore have benefitted the Bakers as a unit.

Over one hundred years later, while judicial thought remained critical of married women's separate property, and the necessity of consent to create separate property remained essential, courts appreciated that a woman's pre-marital fortune deserved protection. The Chancery's 1797 decision in *Strathmore v. Bowes* provides a fascinating glimpse into the issue of consent just prior to the nineteenth century. On the surface, this case appears to be merely about fraud; beneath the surface, when dissected in parallel with the greater facts surrounding the two spouses, there is much more to consider. Mary Bowes was the heiress to a fortune derived from commercial enterprise. She married John Lyon, the Earl of Strathmore, in 1767. She was considered "a woman of fashion, possessing an immense fortune, high education … and [was known] for displaying the resistless ornamental appendages of exalted rank."[49] She carried on an extra-marital affair with George Grey over many years. When her husband died in 1776, she became entitled to large estates pursuant to her father's will, including "her house and garden at Chelsea, with conservatories and hot-houses, upon the largest scale, her house in Grosvenor Square, her seats at Paul's Walden, Gibside, Streatham Castle, and Barnard Castle, besides lands."[50]

Following her husband's death, Lady Strathmore continued her relationship with Grey, and they became engaged. On January 9, 1777, in contemplation of her marriage to Grey – and, crucially, with his consent – Lady Strathmore conveyed certain of her possessions into trust for

[49] Jesse Foot, *The lives of Andrew Robinson Bowes, Esq. and the Countess of Strathmore, written from thirty-three years professional attendance, from letters, and other well authenticated documents*, (Becket and Porter, London: 1812), 111.
[50] *Ibid*, 46.

her sole and separate use and to provide for her children. In a dramatic turn of events, though, she became acquainted with Andrew Robinson Stoney when he "fought a duel on her account with the editor of a newspaper, who had traduced her character." Injured in the duel, Stoney claimed to be on his deathbed and prevailed upon Lady Strathmore to marry him so "he should die happy." They were married the next day, on January 17, 1777, with Mr. Stoney carried into the church on a litter. Of course, Stoney did not die; it was later determined the duel had been a sham to entice Lady Strathmore away from Grey. Stoney had actually traduced Lady Strathmore's character in the newspapers himself, then afterward pretended "to vindicate her from such aspersions, by engaging in a *pretended duel*; by these and other means imposing upon her credulity, and feigning to have a great regard and real affection for her."[51]

At the marriage, Stoney took the Bowes name. In May 1777, just four months into the marriage, Lady Strathmore executed a deed revoking her separate estate. In memoirs published by Bowes well after the couple had separated, Lady Strathmore is said to have written to him: "I yielded all my fortune without any reserve for myself … I never had a doubt, you would cheerfully supply me with what sums I might want, which would be very small indeed after my debts were paid, which I have often wished I could have done before I married."[52] The reality, however, was much different. Within months of their marriage, Bowes forbade Lady Strathmore to see her friends and family and began physically assaulting her. On February 3, 1785, Lady Strathmore commenced a suit of separation, alleging that Bowes treated her cruelly by, among other things, "refusing her the necessaries of life, and decent proper cloathing, and compelling her to wear shabby and ragged apparel; and, notwithstanding her very large fortune, withholding

[51] *Bowes v. Bowes*, 2 Eng. Rep. 1178 (hereafter *Lords' Judgment)*, 1179.
[52] Mary Eleanor Bowes, Countess of Strathmore, *The confessions of the Countess of Strathmore; written by herself. Carefully copied from the original, lodged in Doctor's Commons* (London: 1793), 29. Bowes made the Countess say terrible things because he wanted all of her estates as his own; Foot, *The Lives*, 45.

money, and obliging her to be without any for several months together; forbidding her tradesmen to trust her."[53] She proceeded expeditiously with her witnesses, and the matter was concluded and assigned for sentence, but Bowes appealed the decision. His appeal was dismissed, but he appealed that decision. Lady Strathmore eventually obtained a divorce, and Bowes was ordered to pay alimony. He never did, even though he continued to enjoy the income of her separate estate.

On February 7, 1785, concurrently with her separation suit, Lady Strathmore sued for peace in the Court of King's Bench, alleging ill treatment by her husband. The court ordered Bowes to enter into security for his good behaviour for one year. That same year, Lady Strathmore also commenced a suit in the Court of Chancery, alleging that Bowes had compelled her to revoke her separate estate. She sought a declaration cancelling the revocation and dispossessing Bowes of her estates. Bowes filed his own bill, alleging that he had not known of, nor consented to, the separate estate prior to marriage, and therefore the separate estate was fraudulent and in derogation of his marital rights. In memoirs written by Bowes' friend Jesse Foot, it was "very reasonable and natural to suppose, that any man in the character of a husband would get rid of such a settlement if he could." However, "it is generally believed, indeed it has been sworn that Bowes was not very gentle in the mode which he adopted in accomplishing his purpose."[54]

When Bowes' court-ordered period of good behaviour expired in 1786, he and some other men, "under pretence" of taking Lady Strathmore elsewhere, "took her by force out of a house" and carried her to Strickland Castle, where she was "detained against her will for several

[53] *The Gentleman's and London Magazine; or, Monthly Chronologer* (Dublin: 1777), 74.
[54] Foot, *Lives*, 144.

days"[55] in order to prevent the determination of her divorce proceedings.[56] Upon her release, she sued for fresh articles of peace. The court ordered Bowes to give security for peace for fourteen years by way of £10,000 payable by him and two sureties in the amount of £5000 each. On May 7, 1786, Bowes' counsel attempted to have the period of peace and the sums payable lessened, arguing that "there had been no instance since the Revolution in which sureties for the peace had ever been required for more than a year."[57] Lady Strathmore's counsel argued that it was "a much more aggravated case than any which has been mentioned."[58] Judge Ashurst reduced the length of time of the peace on the basis that an action for perjury against Lady Strathmore was pending, but he did not reduce the sums payable, holding that Bowes stood "charged with as daring an outrage as ever was committed in a civilized country."[59] In May 1787, Bowes was put on trial for conspiracy for the abduction and all defendants were, "without any great hesitation," found guilty and imprisoned.[60]

The two bills concerning Lady Strathmore's separate estate came before Lord Chancellor Thurlow on March 8, 1788. In evidence, Lady Strathmore admitted that Bowes did not know about the separate estate because she had not known him until the day before their marriage, well after she had created the separate estate. Based on such evidence, counsel for Bowes argued that the court should not "hold any act valid that is done by either man or woman, in disparagement of the rights to be acquired by the other, by marriage."[61] In furtherance of this argument, counsel submitted that a "husband is a purchaser of many rights by the marriage, and a purchaser of the

[55] *The King v. Bowes*, 99 Eng. Rep. 1327.
[56] *The Scots Magazine*, Vol. XLIX (Edinburgh: 1788), 302.
[57] *The King v. Bowes*, 1327.
[58] *Ibid*, 1328.
[59] *The King v. Bowes*, 1329.
[60] *The Scots Magazine*, 306.
[61] *Strathmore (Countess of) v. Bowes*, 29 Eng. Rep. 194 (hereafter *Buller's Judgment*), 194.

highest kind the law knows."[62] Lady Strathmore's alleged fraud had deprived Bowes of his marital rights to acquire her property. In reply, Lady Strathmore's counsel argued that there was no fraud since the separate estate was properly created in contemplation of marriage to George Grey (not to Bowes). The matter was directed to a jury trial in the Court of Common Pleas. Upon evidence that "Bowes's tortures and cruelties" included kidnapping and forcible confinement, the jury quickly determined that the revocation deed was prepared under duress and it was nullified.[63]

Following the jury's ruling, on June 19, 1788, the two bills came before Justice Buller, Master Holford and Master Ord. While Buller defined fraud as "falsely holding out, that a woman has an estate unfettered, and that the husband will be … entitled to it," he held that there was no general rule of law obliging him to declare Lady Strathmore's separate estate void for fraud because he was not prepared to ignore Bowes' outrageous conduct.[64] A husband was a purchaser for many purposes by marriage, but this principle did not hold universally. For example, Buller referred to settlements made in favour of children, suggesting that he was influenced by Lady Strathmore's provisions for her children. Buller chastised Bowes, stating, in reference to the sham duel, that "[a] man who begins by such a stratagem is not entitled to much consideration in a court of justice."[65] Buller declared the separate estate to have been established and ordered an accounting of the rents and profits Bowes had received from it.

The matter, however, was not over. Lord Chancellor Thurlow heard the case again on March 3, 1789.[66] Bowes' counsel argued the basic principles of coverture: "it is absurd to say,

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[62] *Buller's Judgment*, 194.
[63] Foot, *Lives*, 44.
[64] *Buller's Judgment*, 196.
[65] *Ibid*, 197.
[66] *Strathmore (Countess of) v. Bowes*, 30 Eng. Rep. 211 (hereafter *Thurlow's Judgment)*

the wife shall by her own act deprive the husband of what the law has given him."[67] He returned to the patriarchal principles of *Manby v. Scott* (1662), set out in Chapter 1, by arguing that a wife who makes herself independent of her husband without consent "will destroy that subordination so necessary in families, which is analogous to that in the state, and tends to support it."[68] He went so far as to call the husband a cipher in his own household in such a circumstance, and argued that Bowes' case was stronger than the precedential cases in that "here she is made quite independent of the husband."[69] In reply, Lady Strathmore's counsel focussed on the circumstances surrounding the creation of the separate estate: it was created in contemplation of marriage to a third party (Grey), with that third party's knowledge and consent, and was already a binding legal device when the marriage to Bowes took place. While counsel admitted that "a man by marrying a woman gains a dominion over her property, and in a great degree over her person," such a principle did not apply here because the property was not rightfully Lady Strathmore's at marriage but rather already placed in trust.[70] Her counsel advocated a reverse onus, arguing that since "every man knows, that a woman may settle her property so that a future husband shall not be able to touch it," Bowes should have inquired about estates before the marriage. He asserted that Bowes himself was at fault since "the emotion and precipitation, which he caused by this artifice, was the cause, which prevented the communication of the actual situation of her fortune."[71] It was clear that the "only pretence here is, that he expected her fortune would have been greater, than it proved, which expectation he did not disclose."[72]

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[67] *Thurlow's Judgment*, 212.
[68] *Ibid*.
[69] *Thurlow's Judgment*, 212.
[70] *Ibid*.
[71] *Ibid*, 213.
[72] *Ibid*, 214.

Thurlow found for Lady Strathmore. However, in giving his decision, he made clear his support for the patriarchal principles advocated by both counsel, suggesting that those principles remained firmly the law. He reiterated the principles of economic exchange contemplated in marriage, holding that "the law conveys the marital rights to the husband, because it charges him with all the burthens, which are the consideration, he pays for them."[73] Out of these rights emerged a principle of law: "the husband shall not be cheated on account of his consideration."[74] Based on the facts before him, however, he found no fraud. Lady Strathmore had properly created her separate estate in contemplation of marrying Grey, then, "having suddenly changed her mind, and married Bowes, in the hurry of that improvident transaction she did not communicate [the separate estate] to him; but there was no time, and could be no fraud."[75] The key was the timing of the separate estate's creation. Any fraud on Lady Strathmore's part had to have been committed against Grey, since the separate estate was created in contemplation of marriage to him.

Although Bowes was unsuccessful again, still the matter was not over. For the next several years, Lady Strathmore and Bowes were engaged in extensive litigation. This included a judicial accounting of the income from various castles, manors, houses, farms, collieries, and timber that had been received by Bowes, totalling over £10,000. From 1788, Bowes was in contempt of court for not having paid Lady Strathmore her costs of the Chancery bill, not having delivered to her the revocation deed, and for not giving her back various pictures, plate, jewels and apparel "and all other articles and things settled upon or separately belonging to her."[76] On October 18, 1796, seven years after Thurlow's decision was rendered, Bowes appealed to the

[73] *Thurlow's Judgment*, 214.
[74] *Ibid*.
[75] *Ibid*.
[76] *Lords' Judgment*, 1183.

House of Lords.[77] The Lords' reported decision is the only one that thoroughly canvassed Bowes' pre-marital circumstances and marital conduct, demonstrating the highest court's contempt for his character. For example, Bowes is described as "a lieutenant on half-pay, in a regiment of foot, and greatly distressed in his circumstances, and possessed of little or no property."[78] Of the four grounds of appeal presented on behalf of Bowes, one stands out: Thurlow's judgment established a precedent that would be "destructive of confidence in every matrimonial engagement, and [lead] to consequences subversive of all the grounds on which the law of this country, with respect to the obligations on husbands, by force of the contract of marriage, is founded."[79] The House of Lords, stepping out from behind the shadow of *Manby v. Scott*, disagreed, because the facts of the case were so outrageous that it went beyond pre-established principles. Although the Lords' reported decision offers sparse evidence of the debate amongst themselves, I suggest that Thurlow's earlier decision reflects the same thinking as would have gone on in the House of Lords: the principle of patriarchal authority and the necessity for consent remained a significant and unchangeable piece of the law of coverture, but it could be manipulated in egregious circumstances.

As the separate estate became common in nineteenth-century pre-marital agreements, the principles established by the foregoing cases remained critical in judicial reasoning. However, the discretion allotted to the court continued to be generously exercised, as in the 1813 Chancery case of *De Manneville v. Crompton*.[80] According to the reported decision, in January 1799, Margaret Crompton was engaged to Leonard De Manneville, a French emigrant. Margaret was "possessed of, or entitled to, a considerable personal Estate," which included a debt due from her

[77] *Lords' Judgment*, 1183.
[78] *Ibid*, 1179.
[79] *Ibid*, 1183.
[80] *De Manneville v. Crompton* (1813), 35 Eng. Rep. 138.

mother, Ann Crompton, in the sum of £2000 by way of a promissory note.[81] On April 2, 1800, a marriage settlement was entered between the two intended spouses with both usual and unusual terms. All of Margaret's real and personal property, valued at £700 per year, was placed in trust for her separate use for life, with her mother and another acting as trustees. The trustees were authorised to call in the securities held in trust but only with Margaret's express written authorisation. A more unusual clause provided that if Margaret died while cohabiting with De Manneville, £2000 was to be invested with interest payable to him; if the parties ceased cohabiting or if De Manneville died first, £2000 was to go to their children. The inclusion of this clause suggests a concern on the part of the Crompton family respecting De Manneville's intentions regarding Margaret's fortune. A final provision in the settlement was a promise by De Manneville that he would not compel his wife to live anywhere but in Great Britain.

The marriage took place in 1800. The De Mannevilles had a daughter, Caroline, in 1803. Shortly after Caroline's birth, however, "[d]ifferences arose between Mr. and Mrs. De Manneville; and … she withdrew from his house" with her daughter.[82] Extensive litigation followed between the spouses over the custody of the child. In the custody dispute, Margaret testified that she had left her husband because of "ill usage, threats to carry her and the child out of the kingdom; and he pressed her to make a Will in his favor."[83] In 1813, many years after the couple had separated, De Manneville filed a bill seeking an accounting of his wife's personal estate as of the date they had entered into the marriage settlement. He alleged that Ann Crompton's promissory note "had been cancelled and destroyed" after Margaret left him.[84] Margaret responded by saying that the promissory note had originally been given without

[81] *De Manneville v. Crompton*, 138.
[82] *De Manneville v. De Manneville* (1804), 32 Eng. Rep. 763.
[83] *Ibid*, 763.
[84] *De Manneville v. Crompton*, 138.

consideration when her mother was a young widow, at her uncle's urging. The purpose of the note had been to secure Margaret should her mother marry again, since Margaret's "Fortune at that Time was inconsiderable."[85] When Margaret had "acquired a large Accession of Fortune" a year before her marriage, she had burnt the promissory note. The issue became whether Ann Crompton was "bound to bring into the Fortune of her Daughter a Sum of £2000, represented as due to her from the Mother at the Commencement of the Treaty of Marriage."[86]

Lord Chancellor Eldon was "very unwilling to relax a Principle, which has long prevailed … that, if a Representation is made upon the Circumstances of a Person about to form a Connection in Marriage, and that Representation is of such a Nature, that, if not made good, or if varied, it will materially affect the Circumstances in Life of the Party," the court will compel the representor to make good on the representations. However, Eldon also held that it was "of equal Importance, that this should not be carried to the Extent, that, whenever any thing occurs in general Treaty, not entering into Particulars, or shewing, that the Marriage actually took place upon such Representation."[87] Eldon found that, in the marriage settlement, there was "no Representation of what Particulars it consisted, or of the actual amount" of the debt. The promissory note itself was not specifically identified beyond the plural word *Notes*. It was too great a stretch to claim that, because "no Note happens to be found among the Particulars of the personal Property, though the Word "Notes" is in the Deed, to take that as a Ground for imputing Fraud." What was required was "sufficient Evidence in the Nature of the Transactions," during

[85] *De Manneville v. Crompton*, 139.
[86] *Ibid*.
[87] *Ibid*.

marriage negotiations, "that the personal Estate, as it stood at the Commencement of that Period, whatever its Amount, should in no Way be diminished if the Marriage should take place."[88]

Eldon went further and addressed the stipulation within the settlement that Margaret's written consent was required for all transactions. In crafting this provision, she had been "settling her own Property on Marriage" and required explicit involvement in any request for sums under the settlement.[89] The court did not have authority to strike out that provision, which was essentially what De Manneville was asking. Eldon's decision reflects a paternalistic bent and a generous exercise of discretion. He accepted a strict reading of the legal language of the marriage settlement in order to preserve as much of Margaret's pre-marital fortune as he could justifiably preserve for her and keep it out of her husband's hands.

Similar issues arise in the 1826 Chancery decision of *Goddard v. Snow*.[90] The reported decisions states that in August 1812, Mary Peete executed a deed wherein £500 due to her from William Snow was placed into trust, with interest payable to her separate use. In 1812 – the evidence could not establish exact dates – Mary was "on terms of intimacy and friendship" with Thomas Goddard and agreed to marry him. The marriage took place in July 1813. When Mary died nine years later, Goddard filed a bill against her representatives, alleging that "he had never been aware of her right" to Snow's debt and interest. He claimed that, when Mary executed the deeds in 1812, "their marriage was in contemplation, and the treaty for it pending," thus the deeds were fraudulent against him.[91] A witness testified that, on the day after her wedding, Mary told her she "had put [her estate] entirely out of her power … so that it should be out of the

[88] *De Manneville v. Crompton*, 140.
[89] *Ibid*.
[90] *Goddard v. Snow* (1826), 38 Eng. Rep. 187.
[91] *Goddard v. Snow*, 187.

power of any husband to touch it."[92] The solicitor who drafted the deed testified that he met with Mary and Snow, and based on their discussions with him, he believed the deed was executed "with a view to [Mary's] marriage with the Plaintiff, and to secure her property upon herself in the event of such marriage," though he was unable to confirm that Mary had specifically instructed him in this way or specifically told him about the marriage.[93] There was no evidence that Mary had ever received the interest on the debt during the marriage, though her trustees claimed that it had been paid.

Counsel for Mary's estate cited *Strathmore v. Bowes* for the proposition that fraud "consists in falsely holding out an estate to be unfettered, and in representing that the intended husband will, as such, be entitled to it, when in fact it is disposed of from him."[94] They argued that the evidence must establish actual deception rather than mere concealment. Goddard could not have been induced into his marriage with Mary based on the interest from Snow's debt if he did not even know about it in the first place. Further, counsel suggested that Goddard had acquiesced or agreed to the deed. In support of this contention, counsel asked, "Is it likely that, in the humble situation of life in which the parties were, the possession of a sum of £40 or £50 a-year by his wife should never have manifested itself in a way to excite his attention or his curiosity?"[95]

Master Gifford rendered his decision in August 1823. He laid out the principles upon which fraud would be found: if "at the time of the execution of the settlement, marriage was in the contemplation of the parties; that the woman executed the settlement in contemplation of the

[92] *Goddard v. Snow*, 188.
[93] *Ibid*.
[94] *Ibid*.
[95] *Ibid*, 189.

future marriage; and that she concealed it from her future husband."[96] With respect to the application of *Strathmore v. Bowes*, Gifford held that that case "must be considered with reference to the particular circumstances" at issue.[97] That is, the deed in that case had been "honest and proper, being made in contemplation of a marriage with another person, and with the consent of that person."[98] Gifford found that Mary's deed had been made fraudulently and her husband was entitled to the money.

The 1833 Chancery case of *St. George v. Wake* also reflects the principles established by the precedents laid out above. According to the reported decision, in 1817, sisters Martha and Sarah Noble lived with their aunt, Sarah Daniel. In 1824, however, Martha "disobliged Mrs. Daniel by her marriage" to Charles Wake, after which Martha was not "upon friendly terms with her aunt."[99] Around September 1829, Sarah, then aged 38, was living with Mrs. Daniel when she met Reverend Henry St. George. They became engaged, and their intended marriage was made known to Henry Landor, Mrs. Daniel's "confidential adviser and solicitor."[100] In October 1829, St. George returned to his home in Ireland for a time, after which Mrs. Daniel asked Landor to "make inquiries as to the accuracy of Mr. St. George's representations respecting the estates of his father and his own prospect of making a living." Upon such inquiries being made, "it turned out that the property was very limited," so Mrs. Daniel sought Landor's advice about providing for Sarah. Mrs. Daniel executed a will in which she provided for both of her nieces: Martha was to inherit £2000 for her separate use, with the principal to her children, and, if no children, then

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[96] *Goddard v. Snow*, 189.
[97] *Ibid*.
[98] *Ibid*.
[99] James William Mylne and Benjamin Keen, *Reports of Cases Argued and Determined in the High Court of Chancery during the Time of Lord Chancellor Brougham, and Sir John Leach, Master of the Rolls.* Vol. I. (New York: Banks, Gould & Co., Law Booksellers: 1852), 611.
[100] *Ibid*.

half to Sarah and the other half to another relative; Sarah was to inherit the residue of Mrs. Daniel's estate.

On November 15, 1829, with St. George still in Ireland, Mrs. Daniel died. That same night, Landor wrote to Sarah that Mrs. Daniel "told me that in consequence of your intended marriage, she should make another will, and do something more" for Martha than was currently in her will. Mrs. Daniel had not, however, executed a codicil. Landor advised Sarah that Mrs. Daniel had wanted her to give Martha the rights to dispose of her inheritance as she pleased, instead of having to give it over to Sarah (as the will demanded). On November 16, Sarah assented to Landor's request and gave up her interest to Martha. The next day, Sarah also assigned to Martha bonds valued at £1200, which Sarah had possessed in her own right.

On December 14, 1829, Sarah married St. George. Shortly thereafter, on January 19, 1830, the St. Georges filed the original bill in the action against Martha, Martha's husband Charles Wake, and Landor, seeking a declaration that the November deeds were fraudulent and void. St. George alleged that, while he was in Ireland, Martha, Wake and Landor "concerted a scheme for inducing [his wife] to make over some of her property" to Martha, and that Sarah, "without reflecting" on her engagement to St. George, which rendered her incompetent to dispose of her property, acceded to her sister's proposal.[101] St. George further claimed that Sarah had been "prevailed upon" to consent to the assignment of the bonds. The bill did not claim that the deeds had been concealed from St. George, however, nor that he was unaware of their existence. Sarah died in October 1830, but the claim carried on. In argument, St. George submitted that the principles of coverture dictated that a married woman cannot dispose of her property in fraud of the marital contract, and a woman in contemplation of marriage was as much

[101] Mylne, *Reports*, 613.

under coverture as she was after the marriage occurred. He claimed that the defendants had taken advantage of his absence "and of the unprotected situation of the intended wife" to acquire property that belonged, by marital right, to him.[102] He alleged collusion, arguing that the only motive for the "extraordinary precipitation" with which the deeds were executed was to keep it from him.[103]

The defendants denied that the transactions "were fraudulently procured and insisted that they were free and unconstrained gifts" from Sarah.[104] Landor testified that the deeds were signed at his advice "for the purpose of fulfilling, to a certain extent, the wishes and intentions of the testatrix, and of re-establishing affection between the two sisters." He pointed to Sarah's "mature age and discretion" at the time of making the deeds.[105] Counsel for the defendants argued that St. George knew about the deeds and had the opportunity to end the engagement in light of them. He argued, "it did not suit the Plaintiff to abandon a lady with a fortune of 30,000*l*.because he could not obtain, in addition to that fortune, a sum of 2000*l.* or 3000*l.*, which the lady's kindness and generosity had induced her to give to a sister in less fortunate circumstances."[106] Counsel went further, alleging that St. George had induced Mrs. Daniel to consent to the marriage by misrepresenting his own pecuniary circumstances.

The court found no evidence to suggest the transactions were concealed from St. George and, because the bill did not even make such claims, it was presumed he had known of the transactions. The court held that, "if a person is acquainted before his marriage with the fact of an assignment of property made by his intended wife, such assignment cannot be said to be a

[102] Mylne, *Reports*, 615.
[103] *Ibid*.
[104] *Ibid*, 613.
[105] *Ibid*, 614.
[106] *Ibid*, 615.

fraud upon his marital right."[107] However, the court did infer from the circumstances that "the deeds were prepared with all this haste and precipitation, lest Sarah's willingness to acquiesce in the suggestions which had been made to her should be altered by the return of her intended husband."[108] Landor and the defendants knew of Sarah's engagement, yet still conducted themselves poorly. Though the court ruled in favour of the defendants, costs were not awarded to them because of their conduct.

St. George appealed the decision. The appeal was heard by Lord Chancellor Brougham in August 1833. The reported decision indicates that Sarah had made allegations of violence at the hands of Martha in compelling her to consent to giving up her interest, which Brougham dismissed on the basis that "such expressions of feeling are incident to family disputes." He observed that Sarah was "of mature age, between thirty and forty, and apparently, not without some knowledge of business." Brougham held that, while the principle established in precedent that a deed purporting to restrict a husband's marital rights to property without his knowledge and consent was void, he stated that such a principle was "very rarely acted upon." In most of the cases, "there were circumstances which the court laid hold of, to escape from the application of the rule, or which really took those cases out of the rule." Brougham cited various other precedents, including *Goddard v. Snow* (see page 72), of which he stated, "the principle has been carried further than in any other case." Brougham asserted that no case existed of "a conveyance by the wife, though without consideration, being set aside, simply because made during a treaty of marriage, and without the knowledge of the intended husband."[109] He stated that it was an essential element of the fraud principle that "the husband should, up to the moment of the

[107] Mylne, *Reports*, 616.
[108] *Ibid*.
[109] E.D. Ingraham, ed., *Condensed Reports of Cases Decided in the High Court of Chancery in England*, Vol. VIII (New York: Gould, Banks and Co., 1836), 409.

marriage, have been kept in ignorance of the transaction."[110] Other elements included considering the objective of the transaction and the parties' circumstances, including the husband's pecuniary situation. Brougham found no evidence that Sarah's transaction was done "in fraud of the marital rights about to vest" in St. George. The fraud principle required more than "the bare fact of the husband not knowing what had been done," including actual misleading. The previous ruling was affirmed. Brougham recognised that the "great haste in which the whole transaction was begun and finished before the intended husband's arrival, was the cause of all suspicion which arose respecting it." However, there was doubt respecting the evidence, which meant that the matter could not have been settled without the court's assistance. As such, Brougham ordered that no costs be awarded to either party.[111]

Reviewing the foregoing cases reveals the concept of consent as a necessary element of the validity of the separate estate moving from strict interpretation to discretionary use. There is strict interpretation of the concept in *Howard v. Hooker* (1672), where a husband is favoured, in spite of evidence suggesting that he was not only aware of the separate estate's existence but had benefitted from its existence by way of an inheritance bequeathed to him solely because of the separate estate. There is a dilution of the concept in *St. George v. Wake* (1833), where Brougham claimed that strict interpretation was very rarely used by the court. However, the interpretation of these decisions is complicated by the facts surrounding them. In *Howard v. Hooker*, the wife seems to have supported her husband's claim against her own separate estate, and thus financial independence, whereas in both *Goddard v. Snow* and *St. George v. Wake*, the wife was dead and unable to represent her position. In *Strathmore v. Bowes* and *De Manneville v. Crompton*, the wives were parties to the suit but separated from their husbands, and the husbands themselves

[110] Ingraham, *Condensed Reports*, 412.
[111] *Ibid*, 413.

were disreputable characters. Therefore, it is likely the judiciary was compelled to exercise discretion against them. Drawing wide conclusions from the foregoing cases is problematic, yet the underlying tone of each decision upheld established patriarchal principles that emphasise a husband's acquisition and control of all property rights during marriage.

2.4 Classifying the Separate Estate: Gifts and Paraphernalia

Clancy's 1819 text identified gifts as a type of separate estate, and while paraphernalia (characterised by Staves as "the old category"[112]) appears from the case law to be associated with gifts, Clancy does not even list it in his index. Under "Ornaments, Personal," Clancy writes, "see Gift" – which seems to merge the two categories.[113] He described gifts as "the spontaneous produce of the liberality of the husband, or of a stranger, viz. Jewellery and other ornaments of the person," and he insisted that the circumstances of each case, including the timing of the giving and from whom the gift was received, determined whether an item constituted a gift and thus affected its subsequent proprietary treatment.[114] Susan Staves distinguishes paraphernalia from gifts on the basis that paraphernalia belonged to a married woman based on her *present* use of the goods, whereas gifts belonged to the husband based on the *future* use of the goods.[115] The legal rights associated with gifts and paraphernalia, particularly the restrictions placed upon married women's acquisition of personal items, demonstrates ways in which married women's financial independence was inhibited.

Paraphernalia was generally used to describe personal ornaments worn by a married woman pursuant to the law of necessaries, which were "excepted out of the power of the

[112] Staves, *Married Women's Property,* 148.
[113] Clancy, *Essay*, Index.
[114] *Ibid*, 61.
[115] Staves, *Married Women's Property,* 148.

husband, so that he cannot dispose of [them] by his will."[116] *Baron and Feme* defines paraphernalia as the "necessary Apparel for her Body after the death of the husband," linking personal items to maintenance in widowhood.[117] *Laws Respecting Women* takes the definition one step further by imposing social restrictions: paraphernalia is "the apparel and ornaments of the wife, suitable to her rank and degree, which she becomes entitled to on the death of her husband."[118] Paraphernalia does not include "more than is convenient."[119] The emphasis on a husband's discretion is paramount in the description of paraphernalia. The court in *Manby v. Scott* (1659-1662) held that the wife "was to be clothed in such sort as her husband thought fit."[120] Though a wife might wish for a velvet gown and a satin petticoat, her husband should direct that she be attired in simpler fare since such items "pleaseth him, and suits best with his condition."[121] In *Manby v. Scott*, it was held that a jury could never determine whether an item was paraphernalia because, "whether this or that apparel … be most necessary or convenient for any wife, the law makes no person judge thereof *but the husband himself*."[122] Reasonableness was not a question of fact but of law, and only the husband was legally authorised to give the answer.

The gendered difference in the legal treatment of personal property, demonstrated by the limit of the range of goods deemed to be paraphernalia, is also exemplified by the strictness with which the requirement of necessity was applied in determining paraphernalia, which in turn reflected the reduced status of a married woman's property rights. Wooddeson qualified the separate characteristics of paraphernalia when he said that a "husband's claim to the personal

[116] Wooddeson, *Systemical View*, cclvii.
[117] *Baron and Feme*, 65.
[118] *Laws Respecting Women*, 151-152.
[119] *Ibid*, 189.
[120] *Scott v. Manby*, 86 Eng. Rep. 781, 786.
[121] *Ibid*, 789.
[122] *Ibid*, 790.

estate of the wife is … of the general and indiscriminate kind: but her right to paraphernalia … respects only *particular* goods and chattels."[123] For example, consider the hierarchy of property rights vis-a-vis a husband, his creditor and his wife with respect to personal items, where the wife was reduced to last priority. In order to satisfy a debt owed to them by a husband, creditors could not take a married woman's paraphernalia, but they could take her superfluous goods because creditors "should not be allowed to starve."[124] As Wooddeson said, "where the effects of the husband are insufficient to pay his debt, the wife cannot claim, *in such case*, things ornamental and unnecessary, tho' she might otherwise have intitled herself to them."[125] The wife, therefore, held only beneficial title to personal items and she could easily be dispossessed of those items.

The foregoing propositions respecting paraphernalia and gifts are articulated in the Chancery's decision in *Hastings v. Douglas*, rendered around 1634.[126] Sir John Davies, the Attorney-General of Ireland, married Eleanor Touchet, the daughter of the Earl of Castlehaven, in 1609. They had one surviving child, Lucy, who married Lord Hastings. Davies died around 1625, and, according to Davies' biography, the "whole of [his] estate was to pass to Lucy, rather than his widow, an illustration of the state of Davies' marriage."[127] Eleanor quickly remarried. While Eleanor was close to her daughter and is said to have been supported by her during litigation, Eleanor did bring a bill against Hastings, who would have received most of Davies' estate by virtue of his marriage to Lucy.[128] Eleanor was involved in a greater dispute concerning

[123] Wooddeson, *Systemical View*, cclvii-cclviii.
[124] *Wilson v. Pack*, Prec. in Cha. 297.
[125] Wooddeson, *Systemical View*, cclvii (emphasis in original).
[126] *Hastings v. Douglas*, 79 Eng. Rep. 901.
[127] Hans Pawlisch, *Sir John Davies and the conquest of Ireland: a study in legal imperialism* (Cambridge: Cambridge University Press, 1985), 28.
[128] Helen Ostovich and Elizabeth Sauer, "Letters," in *Reading Early Modern Women: An Anthology of Texts in Manuscript and Print, 1660-1700*, ed. Helen Ostovich and Elizabeth Sauer (Routledge: New York, 2004), 215.

Davies' estate, of which much was forfeited upon her remarriage, but the relevance of her dispute for my purposes centers around jewelry. During her marriage to Davies, Eleanor had worn certain jewels. Davies' will devised "the use and occupation of all his … jewels" to his wife during her widowhood. Eleanor sought to have the jewels declared paraphernalia because of her frequent permitted use of them, coupled with her social position as the daughter of "an ancient baron of this realm." She argued that a husband's "permission of the wife to wear them usually, is as a gift of them to her by her husband."[129] This reflected the law's requirement for necessity and convenience, "for it is not reasonable the husband should leave her naked of those jewels which she usually did wear, and are fit (according to her calling) to wear."[130] In defence, Hastings argued that the jewels were not paraphernalia because Davies' will dictated his wife's limited use of them (only during her widowhood); moreover, a "husband cannot give aught to the wife, they being both but one person in law."[131] Paraphernalia was not a separate entity in which a wife's entitlement took precedence over that of creditors, because these are items "not given to the wife, but those which are of necessity, viz. necessary apparel."[132] After being argued by counsel for both parties, the matter was "openly argued at the Bench," indicating it was a decision of some importance.[133] The court agreed that Eleanor was entitled to paraphernalia, but it was limited to necessary apparel. In this case, there was no necessity that "she should have a chain of diamonds, and the said sixty-five great pearls, and the sixty-five small pearls, which are things hanging loose, and are not in any chain or bracelets; and they be not for any necessity, for ornament, or for covering."[134] Despite her husband having given such items to her, this was seen

[129] *Hastings v. Douglas*, 902.
[130] *Ibid*.
[131] *Ibid*, 903.
[132] *Ibid*.
[133] *Ibid*, 902.
[134] *Hastings v. Douglas*, 903.

as constituting only beneficial ownership during her life, with the legal title always remaining with her husband and thus passing to his estate upon his death. This decision was likely influenced by Eleanor's remarriage – which brought her under coverture of a new husband – as well as her contemporary infamy as a prophetess.[135]

In the 1680 Chancery decision in *Flay v. Flay*, the words of a husband's will were at issue, which the court was asked to interpret either in favour of the wife, Mary Flay, or the executrix, the couple's daughter. According to the reported decision, Mary's husband willed her "his Household Goods and Stuff." The items included a silver tankard, silver spoons, a bracelet Mary wore, some pieces of "old Gold," – some given by Flay and others Mary had received prior to marriage, "which she had kept all the time of her marriage." The court held that the "the Bracelet and Pieces of Gold which her Husband gave her, and permitted her to use and dispose of in his Life-time, it cannot be intended that he designed to take them away at his Death, without express Words." Mary had not disposed of the items during her marriage but had rather "been a good Housewife, and saved them" so the court would not take them from her there being "no want of assets for payment of debts."[136] A key component of this decision was that there were no creditors and the other parties to the claim were Flay's relatives, seeking a piece of his estate.

Another early Chancery case respecting paraphernalia is *Calmady v. Calmady*, which was decided prior to 1718.[137] Though the entirety of the case is unreported, general principles can be extracted from various short reports. Josias Calmady married Elizabeth Waldo in 1680. Their

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[135] Diane Watt, "Davies [nee Touchet; *other married name* Douglas], Lady Eleanor," in *Oxford Dictionary of National Biography* (Oxford University Press, 2004) https://doi-org.ezproxy.library.uvic.ca/10.1093/ref:odnb/7233 (accessed 31 March 2018).
[136] *Flay v. Flay* (1680), 22 Eng. Rep. 271.
[137] *Calmady v. Calmady*, 22 Eng. Rep. 528.

second son, Shilston, became Josias' heir. Elizabeth died in 1695, after which Josias executed a will in which he bequeathed to Shilston a crochet of diamonds that had belonged to her, which were to go subsequently to Shilston's heir in succession as an heirloom.[138] When Josias married his second wife, Jane Rolt, in 1699, however, he had a necklace made of the diamonds and added new ones, so that the necklace was worth far more than it had been originally. When Josias died in 1714, leaving Jane to survive him, Shilston claimed the original crochet of diamonds. Jane and her daughter with Josias, Anna Maria, disputed Shilston's claim, arguing that Jane should retain the necklace as paraphernalia. Lord Chancellor Parker "seemed to doubt at first" whether changing the diamonds from crochet to necklace, adding further jewels to it, and allowing Jane to wear it had altered the item so that the original bequest was revoked.[139] He ordered that the diamonds be separated, decreeing that the original diamonds belonged to Shilston as heir, having been specifically bequeathed to him as an heirloom. The reports do not indicate what was done with the second set of diamonds, "yet it is inferred from the separation, that they must have been ordered to the widow as part of her paraphernalia."[140] Interestingly, Shilston never married. He was succeeded by his brother, and his estate was embroiled in litigation after his death, so the eventual resting place of the original diamonds is unknown.[141]

In 1722 *Burton v. Pierpoint* was decided in the Chancery by Lord Chancellor Macclesfield.[142] The reported decision states that when William Pierpoint married Elizabeth Darcy, she came to the marriage with twenty-five guineas, and he settled his real estate on

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[138] *Calmady v. Calmady*, 528.
[139] *Ibid*.
[140] R.S. Donnison Roper, *A Treatise on the Law of Property Arising from the Relation Between Husband and Wife*, Vol. 2. (New York: Stephen Gould and Son, 1824), 141.
[141] "Calmady, Shilston (?168701731), of Leawood and Langdon, Devon," http://www.historyofparliamentonline.org/volume/1715-1754/member/calmady-shilston-1687-1731, (accessed 23 January 2018); National Archives of the UK: PROB 18/45/49.
[142] *Burton v. Pierpoint* (1722), 24 Eng. Rep. 648.

himself with remainder to her for her life. In his will, Pierpoint bequeathed "his wife's jewels to her, and likewise the use of the plate to her for her life."[143] When he died in 1706, Pierpoint's assets did not satisfy his debt, so his creditors were awarded payment out of Elizabeth's jewels, plate, and dowry. In 1719 both of the couple's sons died without issue; the property they had inherited from their father reverted back to his estate and thus became liable to the debts. The issue arose as to whether it had been inappropriate to satisfy Pierpoint's debt by using his wife's paraphernalia and dowry. Macclesfield found, firstly, that dowry was not paraphernalia, which was "confined to the ornaments of her person." Dowry was given to a wife personally, not to a trustee on her behalf, and anything a wife owned personally became her husband's upon marriage. Elizabeth was not entitled to the jewels because the jewels had only come into her possession by virtue of her husband's will, which made them also liable to his debts. Though assets were now available to pay Pierpoint's debt, it changed nothing, for "if there should not be assets real and personal at the testator's death, or, at least, at the time when the jewels were applied to debts, then the jewels should be liable."[144]

Lord Chancellor Hardwicke was engaged in several paraphernalia cases in the mid-eighteenth century, beginning with the 1737 Chancery case of *Seymour v. Trevelyan*. Henry Seymour took the surname Portman in 1690 when he inherited his cousin's estates, valued at £8,000. In 1714, as a widower in middle age, Henry married his second wife, Meliora Fitch, the fourteen-year old daughter of a London grocer. She was reputed to be a beauty and had a fortune of £1500.[145] On January 31, 1723, Henry executed a will in which he gave Meliora £10,000 "in full of all her dower and thirds, and in full satisfaction of any lands he had settled on her for life,"

[143] *Burton v. Pierpoint*, 648.
[144] *Ibid*, 649.
[145] "Seymour (afterwards Portman), Henry II (c. 1637-1728), of Orchard Portman, Som." http://www.historyofparliamentonline.org/volume/1660-1690/member/seymour-henry-ii-1637-1728 (Accessed 23 January 2018).

as well as his two best hunting-horses, his best pair of coach-horses, and "all her wearing apparel, and ornaments of her person, the gold watch and great pearl necklace which she usually wore, his snuff-box which came from *France*, and all his jewels."[146] He executed a codicil to the will on March 13, 1723, revoking the great pearl necklace and jewels but otherwise ratifying his will. One reported decision characterised this as a revocation of "*his* jewels" and "*her* pearl necklace."[147] Henry executed another codicil to the will on April 16, 1726, giving Meliora "his diamond ear-rings, which cost near 1,200*l.*"[148] Henry died in 1727. Meliora remarried the next year and with her second husband, Thomas Fownes, she brought a bill claiming paraphernalia.

Hardwicke held that he had to determine which items constituted paraphernalia because a husband could not at law devise away his wife's paraphernalia. He examined the wording of the will, noting that Henry explicitly revoked the devise of *his* jewels, which were explicitly distinguished from *her* apparel, gold watch and jewels, as well as ornaments of *her* person. These items called *hers*, therefore, were paraphernalia. As for the diamond earrings, Meliora did not seem to have worn them, "and therefore [they] might not be part of her paraphernalia."[149] Hardwicke also declared that "what jewels, utensils, and other things had been given to her by her husband, or by any other person by his consent or approbation in his life-time" should be delivered to Meliora and her second husband.[150] Interestingly, in 1741, Meliora was party to

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[146] *Portman v. Seymour* (1742), 88 Eng. Rep. 452, 453; Martin John West, *Reports of Cases Argued and Determined in the High Court of Chancery, from 1736 to July, 1739, From the Original Manuscripts of Lord Chancellor Hardwicke and the Contemporary Reports, Compared with and Corrected by Lord Hardwicke's Notes: With Notes and References to Former and Subsequent Determinations and to the Register's Book*, Vol. I (London, 1827), 109.
[147] *Seymore v. Tresilian* (1737), 26 Eng. Rep. 1007.
[148] West, *Reports of Cases*, 109.
[149] *Seymore v. Tresilian*, 1007.
[150] *Seymour v. Trevilyan* (1737), 25 Eng. Rep. 846.

litigation involving Henry's will and title to certain estates, which she claimed entitlement to by law of custom.[151]

Hardwicke also presided over the 1740 Chancery case of *Northey v. Northey.*[152] During her marriage to William Northey, Abigail received jewels from her husband and from family members, and she also purchased jewels on her own. In his will, Northey bequeathed Abigail some jewels for her life and bequeathed others to his brother Edward, the executor of his estate. After Northey died in 1738, Abigail brought a bill claiming the jewels as paraphernalia. Counsel for Edward, the executor, argued that, in order to be considered paraphernalia, a wife had to have "constant possession and custody" of the item.[153] Northey had only ever given his wife "a bare permission" to wear the jewels, as evidenced by the jewels being locked up and Abigail being "permitted only to wear them sometimes, at [her husband's] pleasure."[154] Hardwicke disagreed, holding that the jewels were paraphernalia, since Abigail "wore them for the ornament of her person whenever she was drest."[155] The jewels "being in the custody of the husband will make no alteration, for the possession of the husband is the possession of the wife." Hardwicke applied coverture in the wife's favour to give her ownership of the jewels.

Also in 1740, and just five weeks after he gave judgment in *Northey v. Northey*, Hardwicke decided *Ridout v. Lord Plymouth* in the Chancery. Interestingly, however, the discussion within the reported cases is strikingly different, revealing the extent to which the court grappled with the concept of paraphernalia.[156] This case came on as a result of significant debt on the estates of the Earl of Plymouth. Elizabeth Lewis married Arthur Windsor, the Earl of

[151] *Portman v. Seymour*.
[152] *Northey v. Northey* (1740), 26 Eng. Rep. 447.
[153] *Ibid*, 448.
[154] *Ibid*, 447.
[155] *Ibid*, 448.
[156] *Ridout v. Plymouth (Earl of)* (1740), 26 Eng. Rep. 465.

Plymouth, in 1730. They had one child, Arthur, in 1731; but Lord Plymouth died in 1732, and Lady Plymouth died the following year. In 1736, when Lady Plymouth's father, Thomas Lewis (possibly the infant Lord Plymouth's guardian) died, the Plymouth estate "was so encumbered with debt that the interest exceeded the rental, and three Acts of Parliament were obtained to sell" it.[157] In this context, which must incorporate a legislative shift in which bankruptcy fraud and forgery were becoming capital offenses, a claim for paraphernalia arose. Lord Plymouth's creditors, legatees and the heirs of legatees sought payment out of his estate; in particular, they sought jewels which Lady Plymouth had been gifted before and during her marriage. The defendants included Arthur, the infant Lord Plymouth, and Lady Plymouth's mother, Mrs. Lewis. The defendants' first argument, that the jewels were paraphernalia, was dismissed outright on the basis that a wife was not entitled to any items where her husband's assets did not cover his debts. This contradicts the principles set out in *Hasting v. Douglas* (1634), wherein a wife was entitled to retain all items necessary to her apparel. The reported decision contained no details of any discussion or ruling respecting necessity or convenience. However, this omission is not necessarily reflective of any general statement that such principles no longer applied. Rather, the omission is probably because Lady Plymouth was already dead and such a discussion was unnecessary.

The defendants' next argument was that Lord Plymouth had only acted as a trustee to the jewels his wife had received before their marriage; however, the court would not allow such a challenge to the basics of the law of coverture, finding such a contention "impossible to maintain." Lady Plymouth may have had absolute property in the jewels before marriage, but

[157] The National Archives of the UK: GB 0214 DPL.

"immediately upon the marriage, the law gives them the husband."[158] Finally, the defendants argued that the jewels given during the marriage were "too trifling" to be part of Lord Plymouth's estate.[159] Hardwick held that, under coverture, all gifts were possessed by Lord Plymouth as husband and that keeping the gifts from his creditors was "manifest fraud."[160] Though Hardwicke expressed dismay in his decision, stating it to be "a very unfortunate and very hard case, that Mrs. Lewis [Lady Plymouth's mother] should be stripped of these things,"[161] he made no effort to consider whether the gifts could have been deemed paraphernalia and thus retained by the defendants. Instead, Hardwick permitted Mrs. Lewis, a widow, to purchase the jewels from the creditors. Interestingly, the trustees of Mrs. Lewis' marriage settlement also purchased a portion of Lord Plymouth's estates valued at £47,000.[162]

In contrast, in the 1746 Chancery case of *Graham v. Londonderry*, Hardwicke did consider distinctions between gifts and paraphernalia.[163] Thomas Pitt, once the governor of Madras (nicknamed "Diamond Pitt"), had a son named Thomas, who married Frances Ridgeway in 1717.[164] Frances was the daughter and co-heiress of the late Earl of Londonderry. Upon the marriage, Thomas' father, Governor Pitt, gave Frances a collection of diamonds. The couple had three children, including the heir, Ridgeway Pitt. Thomas died in 1729, and Frances was remarried, to Robert Graham, in 1732. Around 1745, Ridgeway filed a bill against his mother and Graham with respect to Thomas' personal estate. At issue were three collections of diamonds, the first of which was the gift to Frances from Governor Pitt. Hardwicke decreed

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[158] *Ridout v. Plymouth (Earl of)*, 466.
[159] *Ibid.*
[160] Clancy, *Essay*, 62.
[161] *Ibid.*
[162] The National Archives of the UK: GB 0214 DPL.
[163] *Graham v. Londonderry* (1746), 26 Eng. Rep. 1026.
[164] Perry Gauci, "Pitt, Thomas (1653-1726)," in *Oxford Dictionary of National Biography* (Oxford University Press, 2004) https://doi-org.ezproxy.library.uvic.ca/10.1093/ref:odnb/22333 (accessed 9 February 2018).

these diamonds to be a gift from a father-in-law and thus for Frances' separate use with subsequent entitlement to them in her own right. The second collection of diamonds was set in a picture of the regent of France and was given to Frances by the regent of France via Thomas. Hardwicke decreed that, if this collection of diamonds was indeed a gift from the regent of France, the jewels fell "under the same rule, for being a present by a stranger during the coverture might be construed as a gift to her separate use."[165] The third collection of diamonds was a necklace that underwent several alterations. The evidence confirmed that Frances had worn the diamond necklace on special and public occasions. Hardwicke decreed the necklace to be paraphernalia. Though he agreed that a husband can make a gift to his wife, where a husband "expressly gives any thing to a wife to be worn as ornaments of her person only," it was to be "considered *merely* as paraphernalia."[166] The consequence of finding otherwise was that if such items "were looked upon as a gift to her separate use, she might dispose of them absolutely, which would be contrary to his intention."[167] In determining the category into which the necklace fell, Hardwicke considered the use to which the goods were put. If an item was ornamental, it was paraphernalia. In this case, Frances' use of the necklace was confined to special and public occasions. In the end, Frances was entitled to each collection of diamonds.

The 1784 Chancery decision of *Boynton v. Parkhurst* returns to the principles set out in *Hastings v. Douglas*.[168] Sir Griffith Boynton was married to Mary Hebblethwaite in 1768. Their first son, Griffith, was born in 1769. Boynton executed a will dated April 27, 1771 in which he appointed Lady Boynton as his executrix. In his will, Boynton gave to Lady Boynton his house for life, an annuity of £1000, and "the use of her jewels for her life," along with a variety of

[165] *Graham v. Londonderry*,1026.
[166] *Ibid*,1027.
[167] *Ibid*.
[168] *Boynton v. Parkhurst* (1784), 28 Eng. Rep. 1307.

household goods, plate, carriage, and a legacy of £200. A critical provision in the will, however, limited Lady Boynton's inheritance should she remarry: "if my said wife shall happen to marry again," then every devise, bequest, annuity "shall cease and be void" and be replaced by a £100 annuity.[169] The couple had two more sons, Francis in 1777, and Henry in 1778.

Boynton died on February 6, 1778. In July 1781, his heir, Griffith, filed a bill asking his mother to declare whether she would accept the benefits bequeathed her under Boynton's will or take dower rights instead. At the time, Griffith was only twelve years old, which suggests that other parties were controlling his claim. Concurrently, Boynton's creditors filed a bill seeking payment of debts from his estate. Lady Boynton elected to take her dower rights. The bills were heard by Master Sewel in May 1782. He found that Lady Boynton could not make a declaration as to her dower rights when she was not aware of the value of Boynton's personal estate; an accounting was ordered and a report filed in December 1783. To complicate matters, Lady Boynton remarried, to John Parkhurst, on January 19, 1784. In consequence of this event, Griffith sought to make Parkhurst a party to the bill, submitting that the value of Boynton's estate was affected by Lady Boynton's remarriage. In response to this bill, Lady Boynton sought to have her jewels declared paraphernalia. In April 1785, the question before the court was whether Lady Boynton was entitled to the jewels devised to her by Boynton as paraphernalia, "although the personal estate was not sufficient to pay the debts." Just as the court had decided in *Hastings v. Douglas*, Lady Boynton was awarded her jewels "in prejudice of the charged estate."[170] However, although the two reported decisions make little mention of debt, and one decision states that Sir Boynton's personal property could not repay his debt, the general

[169] William Brown, *Reports of Cases Argued and Determined in the High Court of Chancery, During the Time of Lord Chancellor Thurlow, and of the Several Lords Commissioners of the Great Seal, and Lord Chancellor Loughborough, From 1778 to 1794*, 4th ed., Vol.I (London: 1819), 445.
[170] *Boynton v. Parkhurst*.

commentary on this case suggests that the debt was charged to real property only. Because the jewels were personal property, they were not chargeable for debt until the real property had been liquidated.

Finally, the 1818 Chancery decision of *Walter v. Hodge* explores the treatment of gifts in the nineteenth century.[171] According to the reported decision, about eleven days prior to his death, Robert Hodge went to the bank and sold some of his property. He returned home and gave his wife Martha £600 in banknotes. He told her that, should anything happen to him, the banknotes were hers, and that she could use the money as she pleased. At this time, Hodge was "in a poor or indifferent state of health."[172] When he died less than two weeks later, Martha had spent some of the money and retained some of it on her person. Beneficiaries under Hodge's will filed a bill claiming that the banknotes were part of his estate. Martha responded by claiming the banknotes to be an absolute gift from her husband to her own separate use, alleging that she "considered the same as her own exclusively" and should not have to repay the sums she had expended.[173] Master Plumer held that the evidence was not sufficient to establish an absolute gift from husband to wife because there was no trustee involved – either a separate person or a clear and distinct act by Hodge to set himself up as his wife's trustee. Plumer held that "a mere delivery by a husband to his wife is far from being conclusive, the possession of the wife being in general the possession of the husband."[174] Martha was ordered to repay what she had spent of the banknotes and hand over those she had retained.

[171] *Walter v. Hodge* (1818), 37 Eng. Rep. 190.
[172] *Ibid*, 191.
[173] *Ibid*, 190.
[174] *Ibid*, 194.

2.4 Conclusion

Scholars of the law of coverture have established that women regularly challenged its restrictions in their daily life by way of the separate estate. The scholarship which suggests that women challenged coverture's restrictions tends to focus on feelings women had about their personal possessions, however, rather than on any evidence that women's rights to possessions were legally enforceable. By examining a variety of cases concerning the extent to which the separate estate allowed married women to negotiate coverture, it becomes clear that the separate estate should be defined in the sense of property being set aside for a special purpose – not in the sense of property detached from other property or rights of marriage, and certainly not in the sense of property severed from the overarching control of the husband. In the 1684 case of *Palmer v. Trevor*, the law is very clear that coverture strictly applies to a married woman's separate property, particularly where that woman is living away from her husband. However, no distinct principles of law emerged out of the concept of consent to enter into the separate estate, which was critical to its validity. Strict interpretation of the concept of consent is urged by *Howard v. Hooker* (1672), yet the principle is diluted in *St. George v. Wake* (1833) and open to wide discretion in *Strathmore v. Bowes* (1797) and *De Manneville v. Crompton* (1811). Drawing broad conclusions from the foregoing cases is problematic when we consider the circumstance of each case, although the underlying rule of each decision upholds established patriarchal principles that emphasise a husband's acquisition and control of all property rights during marriage. The case law surrounding paraphernalia and gifts as categories of the separate estate displays the same focus on patriarchal principles. Paraphernalia appears to be a category of personal possession that was prevalent in the seventeenth and eighteenth century but lost its importance by the nineteenth century, and certainly of so little significance by the time Clancy wrote his 1819 text as to be excluded from his writing. Although by 1818, when *Walter v. Hodge*

was decided, it remained the law that a husband could not gift a personal item to his wife for her separate use (because the possession of the wife was the possession of the husband), there does not appear to be a consensus established by precedent with respect to the treatment of paraphernalia.

Despite the inability to make general conclusions based on the cases examined in this chapter, one important pattern does emerge: the critical role of third-party creditors. This presence introduced an element of fraud with which the court had to juggle. For example, when *Burton v. Pierpoint* was decided in 1722, jewels explicitly given to a wife by way of her husband's will did not constitute paraphernalia to be exempted from a creditor's hands though this ran counter to the established rule of law that a husband could not devise away his wife's paraphernalia. By giving paraphernalia to his wife in his will, a husband excluded it from being categorised as paraphernalia and thus essentially devised it to his creditors. The pattern respecting creditors is most strongly evidenced by the contrasting decisions rendered by Lord Hardwicke. In *Seymore v. Trevlyan* (1737), *Northey v. Northey* (1740) and *Graham v. Londonderry* (1746), Hardwicke permitted a wife to retain jewels that she had worn as ornaments of her person and which thus constituted paraphernalia, or that had been given as gifts for her separate use. In *Ridout v. Plymouth* (1740), however, he disallowed a similar claim. The distinguishing feature of the latter case was the involvement of creditors and the demise of the wife, who thus had no use for the jewels.

Chapter 3 – Preserving the Law of Coverture: Pin-Money as "a pernicious ministrant to feminine independence"

> *Pin-money "is for the establishment, it is for the joint concern, it is for the maintenance of the common dignity; it is for the support of that family whose brightest ornament very probably is the wife; whose support and strength is the husband, but whose ornament is the wife."*
>
> *Howard v. Digby* (1834)

3.1 Classifying the Separate Estate: Pin-Money

In 1819 James Clancy published the second edition of his treatise on the legal rights of married women with respect to their separate property, '[*t*]*o Which is Added, the Law of Pin-Money.*"[1] The speed with which Clancy published this second edition – just four years after the first – and its inclusion of the concept of pin-money suggests that the latter was emerging as a significant legal mechanism. This chapter reviews the legal rights associated with pin-money to demonstrate that, while pin-money was technically categorised as separate estate, practically speaking, it could not be construed as property held by a married woman independently from her husband. Clancy defined pin-money as an annual sum settled on a woman before marriage, or allowed by her husband during marriage, "for her personal and private expenditure."[2] He listed clothes and ornaments as items to which pin-money could be applied. According to Clancy, pin-money was "not separate estate, of which the wife can dispose as she pleases," but was intended for a wife's personal enjoyment, and "it would be contrary to the intent of its creation, if she were capable of depriving herself of it."[3] When this statement takes into account that which Clancy identifies as properly purchased with pin-money – personal adornments – it is clear that a

[1] James Clancy, *An Essay on the Equitable Rights of Married Women, with respect to their separate property, and also on their claim to a provision, called The Wife's Equity, to which is added, the law of pin-money, separate maintenance, and of the other separate provisions of married women, Second edition* (Dublin: 1819), title page.
[2] *Ibid*, 375.
[3] *Ibid*, 53.

married woman's personal enjoyment excluded bettering her independent financial position to any significant degree.

Susan Staves' monograph dedicates a chapter to pin-money in which she examines case law to determine whether pin-money could be classified as a "species of property that women could be said to own" in spite of coverture.[4] Pin-money ostensibly provided a woman with a separate income during marriage. However, Staves' analysis of pin money through the lens of patriarchal ideology concludes that public policy considerations created only an illusion that pin-money compensated for the inequalities of marriage created by coverture. This chapter contemplates a number of cases involving pin-money, many of which were not referenced in Staves' study, yet I have drawn the same conclusions. I agree with Staves' assertion that, because pin-money was "a potentially threatening source of women's power," legal rules developed to minimise "the possibility that such property could become a source of women's power or the material basis for equality between men and women."[5] Though generalisations are difficult to draw from the small sampling of cases I have reviewed, the law emerging from the cases examined below, particularly the seminal decision of *Howard v. Digby*, suggests an overall intention to repress female financial independence by trivialising pin-money and retaining authority over a married woman's purchasing decisions.

The concept of pin-money was a "relatively new social phenomenon" that did not enter legal minds until the Restoration.[6] It emerged as a common legal practice by the nineteenth century in parallel with a rapid and dramatic expansion of commerce. Margaret Hunt refers to pin-money as a device "that was mainly resorted to by the very rich," although her evidence

[4] Susan Staves, *Married Women's Separate Property in England, 1660-1833* (Cambridge, Massachusetts: Harvard University Press, 1990), 132; 133.
[5] *Ibid*, 161.
[6] *Ibid*, 132.

demonstrates that the use of pin-money was spreading and normalising among middling groups in the nineteenth century.[7] Because pin-money concerns married women's financial interests, and Clancy's definitions (above) suggest that pin-money's use was limited to the purchase of ornaments, a consideration of women's contemporary consumption habits, and the economy within which they operated – including how such women were represented within that economy – is critical. An analysis of how the law of coverture affected pin-money requires knowledge of the personal value that married women placed on particular goods and the larger social value that society placed upon married women engaged in commercial consumption.

Joanne Bailey refers to an increasing array of domestic and personal goods available for purchase in the long eighteenth century, the consumption of which was greatly attributable to women. Her examination of the scholarship on consumption determined that women's "purchasing activities helped stimulate economic growth and industrialization."[8] Beverly Lemire describes a new credit culture emerging in which "a growing consumerism fired the economy," with "display and distinction" claiming the attention of adults and children alike. Lemire points out that, "whatever the legal constraints of coverture," married women played a significant role in the new economy.[9] She identifies clothing as "the most demotic arena where consumer politics and conflicts played out," with expenditures on clothing being of significant economic force.[10] Catherine Ingrassia's study of literary representations of women in the financial marketplace of the 1700s affirms the emergence of a new culture through an assessment of new

[7] Margaret Hunt, *The Middling Sort: Commerce, Gender, and the Family in England, 1680-1780* (University of California Press: 1996), 158.
[8] Joanne Bailey, "Favoured or Oppressed? Married Women, Property and 'Coverture' in England, 1660-1800," in *Continuity and Change* 17, no. 3 (2002), 353.
[9] Beverly Lemire, *The Business of Everyday Life: Gender, Practice and Social Politics in England, c. 1600-1900*, (Manchester and New York, 2005), 31.
[10] Lemire, *The Business of Everyday Life*, 7.

speculative investment practices and their impact on attitudes towards women.[11] Ingrassia recognises a "cultural anxiety about gender and credit … stimulated by the South Sea Bubble" and a subsequent sexualisation of investment that influenced popular literature.[12] This social anxiety was often directed at married women who used their separate estate to purchase stock. Of particular significance, Ingrassia reviews texts in which married women pawned jewels or gifts from their husbands to fund investment, a practice that, in the literature, was "compared to the activities of prostitutes, who are represented as immediately investing their earnings in the stock."[13] A wife's use of pin-money in ways that her husband had not directed was associated with disapproval, which reflects the concern found in *Manby v. Scott* over a century earlier.

In the same vein, Jennie Batchelor examines the role of women's pocket books in the eighteenth century as a way of identifying cultural and social pressures on women who participated in the economic sphere.[14] Pocket books – annual publications that incorporated a woman's accounts, diary and ladies' fashion magazines into one book – were intended to foster a private, financial world within which women had strict moral obligations.[15] Pocket books endorsed fashion only within "a prevailing economic and moral framework designed to cultivate socially and economically desirable wives and daughters."[16] Batchelor describes pocket books as being created "as preventative safeguards" of a woman's financial reputation.[17] The pocket book constructed a feminine ideal with the "double-edged power" of household moral and economic responsibility. Batchelor identifies what she calls a paradoxical response to the emerging

[11] Catherine Ingrassia, *Authorship, Commerce, and Gender in Early Eighteenth-Century England: A Culture of Paper Credit* (Cambridge: Cambridge University Press, 1998).
[12] *Ibid*, 11.
[13] *Ibid,* 36.
[14] Batchelor, "Fashion and Frugality: Eighteenth-Century Pocket Books for Women," *Studies in Eighteenth-Century Culture*, 32 (2003), 1-18.
[15] *Ibid,* 2.
[16] *Ibid*.
[17] *Ibid,* 6.

prevalence of pin-money: while the pocket book acknowledged and even affirmed a married woman's financial independence, it concurrently policed and asserted control over its reader's financial independence.[18] The pocket book invited a married woman to govern her own use of pin-money by suggesting ways in which she could spend her income, but those very suggestions, which focussed on frivolity instead of investment or real property, curbed true financial independence. Hunt similarly argues that the separate estate held "an equivocal place in eighteenth-century family life" because it was hard to reconcile with the ideal of female financial dependence and passivity."[19] More recently, Alexandra Shepard has examined married women's consumption habits in a case study of two married women who ran a pawn shop in eighteenth-century London.[20] Shepard identifies consumption as a crucial component of the contemporary economy: being "a form of asset management" founded upon married women's responsibility for household management. [21] Shepard examines the ways in which certain apparel was valued by the pawnbrokers, arguing that clothing was important, "not just as signifiers of status (in this case deemed 'as fine as any merchant's wife'), but also as repositories of wealth and as a kind of 'alternative currency'" in a "cash-scarce" economy.[22] As a result, married women are seen to possess a "considerable sense of entitlement … towards the moveable property that constituted their households (much of which they were charged with managing and protecting)."[23]

Karen Pearlston turned her mind to the intersection of married women and the changing economy in the context of creditors and bankruptcy. She identifies legal patterns suggesting that "the common law's formal adherence to coverture began to come under concerted attack,"

[18] Batchelor, "Fashion and Frugality," 2.
[19] Hunt, *The Middling Sort*, 157.
[20] Alexandra Shepard, "Minding Their Own Business: Married Women and Credit in Early Eighteenth-Century London," *Transactions of the RHS* 25 (2015), 53-74.
[21] *Ibid,* 54.
[22] *Ibid,* 63; 64
[23] *Ibid,* 65.

particularly where creditors were concerned.[24] She is particularly interested in examining coverture's implications with respect to married woman engaged in commerce who sought bankruptcy. While her work focusses on *feme sole* traders, which are beyond the scope of this thesis, Pearston's argument that exceptions to coverture

When set within the context of a changing financial atmosphere and women's role in commercial consumption, as outlined by the historians above, Clancy's legal writings and the case law emerging in this era demonstrate that pin-money remained inextricably connected to, and controlled by, a husband. Clancy was clear that pin-money was not separate property and "not that kind of property which gives [a wife] the power of a *feme sole* with respect to it."[25] Further, the social parameters governing a married woman's use of her pin-money strictly prohibited purchasing vehicles of financial independence, such as investments or real property, and strictly limited purchases to ornamental objects suitable to a woman's social standing. Combined, these concepts severely limited the separate nature of pin-money.

Despite claiming that pin-money was not separate property, Clancy asserts a husband's claims against pin-money savings were "altogether without foundation" because "it would be strange that [the husband] should have the power of reclaiming what he had given to his wife, or any of the fruits of the gift."[26] In other words, pin-money was irrevocable by a husband – giving his wife a semblance of legal ownership – yet it was not classified as independent property over which a married woman exercised exclusive control. Such reasoning follows earlier legal precedent. In the 1691 Chancery decision of *Herbert v Herbert* it was held that, where a married woman "by management or good housewifery saves money" out of pin-money, she may retain or

[24] Karen Pearlston, "Married Women Bankrupts in the Age of Coverture," *Law & Social Inquiry,* 34, 2 (Spring 2009), 266.
[25] Clancy, *Essay*, 381.
[26] *Ibid*, 53.

dispose of the savings or any goods bought with the savings in her will.[27] This appears to give a married woman ownership over her pin-money. However, although the reported decision is not specific about what goods were purchased with the pin-money, it is noteworthy that the wife – Margaret Herbert – did not purchase land with her savings, and the plaintiffs in the claim appear to be relatives, which suggests that they were seeking Mr. Herbert's estate to Margaret's detriment.

In the 1734 Chancery decision of *Slanning v. Style*, similar principles were applied.[28] According to the reported decision, during their marriage, Robert Style permitted his wife Mary to sell household goods and use any profits as a type of pin-money for her own separate use. Mary claimed that Style borrowed £100 from her pin-money savings, and she sought repayment of this debt from his estate after his death. The pin-money arrangement was not in writing, but the evidence showed that Style had had the same arrangement with his first wife and with his sister when she had acted as his housekeeper. The executrixes of Style's estate – his three sisters, who all benefitted under his will – contested Mary's claim. They argued that without a written a document "to raise a separate property in a *feme covert,* which was what the law did not favour," it was a connivance by his wife to enjoy her husband's earnings even after his death. The argument emphasised the source of pin-money: "in truth, the husband's borrowing this £100 of his wife, was no more than borrowing his own money." Lord Chancellor Talbot disagreed, finding that "courts of equity have taken notice of and allowed feme coverts to have separate interests by their husband's agreement." Mary had accrued savings with her husband's knowledge and consent, and this "seemed but a reasonable encouragement to the wife's frugality." The £100 was thus a debt the husband owed his wife.

[27] *Herbert versus Herbert* [1691] Prec. Ch. 45.
[28] *Slanning v. Style* (1734), 24 Eng. Rep. 1089 (also cited as *Stanney v. Style*).

As if to remedy against unwanted future uses of *Slanning v. Style* as a precedent, however, the report notes that "here was no creditor of the husband to contend with."[29] That is not strictly true, however. There were no third-party creditors, but the parties to the claim were Style's three sisters (and their respective husbands), who were beneficiaries under his will. Had debts to a *third-party* creditor been at issue, Mary's savings may have been liable to pay his debt; therefore it is questionable whether, in this case, pin-money savings were truly hers. This commentary reflects Clancy's understanding of the rights of a third-party creditor. Claims by a husband's creditors against his wife's pin-money (or goods purchased with pin-money) "stand on very different grounds" than the husband's claims to prevent "a gross fraud on them."[30] Such an emphasis on fraud, which links a third party to the wife's pin-money, destroys pin-money's quality as truly detached property with independent legal ownership.

The 1750 Chancery case of *Churchill v. Dibben* further qualifies the principles established above, attesting to the unwillingness of the judiciary to allow pin-money to become truly detached property.[31] According to the reported decision, prior to Elizabeth Brown's marriage to Thomas Dibben, particular lands were conveyed to her trustees with the income to be paid to Elizabeth "for her separate use and benefit." Although it is not clear that the income from the lands was characterised as pin-money, the principle established by this case suggests its usefulness to the study of pin-money. During the marriage, Elizabeth saved the income from her separate estate to purchase real property. She made her will on May 14, 1749, in which she bequeathed to her sister, Mary Churchill "all my estate in Porten" and to her kinsman, Thomas Churchill, a portion of a farm "now in my possession" and "all the lands that I have

[29] *Slanning v. Style*, 1091.
[30] Clancy, *Essay*, 54.
[31] *Churchill v. Dibben*.

purchased."[32] She gave her husband another estate she had purchased. The residuals went to other relatives, including her infant nephew. After her death, the court was asked to determine whether Elizabeth had authority to make dispositions of real property purchased out of her separate estate. Lord Chancellor Hardwicke held that (as in *Herbert* and *Slanning* above) a married woman was "at liberty to dispose of her personal estate" through her will. He distinguished land from personal goods when he held that no agreement that purported to dispose of real property – that is, land – would be of any effect. His reasoning for this prohibition was the sanctity of the family: "it is a third person in this case, the heir at law of the woman, that would be defeated by it."[33] However, it is noteworthy that it does not appear that Elizabeth had any children. Her will benefits her kin, including a man who appears to be her sister's son. Despite the parties to the claim not including a direct heir, the court held that Elizabeth had used money over which she had sole authority and with which she was permitted to purchase moveable goods, but had purchased land. She was forbidden to dispose of such land under coverture. By transferring her own money (personal property) into land (real property), Elizabeth recategorised her property so that her rights of distribution were confined by coverture.

Pin-money was bound up with the law of necessaries (a concept discussed in detail in Chapter 1) which further ensured that it would not be characterised as a legal device detached from the husband. Linking pin-money to necessary maintenance during marriage depreciated its value by connecting it solely to a married woman's need for bare subsistence instead of her financial independence or economic agency. For example, "the most important idiosyncratic

[32] John A. Dunlap, *Reports of Cases Decided in the High Court of Chancery by the Right Hon. Sir Lancelot Shadwell, Vice-Chancellor of England. With Notes and References to both English and American Decisions*, Vol. XVI, (New York: 1845), 449.
[33] *Churchill* v. *Dibben*, 1312.

rule"[34] was laid down in the 1722 decision of *Powell v. Hankey*, wherein pin-money arrears could not be carried back more than one year based on a presumption that a married woman who permitted pin-money to go unpaid must have been maintained to her satisfaction without resorting to her pin-money or must have willingly given her husband the pin-money.[35] Such a ruling runs contrary to the general law of contract wherein arrears for breach of contract run for the length of the contract and, as Staves claims, "was one reason why married women's property did not then lead to married women's power."[36]

The cases that follow the one-year arrears rule demonstrate the inextricable link between pin-money and the husband. In the 1725 Chancery case of *Thomas v. Bennet*, Mary Thomas was settled with £50 per year as pin-money for "apparel and private expenses" upon her marriage to William Bennet.[37] However, according to the reported decision, she did not receive her pin-money over the ten-year marriage. After her death, her executors sued for ten years' worth of arrears. The court dismissed the claim on evidence showing that Bennet had maintained his wife and that Mary had never demanded the pin-money. There is no evidence within the reported decision to suggest why Mary did not demand her pin-money. This situation – where a wife failed to demand arrears of pin-money during her marriage – demonstrates that pin-money was not truly for "private expenses,"[38] as set out in her pre-marital contract, or for personal enjoyment and "private expenditure," as set out in Clancy's treatise, all of which thereby diminishes the separate quality of pin-money.[39]

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[34] Staves, *Married Women's Separate Property*, 161.
[35] *Powell v. Hankey*, 24 Eng. Rep. 649.
[36] Staves, *Married Women's Separate Property*, 161.
[37] *Thomas v. Bennet* (1725), 24 Eng. Rep. 757.
[38] *Ibid*, 757.
[39] Clancy, *Essay*, 375.

In *Fowler v. Fowler* (1735), the Chancery reiterates this concept and further qualifies the separate nature of pin-money.[40] Sarah Sloane married Richard Fowler in 1706, at which time Sarah was settled with £100 per year as pin-money. According to the reported decision, over a two-year period, Fowler did not pay the pin-money, then he drafted a will in which he expressed "great affection for his wife" and "gave her a legacy of £500."[41] For another year after the will was completed, he did not pay the pin-money. Then he died, after which Sarah's trustees, along with her children (who were beneficiaries under their father's will) sought arrears. At issue was whether the £500 legacy set out in Fowler's will sufficiently satisfied the arrears. Lord Chancellor Talbot restricted arrears to one year; therefore, the £500 legacy more than satisfied Fowler's debt to his wife. It is instructive that, in his decision, Talbot ensured that the principle of pin-money arrears was properly elucidated: "Where pin-money is secured to the wife, and it appears that the husband notwithstanding provides the wife with clothes and other necessaries, this, during such time as the wife is so provided for by the husband, will be a bar to any demand for her arrears of pin-money."[42] As in *Thomas* above, Talbot's ruling focussed on ensuring a wife was appropriately maintained during marriage. He does not acknowledge that Sarah may have wanted pin-money for purchases of personal enjoyment. Clancy submits that "there is good sense" in the decisions that construe pin-money as a type of maintenance, since "the object of pin-money being to supply clothes and ornaments to a wife, when her husband provides these things for her, and she accepts of them, it must be taken to be a satisfaction of her claim, and that she agrees to such payment."[43] This statement, and the case law reviewed above, directly supports Hunt's contention that contemporary attitudes trivialised pin-money, suggesting that a

[40] *Fowler v. Fowler* (1735), 24 Eng. Rep. 1098.
[41] *Ibid*, 1098.
[42] *Ibid*.
[43] Clancy, *Essay*, 379.

married woman had no need – let alone desire – for anything beyond bare maintenance, the terms of which were strictly defined by her husband.[44]

In the 1737 case of *Moore v. Moore*, the definition of pin-money is examined in a different way when the Chancery heard a claim for payment of pin-money during separation and the one-year arrears rule was ignored.[45] Anastasia Aylward was the daughter of John Aylward, a merchant of Irish origin who established an expansive Atlantic trading network. Aylward lived abroad much of his life, marrying Helena, the widow of a French merchant. Anastasia was likely born in France and moved to London with her family at the turn of the eighteenth century. After her father's death in 1705, Anastasia became co-heir with her two sisters. Helena took over the trading enterprise and negotiated lucrative marriages for her daughters.[46] In 1707 Anastasia was engaged to marry Sir Richard Moore, and she was settled with £100 per year as pin-money. During the marriage, Anastasia gave birth to fourteen children, all but two of whom survived infancy.[47] The couple was married for twenty years "with great harmony," according to the court,[48] though "there wer [sic] continual quarrels between the plaintiff and the defendant about pin-money." Witnesses swore that Moore "divested her of all kind of management, and made her not only as a cypher in his family but took from her even the respect due to her from his

[44] Hunt, *The Middling Sort*, 158.
[45] *Moore v. Moore* (1737), 26 Eng. Rep. 174.
[46] Giada Pizzoni, "Economic and Financial Strategies of the British Catholic Community in the Age of Mercantilism, 1672-1781," (PhD diss, University of St. Andrews, 2015). Anastasia's elder sister, Mary, married Henry Charles Howard, the son of the Earl of Arundel, and their son became the 10th Duke of Norfolk.
[47] Thomas Wotton, *The English Baronetage: Containing a Genealogical and Historical Account of all the English Baronets Now Existing: Their Descents, Marriages, and Issues; Memorable Actions, both in War, and Peace; Religious and Charitable Donations; Deaths, Places of Burial, and Monumental Inscriptions; Collected from Authentick Manuscripts, Records, Old Wills, our best Historians, and other Authorities*, Vol. II (London: 1741), 27.
[48] *Moore v. Moore*, 174.

servants."[49] Around 1727, Anastasia left her husband and moved (back) to France. For at least the first six months of their separation, Moore paid her pin-money.

Eight years into the separation, Anastasia's trustees brought a bill seeking payment of pin-money unpaid during the separation. The trustees' counsel argued that the agreement upon which the pin-money was payable was strictly worded to the effect that pin-money was payable "at all events," which must be taken to include separation, and that pin-money had been provided "upon the highest considerations, that of marriage, and a large portion."[50] In response, Moore brought a bill seeking relief against any arrears, arguing that pin-money was only payable during cohabitation as its purpose was to purchase household goods. Further, Anastasia, "by her misbehaviour, in causelessly deserting her family, had forfeited her pin-money." In his judgment, Lord Chancellor Hardwicke laid down the principle that pin-money was "not to incourage a wife to leave her husband, whatever his behaviour may be; for, was this the construction, it would destroy the very end of the marriage contract, and be a public detriment."[51] While Moore "hath made his wife uneasy in respect of the pin-money … this will not justify her going away." [52] This tenet unequivocally established that a wife was prohibited from saving her pin-money in order to accrue a source of funds with which she could guarantee her own maintenance should she *need* to leave her husband. However, Hardwicke held that Moore's continuous payment of pin-money for a period of time during the separation evidenced "a strong presumption that he thought at least she was excusable in separating herself from him."[53] On this basis, he ordered an accounting of amounts due to Anastasia for arrears. Remarkably, the report of Hardwicke's

[49] *Moore v. Moore*, 176.
[50] *Ibid*.
[51] *Ibid*.
[52] *Ibid*, 177.
[53] *Ibid*.

judgment does not mention the one-year arrears limitation, nor does Hardwicke address the contention that pin-money was intended for household use only.

The case law and the treatises establish that pin-money was not to be used by a wife for securing her financial independence, and once paid, pin-money was irrevocable by the husband. However, if a husband refused to allot pin-money to his wife, ignoring a legal instrument strictly setting out his obligation to pay it, his wife was able to recover only one year's worth of arrears. This discrepancy demonstrates the non-separate nature of pin-money, a characterisation that is celebrated by the treatise-writers. While a wife's pin-money was ostensibly hers alone, and something her husband could not touch, he had to actually pay it out to her in the first place in order for it to qualify as hers. If he chose not to do so while continuing to uphold his part of the presumed economic exchange contemplated by marriage by providing maintenance – a term he alone defined – he would not be liable to any accrual of pin-money debt. Such principles benefitted the husband while keeping a wife from making private expenditures for personal use, and certainly not for personal gain, in contrast to the definition of pin-money set out by Clancy.

3.2 *Pin Money* (1831) by Catherine Gore

The jurisprudence and the treatises of the seventeenth and eighteenth century establish pin-money as an emerging legal device; by the nineteenth century, pin-money was such a common device as to be the title and central plot line of a contemporary novel. *Pin Money*, written by Catherine Gore in 1831, exemplifies the fears associated with the pervasiveness of a form of independent income for married women. It is a moral tale of a young woman who receives pin-money upon marriage but is unable to handle it appropriately, nearly leading to her

disgrace.[54] The notion of a wife spending an allowance independently of her husband is seen to encourage immoral behaviour in the main character, a wife. The plot of *Pin Money* fits within the parameters identified in Batchelor's work on nineteenth-century literature. Batchelor recognises a social concern with married women's financial involvement playing out in the plots of contemporary literature. She identifies a common plot structure "in which heroines, regardless, or often because of their virtue, face seemingly insurmountable financial difficulties which threaten their reputation, that of their family and even their very lives."[55] *Pin Money* follows Batchelor's description with a plot line that "charted a woman's fall as an economic crisis."[56] The novel also fits into the contemporary focus on the patriarchal family identified by Hunt, who points out the tendency among eighteenth-century writers to criticise the separate estate "on the grounds that the device encouraged wifely disobedience and hence familial disharmony."[57]

Frederica Rawston, the main character, is introduced as a newly-engaged young woman as "indifferent respecting money matters as prosperity and ignorance of the world could render her."[58] Her fiancé, Sir Brooke Rawleigh, is a humble man with "sterling principles of honour and honesty."[59] Frederica's brother, Lord Launceston, stinging from a series of bad debts incurred as an Eton schoolboy, is depicted as a man of easy disposition who regarded Sir Brooke as "too prudent by half."[60] Frederica's mother, Lady Launceston, is portrayed as being ignorant of the financial implications of marriage, with "no head for business."[61] Her financial ignorance is premised partially on her deceased husband's unwillingness to involve her in financial matters

[54] Ingrassia, *Authorship, Commerce and Gender*; Batchelor, "Fashion and Frugality;" Harriet Guest, *Small Change: Women, Learning, Patriotism, 1750-1810*, (Chicago: The University of Chicago Press, 2000).
[55] Batchelor, "Fashion and Frugality," 2.
[56] *Ibid*, 7.
[57] Hunt, *The Middling Sort*, 158.
[58] Catherine Gore, *Pin Money; a Novel*, 3 vols., vol. 1 (London: 1831), 33-34.
[59] *Ibid*, 24; 25.
[60] *Ibid*, 28.
[61] *Ibid*, 6.

during their marriage, for her husband "could not endure to see a woman worldly-wise" and "used to say that a managing woman deserved to wear a beard by way of penance."[62] Lady Launceston's sister, Lady Olivia Tadcaster, is the designated independent woman who refers to her dead brother-in-law's "arbitrary notions of female delicacy and feminine nonentity" with distaste.[63]

The concept of pin-money is introduced in the novel's first scenes. In contemplation of her niece Frederica's marriage, Lady Olivia advises Lady Launceston to consider pin-money in the marriage settlement. Lady Launceston insists that talk of finances is inappropriate, especially since "Sir Brooke has a very pretty estate; so Frederica will be tolerably well off." Lady Olivia is adamant that Lady Launceston ensure provision for Frederica – whose fortune of £10,000 "may prove extremely convenient to pay off mortgages," which ensures she has "a right to look for liberal overtures" – and is shocked by her sister's contention that "Sir Brooke's lawyers will settle all that."[64] Through this exchange, Lady Olivia is represented as an independent-minded financial advisor, whereas Lady Launceston depends upon her future son-in-law to take care of her daughter. When Frederica herself is invited to the discussion, pin-money is depicted as conducive to marital discord. Frederica, preferring a sentimental view of marriage, reluctantly acquiesces to advice that she secure pin-money, but she insists that, when asking for the pin-money, her mother not let Sir Brooke "suppose *I* have any mercenary views in my marriage. Ask merely what is necessary for me."[65] The dialogue asserts that pin-money should be restricted to necessary purchases, thus classifying it as maintenance and not independent income. Sir Brooke succeeds in reducing the pin-money request by £100 per year, following which, "as rigid an act

[62] Gore, *Pin Money*, vol. 1, 7.
[63] *Ibid*, 7-8.
[64] *Ibid*, 5-6.
[65] *Ibid*, 18-22.

of marriage settlement was signed … as if Sir Brooke and Lady Rawleigh were about to marry chiefly in contemplation of a divorce; and to swear an eternal unity of mind, body, and estate, chiefly for the maintenance of separate interests and opposing rights."[66] The author's depiction of pin-money as adverse to the interests of marriage foreshadows its danger to the newlyweds.

After the couple marry, they move to Sir Brooke's country estate, where Frederica's quiet life breeds impatience. She is first tempted by an opportunity to spend pin-money when she aspires to add a fountain to her newly-commissioned garden. Reckoning that she does not want to propose such a luxurious expense to her husband, she "resolved to indulge herself" in buying the fountain on her own, saying she "will make myself a *cadeau* out of my *pin money*."[67] (The use of the French term adds another layer of presumed immorality.) When the couple return to London after Sir Brooke decides to seek a Parliamentary seat – which means restricting their finances – Frederica's friend Mrs. Erskyne is introduced. Mrs. Erskyne is portrayed as the troublesome friend "over head and ears in debt," despite £500 per year pin-money, who is critical of Frederica's country sensibility, dismissing her clothing as outdated, for example, and encouraging Frederica to spend money.[68] Frederica's second temptation to spend pin-money arises when Mrs. Erskyne seeks her partnership in an opera box subscription – an obvious opportunity for dalliances (adding another layer of immorality). Having purchased the opera box subscription out of her pin-money, Frederica is ashamed to tell her husband about it. Revealing it to him, she refers to her acquisition as a crime.[69] Sir Brooke agrees, characterising this purchase, "the first use you make of your independence," as unreasonable, imprudent and "wantonly

[66] Gore, *Pin Money*, vol. 1, 23.
[67] *Ibid*, 36.
[68] *Ibid*, 52.
[69] *Ibid*, 60-62.

extravagant."[70] Sir Brooke's reaction conveys his discomfort over the connotation that he has not properly maintained his wife, his anxiety about Frederica making independent decisions, and his conflation of *her* pin-money with *their* finances.

Frederica is tempted by her third opportunity to spend pin-money when she purchases a horse. With her approval, Sir Brooke had left her horse in the country but Frederica reflects "that it would be impossible to appropriate [pin-money] more to her personal satisfaction than in the purchase" of a horse in London, which she does without Sir Brooke's knowledge.[71] When he discovers the purchase, the reader learns the principles upon which he objects to pin-money. He considered pin-money "a pernicious ministrant to feminine independence."[72] His fury over the horse purchase represented more than just Frederica's independent use of pin-money – her purchase enabled her to make use of the London outdoors without him, which risked an "approach to familiarity" that was "dangerously easy" on a horse.[73] In light of his wife's purchase, he believed that "the submissive acquiescence with which she received his sentence on her favourite mare, had arisen from a pre-determination to avail herself of the facilities afforded by her *pin money* to add artifice to defiance."[74] Sir Brooke believed his wife had only agreed to leave her horse in the country because she intended to circumvent his authority once in London, and he was vexed by this "offence of her financial independence."[75]

Frederica's final opportunity to spend pin-money epitomises the disgrace she is courting. In the company of the fashionable elite – despised by her husband, of course –Frederica suffers a substantial loss at cards and becomes indebted to the rakish Lord Calder. In a later passage, Sir

[70] Gore, *Pin Money*, vol. 1, 60-62.
[71] *Ibid*, 153.
[72] *Ibid*, 167.
[73] *Ibid*, 168.
[74] *Ibid*, 168-169.
[75] *Ibid*.

Brooke's disapproval of gambling is revealed when he says "I would as soon be married to a hyena as to a gambling wife."[76] Frederica's gambling debt is depicted as being so egregious that she is "started into sobriety."[77] She becomes burdened by the guilt of not disclosing her debt to Sir Brooke. The author has applied all the moral tropes in the plot of this novel – French fashion, infidelity, dishonesty, social extravagance, and gambling – to illuminate the risk of pin-money. Frederica becomes increasingly frantic and the text contains numerous descriptions of sweaty brows, distressed spirit and crises. What is to blame? Pin-money, of course:

> 'Oh! that horrible pin money!' murmured she, in the feverish restlessness of her nocturnal reflections. 'Had I found it necessary to have recourse to Rawleigh for the detailed payment of my debts, - had full and entire confidence been established between us in the defrayment of my personal expenses – never, never should I have plunged into the excess which embitter a destiny especially blest by Providence!'[78]

Without her husband's guidance, Frederica risks disgrace because of her independent financial decisions.

Frederica's story does not end in disgrace, however. Miraculously, she is saved by a spontaneous late wedding gift in an amount that perfectly satisfies her debt. She vows never to trust herself with money again. She exclaims to her husband, "for the future let the odious word of PIN MONEY be forgotten between us!"[79] As she speaks, "tears of tenderness and repentance streamed from her eyes," and she calls her husband "a merciful judge." To Sir Brooke's feeble attempt at reminding her of the legal obligations of their marriage settlement, Frederica replies, that "[n]othing has been, or ever shall be, legally specified between us! – I have proved myself

[76] Catherine Gore, *Pin Money; a Novel*, 3 vols., vol. 2 (London: 1831), 252.
[77] *Ibid*, 210.
[78] Catherine Gore, *Pin Money; a Novel*, 3 vols., vol. 3 (London: 1831), 224.
[79] Gore, *Pin Money*, vol. 3, 295.

incapable of the management of my revenue."[80] The novel concludes with Frederica regretful of her independent purchasing decisions but forgiven by a compassionate husband. The last scene sees a family preparing for Lord Launceston's marriage. In the very last line of the novel, Frederica is urged to warn her brother about his proposed marriage settlement: "go and interpose a word of advice on the important article of PIN MONEY!"[81]

The moral lesson that pin-money encourages a married woman's independence, which strikes at the core of marital values, is on display in *Pin Money*. But does this lesson truly reflect the contemporary social view of married woman's independent income? Two contemporary reviews of the novel suggest that the novel was attempting to enforce a moral lesson on an unreceptive audience. In the *Westminster Review*, an anonymous reviewer warns that the novel does not conform to popular social opinion: "A person reasoning of these times in another age, might be led into a great mistake… that it was thought a fit subject for a book, to guard the female sex against being led into the error of accepting an income."[82] The writer describes the book as an attempt to show "the danger of a married lady's possessing four hundred a year independent of her husband," but s/he does not seem to accept the moral lesson.[83] Similarly, *Fraser's Magazine for Town and Country* published an article in which an anonymous reviewer cites *Pin Money*'s lesson to be that "'pin-money' is an abomination no longer to be countenanced by the heiresses of the land; for that all heiresses, no matter whom they may marry, ought to be entirely dependent on their husbands for all their pecuniary supplies."[84] But s/he dismisses this

[80] Gore, *Pin Money*, vol. 3, 296.
[81] *Ibid*, 327.
[82] "Art. IX – *Pin Money*. By the Author of the "Manners of the Day," *The Westminster Review* Vol. XV (July-October, 1831), 1.
[83] "Art. IX – *Pin Money*," 1.
[84] "The Novels of the Season, Batch the Second," *Fraser's Magazine for Town and Country*, Vol. IV, No. XIX (August 1831), 12.

lesson outright when s/he writes that "the females of the land will not swallow such blarney."[85] The writer emphasises positive attributes of pin-money not explored in the novel: married women "know their own hearts too well, and know the condition of society also too well, not to be convinced that 'pin-money' in very many cases has been the salvation of a family when overtaken by misfortunes; and that women of strong minds and inflexible principle can be trusted with money."[86] Significantly, while dismissing the moral lesson, the reviewer retains his/her paternalistic bias, asking readers to forgive Mrs. Gore, the author, for she "is a woman, and must therefore be forgiven for a woman's foibles and a woman's weakness."[87]

3.3 The Case of *Howard v. Digby* (1834)

The social anxiety that underscores much of the plot in *Pin Money* was also prevalent in fact, as demonstrated in the 1834 Chancery case of *Howard v. Digby*. Like *Pin Money*, *Howard v. Digby* reflected the growing social unease with women's financial independence and provides a practical illustration of the judiciary's solution for restricting pin-money. The judicial response to pin-money was to distinguish pre-existing decisions so that they no longer offered value as precedents. The facts surrounding the parties, as extracted from materials other than the decisions of *Howard v. Digby*, along with the decisions themselves, establish a legal distinction between pin-money and the separate estate. In what has been described as a "spectacular" case, *Howard v. Digby* involved litigation spanning the years 1823-1834 between Lord Digby (the administrator of the late Duchess of Norfolk's estate) and Henry Howard (the executor of the late Duke of Norfolk). [88] The final disposition on this case came from the House of Lords, but its journey from the Court of Chancery reflects a shift in judicial thinking where the ultimate

[85] "The Novels of the Season," 12.
[86] *Ibid*.
[87] *Ibid*.
[88] Staves, *Married Women's Property,* 147.

determiners of the case were an elite judiciary uncomfortable with married women's financial independence and seeking to respond to social anxiety about women's financial independence. The House of Lords soundly rejected the Court of Chancery decision, and in a lengthy and repetitive decision written by Lord Chancellor Brougham, the House of Lords held that pin-money did not form part of a married woman's separate estate.[89]

Charles Howard was heir to the Duke of Norfolk and engaged to marry Miss Frances Scudamore, the daughter of Frances Scudamore – who had been divorced by her first husband, the Duke of Beaufort, for adultery – and Charles FitzRoy, the illegitimate son of the Duke of Grafton. Despite her scandalous parentage, Frances was heiress to an immense fortune. She was described in the press as "possessed of considerable estates,"[90] possessing property in five counties that earned £4,000-£5,000 per year and of cash valued at over £26,000.[91] The parties entered into a marriage settlement in March 1771 wherein Howard would receive his wife's fortune in exchange for settlement upon her of £5,000 "to purchase clothes, jewels and other necessaries on the occasion of her marriage," and pin-money. [92] The pin-money was derived from two sources: Frances' own estates, which she was to inherit upon her father's death, and the estates that Howard was expected to inherit from his father. Of the first source, the legal documents entitled Frances to income from rent-charges (a legal device wherein a payment is annually levied against land) in the sum of £500 and £700 respectively, to be held in trust for Frances' "sole and separate use, exclusive of Howard, who was not to intermeddle therewith, nor were the same to be subject to his debts or engagements."[93] Of the second source, the legal

[89] *Digby (Earl) v. Howard*, 58 Eng. Rep. 220 (hereafter *Shadwell's Judgment*).
[90] *Hereford Journal*, Nov. 16, 1831, Issue 3201.
[91] Richard Bligh, *New Reports of Cases Heard in the House of Lords, on Appeals and Writs of Error; and Decided During the Session 1834*, vol. VIII (London: 1837), 225.
[92] *Shadwell's Judgment*, 220.
[93] *Ibid*, 221.

documents provided Frances with £300 per year in quarterly installments for pin-money for her separate use out of Howard's estates, which was "in augmentation of the pin-money thereinbefore appointed to be paid to her out of her own estates."[94] In other words, two separate legal instruments gave Frances £1500 in pin-money from two difference sources.

On April 2, 1771, the couple was married. Upon marriage, the whole of Frances' property, with the exception of the sum reserved for her wedding apparel, passed to her husband. When Frances' father died in August 1782, she became entitled to receive £700 per year for pin-money to her separate use in lieu of the £500 that had previously been paid to her. She also continued to receive the £300 payable out of Howard's estates. In 1786, Howard became the Duke of Norfolk. During the marriage, despite the Duke enjoying all of the rents and profits of his wife's estates, "no direct payment was made to her separate use, according to the strict provision of the settlement."[95] The Duchess reportedly had a "fit of hysterics" on the church steps following her wedding ceremony.[96] From early on, the Duchess' mind "proved to be unsound," though she lived with her husband until 1809, when the couple began living separately.[97] The Duke died in December 1815. Just four months later, in April 1816, an inquiry was made into the Duchess' mental state and a commission of lunacy was issued against her. It was determined that she had been "a lunatic, without lucid intervals, from December 1782," which – coincidentally or conveniently – was just four months after her father had died, entitling her to an inheritance, which would benefit her heirs. The persons responsible for bringing the inquiry were her co-heirs and distant relatives, Lord Edward Digby, Sir Edwin Stanhope and

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[94] *Shadwell's Judgment*, 221.
[95] Bligh, *New Reports*, 240.
[96] Ian Atherton, "Scudamore family (per. 1500–1820)," in *Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2004), http://www.oxforddnb.com.ezproxy.library.uvic.ca/view/article/71878 (accessed 23 Nov 2017).
[97] *Howard v. Digby* (1834), 6 Eng. Rep. 1293 ("*Brougham's Judgment*), 1299.

Daniel Burr (representing his wife Mary and her sister Ann). In May 1817, these individuals were granted "Custody of the Person, and management of the real and personal Estate of the Most Noble Frances Fitzroy Howard, Dowager Duchess of Norfolk, a Lunatic, she being unable to govern herself or to manage her Estate."[98] A bill was filed by the personal representatives in May 1820 seeking pin-money arrears, but the Duchess, who remained in a "lamentable state of mind" until her death, died intestate in October 1820.[99] Following her death, Lord Digby was permitted by the court to recommence the suit in his own name.

Lord Digby, the Duchess' heir, filed a bill in his own name in the Court of Chancery in April 1823, three years after the Duchess' death. The bill claimed that the Duke had "appropriated all the rents of the said estates to his own use, and that no part of the annuities was, during that period, applied according to the trusts thereof declared" by the instruments of March 1771. The Duchess had not consented to such use of her pin-money, and, "in fact, she was … incapable of consenting, by reason of her lunacy."[100] The bill sought thirty-eight years' worth of pin-money arrears – from the date of the Duchess' commencement of lunacy (1782) until her death (1820). The defendant was the Duke's executor, Henry Howard, who was the son of the Duke's heir, Bernard Howard. Henry Howard took the title Duke of Norfolk himself after his father's death and likely inherited the Duke's estates. Howard claimed that not only had the annuities been applied to the Duchess' use, but the Duke had also applied other sums "to a very large amount" for the Duchess' maintenance, which had kept her in a separate establishment according to her rank, and provided her with "carriages and horses, and with clothes, ornaments and all such articles of necessity, convenience, comfort and enjoyment as are contemplated to be

[98] Daniel Burr, *Memoir of the Life of Lieut. Gen. Daniel Burr. With a supplement containing Letters; documents relative to the succession to the estates of the late Duchess of Norfolk; Inscriptions; &c.* (London: 1821), 99.
[99] *Hereford Journal*, Nov. 16, 1831, Issue 3201.
[100] *Shadwell's Judgment*, 222.

provided by settlements of pin-money."[101] Howard's counsel argued for a presumption of consent on the part of the Duchess.

The matter was not argued before the Vice-Chancellor, Sir Lancelot Shadwell, until November 1831, eight years after the bill was originally filed. His decision was issued that same month. While this suggests that there was considerable legal debate during the intervening years, no examination of witnesses on either side took place, despite the defendant's admission before the court that no pin-money had been provided to the Duchess. Both the Duke and Duchess were dead, of course, but the Duchess' trustees did not testify, nor did any witness who might comment on the manner in which the Duchess lived, both before and after her mental state had diminished. There was no testimony about the manner in which the Duke himself enjoyed his wife's fortune, or whether or not he used her pin-money for his own purposes. Contemporary newspaper reports suggest that the Duke led an extravagant lifestyle. For example, in July 1771, shortly after the marriage, he is reported to have "lost 20,000*l.* at one sitting, at three handed whist."[102] This is equivalent to about £2.4 million today.[103]

Lord Digby's lawyers presented two main arguments before Shadwell. The central argument related to authority: only a wife could authorise the use of her pin-money in a way other than that which was contemplated by the legal instrument regulating its distribution. In this case, the legal instrument had "a singularity in the frame of the settlement."[104] For example, the wording specifically provided that the rent-charge upon which the Duchess received £500 annually was for her *separate use*, and that the land upon which the rent-charge was levied was

[101] *Shadwell's Judgment*, 222.
[102] *London Evening Post*, July 11-13, 1771, Issue 6799.
[103] https://www.measuringworth.com/ukcompare/relativevalue.php?use%5B%5D=CPI&use%5B%5D=NOMINALEARN&year_early=1771&pound71=20000&shilling71=&pence71=&amount=20000&year_source=1771&year_result=2018, (Accessed 22 January 2018).
[104] *Shadwell's Judgment*, 223.

settled only on the Duchess. That is, a source of the Duchess' pin-money was land and the income derived from it, which were both hers alone. Therefore counsel argued that it "manifestly was the intention" of the settlement to "keep the duchess's separate property divided" and give the Duke only limited marital rights to income.[105] The Duke therefore needed his wife's consent to put the pin-money to the uses he had, and the Duchess could not have consented because she was not of sound mind. Counsel's second argument related to the purpose of pin-money, which was asserted to be of a separate nature than ongoing maintenance: the Duke had a legal responsibility, pursuant to the contract of marriage, to "maintain the duchess according to her station in society, without encroaching on her pin-money."[106]

In contrast, Howard's counsel argued that pin-money was distinct from the separate estate. Pin-money was "a provision for the fanciful and luxurious enjoyment of the wife: neither a child nor any person except the wife is intended to benefit by it, and it does not continue longer than the joint lives of the husband and wife."[107] Pin-money gave a married woman "those additional luxuries and comforts which the husband would not be bound to allow her."[108] In other words, these were items to which the law of necessaries would not apply, to which maintenance did not qualify, and for which a husband had no obligations. The Duke had already "supplied the duchess with all those luxuries and comforts which her pin-money was intended to procure."[109] Lord Digby was therefore asking the Duke to pay twice for the same item – an absurdity. The source of the fund from which the items were paid made no difference since the important point was that the funds were available.

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[105] *Shadwell's Judgment*, 223.
[106] *Ibid*.
[107] *Ibid*, 224.
[108] *Ibid*.
[109] *Ibid*, 225.

Shadwell listened to submissions from the defendant's counsel, then indicated that he did not require further reply because he had "a very clear opinion upon the subject."[110] He began his judgment by identifying the Chancery's doctrine that a married woman was entitled to her separate estate as her own property.[111] Within that doctrine, however, where a married woman has consented or acquiesced to the use of her separate funds, the funds surrender their separate status. Although Shadwell addressed the nature of pin-money – stating that pin-money was never "intended to be applied to the necessary maintenance" – the focus of his judgment was consent: or rather, the Duchess's inability to consent.[112] He agreed that the Duke had in fact provided necessary maintenance for his wife, in compliance with his obligations. However, Shadwell did not direct a further inquiry into maintenance because his decision rested on the opinion that "it is not shewn that she could have consented, or permitted by any acquiescence of her own mind, the duke to receive her separate income." He ordered payment of the arrears of pin-money back to December 1782. Shadwell's decision was reported widely in newspapers with an emphasis on his pronouncement of the law of the separate estate; for example, the *Norfolk Chronicle* wrote, "the Vice Chancellor laid it down as the settled doctrine of the Court, that a wife was as much entitled to her own separate estate, as any person to his own exclusive property."[113] On the face of it, Shadwell's decision appears to be about married woman's agency by granting a married woman the right to exclusive control over her separate property. However, the woman who ostensibly benefitted from Shadwell's decision was long dead; the real beneficiaries were not women but rather male heirs to the Duchess' fortune. They were unlikely to have been motivated by anything other than their inheritance.

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[110] *Shadwell's Judgment*, 225.
[111] *Ibid*.
[112] *Ibid*, 226.
[113] *Norfolk Chronicle and Norwich Gazette*, Nov. 19, 1831, Issue 3207.

The unsuccessful defendant, Howard, appealed Shadwell's decision to the House of Lords. The Lord Chancellor, giving the House of Lords' January 1834 decision, was Henry Brougham, who was raised to the peerage as the first Baron Brougham and Vaux in order to take on the Lord Chancellorship in November 1830. Howard's appeal was based on two principal foundations. First, he submitted that Shadwell had erred in defining pin-money as analogous to the separate estate when "[p]in-money should not be confounded with the wife's separate estate generally."[114] Second, no pin-money was owed because the Duke had continually maintained the Duchess, even during her mental illness and while they lived separately.[115] Alternatively, if pin-money was payable, it was limited to one year of arrears.

Howard's counsel crafted a series of submissions in support of their main contentions. To begin with, they argued that the Duke had provided his wife with maintenance "suitable to her rank, expending a sum far exceeding the annuities, in providing for her clothes, jewels, and all such other ornaments [as are] contemplated by the provision of pin-money."[116] In describing this maintenance, counsel speculated that the Duchess would have celebrated her situation by saying, "I am grateful for your payments and kind treatment of me; for having been established in my splendid mansion by you, and kept in all the comfort and magnificence to which I am entitled."[117] Howard's counsel submitted that, if arrears were found owing, they must be set off against amounts the Duke expended in maintenance and the supply of that which was normally purchased with pin-money. Key to Howard's appeal was the characterisation of pin-money as distinctive from the separate estate. The foundation of this argument was maintenance. In a situation where there was evidence of maintenance, or where maintenance served the same

[114] *Brougham's Judgment*, 1295.
[115] *Ibid.*
[116] *Ibid.*
[117] *Brougham's Judgment*, 1306.

purpose as pin-money, pin-money could not be construed as a separate estate. Howard's counsel defined pin-money, in very broad terms, as "what the law considers the wife's actual expenditure during coverture," and he alleged that the Duke "incurred greater expense in maintaining the Duchess, than if she had lived with him in the full possession of her faculties, and in the magnificence of the expenditure suitable to her rank."[118] Essentially, a demand for pin-money by a married woman who was maintained suitable to her rank could not be sustained at law because pin-money was not a legal device in and of itself.

Counsel for Digby, responding to the appeal, submitted various arguments that focussed on the interrelation of the Duchess' mental incapacity with the characterisation of pin-money as a separate legal device. The Duchess' mental incapacity prevented her from consenting to her husband's use of money to which she alone was entitled. The "law permitting a married woman to have the enjoyment of property settled to her use, as if she were a *feme sole*, will not allow her to be deprived of it, unless she precludes herself from all claim to it by some act of her own."[119] This submission echoes Clancy's 1819 statement that "it would be contrary to the intent of [pin-money's] creation, if she were capable of depriving herself of it."[120] Digby's counsel also argued that there was no material distinction between pin-money and other separate estate. Pin-money was "for her expenditure on fanciful and luxurious articles" and was not intended to "substitute for anything which the husband was by law bound to supply; it was neither for clothes, nor board wages, nor support." [121] In particular, it was money to which the wife was entitled to use at her pleasure, as if she were unmarried, and without accountability. To support this contention, counsel referred to the source from which the Duchess' pin-money was derived: it was "not an

[118] *Brougham's Judgment*, 1296; 1295.
[119] *Ibid*, 1297.
[120] Clancy, *An essay*, 53.
[121] *Brougham's Judgment*, 1299; 1298.

allowance from the Duke, but an inconsiderable part of the Duchess' property reserved to her use," with the income continuing to benefit the Duke, as well.[122] In other words, the pin-money came from property out of which the Duke had already received the majority portion in the economic exchange contemplated by marriage.

During submissions on the distinction between separate estate and pin-money, Brougham interrupted Digby's counsel to state that any distinction lay solely in the restriction of arrears to one year versus no limit for arrears of a separate estate. To this comment, counsel replied: "[t]hat is a fanciful distinction."[123] After submissions were made by all counsel, but before Howard's counsel replied, Brougham declared that he "entertain[ed] so clear an opinion differing from that of the Vice-Chancellor" that he needed to address it with the Lords forthwith. Following such consultation, Brougham gave judgment in a long-winded account regarding "this question as one of considerable importance, of some interest from the peculiarity of the facts, and of novelty in respect of judicial decision."[124]

The first issue Brougham addressed was the characterisation of pin-money. He declared that "the distinction between pin-money and separate estate of the wife is very obscure, little being found in the books upon it, and no definition being given."[125] He expounded upon the alleged newness of the question before the Court, stating it "is wonderful indeed how little there is to be found upon the subject of pin-money, notwithstanding its occurring almost every time that a marriage takes place among persons of large fortune." [126] The concept of pin-money, then, was commonplace at the time but had not been so substantially litigated that legal precedent was

[122] *Brougham's Judgment*, 1299.
[123] *Ibid*, 1297.
[124] *Ibid*, 1299.
[125] *Ibid*, 1298.
[126] *Ibid*, 1306.

established. Brougham proclaimed that he could find no reliable definitions within legal literature and was unable to "trace the line which divides [pin money] from the separate property of the wife, with any distinctness."[127] He therefore appears to have overlooked a number of the reported decisions (set out in Chapter 2), including *Herbert v. Herbert* (1691), which established that a married woman could retain savings or goods she bought with savings accrued from pin-money, and *Thomas v. Bennet* (1725) with its supporters, *Fowler v. Fowler* (1735) and *Moore v. Moore* (1737), where it was established that pin-money is not payable in arrears where a married woman, though refused her pin-money during the marriage, has been adequately maintained by her husband. Having decided that there were no precedents, Brougham took it upon himself to create law. Essentially, he took advantage of facts that allowed him to establish strict parameters for pin-money without directly impacting an esteemed noblewoman because she was already dead.

To determine whether pin-money was distinct from the separate estate, Brougham considered the nature of pin-money in terms of its purpose, with what view it is set apart and provided, in what right a wife enjoys it, and by what obligation a husband pays it.[128] He found that pin-money was "not a gift from the husband to the wife, out and out" and "is not to be considered like money set apart for the sole and separate use of the wife," despite the language of the legal instruments, which stated those exact words.[129] Rather, pin-money is "set apart for a specific purpose, due to the wife in virtue of a particular arrangement, payable by the husband by force of that arrangement and for that specific purpose."[130] He did not elaborate on how this differed from the separate estate. The source from which pin-money was derived made no

[127] *Brougham's Judgment*, 1306.
[128] *Ibid*, 1300-1301.
[129] *Ibid*, 1301.
[130] *Ibid*.

difference: a wife's property became her husband's upon the marriage, so pin-money derived from her property "was as much given by him as if it had been given out of [his] … estates."[131]

To Brougham, pin-money was intended for a wife's personal expenses, used "for the dress and the pocket-money" since " its very name implies a connection with the person; it means that which goes to deck the person of the wife."[132] However, he did not stop there, making an addition to the foregoing description – and thus creating new law – that pin-money was also "upon a somewhat larger construction, to pay her ordinary expenses."[133] With this statement, Brougham strictly aligned pin-money with maintenance, thus ensuring that it would remain under the umbrella of male control. A husband's economic status defined his economic relationship with his wife and in turn determined whether her financial expenditures constituted pin-money or maintenance. For example, the husband "in a humble station of life, pays his wife's bills as he pays his own." The husband "in a station a little higher" pays an allowance for his wife's housekeeping expenses and pays for her dress out of "common convenience." The husband "in a higher station still," makes a "general arrangement." And the husband, "in a higher station – in the highest," makes an agreement for pin-money so that his wife "shall not be reduced to the somewhat humiliating necessity of disclosing to [her husband] every want of a pound to keep in [her] pocket" or of seeking his consent every time she wants to order a dress. The wife in the highest station is provided with an amount consistent with her husband's status and income, which she ostensibly retains apart from him and exempt from his control only by reason of the convenience of both parties.[134] Brougham's comments show a clear disregard for the contention that pin-money might evoke more than merely a convenient way for a married

[131] *Brougham's Judgment,* 1299.
[132] *Ibid*, 1301.
[133] *Ibid.*
[134] *Ibid.*

woman to shop. To him, pin-money was a budget given by a husband to a wife to allow her to circumvent the inconvenience of being unable to enter into her own contracts under coverture. Pin-money had no value aside from convenience, thus equating a married woman to her husband's servant. In a world in which consumption of newly-available products was burgeoning, married women undoubtedly did not share Brougham's view of pin-money.

In considering Howard's argument that pin-money was not payable where a husband has maintained his wife, Brougham recounted the Duchess' married life. Despite her lunacy, the Duchess "continued to enjoy a good bodily health; she lived not much in society, but was not confined; she went about visiting, and was visited to a certain extent." It was undisputed that during their marriage, the Duke paid for "her milliner's bills, carriages, and, in fact, all those personal expenses with which, more or less, pin-money has connection."[135] In paralleling pin-money with maintenance, Brougham questioned that, if a husband "with his own hands pays for the wife's jewellery, millinery and ornaments, what difference can it make whether he pays it into her own hands, or gives it to her tradespeople?"[136] Again, Brougham disregards any consideration that a married woman might associate her pin-money with independence or some form of economic agency. Just as Hunt has pointed out in the context of contemporary literature, Brougham trivialised pin-money to suggest that "all that was at stake was a woman's ability to buy the latest Paris fashions."[137] According to Brougham, the value of pin-money rested solely in convenience, which dramatically played down its importance in the eyes of married women who sought to make their own independent purchasing decisions within or beyond the realm of fashion.

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[135] *Brougham's Judgment*, 1300.
[136] *Ibid*, 1299.
[137] Hunt, *The Middling Sort*, 158.

Brougham's decision also disposes with the necessity of consent on the part of the husband, which necessity suggests a reversal of gender roles within the economic relationship of marriage. How could a husband pay tradesmen for his wife's ornaments, then also be expected to yield to his wife's demands to pay her that same amount because she did not expressly consent to his paying the tradesmen? Is Brougham speaking from his own life experience when he declares that "it is equally clear that no nobleman or person of however high and honourable degree, being in ever so wealthy circumstances, would ever dream of making an allowance to his wife for pin-money, if he were at the same time to be paying all her bills year after year, her milliner's bills and others, over and above her pin-money?"[138] He found that pin-money benefitted both spouses. In fact, he declared that a husband retained as important an interest in pin-money as his wife, since his wife must be attired appropriate to *his* rank – thus linking pin-money to a married woman's responsibility towards her husband and again defeating the purpose of pin-money as a form of income to be used at a wife's pleasure.[139] Brougham declared that the Duke "had the fund in a certain degree in his own power," because it was necessary for his own social standing to be seen to be providing extravagantly for his wife.[140] Brougham was particularly adamant about this given that the Duke and Duchess of Norfolk were of "a station next to Royalty in the society of this country."[141] Prior to her marriage, the Duchess was simply Frances Scudamore; she attained the rank of duchess by virtue of her marriage. Such a benefit came with responsibility. She was "to be adorned according to her degree," not simply as Mrs. Howard, but rather "as the wife of Charles Duke of Norfolk." Based on the foregoing, the Duke retained a significant – even primary – interest in his wife's pin-money.

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[138] *Brougham's Judgment*, 1301.
[139] *Ibid*.
[140] *Ibid*, 1301-1302.
[141] *Ibid*, 1301.

To further prove his point, Brougham again invoked social distinctions. He declared that, if the Duchess had saved her pin-money and spent only £25 of her £1000 per year by dressing "like a mechanic's housewife, or a farmer's dame, or as a mere servant, instead of the first Duchess of the land," she could not have recovered her savings at law. This is in direct contrast to the celebration of frugality upheld in *Herbert v. Herbert* and represents a shift in thinking away from valuing thrift, and instead emphasising consumption and display of wealth, as Harriet Guest and Jennie Batchelor have independently identified.[142] Brougham explains himself: "the money is meant to dress the wife so as to keep up the dignity of the husband, not for the mere accumulation of the fund."[143] Pin-money was meant to be spent – but only in a specific way, as directed by the husband by way of his explicit or implicit direction. This approach denied a wife the use of her pin-money as a means of accruing her own wealth and ensured that it remained as a benefit to the husband and under his control. Despite the rhetoric that pin-money was intended for frivolous expenses, the Duchess was prohibited from receiving money allotted to her to truly do with as she pleased.

Brougham identified the Duke's social position as the highest next to that of the king, setting a standard to which the Duchess had to conform, which precluded any financial independence on her part. It is therefore fascinating that the representation of the Duke, as captured contemporaneously by Sir Nathanial Wraxhall's memoirs, presents a shocking hypocrisy that cannot be reconciled with Brougham's interpretation. Brougham insisted that the Duke had "a right to have the pleasure of it, to have the credit of it, to be spared the eyesore of a wife appearing as misbecomes her station."[144] However, the Duke himself was described as

[142] Guest, *Small Change*; Batchelor, "Fashion and Frugality."
[143] *Brougham's Judgment*, 1302.
[144] *Ibid*, 1309.

"destitute of grace or dignity," being made from Nature's "coarsest mould," without "any of the external insignia of high descent."[145] Brougham declared that the Duchess must be clothed in a manner suitable to her rank and not like a farmer's wife or servant, yet the Duke "might indeed have been mistaken for a grazier or a butcher by his dress and appearance." The Duke rejected the fashions of the day, having "the courage to cut his hair short and to renounce powder."[146] He was always dressed in the same outfit, "a plain blue coat of a peculiar dye" that "was said to be imposed on him by his priest or confessor as a penance."[147] Even in keeping clean, the Duke "was negligent to so great a degree, that he rarely made use of water for purposes of bodily refreshment and comfort."[148] He did not change his linens regularly, and Wraxall remembers the Duke "[c]omplaining one day to Dudley North that he was a martyr to the rheumatism, and had ineffectually tried every remedy for its relief, 'Pray, my Lord,' said he, 'did you ever try a clean shirt?'"[149] The Duke's uncleanliness meant that "his servants were accustomed to avail themselves of his fits of intoxication for the purpose of washing him."[150] When juxtaposed against the demands made of his wife, as set out by Brougham, this account of the Duke's appearance demonstrates the kinds of legal fictions deployed to restrict a wife's control over her monies and deny her a financial existence independent of her husband.

The House of Lords decision in *Howard v. Digby* was crafted by a socially privileged man who would benefit from retaining financial control within marriage in concurrence with other privileged men who would similarly benefit. Brougham conferred with a number of Lords on the issues, since they were "the persons of all others most conversant with the nature and

[145] H.B. Wheatley, *The Historical and the Posthumous Memoirs of Sir Nathaniel William Wraxhall, 1772-1784*, vol. 3, 361.
[146] *Ibid*.
[147] *Ibid*, 364.
[148] *Ibid*, 362.
[149] *Ibid*, 363.
[150] *Ibid*, 362.

object of pin-money, and whose settlements are made with reference, in some degree at least, to its amount." It is unlikely that he sought counsel from the wives of those Lords or from lawyers who represented a wife during marriage negotiations. Brougham was reassured by his peers that "my impression respecting the nature of pin-money is by no means confined to myself and … the view I had formed of it is the universally prevalent view among all who have considered the matter." It was the opinion of those Lords, who had personally provided it to their wives or their son's wives, that pin-money was merely "a sum allowed to save the trouble of a constant recurrence by the wife of the husband upon every occasion of a milliner's bill."[151] In practice then pin-money was not intended for a married woman's personal enjoyment; nor was it a means with which she could retain a semblance of independence under the strictures of coverture.

3.4 Conclusion

When the concept of pin-money became commonly used as a component of a married woman's pre-marital property settlement in the nineteenth century, as is suggested by its prominence in the plot of *Pin Money*, the judiciary was motivated to respond and confine a woman's property rights. *Howard v. Digby* created a strict definition of pin-money that unequivocally linked it to the husband and demarcated it as distinct from the separate estate. The influence of the husband is seen in Brougham's definition of pin money as a "fund which she may be *made to spend* during the coverture, by the intercession and advice, and at the instance of her husband." Pin-money is to be used under a husband's instruction, either directly or by virtue of his social rank. The husband may use "that influence which the law supposes him legitimately to have over his wife, and sees that the fund is duly expended for its proper purposes." While Brougham did not go so far as to say that a husband was entitled to retain pin-money if a wife

[151] *Brougham's Judgment*, 1308.

was not attired "in a becoming way," he was not afraid "of stretching the proposition to that extent … the Duke would of course say, 'If you do not dress as you ought to do, what occasion have you for pin-money?'" Pin-money was not for a wife alone. Rather, it benefitted the entire family, harkening back to the patriarchal principles laid out in *Manby v. Scott* (1662). It "is for the establishment, it is for the joint concern, it is for the maintenance of the common dignity; it is for the support of that family whose brightest ornament very probably is the wife; whose support and strength is the husband, but whose ornament is the wife." In this definition, the House of Lords soundly rejects any assertion that pin-money was for a wife's separate, independent use. *Howard v. Digby* and Clancy's definition of pin-money as an allowance "allowed" by a husband for his wife's "personal and private expenditure" epitomises the difference between the theory of law and its practical application. In theory, and according to its strict legal language, pin-money was for a wife's sole and separate use, and her husband was not to intermeddle with it. In practice, a husband dictated to what purposes the pin-money was put and precluded his wife from true financial independence.

Conclusion

During the long eighteenth century, an English a wife was "under the Obedience of her Husband" because of coverture, a "Law of God" and a "Law of Nature."[1] This thesis maps out the meaning behind the law of coverture as it operated as a gendered legal mechanism to regulate married women's rights to property, and thus to their economic agency. My argument is structured around three themes – the justification, challenge, and preservation of the patriarchal principles underpinning married women's property rights – with each theme reinforcing the assertion that married women were severely curtailed by coverture, and the legal and social responses to it. Coverture, which made husband and wife one person under the law and deprived a woman of her own legal identity upon marriage, was justified by the belief in the sanctity of marriage with husband as sole authority. Coverture was challenged when the separate estate developed, which enabled married women to gain theoretical control over real and personal property. The overwhelming judicial and social response to the separate estate, however, established parameters to preserve coverture and ensure that married women continued to be denied an identity separate from their husbands, and thus any semblance of financial independence.

My analysis of marital property distribution considers the foundation from which women's disenfranchisement during marriage emerged. Merely stating that the law of coverture applied to marital property fails to convey the significant underlying reasons why coverture ensured that marital property rights were retained solely by men. The application of coverture to marital property, as deconstructed in Chapter 1, illustrates the framework of restrictions upon married women's property rights. The patriarchal belief system selected husbands as the more

[1] Anonymous, *Baron and Feme. A Treatise of the Common Law Concerning Husbands and Wives* (London: 1700), 4; 5.

appropriate managers of household assets (including being the best determiners of a woman's necessary expenses) and placed women in a disabled position under the law, encouraging the idea of marriage as an economic exchange. By telling a woman that she benefitted from marriage, in that she gave up assets to which she was not otherwise savvy enough to manage in order to secure lifelong maintenance, she was encouraged to celebrate – even to display gratitude for – her inferior, dependent position with no opportunity for financial autonomy. Yet even the lifelong maintenance a woman was supposedly securing was not guaranteed. The legal principles that arose from the seminal 1662 decision in *Manby v. Scott* include a husband being bound to maintain his wife, not by the common law – and thus in a legally enforceable manner – but by the law of nature and God. A husband needed to maintain his wife because "she is 'bone of his bone, flesh of his flesh,' and no man did ever hate his own flesh so far as not to preserve it," which assumes adherence to a natural law concept, expecting a husband to maintain his wife rather than arming her with a remedy to enforce maintenance. [2]

The marginalisation of married women is observed when assessing the impact of debt in marriage. Under coverture, a wife could not incur her own personal debt, but she could contract for household items as her husband's agent. The scholarship on coverture has established that wives did so in great numbers to ensure the efficient running of their households. Some scholars have used evidence of these contracts to assert that married women had a form of economic agency. However, the practical application of the law ensured that wives did not step beyond their established legally disabled position as the minority partner in the business of marriage. In *Manby v. Scott* (1662), the arguments before the court focussed on the ability of a wife to incur debt while living separate from her husband, even though she received no maintenance from

[2] *Scott v. Manby*, 86 Eng. Rep. 781 (hereafter *Hyde's Judgment*), 784.

him. The case was significant because it "toucheth the man, in point of his power and dominion over his wife."[3] It was held to be unacceptable to allow a wife who lives separate from her husband – regardless of the reason – to impose debt upon her husband for personal purhases; to do otherwise would mean that husbands "shall (be forced) against their will to trade with such as their wives please."[4] In other words, when a wife ceases to cohabit with her husband, she forfeits not only the right to maintenance established by the economic exchange of marriage, but also the right to enter into any contracts or incur any debt for her own necessary purchases, because she remains precluded from doing so long as she is married and under coverture. Such a principle discourages a married women's departure from marriage for any reason and unequivocally disables her from financial independence by ensuring she can never "be her own carver, and judge of the fitness of her apparel, of the time when it is necessary for her to have new cloaths."[5] She is, in the eyes of the law, her husband's servant, who may be sent to market to provision for her household but only in compliance with her husband's authority.

Manby v. Scott represents judicial attitudes at the time of Restoration, creating a foundation for authoritarian rule in marriage that shifted in the years to come, yet remained consistently connected to property rights. Restricting property distribution among spouses is universal and consistent throughout the long eighteenth century, which reflects the continuity of the belief that only men were entitled and able to manage, control and dispose of all types of property within marriage. The case law evolved during the eighteenth century as the concept of the separate estate developed, as set out in Chapter 2, challenging the traditional consequences of coverture. Married women were permitted the beneficial ownership of real or personal property

[3] *Hyde's Judgment*, 782.
[4] *Manby and Richards v. Scott*, 83 Eng. Rep. 268 (hereafter *Jury's Judgment*), 269
[5] *Hyde's Judgment*, 783-784.

held in trust for them. This new legal mechanism was set in the context of a changing landscape of property definitions; ownership of property was no longer symbolised solely by natural accession but rather by control of property. The nature of property continued to expand from the stable and immovable (land) to encompass the fluid and immaterial (speculative stocks), strengthening a credit economy within which women became active participants. The judicial response to this shift was to preserve coverture by reinvigorating the pre-established theories of patriarchy, such as those laid out in *Manby v. Scott*, and to define parameters that restricted the ways in which the separate estate could be created and used.

In the nineteenth century, when the separate estate grew to include pin-money, the judiciary was motivated anew to preclude married women from financial independence. In the seventeenth century, married women were permitted to make their own purchases from pin-money savings to encourage frugality. In contrast, by the nineteenth century, as is discussed in Chapter 3, pin-money was restricted or outrightly prohibited in the face of evidence that a husband maintained his wife even where he concurrently refused to pay pin-money as contractually obligated. Case law establishes a link between pin-money and maintenance, preventing pin-money from becoming a form of income to be used independently by a wife. Why would a wife need, let alone want, her own income when she was adequately maintained by her husband? The judicial response, as deduced from the cases explored in Chapter 3, was to trivialise pin-money by suggesting that a wife could have no desires beyond bare subsistence, which her husband provided. This directly corresponds to the prevailing social anxiety respecting women's new economic role and purchasing power. Economic agency could not truly be acquired when pin-money was controlled by your husband: first, by requiring his consent to even enter into such an arrangement; and second, by giving him sole authority to dictate the goods

upon which pin-money could be spent. In particular, investments or purchases of real property were controlled. Moreover, a husband could refuse to pay pin-money even in defiance of a legal instrument, and the worst penalty for his evasion of contractual obligations was repayment of one year's worth of arrears. The judicial response to pin-money is explicated by the unanimity found in the principle that pin-money is not separate property, as set out in a number of cases.

Though Susan Staves' monograph, written nearly thirty years ago, argues that coverture effectively restrained married women's independence by restricting access to property, many historians have more recently expressed the view that married women manipulated coverture to such an extent that, practically speaking, they were not restricted by it at all. Allison Anna Tait's 2016 review of multiple Chancery cases asserts that the separate estate effectively freed married women from the bounds of coverture by acknowledging married women's rights to separate property. She asserts that married women were economic agents in their households. Alexandra Shepard's 2015 case study of two married women engaged as pawnbrokers in London argues that routine economic management by married women was a major part of everyday household enterprise, but she does not go so far as to give these married women active economic agency. Rather, Shepard defines their negotiation of coverture in their commercial enterprise as instances of "the routine *centrality*" of married women in economic life.[6] Where studies have been done on the patterns of possessory language used by married women in household records and probate inventories, as in Shepard's and also Joanne Bailey's work, it is suggested that such women felt ownership over personal property. However, both scholars acknowledge that a husband still retained ultimate authority. As Craig Muldrew recognises, a marital power imbalance existed in which even a wife with an active managerial role in her household knew that the final decision

[6] Alexandra Shepard, "Minding Their Own Business: Married Women and Credit in Early Eighteenth-Century London," *Transactions of the RHS* 25 (2015), 73.

remained under her husband's authority.[7] Similarly, Pearlston's work on married women in commerce engaging in bankruptcy proceedings argues that even exceptions to coverture were limited because "a married woman could never act to except herself from the doctrine." Despite the many exceptions available, "each of them required that someone besides the wife engage in conduct that set the exception in motion."[8]

The judicial decisions explored in this thesis, along with the treatises that interpret those decisions, expand the knowledge of contemporary attitudes towards married women's separate property. When those decisions and interpretations are set within the context of social anxiety respecting married women's separate property, as described in Catherine Gore's *Pin Money*, a picture develops in which any challenge to coverture – and thus any assertion of married women's economic agency – by the separate estate was severely curtailed by judicial decisions that justified and preserved coverture. In other words, the "body of rationalizations, explanations, and exceptions that made it possible to keep the entire edifice [of patriarchy] in place," as Pearlston identifies. This is the law in practice.[9]

Admittedly, though, accurately extrapolating trends from the evidence analysed in this thesis is difficult. Firstly, too few cases deal with the effects of the law of coverture on marital property. Legal scholars warn about the extent to which legal theory may be applied as universally representative of married women's experience. Tim Stretton refers to the "vast and undulating landscape" of English civil law, which suggests that theories on the effects of the law

[7] Craig Muldrew, " 'A Mutual Assent of her Mind'? Women, Debt, Litigation and Contract in Early Modern England," *History Workshop Journal* (No. 55, Spring 2003), 48.
[8] Karen Pearlston, "Married Women Bankrupts in the Age of Coverture," *Law & Social Inquiry*, 34, 2 (Spring 2009), 294.
[9] *Ibid*, 266.

cannot be applied generally.[10] Not only are the reported cases sparse, but such cases provide evidence only from vigorously defended suits, which is problematic. As Bailey points out, since most litigation was abandoned before evidence was produced, let alone retained, the archive is inevitably "the least representative of the causes, and, therefore, by extension, the least representative of society in general."[11] Secondly, it was not married women themselves who were challenging the law of marital property distribution. Of the cases reviewed, it was most often a third party beneficiary or a creditor claiming a piece of a dead spouse's estate. For example, the significance of *Howard v. Digby* (1833) rests just as much in the parties involved as in Lord Brougham's words. The parties making claims were each beneficiaries of the dead spouses, suggesting that the decision was an opportunity for a judicial response to pin-money that had no direct negative effect on the wife at issue, and was intended to be heard by a wide audience in order to re-establish patriarchal principles believed to be eroding in the face of a new economy. Creditors also loom particularly large, likely influencing judges who were motivated by a legal environment vigilant about fraud. Finally, judges then – as today – were affected by what Staves characterises as "idiosyncratic" reasons for rendering decisions.[12] That is, judges exercised discretion at will, either in response to – or to create – social and cultural influence. All of this suggests that married women's economic agency was not a primary reason for bringing a case before the judiciary, and it is perilous to draw sweeping conclusions based on the foregoing dispositions and their explication in legal treatises.

This thesis open doors to new research into coverture's effect on representations of both husbands and wives. The concept of pin-money can be explored in the wider context of

[10] Tim Stretton, *Women Waging Law in Elizabethan England* (Cambridge: Cambridge University Press, 1998), 25.
[11] Joanne Bailey, "Voices in court: lawyers' or litigants'?" *Historical Research* 74, 186 (2001), 407.
[12] Susan Staves, *Married Women's Separate Property in England, 1660-1833* (Cambridge, Massachusetts: Harvard University Press, 1990), 154.

masculinity, for example. Lord Brougham's words in *Howard v. Digby* suggest that pin-money was of strategic importance for men, increasing their social representation through their wives. How significant was it to an individual husband to retain control over his wife's physical appearance or to demonstrate to the world at large how well he could provide for her? My argument also invites broader questions about the relationship between judicial decisions and social change. By examining the legal records in each case rather than the decision itself, for instance, one could explore any disconnect between the narratives of litigants and their representations in court, which would give further insight into the power structures of the socially-constructed concept of marriage under patriarchy and the influence of third parties, particularly creditors and beneficiaries. What impact might this potential disconnect have had on the significant changes to marital property legislated in the mid-nineteenth century? The exploration of the influence of third parties also raises questions about whether marital conflict actually existed in the marriages detailed within the sourced cases, which affects assertions made about economic agency. For example, further work could test assertions made by cultural historians who introduce concepts of economic agency based on marital conflict presumed from reported case law. A focus on marital conflict as sourced from the reported cases overlooks other factors at play in shaping the sources, such as the influence of third-party creditors or beneficiaries, and disregards the potential that a wife may have even been a willing partner in litigation (such as may have occurred in *Howard v. Hooker* at pages 59-61).

I incorporate Susan Staves' and Amy Erickson's emphasis on the technical legal implications of coverture to assert that mitigating the legal restrictions of coverture did not translate into practical economic agency. Had any of the women studied in probate inventories asserted what they believed to be their rights of property possession in a court of law, they would

have encountered the substantial barricade of patriarchal thinking established by centuries of precedent in which women's rights to separate property were extinguished upon marriage. The judicial response to such claims, had they been made – and given the dearth of reported cases on married women's separate property generally, and claims made by married women themselves particularly, such claims were rarely pursued – would have been to reinforce the patriarchal ramifications of coverture to ensure that it persisted and was recognisable to society at large. Though the scholarship suggests that married women *thought* of certain types of property as their own, the law mandated that such goods belonged to their husbands. As Erickson has pointed out, the adag e is 'possession is nine-tenths of the law,' leaving the remaining one-tenth. Ignoring that critical last piece is detrimental to the study of married women's property rights. Amanda Vickery asserts that "social meaning cannot be read off the bare fact of ownership."[13] Nor, I would argue, can legal meaning. True, as Danaya Wright contends, "legal rights and obligations do not always map neatly onto the lived experiences of people's lives."[14] But though women's "desires are subject to their husband," and though "some women can shift [coverture] well enough," the judicial response to coverture justified and preserved it to such an extent that any routine mitigation of coverture's restrictions in daily life did not amount to an *avoidance* of coverture and certainly did not translate into an *evasion* of coverture.[15]

[13] Amanda Vickery, "Women and the world of goods: a Lancashire consumer and her possessions, 1751-1781," in *Consumption and the World of Goods*, eds. John Brewer and Roy Porter (London and New York, 1993), 276.
[14] Danaya Wright, "Coverture and Women's Agency: Informal Modes of Resistance to Legal Patriarchy," in *Married Women and the Law: Coverture in England and the Common Law World*, Tim Stretton and Krista J. Kesselring, eds. (Montreal & Kingston: McGill-Queen's University Press, 2013), 241.
[15] *The Lawes Resolutions of Womens Rights: Or, The Lawes Provision for Women* (London, 1632), 6.

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Appendix

Case Name	Jurisdiction	Plaintiff	Defendant	Notes	Disposition Favoured
Boynton v. Parkhurst (1784)	Court of Chancery	Griffith Boyton (infant son and heir)	Mary Boynton (wife)	Sir Griffith Boynton (husband) dead	Wife
Burton v. Pierpoint (1722)	Court of Chancery	Elizabeth Pierpoint (wife)	Creditor	William Pierpoint (husband) dead	Creditor
Calmady v. Calmady (1718)	Court of Chancery	Jane Calmady (second wife) and Anna Maria Calmady (daughter with second wife)	Shilston Calmady (son and heir)	Josias Calmady (husband) dead	Split
Child v Hardyman (1725)	Court of King's Bench	Creditor (contracted with wife after she returned to cohabit)	Husband	Wife separated then returned to cohabit but forced to live in garret	Husband
Churchill v. Dibben (1750)	Court of Chancery	Mary Churchill (wife's sister and sole remaining heir to father) Richard Churchill (nephew)	Thomas Dibben (husband)	Elizabeth Dibben (wife) dead	Husband
De Manneville v. Crompton (1813)	Court of Chancery	Leonard De Manneville (husband)	Margaret de Manneville (wife), her trustees and Ann Crompton (wife's mother)	Separated and contentious	Wife

Case Name	**Jurisdiction**	**Plaintiff**	**Defendant**	**Notes**	**Disposition Favoured**
Flay v. Flay (1680)	Court of Chancery	Daughter and beneficiary	Mary Flay (wife)	Husband dead	Wife
Fowler v. Fowler (1735)	Court of Chancery	Richard Sloan Fowler (son); Sarah Fowler, infant (daughter)	Sarah Fowler (wife)	Richard Fowler (husband) dead	Beneficiaries
Freeman v. Goodham (1676)	Court of Chancery	John Freeman and David Knight (creditors)	Charles Goodham and Mary, his wife	Mary Goodham (wife) dead at time of litigation	Settled out of court likely because creditor was going to win
Gilchrist v. Brown (1792)	Court of King's Bench	Gilchrist (wife's creditor during separation)	Mr. Timiss (husband)	Mrs. Brown (wife) was alive but separated without maintenance	Creditor
Goddard v. Snow (1826)	Court of Chancery	Thomas Goddard (husband)	John Snow (debtor of Mary Goddard); Mrs. Goddard's next of kin	Mary Goddard (wife) dead at time of litigation	Husband
Graham v. Londonderry (1746)	Court of Chancery	Ridgeway Pitt, Lord Londonderry (son and heir)	Frances Graham (wife), Robert Graham (second husband)	Lord Londonderry (husband) dead	Split
Hastings v. Douglas (1625-1660)	Court of Chancery	Lord Ferdinando Hastings (son-in-law, beneficiary of husband's estate)	Lady Eleanor Douglas (wife)	Sir John Davy (first husband) dead	Husband of daughter and beneficiary of first husband's will

Case Name	Jurisdiction	Plaintiff	Defendant	Notes	Disposition Favoured
Heard v. Stanford (1736)	Court of Chancery	William Stanford (creditor of wife pre-marriage)	David Heard (husband)	Elizabeth Heard (wife) was dead at time of litigation	Husband - Creditor not entitled to wife's pre-marital debt as coverture ended by wife's death
Herbert v. Herbert (1691)	Court of Chancery	Christopher Herbert	Margaret Herbert (widow)		Wife
Howard v. Digby (1834)	Court of Chancery	Edward, Earl Digby (wife's heir)	Henry Howard (husband's heir)	Duchess of Norfolk, Frances Howard (wife) dead Duke of Norfolk, Charles Howard (husband) dead	Husband's beneficiaries
Howard v. Hooker (1672)	Court of Chancery	Sir Philip Howard (second husband) and Elizabeth Howard (wife)		Action brought in wife, Elizabeth Howard's name and in name of husband Sir Howard, in right of his wife, to have all her benefit	Husband
Manby v. Scott (1659-1662)		Mr. Manby and Mr. Richards (tradesmen and wife's creditors)	Sir Edward Scott (husband)	Katherine Scott (wife) contracted with creditor while living separate from husband, and was alive during litigation	Husband

Case Name	Jurisdiction	Plaintiff	Defendant	Notes	Disposition Favoured
Marshall v. Rutton (1800)	Court of King's Bench	John Marshall (wife's creditor during separation)	Isaac Rutton (husband)	Mary Rutton (wife) was alive but separated and receiving maintenance	Creditor
Moore v. Moore (1737)	Court of Chancery	Sir Richard Francis Moore (husband)	Representative for Anastasia Jane Moore (wife)	Anastasia Moore (wife) separated and receiving maintenance	Wife
Northey v. Northey (1740)	Court of Chancery	Edward Northey (brother and executor)	Abigail Northey (wife)	William Northey (husband) dead	Wife
Palmer v. Trevor (1684)	Court of Common Pleas	William Palmer (husband) and Elizabeth Palmer (wife)	John Trevor (Mrs. Palmer's son-in-law) and Elizabeth Trevor (Mrs. Palmer's daughter)	Elizabeth Palmer (wife) left her husband and moved in with her daughter; at issue was her first husband, William Morley's estate	Husband - wife left him and may have taken goods
Powell v. Bell (1706)	Court of Chancery	Thomas Bell (inherited portion of Ann Powell's first husband Anthony Hanson's estate)	John Powell (second husband) who received some of Anthony Hanson's estate by way of his wife, Ann Powell	Ann Powell (wife) was dead at time of litigation	Third party beneficiary under first husband's will
Ridout v. Lord Plymouth (1740)	Court of Chancery	Creditors, legatees and heirs of legatees	Elizabeth Lewis (wife's mother)	Lord Plymouth husband) dead; Lady Plymouth (wife) dead	Creditors

Case Name	Jurisdiction	Plaintiff	Defendant	Notes	Disposition Favoured
Robinson v. Gosnold (1689-1710)	Court of King's Bench	Mr. Robinson (creditor of wife during separation)	Mr. Gosnold (husband)	Mrs. Gosnold (wife) was alive but separated then returned to husband	Creditor – husband liable to wife's creditors during cohabitation even if it comes after separation
St. George v. Wake (1833)	Court of Chancery	Henry St. George (husband)	Martha Wake (wife's sister and beneficiary)	Sarah St. George (wife) dead when disposition rendered	Beneficiary (of wife)
Seymour v. Trevelyan (1737)	Court of Chancery	Meliora Seymour Fownes (wife) Thomas Fownes (second husband)	Sir John Trevelyan (beneficiary)	Sir Edward Seymour (husband) dead	Wife
Slanning v. Style (1734)	Court of Chancery	Elizabeth Stanney (sister), Anna Pilling (sister) and Hannah Style (sister) – all residual legatees	Mary Style (wife)	Robert Style (husband) dead	Wife
Strathmore v. Bowes (1797)	Court of Chancery	Mary Eleanor Bowes, Countess of Strathmore (wife)	Andrew Robinson Stoney/Bowes (second husband)	Egregious circumstances in marriage	Wife
Thomas v. Bennet (1725)	Court of Chancery	Executors of wife's estate	William Bennet (husband)	Mary Bennet (wife) dead	Husband

Case Name	Jurisdiction	Plaintiff	Defendant	Notes	Disposition Favoured
Walter v. Hodge (1818)	Court of Chancery	Beneficiary of husband's will	Martha Hodge (wife)	Robert Hodge (husband) dead	Beneficiary