Chapter 7

"Whilst Grass Grows or Waters Run"

Women and Testation Practices on the Southern Avalon

By the eighteenth century, British inheritance law and customary practice favored the male line of descent.[1] Women's property rights tacked a precarious course in English common law between the Scylla of primogeniture and the Charybdis of coverture. The system of primogeniture dictated that in a case of intestacy, the eldest son should inherit the father's real property, although in the absence of sons, daughters would inherit jointly in preference to male collateral kin. The widow held dower rights—a life interest only in one-third of her deceased husband's real property, with no right to alienate (for example, sell or mortgage) the property from the estate, which would ultimately revert to the legitimate heir(s). Among the aristocracy and upper middle class, however, a system of *tail male*—the entailing or settling of an estate on a succession of male heirs—was widely practiced from the seventeenth through the nineteenth centuries, despite the *rule against perpetuities*,[2] and further reduced women's access to real property. Furthermore, such property that women did hold came under the control of their husbands at marriage under the principle of marital unity, although they could recover in widowhood any freehold property that had been theirs before marriage and had not been disposed of (with their consent) by their husbands.

Previously, in the late medieval and early modern period, the common law had been tempered by equity, manorial law, and ecclesiastical law. Manorial law, for example, often favored partible inheritance among sons rather than primogeniture; it also made provision for *freebench*, which was a widow's right to a proportion (ranging from one-third to all) of her late husband's *copyhold* (land held at the will of the lord or according to manorial custom) for either the duration of her life or until her remarriage. Ecclesiastical law dealt with leasehold property and chattels (moveable goods or personal property) and advocated a form of community property in marriage and equitable distribution of parental wealth among children. Intestacy law was influenced by ecclesiastical principles, for instance, in its distribution of chattels: one-third to the widow and two-thirds to the children of the deceased, with equal distribution of a widow's goods to all children. Furthermore, ecclesiastical courts often reduced the land-inheriting heir's share of moveable goods in favor of the other children to effect a more equitable distribution of the overall estate. Meanwhile, equity had jurisdiction in all types of property matters, and it occasionally mitigated some of the harsher

aspects of common law in specific circumstances. Equity also permitted the protection of women's property from the repercussions of coverture by a system of marriage settlements and trust agreements. These options, however, were generally pursued by the well-to-do only. Furthermore, women often did not participate in such arrangements and, in effect, forfeited control of their property to male relatives, at least until their widowhood.

The balance of power among these legal systems was shifting between 1300 and 1800, but with the increasing secularization and centralization of the state in the sixteenth and seventeenth centuries, the momentum turned in favor of common law. In a process "euphemistically called the 'rationalization' of the law," according to Amy Erickson, common and statutory law came to dominate other systems: equity was incorporated into common law, while ecclesiastical and manorial law were relegated to the status of *custom* only—something less than actual *law*.[3] By the eighteenth and nineteenth centuries, in a general climate of conservatism in relation to women's rights and status, a system of inheritance that already favored the line of male descent had become even more restrictive in terms of women's property rights and economic security.

Yet within England, the law was frequently tailored to local conditions and customs. For example, widows often inherited more real property than the law entitled them to, albeit usually with a life interest only. Certainly, they inherited a substantial amount of personal property and cash from both probated estates and intestacies. Women also acted as executors, guardians, and trustees, giving them some status in the disposition of family property. In addition, pre-mortem endowments were made to younger children, both male and female, through marriage settlements and deeds of gift. Among the aristocracy and middle class, primogeniture and tail male were generally favored; but within plebeian or working-class communities, daughters frequently inherited on a relatively equitable basis with sons, sometimes with *sole use* provisions to prevent the property from falling into the hands of sons-in-law. This *share and share alike* principle most often manifested itself in communities in which family members performed productive work together within household economies.

Similar adaptations of English inheritance law also took place in Newfoundland, as Trudi Johnson concludes in her examination of the impact of the local inheritance regime on matrimonial property law.[4] Johnson argues that the reception of male-centered English inheritance law was mitigated in Newfoundland by local circumstances and customary practices. While English laws in general were tempered by island conditions,[5] the application of property and inheritance law was particularly tenuous, given the uncertainty of the nature of property in Newfoundland until the nineteenth century—the result of a traditional fishing regime that had reserved large portions of land from private use for the benefit of

the migratory ship fishery. Even lands designated for private use could not be held by freehold title. From the passage of the *Newfoundland Act* of 1699 throughout the eighteenth century, local merchants and residents increasingly occupied waterfront properties as the sedentary fishery became more established, and British authorities permitted uninterrupted possession provided that the properties were employed for the purposes of the fishery. But the formal recognition of private property did not really begin to evolve until the early nineteenth century (1810s to 1830s), when authorities gave in to the demands of an increasing and stabilizing population for greater certainty in land titles. However, while the definition of property remained uncertain until that time, this ambiguity did not translate into a casual attitude towards land among residents of Newfoundland. The location of the fishing room—its proximity to fishing grounds and sources of supply and trade, its physical suitability for erecting stages and flakes, its access to wood and water—was vital in the fishing economy.[6] Of equal importance was nearby land for houses and gardens to maintain the fishing household within a tenable distance of the fishing room. Fishing families in Newfoundland thus clung to their holdings tenaciously. As Johnson points out, the continuous possession of property was critical, for it provided "a measure of economic security in a society with precarious economic conditions. The land was valued, not as an indicator of wealth, but by its proximity to the sea, the very source of livelihood. The transfer of possession, therefore, was crucial."[7]

The importance of property to Newfoundland fishing families was reflected in the evolution of a system of usage and customary practices in which title by quiet possession and partible inheritance featured prominently and were recognized by the local community. Johnson notes that local inheritance practices were frequently guided by a concern for the future economic security of all members of the family. The principle of primogeniture was often tempered by concerns for the support and maintenance of widows and daughters, and a concern for more equitable distribution influenced testation practices. This did not mean that all beneficiaries inherited equally. Sons were far more likely to receive fishing premises and gear, with the expectation that they would care for widows and dependent siblings. Widows and daughters, however, would also receive some form of maintenance: often cash, livestock, or personal effects, but sometimes real property bequests that were usually protected from sons-in-law or any future husband of the widow by the establishment of life interests.[8]

On the southern Avalon, women appeared less frequently than men in estate matters recorded by the local courts and in governor's correspondence. Yet they were quite a conspicuous presence in the records, and evidence of their participation supports many of the conclusions drawn by Johnson.[9] Johnson notes that there were five principal means by which property was designated to family members: deed of gift, deed of conveyance, intestacy, wills, and marriage

settlements. Irish Newfoundland women generally appeared only in the first four categories in the records from the southern Avalon, and various examples will be discussed below. Marriage settlements and trust agreements were the province of the well-to-do, and while there were several Irish Protestant merchant-planter interests on the southern Avalon in the eighteenth century, few of the women in these families ever came to Newfoundland. Several examples of such agreements involving stay-at-home daughters appear in the Carter-Benger-Nason Papers, but they involve properties in Ireland only and have therefore been omitted from this discussion. The women of the Benger family were exceptional, since they did reside in Ferryland in the eighteenth century (see Chapter 9), but details of their marriage settlements have not survived in public repositories.

Wills, Deeds of Gift, and Deeds of Conveyance

Because wills, deeds of gift, and deeds of conveyance were all methods by which property was bequeathed to family members, and were sometimes used in combination by testators in a system of pre-mortem and post-mortem endowments, they will be discussed together here. A combing of wills from the study period garnered the names of sixty-five women on the southern Avalon: ten testators and fifty-five legatees, of whom nine served in the capacity of executor (see Table 7.1). Thirty female beneficiaries inherited real property, sometimes in combination with cash and/or personal effects, while twenty-four female legatees received chattel interests only. The name of one other beneficiary surfaced in a court case, but the nature of the property she inherited was not specified in the record. Another twenty-three women appeared in deeds of gift and deeds of conveyance from the period. Of these, four were transferors, while the remaining nineteen were recipients of property. All but two of these transfers involved real property, sometimes in combination with moveable goods or personal property. Only two deeds marked arm's-length conveyances between non-related parties: one involving a female transferor, and the other, a female purchaser. The remaining twenty-one were testamentary transfers between family members, typical of customary inheritance practices of the period. Of the nineteen female transferees, seventeen received real property, sometimes in combination with personal effects, while the remaining two received personal property only.

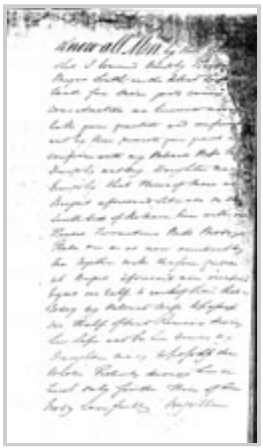
Sons on the southern Avalon were favored in terms of receiving fishing premises, family homes, and other significant pieces of real property, while daughters generally received lesser properties (such as gardens and small meadows), cash, livestock, furniture, and personal effects. In his 1797 will, for example, William

Gregory of Brigus South left all his real property, including house, fishing premises and boats, gardens, and meadows to his sons, John, Thomas, Simon, James, and Richard. His two daughters, Elenor Norris and Mary Holly, were already

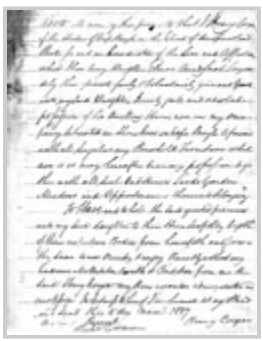
married, and their father doubtless expected that their husbands would provide their livelihoods. Still, he left them each £40 pounds and a gold ring.[10] In 1820, two Neill brothers, Michael and John, in Admiral's Cove (Fermeuse), executed virtually identical deeds of conveyance in which their respective sons were granted fishing rooms and plantations, while their daughters received only livestock (both daughters were named Bridget, and each received two cows and a horse from her father).[11] By his will in 1834, Michael Neill of Admiral's Cove (Fermeuse)[12] initially left the bulk of his £600 estate to his five sons. He gave his eldest, Constantine, the fishing room and plantation that he had inherited from his own father; and he gave his remaining four sons—John, Michael, Owen, and James—the house and fishing premises he currently occupied, with the proviso that they care for his "beloved wife Mary" so long as she remained unmarried. (These provisions for the sons were actually confirming transfers that had originally been designated by deeds of gift dated 16 April 1833; the deeds are referred to in the will, but they have not survived in the records, or perhaps were never entered.) His surviving daughters were to divide equally all their father's livestock— "horses, cows, heifers, calfs, Bulls, bullocks, pigs, sheep"—together with the hay and fodder currently housed with them. By a codicil dated the same day, however, he revoked the livestock bequest to his daughters and delegated the animals to the benefit of his wife and all unsupported children. He also stipulated that his wife have £100 immediately for her own use, and that his daughters each receive £100 upon marriage.[13] These testamentary documents all exemplified a clear-cut division of property along the lines of gender—real property to sons, other forms of property to widows and daughters—with an effort to provide some form of support to all family members.

However, women did inherit real property quite frequently; but when real property was bequeathed or transferred to a wife or daughter, it was often only for the woman's lifetime or, in the case of widows, until remarriage. This was essentially a means of keeping the property in the family and protecting it from the repercussions of coverture in the event of daughters' marriages or a widow's remarriage. It should be noted, however, that while testators sometimes stipulated that property remain within or revert to the male line of descent, they were more frequently content that property devolve to their daughters and their daughters' legitimate heirs, keeping it among lineal descendants of both sexes. Often, the *sole and separate use* formula was also employed in these documents to remove the property from the control of sons-in-law. A life interest was specifically created for women in seventeen of the thirty will bequests involving real property and in thirteen of the seventeen gifts/conveyances involving real

property examined.



Edmund Dunphy of Brigus South, for example, transferred his house, furniture, personal effects, and four gardens to his wife and daughter, both named Mary, in equal shares, with the stipulation that after his wife's death, the entire property was to devolve to his daughter "in Trust only for the Heirs of her body lawfully begotten," with the further provision that "[in] default of such Heir the said premises will & shall revert to the next lawful heir."[14] Similarly, Matthew Ronan of Ferryland left his entire property, moveable and immoveable, including a house, gardens, meadows, cattle, and farming utensils, to his wife "for her sole benefit, use and interest," with the proviso that it descend from her to her grandson, Martin Cullaton.[15] Robert Carter Sr. of Ferryland transferred to his daughter Mary Sanders a life interest in a plantation in Ferryland, with the stipulation that the property devolve to her issue upon her death.[16] In this case, however, the restriction applied to both male and female beneficiaries, for, when Mary's son Robert Sanders, in turn, gifted his share of the property equally to all his children (three sons and two daughters) in 1818, he cited his grandfather's intention that the property should remain in the family, and stipulated that no child of his own could ever dispose of his or her interest in the property to outsiders.[17]



Similarly, the three deeds of gift by which Henry Coryear transferred his various properties in Cape Broyle harbor to his children in 1817 contained restrictive covenants for his son as well as his daughters: Elenor, Ann, and Sarah received his house, adjoining gardens and meadows, and household furniture, while Elizabeth and Mary received a plantation in Cape Broyle currently occupied by Patrick Kelly, with the provision that the properties were to devolve to "their Heirs lawfully begotten of their respective Bodies"; John received Henry's main fishing premises in Shores Cove, Cape Broyle, but also with the stipulation that the property should pass on to "his heirs Male lawfully begotten."[18] Sons, then, were also often limited in their flexibility to dispose of real property through sale, mortgage, or future bequests outside the direct line of descent, as testators created *general tails* and tails male to maintain property,

particularly fishing premises, as a means of livelihood for future generations of the family.[19]

Even when women were given only a life interest in real property, they were occasionally given some discretionary power in relation to its ultimate disposition. In a deed of gift executed on 10 October 1759, for example, John Bole of Ferryland transferred all his plantations, goods, chattels, and personal estate in Newfoundland to his brother Henry's widow, Elizabeth Bole (now Seale). She was to have a life interest only, and upon her death, the property was to devolve to her children by the late Henry—Mary and Elizabeth Bole—and then on to their children. If one of the daughters died before her mother, the survivor of the two was to inherit everything. John's intention was obviously to maintain the property among lineal descendants of the Bole family and protect it from any claims arising from future spouses of Elizabeth or her daughters. The deed contained a provision, however, that gave Elizabeth some say in the final distribution of the property, for John stipulated that the daughters would inherit only if they were "dutyful to their mother"; "if they should disoblige their mother," he declared, "then she is at liberty to leave the said estate and Plantations to whom she shall think proper."[20]

Similarly, in his 1833 will, Simon Nowlan of Bay Bulls left all his plantations, gardens, and meadows to his wife Elizabeth with the proviso that the property was not to leave the Nowlan family. Nonetheless, Simon left Elizabeth with some discretionary power to leave the property at her death "to one or as many of the family as she thinks proper (and as an endowment)," although the chosen heir was still "not to sell, set, mortgage, transfer or make over to any person or persons whatsoever, but to have it go successively in the family (of Nowlan)."[21] Another example was the 1848 will of Laurence Tobin, a planter at Witless Bay. Laurence left his fishing room and equipment to four of his sons, and the remainder of his property—land, houses, furniture, and cattle—to his wife, Eleanor, with the condition that she should leave her portion to two sons, Phillip and James, only if she felt they deserved it. "Should they or either of them transgress or do any thing contrary to the will of my wife so as it can be made appear," he declared, "I leave it invested in her my wife to give their or his part to any of my other sons she consider more deserving of it."[22] Still, most of these women were restricted to redistributing the

estate property within the family.

On rare occasions, women legatees inherited real property with no strings attached. In a memorandum of gift in 1809, for example, Matthew Ronan gave a piece of land to his niece Elizabeth Collitan, "her Heirs, Executors, administrators and assigns… [for] their use and benefit from hence and for ever without any encumbrance or consideration whatever."[23] Similarly, in an 1815 deed of gift, Nicholas Bleake (also Bleacke) gave two-thirds of his land to his son Mickel and one-third to his daughter Catherine to hold absolutely and forever, "whilst Grass Grows or Waters Run."[24] This type of unconditional bequest of land to female legatees was unusual for wills in the area; but it was an uncommon form of bequest to male legatees as well, for testators frequently employed restrictive covenants respecting land, regardless of the sex of the beneficiaries.

Although sons (and often eldest sons) were generally favored in wills, it was not unusual for other family members to have been accommodated by previous arrangements such as deeds of gift or conveyance. This appears to have been how Robert Carter Sr. allotted his estate to his various offspring in the eighteenth century. As noted above, he transferred property to his daughter Mary, likely before her marriage to Daniel Saunders, and protected the gift from the repercussions of coverture. By his 1795 will, he left the bulk of his remaining estate to his eldest son, William, with an annuity to his wife and small bequests of personal property and cash (one guinea each) to his son Robert and daughters Ann Sweetland and Joan Tessier.[25] These small bequests to younger children from Carter's extensive estate suggest that they had already received their endowments by earlier deeds of gift or marriage settlements (Mary's absence in the will suggests that she may have died before her father). Pre-mortem endowments may also have been the method by which Laurence Tobin distributed his estate, for, while his widow and four of his sons received the bulk of the estate, the remaining four sons and five daughters received token amounts of cash: 1s. or 5s. Such was also probably the case with the estate of Thomas Norris Sr. In his 1840 will, Norris left his house, gardens, meadows, fishing premises, and four rental properties to his eldest son, Thomas Jr. His other three children—a son and two married daughters—received only 5s. each according to the will. While it is possible that these male testators had each fallen out with large portions of their families, it is far more likely that they had already made arrangements for their other children prior to executing their last testaments.[26]

Sometimes the widow and younger children were favored

by a final will, the older heirs having already received their portions. In his 1856 will, for example, Matthew Morry Sr. of Caplin Bay left his second wife, Ann Carter Morry, a life interest in his extensive estate—including a house, furniture, cattle, book debts, fishing rooms and appurtenances, a *Western boat* and *coasting schooner*, and all his lands, plantations, and tenements. Her interest in the house, garden, furniture, and cattle were to devolve at her death to Morry's daughter by his first marriage, Priscilla, and her lawfully begotten children.[27] The testator had had several sons and daughters by his earlier marriage, but most likely he had already provided for them with pre-mortem transfers. It is also likely that previous arrangements had been made for the major items that would not pass from Ann to Priscilla by the will—fishing premises, boats, gear, book debts, plantations, and tenements—to revert to the older children, particularly the eldest son, Matthew Morry Jr.

However, eldest sons were not always favored in testation practices. For example, in his 1810 will, Robert Carter, Mariner (of the second generation of the family in Ferryland), stipulated that after payment of his debts, the remainder of his estate should be divided equally among his wife and three children: Robert, Elisabeth, and James.[28] Carter's son Robert also followed the principle of equitable distribution in the disposition of his estate. By his will, which was probated in 1853, he basically followed the intestacy law in bequeathing to his wife, Sarah, a life interest in his dwelling house, stables and garden, and in one-third of his plantations, fishing rooms, tenements, and other properties (unstated but implied was that two-thirds would be distributed among the children of the marriage). If she remarried, Sarah was still to receive a life interest in one-third of the bequeathed property. At her death, all her property held by virtue of the will was to revert to the estate and be distributed equally to all their children (sons and daughters). In the meantime, Sarah was to act as executor of the will and was also granted the power—in her widowhood only—to dispose of any of the property she held by the will, if such a transfer was necessary for her support. The latter was an exceptional provision in terms of women legatees with life interests.[29]

In his 1848 will, Edward Power of Brigus South also apportioned his significant estate quite equitably among his two sons and two daughters (his wife, Brigid Doyle, had clearly predeceased him, as he stipulated his desire to be buried next to her at Brigus).[30] Although his main fishing premises were left to his sons, the family home and other significant real properties were left to his daughters. Indeed, Power's will was such a model of the *share and share alike* principle that it is worth summarizing the main bequests here:

- To his sons, Joseph and Nicholas, during the term of their natural lives, the fishing room with stores, stages, flakes, cook rooms, to pass within the family forever. If the sons were ever to argue over the property, one-half was to be evaluated and sold to the other or to the next closest heir.
- To Joseph, during the term of his natural life, a house and garden with potato field as well as ground near Power's fishing room that he had bought from Charles Hutchings.
- To Nicholas, during the term of his natural life, a spot of ground on Power's old fishing room, 60 feet by 40 feet, for building a house, should he require it, as well as the cultivated ground at the back of the old fishing room and the land between the old room and the sea.
- To his daughters, Sarah and Ellen, during the terms of their natural lives, his dwelling house, furniture, goods, the small garden adjoining the house, the garden at the rear of the store adjoining Mark Grace's ground, and the land and farm on *the Hill* held by an 1832 government grant, along with any buildings and farming utensils, with the proviso that if the daughters were to marry or decide to live apart, the property was to be divided equally between the two in accordance with the judgment of the two sons.
- To Sarah, during the term of her natural life, his fishing room known as *Lookout Room* in Brigus South.
- To Ellen, during the term of her natural life, his fishing room on Brigus Island known as *Webber's Room*.
- To his grandson Edward (son of the late Peter Power), his meadows and gardens currently let to James Doyle in Brigus at a rent of 30s. per annum; Joseph to act as trustee.
- Land occupied by Martin Leary to be divided equally between his two sons and two daughters.
- To Joseph, one cow.
- To Nicholas, one cow and his horse named Star.
- To Nicholas and Joseph, the remainder of all cattle and horses.
- To Ellen and Sarah, all farm produce to be shared equally.
- The land never to be sold or mortgaged out of the family.
- Any disagreements to be referred to Robert Carter, justice of the peace, Ferryland.

In addition to the equitable distribution of the real and moveable property among his children, the other striking feature of Power's will is the life interest created for all children, regardless of sex, in the land bequeathed. Every gift of real property contained the restriction that the bequest was for the natural life of the legatee only. And in devising the main fishing premises to his sons, Power took extra precautions, stipulating that after their deaths, the property was "to descend to their children and their children's children in succession for Ever." If disagreements arose between the sons over the property or any part thereof, it was not to be sold to strangers but "delivered up to one or other of my Descendants at such a valuation as two disinterested and respectable Persons may set thereon." The right of first refusal was to be given "to the senior in possession and upon his refusal to take it then to the next senior and so, on

through the several of my descendants alive in rotation untill some of them accept the offer." As a final precaution, he added a clause at the end of the will providing that no land was to be disposed of in any way outside the family, but was to devolve to his lineal heirs, male or female:

> *I further Will and Declare*, and all the Gifts and bequests aforenamed are made upon *this express and positive Condition*, that is to say, That no part or parcel of the above named landed Property shall ever be mortgaged, sold, or in any way whatever disposed of or made away with, but be and remain the Property of my descendants in rotation, so long as any of them shall survive, or be alive, and when any of the above named Parties shall die, His Heirs, and their respective proportion shall become and be the property of the next akin alive and among those equally near, to be justly and equitably divided among the Heirs of my descendants for Ever.

Although the rule against perpetuities acted as a legal bar to Edward's vesting property interests into the remote future, his wishes were respected by family members through the years, and much of his property at Brigus South continued to be held by his direct descendants in the late twentieth century.

When a male testator had no sons, he generally left his property to his widow (if she had survived him) and daughters rather than to a more distantly related male heir. Peter Weston of Ferryland, for example, made his wife, Catherine, and two daughters, Catherine and Sarah, co-heiresses of his extensive estate—including several houses, fields, gardens, stores, wharfs, fishing rooms, stages, and flakes in Ferryland harbor—leaving a nephew, William Ludwig, only 1s. Stg.[31] William Murray of Ferryland similarly divided his estate between his wife and daughter, except for one piece of ground that was left to the parish priest in payment for masses for the souls of himself and his former wife; his current wife, Mary, received a £15 annuity from a rental property, while his daughter, Mary Barron, received the remainder of his £50 estate, including property, furniture, and personal effects.[32] And the will of John Jenkins of Renews divided his entire estate between his five daughters, with the share of one daughter who had predeceased him being devised to her surviving heirs.[33]

Occasionally, special bequests were made to other female relatives. For example, John Gregory, formerly of Brigus South and then of Ferryland, left the sum of £4 to his sister Mary Holly for attending him in his final illness.[34] Robert Carter's

1810 will (see above) stipulated that his mother-in-law, Mrs. Howe, receive £400 pounds from his estate in repayment of sums of money loaned to him over time.

Women on the southern Avalon, then, were a substantial presence as beneficiaries in testamentary documents of the study period.

Women's Wills and Deeds of Gift or Conveyance

While women were much more likely to be the recipients of property than testators and transferors, a small number of them executed testamentary documents during this period. As noted above, evidence of ten women's wills and four women's deeds of gift or conveyance exists in the records examined. And although women beneficiaries came from both the English and the Irish populations on the southern Avalon, with English women predominating, women testators and transferors came predominantly from the Irish community: eight of the ten testators and three of the four transferors were Irish or Irish Newfoundland women.

One of the two English-Newfoundland female testators in the area was a widow, Mary Keen (or Kean), and by the time she began disposing of her property in the 1790s, her descendants had already begun to marry into the Irish community.[35] Two wills purportedly executed by the widow Keen (on 16 February 1795 and 9 February 1798, respectively) surfaced in an 1817-18 court case in St. John's in which her granddaughter's husband, Thomas Meagher, was being sued by his creditors Hunters and Company for an outstanding debt of £551.1.6. The plaintiff was hoping to attach a fishing plantation at Ferryland that Meagher had mortgaged to the company as security for his original debt of £800.4.2. The plantation had initially been Mary Keen's, but Meagher had gained possession of the property through his marriage to Mary's granddaughter, Joan Ryan. Nonetheless, Meagher hoped to cast some doubt on his right to have mortgaged the premises by the production of the two purported wills. The 1795 will devised Mary's fishing plantation at Ferryland jointly to her bachelor son, James, and her granddaughter, Joan Ryan, with the proviso that the entire property devolve to Joan upon James's death. The 1798 document was purportedly executed in anticipation of Joan's marriage to Thomas Meagher, and stipulated that if the marriage took place, the property was to go to Thomas, his children, and their successors forever, provided that Thomas and his family live with Mary and that he act in concert with her for the general good of the property. Neither will was probated, although the St. John's court noted that both were entered in the surrogate court records for Ferryland (the Ferryland entries have not survived).

The court's attention in 1817-18 focused on the second will and its creation of an interest for the Meagher children, for if it was legitimate, it would have acted as a bar to the mortgage and an obstacle to Hunters's right to attach and sell the

property. Ultimately, the second will was deemed a fraud upon presentation of proof that one of the witnesses' signatures was not legitimate. It appears, however, that Mary Keen did write at least one, and possibly two, testamentary documents, even though the second was not validly witnessed.[36]

Two other female testators appearing in the records were actually women who lived in Ireland. One of these women, Elizabeth Ludwigg (or Ludwick) of Waterford, was the widow of William Ludwigg, son of John and Mary Ludwigg and scion of a wealthy Irish Protestant merchant-planter family with extensive holdings in Ferryland in the eighteenth century. Although William lived at times in Ferryland, it is likely that Elizabeth never joined him there, choosing instead a life of genteel domesticity in the home country. Most of the Ludwigg properties on the southern Avalon were disposed of in the eighteenth century, but at least one remained in the family, for at Elizabeth's death in 1800, she left a fishing room, stage, and flake at Ferryland to William Coman, a merchant from Waterford City operating on the southern Avalon.[37]

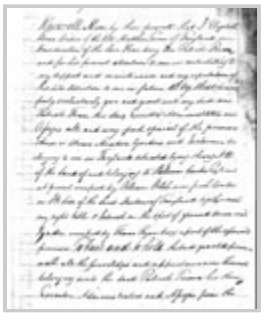
Another Irish testator also held property in Ferryland through her ties to an eighteenth-century Irish Protestant merchant-planter in the study area. Anstice Gorman of Youghal, County Cork, was a servant to the family of Richard Nason and Dorcas Benger Nason, and had an illegitimate child, Thomas, by Richard. Both the Nason and the Benger families had extensive holdings on the southern Avalon, particularly in Ferryland, and although most members of the families had returned to Youghal or removed to America by the nineteenth century, they maintained many of the southern Avalon holdings as rental properties. In his 1818 will, Richard noted that his children had already been provided for by various marriage settlements and deeds of family agreements, which the will confirmed. His wife, Dorcas, had predeceased him. The remainder of his estate, including his dwelling house and garden as well as the title, rents, and rent arrears in relation to several properties in Cork and his extensive holdings in Ferryland, he left to his "faithful servant," Anstice Gorman, and their son, Thomas. Furthermore, Anstice was named executor of his will, and Richard stipulated that if any of his legitimate children disputed the will's contents, they were to be cut off with only 1s., regardless of any prior arrangements made on their behalf.[38] Thus Anstice and Thomas became substantial landlords in Ferryland. Thomas died in 1826, and Anstice herself died on 5 March 1828. By her will, executed the month before she died, she left all the property of any nature that had been bequeathed to her by Richard Nason, including her Ferryland property, to her nephew John Nunan.[39]

All other female testators/transferors in this category were Irish Newfoundland women. Johnson notes that women's testation practices in Newfoundland, like

men's, followed the customary practice of partible inheritance. Unlike male testators, however, they showed a greater concern with the distribution of personal property.[40] These trends were certainly reflected in the 1815 will of Hester Brothers of Fermeuse, in which she carefully apportioned all her real and personal property to her nieces and nephews, a task that was complicated by the fact that the names of the testator and three beneficiaries were the same:

> Know all men by these presents that this my last dying will [and Testament - obliterated in original] is to leave Half my House and Gardens to John Brothers son William and the other half to his Daughter Hester Brothers and likewise Hester Brothers is to have my Bed and she is to have my ring and one Silver spoon, Michael Brothers daughter Hester is to have one Silver spoon and half dozen plates and one Candlestick, James Brothers Daughter Hester is to have one Silver spoon and one half dozen plates, and one Candlestick, James Brothers is to have one Table and ------ [unreadable] Desk, the said William Brothers or Hester Brothers is not to demand the House or Gardens while their Father lives.[41]

But most of the remaining women's wills and deeds examined were simple, single-heir dispositions. In 1804, Mary Whealan bequeathed one-half of the property that had been left to her by her husband to her son, John Magil, as well as the use of the other half until it was required by its proproietor, Bridget Whealan.[42] Similarly, Mary Berrigan, a widow at Renews, left to her grandson William Berrigan her right to her dwelling house, fishing room, and garden by a will executed in 1826.[43] Often, widows made these dispositions to children or grandchildren in exchange for support in their old age.[44] This was likely the purpose of the two previous examples, and it was certainly the stated intent of the following family transfers. In 1816, Elizabeth Foran of Ferryland granted to her son Patrick Foran her title to her house, meadows, and gardens, as well as a rental property in Ferryland "for his present attention to me, in contributing to my support and maintenance and my expectation of his like attention to me in the future."[45] Similarly, in 1831, Margaret Aylward of Admiral's Cove (Fermeuse), a widow who had been living with her son John for the last fourteen years of her life, repaid his family for their support in her old age by leaving all her property—a house, potato garden, and furniture worth in total about £10—to



John's son, also named John.[46]

Only one female testator/transferor created a life interest with her gift. In 1817, Mary Whealan granted property on the north side of Ferryland currently occupied by her son John McGill to her granddaughter Mary McGill to hold during her natural lifetime and then to pass on to her granddaughter's lawfully begotten heirs.[47] Whether this deed was intended to override Mary's 1804 will favoring John (see above) or was related only to a portion of her property is difficult to determine.

In one other instance, a widow who had remarried executed a deed of gift to transfer property held from her previous marriage to the children of that marriage in order to protect their inheritance from the repercussions of coverture. In 1814, Mary Neill Dalton (also Daulton), the widow of Constantine Neill of Fermeuse then married to James Dalton, transferred to her two oldest sons, Owen and Constantine Neill, her house, meadows and gardens, boats, nets, and seines equally, with the provision that "they are not to put the four youngest out of the House until they are able to do for themselves."[48] Although the deed was executed after her second marriage, there was no indication in the records that its effectiveness was ever challenged by the recording magistrates or her second husband.

Evidence of the remaining two women testators exists only through allusions in court cases. The will of Mary Shea of Ferryland did not survive in the records, but it was referred to in the dispute that arose between her daughter, Hannah McDaniel, and Catherine Weston in the late eighteenth century (see Chapter 6). This reference indicates that she possessed at least one fishing room at the time of her death, which had been granted to her by Governor Montagu, and that she had left the room to her daughter Hannah, presumably by a will that was probated, as her "executors," Hannah and William McDaniel, sold the property to William Carter in 1795. In addition, a fragmentary reference to the will of Catherine Carroll of Witless Bay parish, dated 25 August 1843, appears in the records of her parish priest, Reverend Cleary, to whom she left £2 to offer up masses for her soul.[49]

Gender, Ethnicity, Class, and Testation Practices

The fairly equitable inheritance practices in the area were still tempered by gender difference. Among legatees, the disparity appeared in the nature of property inherited. Although estates were often distributed among male and female heirs on a fairly equitable footing, male heirs still tended to be favored

with bequests of major fishing premises, with widows and daughters, by contrast, inheriting properties that were of less importance in the fishing economy. Among testators, the most obvious gender difference manifested itself in sheer numbers. Overwhelmingly, the testators or transferors in the documents encountered were men, reflecting an inheritance regime that—while flexible within the local context—still favored male ownership (or possession) of property. Another obvious gender difference was in the marital status of the testators: while male testators were single, married, and widowed, most women's testamentary documents, at least those that have survived, were written by widows.[50] Most of these were disposing of relatively small estates, often in exchange for support in their old age, and they tended to be less preoccupied with maintaining properties in the patriline, although this may simply have been a reflection of the lesser significance of the properties they were transferring.

In terms of ethnicity, the provision for the saying of masses for the souls of testators and family members seems an obvious difference between English Protestant and Irish Catholic testamentary documents. Yet it was not a preoccupation of Irish testators on the southern Avalon, and only three examples appear in the records examined.[51] This may have reflected a lack of disposable cash for such purposes, or it may be further evidence of the less rigid hold of formal Catholicism on the population during most of the period.

Both English and Irish testators in the area shared a preference for fairly equitable testation practices, with accommodation being made for all family members, albeit with a favoring of sons in terms of primary fishing premises. While this was a deviation for the English population (particularly the middle-class English), who had come from a legal tradition of primogeniture and impartible inheritance, it was less a departure for the Irish population, for whom communal property and partible inheritance had been long-standing customary practices. This suggests a possible addendum to Johnson's thesis: that an extensive Irish influence on the island may have been part of the blend of local circumstances that tempered the reception of English inheritance law in Newfoundland.

Aside from a variance in inheritance traditions, the most discernible ethnic difference in testation practices on the southern Avalon appeared in the status of women in testamentary documents. By far, English and English-Newfoundland women predominated as legatees in written documents, while Irish or Irish Newfoundland women predominated as the authors of wills (all but two) and deeds of gift or conveyance (all but one). Although there are insufficient surviving records to draw firm conclusions, it is possible that English women, who hailed mostly from the old planter society and a rising middle class that had extensive estates to manage, were less likely to write testamentary documents because the disposal of their property had already been laid out in trust agreements, marriage

settlements, and the restrictive clauses and life interests of wills and family transfer agreements written by men. Still, most would have had property in their widowhood; but a number of these women retired in their widowhood to England or St. John's, and any testamentary documents written by them thereafter do not appear in the southern Avalon records.[52]

Overall, English families did figure more prominently in the testamentary documents examined in terms of the size of their estates. But there were some substantial Irish estates involved as well—not only the interests of eighteenth-century Irish Protestant merchant-planter families (such as the Ludwiggs, Nasons, andBengers) and substantial Irish Catholic planter families (such as the Neills), but also the interests of families that had begun in fishing service or small-scale family enterprises and accumulated considerable property after coming to the area (such as the Murrays, Powers, and Tobins). Indeed, the Irish plebeian community was respectably represented among the wills and deeds of gift or conveyance during the period and demonstrated the same concern to provide equitably for family members. However, they were proportionately under-represented in the documents examined, which is perhaps to some extent a reflection of the relative literacy levels of the two groups. Of course, it is quite possible that some of the local Irish executed wills and deeds that were never recorded in the court records, but whose families abided by their testamentary wishes nonetheless. The majority of Irish plebeian estates during the period, however, would have been left intestate.

Intestacies

At least forty-one women's names appeared in court records in relation to intestate estates on the southern Avalon (see Table 7.2). Of these, thirty-four were potential beneficiaries: thirteen (nine widows, one mother, one mother-in-law, two of unspecified relationship) petitioned to be appointed estate administrators by the court; another twenty-one women were recorded solely as beneficiaries of the estates in question, as widows, daughters, sisters, and cousins of the deceased. All but three of the thirty-four were from the Irish community. The administration of seven women's estates (two valued at £10, one each at £20, £40, £50, and £100, and one of unspecified value) were also included in the records of the period. All but one—Catherine Jackman of Renews, with an estate valued at £10—were Irish Newfoundland women. Inventories of the estates were not available in all the records of the above matters, but of those that were recorded, the estate administration always included the distribution of real property, often in combination with goods and personal effects.

As noted earlier, the English law of intestacy stipulated that in relation to chattel interests and personal property, the surviving spouse inherited one-third of the

estate, and the legitimate children of the deceased inherited the remaining two-thirds. If no spouse or children survived the decedent, the estate devolved to the next of kin. This rather straightforward formula for distribution was complicated in Newfoundland by the treatment of real property as chattels real in the case of intestacies.[53] Because of the tentative definition of real property that was rooted in the traditional privileging of the migratory ship fishery, the applicability of English inheritance laws to Newfoundland was open to interpretation well into the nineteenth century. Often, local courts treated an interest in the land as chattels real in the case of intestacies, favoring a division of one-third to the widow and the remaining two-thirds among the children (or equal division among children if there was no surviving widow) over the English principle of primogeniture.

Indeed, this interpretation was made law by the fledgling Newfoundland legislature in 1834 with the passage of the *Chattels Real Act (4 Wm. IV, Cap. 18)*. Declaring that primogeniture and impartible inheritance were inappropriate for Newfoundland circumstances, the act provided that real property in intestate estates should be distributed, like personal property, as chattel interests. Debates leading up to the passage of the legislation indicated that the spirit and intent of the legislation was to accommodate the more inclusive inheritance regime that had developed through local practice. Nonetheless, colonial courts continued for years to be entangled in interpreting the Act alternately as declaratory—merely confirming a situation that had long existed by custom and usage—or as new law that had not applied to intestacies prior to 1834.[54]

Even before the passage of the *Chattels Real Act*, however, southern Avalon courts had tended to favor the distribution of real property in intestate estates as chattels real. One such case occurred in 1792, when Mary Kennedy sued her brother, William Tucker, over the distribution of the rent from property of their late father, who had died intestate roughly six years previously. William had taken over the property, which had earned a rent of £11 per year for five years, then £8 the following year. William had originally paid Mary £4 from the yearly rent, as the "intended bequest" of his father, but when the rent had dropped to £8, he had declared himself his father's sole heir and paid his sister nothing. The court declared that "Lands & Plantations, in Newfoundland, are nothing more than Chattel Interests, and should, in case of Intestacy, be distributed as such." William and Mary were therefore to share the proceeds equally (presumably there was no surviving widow), and William was ordered to reimburse his sister half the previous year's rent (£4)—a sum that was to be withheld from William's wages with Matthew Morry—plus, over time, an additional £7.10.0 to make up the deficiency in her share of the rent from the previous five years. Further, the court advised Mary that she did not have to honor the rental arrangement entered into by her brother and could take possession of half the plantation herself if she so

desired. Case File 30 This case, involving an Irish Newfoundland woman on the southern Avalon, would prove to be a landmark case in the evolution of Newfoundland law on the treatment of interest in real property as chattel interest in the case of intestacies.[55]

The local courts upheld this principle in various cases, including those involving widows and the attachment of real property for debt. In the late 1810s, for example, Hunt, Stabb, Preston, an English mercantile firm operating out of Renews and struggling to keep its head above water in the post-war depression, learned to their chagrin (and considerable financial disadvantage) that their interpretation of the law of property and inheritance from the home country was not always shared by the magistrates in Ferryland. In a collection action against the estate of Catherine Jackman, for instance, they found themselves stymied by the court's application of the law of intestacy regarding real property they were hoping to attach. In 1813, Catherine had entered into a mortgage with the firm, offering her house, outhouses, and two head of cattle as security for a debt of £143.15.8, to be repaid at £20 per year until fully paid. Several years later, Catharine died, and the firm tried to foreclose on the mortgage, claiming that the debt had now risen to £160. Catharine's children (two sons) intervened, arguing that their father had died intestate in 1807, and as the debt had been contracted by their mother since that time, the mortgagees had the right to attach only the widow's third of the intestate estate. Hunt, Stabb, Preston contended that the father, Arthur Jackman, had died insolvent, and a large portion of the current debt to the firm had been incurred by him; thus, his entire estate should be responsible for that debt. But the sons argued that only their mother's debt had been secured by the mortgage and that only her share of the property had been encumbered. The court agreed with the sons and ruled that only the widow's third could be disposed of for the benefit of her creditors.[56] Case File 31

The same firm was frustrated again by the court's interpretation of the law of inheritance and coverture in their effort to collect a £50 balance on the account of William Brandy, a dealer with their house who had drowned in June of 1818. The firm invoked the principle of coverture and tried to take possession of a house and garden that, they claimed, Brandy had owned by virtue of his marriage to the widow of John Doyle. The twice-widowed Mrs. Brandy objected to their claim, arguing that her previous husband had died intestate, leaving a daughter, and that this daughter now had the full right to her father's property as his only heir. The court, however, disagreed with both interpretations. Invoking the law of intestacy, it ordered that Doyle's real property should have been distributed as a chattel interest: one-third to his widow and two-thirds to his child. The second husband, Brandy, had therefore been entitled to only one-third of the property by virtue of his marriage to the widow Doyle, and Hunt, Stabb, Preston could only attach this portion to pay his debt.[57] Case File 32

Of course, the vast majority of intestate estates, which involved most of the Irish plebeian community, would not have been processed by the courts. The chattels portion of most would have been low in monetary value; and although many estates would also have included dwellings, gardens, and fishing premises, the distribution was effected in accordance with previously expressed wishes of the deceased and/or customary practices, and was acknowledged by family members and the local community. It is likely that these unrecorded divisions followed the *share and share alike* principle that was reflected in written wills—widows assuming possession of homes and gardens for the remainder of their lives, sons taking over fishing premises and often family homes on the understanding that widows and dependent siblings be cared for, and remaining personal property and real properties of lesser value being distributed among the remaining children. Certainly, this method of partible inheritance was familiar to the Irish community and was likely transported from the old country to the new, where it was reinforced by local circumstances. In particular, given the large numbers of male fishing servants—usually non-inheriting sons in Ireland—who married into local families in the period of early settlement, it is likely that parents made special efforts to ensure that Irish Newfoundland daughters and their families would have the wherewithal to support themselves. Apportioning a piece of family property for a daughter and her new husband, for example, was a form of pre-mortem endowment, whether it was accomplished by formal deed or not. In addition, the significant role of women in economic production and their overall status also likely reinforced a tendency towards partible inheritance. By contrast, in Ireland, a move to impartible inheritance coincided with the decline in women's economic and social status, particularly from the mid-nineteenth century onwards.

Conclusion

As inheritance law evolved at the local level, the legal system accommodated local customary practices that advocated a more gender-inclusive system of partible inheritance than did the English tradition revolving around the male line of descent. On the southern Avalon, as elsewhere in Newfoundland, testation practices were marked by a more equitable distribution of property than that advocated by English common law.

Widows, for example, were often left with substantial property and autonomy by their husbands' wills. And while bequests were usually (although not always) restricted by life interests, widows exercised considerable independence and power in relation to family property during their lifetimes, and sometimes had discretionary power in relation to the ultimate disposition of the estate. Certainly, they were not thrown at the mercy of their children by virtue of exclusionary testation practices—a process described by Nanciellen Davis in the context of nineteenth-century New Brunswick as "patriarchy from the grave."[58] While sons

were favored in terms of property related to the fishery, daughters also inherited real property—sometimes with life interests, but sometimes without (particularly in cases where children were designated as residual legatees after a widow's death). Furthermore, lineal female heirs were generally preferred over male collateral kin in the disposition of land, even among the middle class. Chattels were also often quite equitably divided between heirs of both sexes, in a manner that reflected a concern to provide some means of support for all family members.

Of course, women's experiences within the inheritance regime were tempered by gender, ethnicity, and class. Women were far less frequently testators than men, and generally only in widowhood. English Protestant women predominated as legatees, as the extensive estates of the middle class were carefully disposed of throughout the period. Still, the Irish were a respectable presence in the wills of the period. Intriguingly, Irish women were more frequently testators than English women, perhaps reflecting the "passive" nature of English women's property in the area, or possibly indicating that many of the latter retired outside the region in their widowhood, and thus their wills have been recorded elsewhere.[59]

By far, however, Irish women predominated over English women in intestacies, both as intestates and as beneficiaries. In those matters that were formally administered, women were the beneficiaries of the customary practices and, ultimately, statutory law in Newfoundland that provided that real property be treated as chattels real in intestate estates. This removed land in intestate estates from the repercussions of primogeniture and stipulated a division along the same lines as chattels: one-third to the widow for her lifetime, ultimately to devolve to the children of the marriage; two-thirds equally divided among the children. Most of the intestate estates within the Irish community, however, would never have come before the courts. As such, their distributions were left to customary practice which, in the period of early settlement, likely favored security for widows and dependent children and a continuation of the practice of partible inheritance that was still common in Ireland in the late eighteenth and early nineteenth centuries.

As with the court system, then, the inheritance regime on the southern Avalon, in both its formal and its customary aspects, allowed considerable scope for women's inclusion.

Notes:

Note 1: The following discussion of English inheritance law borrows primarily from Amy Louise Erickson, *Women and Property in Early Modern England* (London: Routledge, 1993), with some additional insights from: Maxine Berg, "Women, Property and the Industrial Revolution," *Journal of Interdisciplinary History* 24, no. 2 (autumn 1993):

233-50; Trudi D. Johnson, "Matrimonial Property Law in Newfoundland to the End of the Nineteenth Century" (Ph.D. diss., Memorial University of Newfoundland, 1998); Derek Mendes da Costa, Richard J. Balfour, and Eileen E. Gillese, Property Law, 2nd ed. (Toronto: Edmond Montgomery, 1990); A. H. Oosterhoff, *Text, Commentary, and Cases on Wills and Succession*, 3rd ed. (Toronto: Carswell, 1990); and Alan M. Sinclair and Margaret E. McCallum, *Introduction to Real Property Law*, 4th ed. (Toronto: Butterworths, 1997). back

Note 2: The rule against perpetuities in English common law restricted the vesting of interest in land beyond a period of twenty-one years after a life in being at the creation of the interest. This prevented a person from tying up his or her property for an indefinite period after death. Nonetheless, the spirit and intention of a tail could be kept alive through the testamentary practices of succeeding generations. back

Note 3: Erickson, *Women and Property*, 6. back

Note 4: Johnson, "Matrimonial Property Law." back

Note 5: This view is also held by Christopher English and Christopher P. Curran; see "A Cautious Beginning: The Court of Civil Jurisdiction, 1791," in *Silk Robes and Sou'westers: The Supreme Court, 1791-1991* (St. John's: Jesperson Press, 1991). back

Note 6: C. Grant Head, *Eighteenth Century Newfoundland* (Toronto: McClelland and Stewart, in association with the Institute of Canadian Studies, Carleton University, 1976). back

Note 7: Johnson, "Matrimonial Property Law," 11. back

Note 8: Johnson, "Matrimonial Property Law," 159-233. See also Raymond Gushue, "The Law of Real Property in Newfoundland," *Canadian Bar Review* 4 (May 1926): 310-14. Ryan, Berkin, and Karlsen note that English rules of inheritance were also refashioned in colonial America, and that male testators sometimes left significant shares to wives and daughters. See: Mary P. Ryan, *Womanhood in America: From Colonial Times to the Present* (New York: New Viewpoints, 1975); Carol Berkin, *First Generations: Women in Colonial America* (New York: Hill and Wang, 1996); and Carol F. Karlsen, "The Devil in the Shape of a Woman: The Economic Basis of Witchcraft," in *Women's America: Refocusing the Past*, ed. Linda Kerber and Jane Sherron de Hart, 3rd ed. (New York: Oxford University Press, 1991), 57-72. Karlsen argues, however, that in the context of colonial Puritanism, the refashioned system left female beneficiaries open to accusations of witchcraft because they "stood in the way of the orderly transmission of property from one generation of males to another" (70). Quite exceptional in colonial America was New Netherland, which was governed by Dutch law before and for several decades after its conquest by the English. Under Dutch law, married women maintained their separate legal identity, and marital property was held jointly, with estates commonly being distributed by joint wills. Widows were thus entitled to one-half of the marital estate and also had the right to administer the other half for legitimate heirs. See: Linda Briggs Biemer, *Women and Property in Colonial New York: The Transition from Dutch to English Law, 1643-1727* (Ann Arbor, MI: UMI Research Press, 1983), 1-6; and Carol Berkin and Leslie Horowitz, eds., *Women's Voices, Women's Lives: Documents in Early American History* (Boston: Northeastern University Press, 1998), 79 and 166. back

Note 9: Both Johnson and I see greater flexibility in local testation practices than Cadigan, who sees the inheritance regime as a bulwark of the patriarchal family structure. See Sean Cadigan, *Hope and Deception in Conception Bay: Merchant-Settler Relations in Newfoundland, 1785-1855* (Toronto: University of Toronto Press, 1995), 65-68. back

Note 10: PANL, GN 5/1/C/9, 19-20, and 24 (23-24 and 28), Will of William Gregory, 1 October 1797, likely entered in the Ferryland court records in 1814 or 1815, given its placement in the records. Note that much of the GN 5/1/C/1 and GN 5/1/C/9 series at PANL contain two sets of page numbers. The alternate set will appear in parentheses throughout the citations for these series. back

Note 11: Both deeds were dated 3 May 1820, and appear in PANL, GN 5/1/C/1, Ferryland, 90 (94). back

Note 12: This may have been the same Michael Neill who had executed the previously mentioned 1820 will, with a larger family, although there were various branches of the

Neill family at Admiral's Cove—all large families of the same collateral kinship group with the same Christian names running throughout. back

Note 13: Mannion Name File, Fermeuse, "Neill, Michael," Will and Codicil of Michael Neill, both dated 4 October 1834; probated 12-15 November 1834. back

Note 14: PANL, GN 5/1/C/1, Ferryland, 56-57 (60-61), Deed of Gift, 24 April 1820. back

Note 15: PANL, GN 5/1/C/1, Ferryland, 95 (99), Will of Matthew Ronan, undated in copy in court records, but the Proof of Will was sworn 20 November 1824. back

Note 16: This transfer is cited in an 1816 agreement reached between Mary's surviving children, Robert Sanders and Ann Sanders Morry (as represented by her husband, Matthew Morry Jr.). See PANL, GN 5/1/C/9, 30-31 (34-35), Agreement between Robert Sanders and Matthew Morry, Jr., 9 January 1816. The date of the conveyance is not given; however, it likely took place prior to Mary's marriage to Daniel Sanders and preceded Robert Carter's will of 1795, in which Mary was not mentioned. See also PANL, MG 31, Carter Family Papers, file 33, Will of Robert Carter, dated 29 March 1795. back

Note 17: PANL, GN 5/1/C/1, Ferryland, 50-53 (54-57), Deed of Conveyance, 10 November 1818. back

Note 18: PANL, GN 5/1/C/9, 31-33 (35-37), three Deeds of Gift, 5 March 1817. back

Note 19: A general tail was an estate tail whereby the interest in the land could be inherited by lineal descendants of either sex. Again, such tails would have been restricted by the rule against perpetuities in common law, but they were often respected by following generations nonetheless, and thus their intent was carried out in practice. back

Note 20: CNS Archives, MF 236, "Will" of John Bole, Ferryland, 10 October 1759. Although the repository lists this document as a will, its wording strongly suggests that it was a deed of gift. back

Note 21: PANL, GN 5/1, vol. 1, 171-72, Will of Simon Nowlan, 4 July 1833; probated 2 November 1833. Also John Mannion Name File, Bay Bulls, "Nowlan, Simon." back

Note 22: PANL, GN 5/1, vol. 2, 147, Will of Laurence Tobin, 11 July 1848. Also Mannion Name File, Witless Bay, "Tobin, Laurence." Tobin's remaining children (four sons and five daughters) received small amounts of cash: 5s. to all but one son, who received 1s. back

Note 23: PANL, GN 5/1/C/1, Ferryland, Memorandum of Gift, 12 July 1809; entered in the Ferryland court records 1 March 1820. back

Note 24: PANL, GN 5/1/C/9, 34 (38), Deed of Gift, 15 October 1815. back

Note 25: PANL, MG 31, Carter Family Papers, file 33, Will of Robert Carter, 29 March 1795. back

Note 26: Mannion Name File, Ferryland, "Norris, Thomas"; Will of Thomas Norris, 6 May 1840; probated 10-11 December 1840. back

Note 27: PANL, MG 237, Matthew Morry Papers, file 3, Will of Matthew Morry Sr., 25 April 1856. back

Note 28: PANL, GN 5/1/C/9, 8 (12), Will of Robert Carter, 3 June 1810. back

Note 29: The will of Robert Carter appears at PANL, GN 5/1, vol. 2, 145-46, but is undated. Carter died in 1852. A subsequent court case in which Sarah Carter appeared as executror of the estate referred to the probate of the will in 1853. See PANL, MG 247, Carter-Benger-Nason Papers, files 18, 20, and 33, various papers respecting *John Nunan v. Robert Carter and James H. Carter in re: estate of Richard Nason*. back

Note 30: See: PANL, GN 5/1, vol. 2, 227, Will of Edward Power, 7 October 1848; also Mannion Name File, Brigus South, "Power, Edward." back

Note 31: Weston's will created a life interest only for his wife, with her third of the property to devolve to the two daughters, or the survivor of them, upon Catherine's death. When the will was submitted for probate, however, Governor Montagu effectively neutralized the restrictive covenant on the wife's share by granting "to Catherine and daughters Catherine and Sarah, their heirs, administrators or assigns [this wording gave Catherine the right to transfer her interest in the property outside the family] the quiet and peaceable and uninterrupted possession" of the property. See PANL: MG 31, Carter Family Papers, file 29, Will of Peter Weston, 28 September 1775; and GN 2/1/A, vol. 6, 149-53, Montagu, Grant to Catherine Weston and daughters Catherine and Sarah, 26 September 1776. back

Note 32: PANL, GN 5/1, vol. 1, 173-74, Will of William Murray, 17 August 1833; administration 19 February 1834. Also, Mannion Name File, Ferryland, "Murray, William." back

Note 33: PANL, GN 2/1/A, vol. 1, 122-23 and 126-27, Petition of John Griffin, Renews (seeking mother's share of estate) and decree of Governor Drake, court hearing at Renews, 29 August 1750. back

Note 34: PANL, GN 5/1/C/1, Ferryland, 46-48 (50-52), Will of John Gregory, 4 July 1816; Proof of Will executed 1 November 1819; entered in Ferryland court records 1 November 1819. These parties were the son and daughter of William Gregory, mentioned above. back

Note 35: The other English testator was Rose Steer, originally of Dartmouth but living as a widow in Caplin Bay by the mid-1820s. Rose left substantial cash bequests to her relatives, both in St. John's and back in England: £50 each to her mother, two sisters, and brother, £100 to a niece, and the remainder of her cash and personal effects to another niece. See PANL, MG 237, Matthew Morry Papers, file 12, Will of Rose Steer, 20 June 1825. Note that these female legatees are not included in the tally at the beginning of this chapter, because they have no connection with the southern Avalon in terms of residence or property holdings. back

Note 36: See: PANL, GN 5/2/A/1: box 2, 143, 162-65, and 221, *Hunters and Company v. Thomas Meagher*, 18 September, 13 October and 3 November 1817; and box 3, 102 and 149-53, *Hunters and Company v. Thomas Meagher*, 27 August and 22 September 1818. See also Mannion Name File, Ferryland, "Meagher, Thomas." back

Note 37: Mannion Name File, Ferryland, "Ludwigg, William," citing an entry on his wife, Elizabeth Ludwigg, from the Registry of Deaths, Dublin, 1800. back

Note 38: PANL, MG 247, Carter-Benger-Nason Papers, file 7, Will of Richard Nason, 1 April 1818. back

Note 39: PANL, MG 247, Carter-Benger-Nason Papers, file 13, Will of Anstice Gorman, [?] February 1828. John Nunan would become involved in a protracted dispute with the Carter family over the title and rents of these properties that was still ongoing in the 1850s (see MG 247 in general). back

Note 40: Johnson, "Matrimonial Property Law," 213-14. back

Note 41: PANL, GN 5/1/C/1, Ferryland, 44-46 (48-50), Will of Hester Brothers, 20 November 1815; entered in the Ferryland court records 23 October 1819. back

Note 42: PANL, GN 5/1/C/9, 3, Will of Mary Whealan, 19 March 1804. back

Note 43: PANL, GN 5/1, vol 1., 474, Will of Mary Berrigan, 13 March 1826; administration 15 October 1845. See also Mannion Name File, Renews, "Berrigan, Mary." back

Note 44: The transfer of property to children by aging parents, with the proviso that the parents be properly cared for in their old age, was a common practice in rural Ireland. Often, the provision for elder care was stated specifically in a written deed, so that the parents' intent would not be open to misinterpretation. back

Note 45: PANL, GN 5/1/C/1, Ferryland, 82-83 (86-87), Deed of Gift, 25 March 1816;

entered in Ferryland court records 3 December 1816. back

Note 46: Mannion Name File, Ferryland, "Aylward, Margaret," Will of Margaret Aylward, 5 March 1831; administration 24-28 October 1833. back

Note 47: PANL, GN 5/1/C/1, Ferryland, 72 (76), Deed of Conveyance, 3 November 1817. In addition, Mary Keen's purported second will (see above) created a life interest for Thomas Meagher, stipulating that the property was to be held by him, his children and their successors forever. As noted, however, the will was deemed invalid by the court, although it may actually have been written by Mary with testamentary intent. back

Note 48: PANL, GN 5/1/C/9, 15 (19), Deed of Gift, 24 May 1814. back

Note 49: Mannion Name File, Witless Bay, "Carroll, Catherine"; citing entry in Dean Cleary's records re: Will of Catherine Carroll, 25 August 1843 (died October 1843). back

Note 50: This can be seen from the documents, but it was also in keeping with English common law, which stipulated that married women could not make wills. Young, unmarried women would usually not have had sufficient property or motivation to write testamentary documents. back

Note 51: The will of John Carroll of Ferryland left sums of money to Father Murphy and Father Brennan for the repose of his soul, as well as those of his deceased parents and sisters. He also bequeathed money for the building of the Presentation convent at Ferryland. See: PANL, GN 5/1, vol. 2, 318, Will of John Carroll, 30 December 1857; and Mannion Name File, Ferryland, "Carroll, John." See also the wills of William Murray and Catherine Carroll, discussed above. back

Note 52: Such was the case with Sarah Carter, wife of Robert Carter (mentioned above), who moved to St. John's after her husband's death and wrote her will in St. John's in 1866. See PANL, MG 31, Carter Family Papers, file 45(b), Will of Sarah Carter, 7 September 1866. This will is not included in the computations in this chapter because it falls outside the time frame of the study. back

Note 53: *Chattels real* refers to an interest in real property that was less than freehold interest—such as leasehold interest in land. back

Note 54: See: Johnson, "Matrimonial Property Law," chap. 6; and Gushue, "Law of Real Property." back

Note 55: PANL, GN 5/4/C/1, Ferryland, box 1, 25-26, *Mary Kennedy v. William Tucker*, 13 October 1792. Johnson also discusses this landmark case in "Matrimonial Property Law," 145-46. back

Note 56: See PANL, GN 5/1/C/1, Ferryland: 113, Mortgage, Catharine Jackman to Hunt, Stabb, Preston and Co., 27 March 1813; and 47, 110, 126, and 161, *Hunt, Stabb, Preston and Co. v. the Estate of Catharine Jackman*, 6 June 1818, and 25 April, 7 November, and 5 December 1820. See also: Mannion Name File, Renews, "Jackman, Catherine"; and PANL, Mildred Howard Collection, Estate Notice, Catherine Jackman, *Royal Gazette*, 18 May 1815. back

Note 57: PANL, GN 5/1/C/1, Ferryland, 109 and 123-24, *Hunt, Stabb, Preston and Co. v. the Estate of William Brandy*, 25 April and 6 November 1820. back

Note 58: Nanciellen Davis, "Patriarchy from the Grave: Family Relations in Nineteenth-Century New Brunswick Wills," Acadiensis 13, no. 2 (spring 1984): 91-100. back

Note 59: Davidoff and Hall use the concept of passive property to describe property held by women from which they could obtain income but over which they could exercise no control. See Leonore Davidoff and Catherine Hall, *Family Fortunes: Men and Women of the English Middle Class, 1780-1850* (Chicago: University of Chicago Press, 1987). back

