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Narratives of Bankruptcy, Failure, and Decline in the Court of Chancery, 1678-1750

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ABSTRACT

This article engages with the contentious and ongoing debate surrounding the usefulness of witness testimony for historical evidence. By utilising Chancery depositions, the article illuminates social and cultural attitudes to bankruptcy, failure, and personal decline, demonstrating how the public nature of status and reputation dictated a person's ability to function – both economically and socially – within the wider community. Focusing on the collaborative nature of witness testimony will show that the court of Chancery not only acted as a debt-recovery mechanism. It was also an institution which inflected social narratives of credit, debt, and personal failure.

KEYWORDS

Bankruptcy; Chancery; depositions; narrative; debt

Introduction

The use of depositions as historical evidence is a divisive issue. This is possibly because it is this type of witness testimony that purports to record the spoken words of individuals from nearly all walks of life.[1] In her hugely influential book, *True Relations: Reading, Literature, and Evidence in Seventeenth-Century England*, Frances Dolan suggests that because of the complexities surrounding the process in which depositions were created, scholars who rely on them often accept that they are 'mediated' but privilege them as providing unique access to early modern 'voices'. According to Dolan, it may be more useful to 'recast mediation as collaboration'.[2] *True Relations* has certainly reinvigorated historiographical debate surrounding the 'unique voice' of witness testimony. Yet, this has largely been reserved for a gendered approach to the law, as scholars seek to analyse the obscuring filters created by the male dominated legal profession. For example, in the introduction to a recently published special edition – entitled 'Women Negotiating the Boundaries of Justice in Britain, 1300–1700' – Alexandra Shepard and Tim Stretton highlight the several boundaries that structured women's agency, and 'filtered their voices through male advisers and officials'. This collection of essays explores how women's abilities to negotiate legal jurisdictions, 'intersected with and were shaped by legal custom, regional difference, and broader social and cultural contexts'. Particular attention is paid to the collaborative processes that presented narratives within a legal setting, and the degree to which modern scholars can access the 'authentic female voice' of actors in the written documents that have survived.[3]

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This article seeks to engage with this ongoing and contentious debate by applying Dolan's line to narrative creation in the court of Chancery in the late seventeenth and early eighteenth centuries. By utilising bankruptcy cases and paying close attention to the people and processes that created the written documents that survive, the article has two aims. The first is to provide a detailed overview of the commissioning, collection, filing, and reading – in public – of witness statements within the court. While previous scholarship has outlined this process, this article will provide a methodological framework for successfully utilising depositions in order to access the narratives created and presented to us at this stage of proceeding.[4] The second aim is to illuminate social and cultural attitudes to bankruptcy, failure, and personal decline, demonstrating how the public nature of status and reputation dictated a person's ability to function – both economically and socially – within the wider community. Focusing on the collaborative nature of witness testimony will show that the court of Chancery not only acted as a debt-recovery mechanism. It was also an institution which inflected social narratives of credit, debt, and personal failure. The article examines forty-eight cases which went to the depositional stage of proceeding and took place outside of the jurisdiction of London between 1678 and 1750. Utilising legal sources will provide a social and cultural analysis of bankruptcy, significantly contributing to the historiography of Chancery and the use of depositional evidence in discussions of narrative construction.

As a court of equity, Chancery provided a platform for a range of witnesses to comment on an individual failure. During the tenure of Lord Chancellor Nottingham – 1673-1682 – the court expanded its authority over bankruptcy and became established as the sole appellate jurisdiction. Put simply, this meant that all cases in Chancery were where the bankruptcy process – known as a 'commission of bankruptcy' – had stalled, and individuals needed the formal authority of the court in order to maintain and uphold a complex system of debt recovery.[5] As the legal requirements of the court altered as the suit progressed, I argue that we can only understand how narratives were constructed by providing background and context to the jurisdiction under discussion, the type of document being used, and finally, the stage of proceeding from which these sources have been utilised. Rather than attempting to 'filter out' mediating legal authorities, I argue that scholars must pay close attention to the ways in which the work of certain individuals – such as legal experts, Chancery commissioners, and clerks of the court – has impacted on the creation of the final documents that have survived.

The thorough investigation conducted at the depositional stage of proceeding allows an exploration of the specific and evaluative language used in relation to failure. Heather Falvey has demonstrated the importance of paying attention to the relationship between the questions posed by parties in a suit – known as 'interrogatories' – and the depositions. By establishing the degree to which legal phrasing was initially presented in interrogatories and then repeated by a witness in the deposition, Falvey concludes that in terms of narrative reconstruction, interrogatories 'assume just as much significance as depositions'.[6] Here, I undertake a similar approach, highlighting how certain witnesses answered specific questions in relation to economic and personal failure. While scholars such as Alexandra Shepard and Judith Spicksley have explored the language of self-description, this article focuses on the narratives created and used in Chancery concerning the appraisal of others in the debt-recovery process.[7] Moving away from traditional

approaches promulgated by social historians of the law and concentrating on the statements of witnesses – rather than the outcome of suits – will refocus our attention on the actors involved in this process.[8]

Similarly, Julian Hoppit has examined the causes of bankruptcy throughout the eighteenth century, and Henry Horwitz and Patrick Polden have assessed the performance of Chancery in terms of 'active' cases and the duration of suits.[9] However, the multifaceted nature of bankruptcy suits means that it is difficult to categorise these cases in any meaningful way. Creditors were often seen on both sides of the dispute and were engaged in a protracted and lengthy process of debt recovery. While the approach in this article does not allow access to the background of individual failures, or how the statements of witnesses influenced the judgment of the Lord Chancellor, analysing specific words and phrases can illuminate how witnesses revealed details surrounding the actions, attitudes, and emotional responses of those involved in economic decline. This can provide unique access to the criteria used by early modern people to judge respectable and credible actions in relation to the repayment of debts on the one hand, and fraudulent and criminal activity on the other.

The article is divided into two sections. The first section provides an overview of how these documents have been created and used within the court, before briefly reviewing the historiography surrounding the value of legal records as sources of evidence. This provides the background and methodological framework for the analysis which follows. The second section builds upon the previous analysis by demonstrating how certain narratives began to be used as evidence in court. Specifically, witnesses sought to show how an individual had fallen from a respectable and credible position, to that of a bankrupt, mirroring wider conceptions of morality, credibility, and ethical behaviour within the community.

The creation of depositions and the collaborative nature of witness testimony

Witnesses in Chancery suits were examined in private, either by an officer of the court in London, or by assigned commissioners in the country. If the parties lived within ten miles of London, then witnesses were required to attend on one of the Chancery Examiners at the Rolls Office. Parties outside this jurisdiction were examined in their local communities, and as Christine Churches has shown, by the late seventeenth century, the examining of witnesses by a Chancery commission was 'no novelty in any part of the country, and elementary preparations for such an event were well understood and a matter of routine'.[10] Plaintiffs and defendants had the right to nominate four commissioners, and to reject two named by the other party. Commissioners had to swear an oath to the court, whereby they would, to the best of their skill and knowledge, 'truly and faithfully and without partiality … take the Examinations and Depositions of all and every Witness and Witnesses produced'. Furthermore, they were 'sworn to secrecy' in undertaking their duties and could not 'publish disclose or make known' the contents of the documents.[11] As such, Commissioners had to swear the witnesses, privately examine them according to the interrogatories provided by each side, supervise the recording of witness statements by the clerk, and have the final documents sealed and returned to the court.

The selection and rejection of commissioners was an important process for competing parties, as commissioners would direct the clerks in the transcribing of answers. This could be of great advantage to a party in the wording of the deponent's evidence to the sense of the commissioner. Churches has shown the tactics involved in selecting commissioners within a cause, as references to 'kindness', 'friendship', their 'ability' as a commissioner, or whether pressure could be applied to a commissioner were all taken into consideration. The four remaining commissioners were either 'the least offensive … or the most inept' to either side, which was an important process in attempting to gain a favourable outcome.[12]

Clerks were also required to swear an oath, whereby they would 'truly and faithfully and without partiality … take and write down transcribe and Ingross the Depositions of all and every Witness', being similarly sworn to secrecy.[13] While relatives and attorneys of the parties – and others with an interest in the outcome of the suit – were ineligible to serve as officers of the court, it is not surprising that certain individuals acted as both a witness and as a clerk or commissioner.[14] Examples can be taken from my sample, as in *Finch v Robinson* (1742), Stephen Ashby was first sworn as a witness for the plaintiff, and later sworn as a commissioner of the court; while in *Perrins v Gyles* (1736), Nathaniel Batty was sworn as a witness for the plaintiff before being sworn as a clerk.[15] This not only demonstrates the localised nature of proceedings, but also suggests that certain individuals acting as clerks or commissioners were familiar with the details surrounding the suit. Ultimately, either side knew it was important to get at least one commissioner who was sympathetic to their cause, or there was always a risk that the deposition would not be taken fairly.[16]

In theory, the procedure for examining witnesses in the country was clearly defined. Questions were to be posed verbally with the deponent answering all in sequence before hearing the next, not being allowed to leave the room until all had been completed. The clerk would then read the answers back and amend any drafts if necessary.[17] New interrogatories were not permitted to be inserted once examination had begun, and the court stressed the need for witnesses to be examined seriatim, taking one question after another in the order they were submitted, and have no knowledge of future questions until the one posed had been answered in full. This was done in order to prevent 'perjury and other mischiefs often appearing to the Court'.[18] One seventeenth-century tract questioned the objectivity of officers of the court, suggesting there was 'too much foul practice used in the taking of *Depositions*, wherein many *Commissioners* and Clerks on both sides, for the most part Act rather as Parties or Agents for the persons concerned, then as becometh *honest indifferent persons*, according to the trust reposed in them by the Court'.[19] This manner of collecting evidence was clearly viewed as being open to abuse and manipulation by parties in a suit, and accusations of collusion, fraud, and bias were commonplace.

Contemporary common law advocates and subsequent legal experts have demonstrated their disdain for this method of gathering evidence. As William Holdsworth has concluded, 'it may safely be said that a more futile method of getting at the facts of the case, than the system in use in the court of Chancery from the seventeenth century onwards, never existed in any mature legal system'. This method was 'productive of the most unconvincing testimony at the greatest possible expense'.[20] Upon completion, interrogatories and depositions were attached alongside a copy of the commissioner's

oath, the clerk's oath, and a formulaic writ naming the assigned commissioners, stating the date of the examination and the date by which the sealed documents would need to be returned to the court.[21] However, there was also a clear disparity between the ideal manner in which to record depositions and the actual practice, as the strict regimen outlined above was rarely followed so precisely. Few deponents answered every question, and several chose to answer multiple questions at once. Further ambiguity arose by the fact that certain clerks specified when deponents failed to answer questions, with remarks such as 'cannot depose', while leaving other questions blank.[22]

Much care and skill went into the framing of interrogatories by parties or their legal representatives in order to elicit responses favourable to their cause. Only on the date of publication – the day when depositions in a case were read aloud and 'published' in open court – were both sides formally permitted access to the statements of each other's witnesses. This was the first chance for a party to officially see the interrogatories posed by the opposing side, and the answers elicited from deponents.[23] If individuals felt that their personal concerns were not being addressed, they could submit interrogatories separate from the rest of the party. For example, in *Carril v Savage* (1729), the defendant George Savage administered a distinct set of interrogatories consisting of three questions relating to a bond made between the bankrupt, William Hayne, and another defendant, Kenard Delabere. Clearly, Savage felt this avenue of investigation required special attention.[24] In the other set of interrogatories posed by the remaining five defendants, we see three questions all begin with the same phrase: 'were you concerned in the Execution of a Comission of Bankrupt awarded against William Haynes in the Title of these Interrogatorys named and in what capacity did you act therein'. Each question then explored a specific aspect of the bankruptcy, including a bond executed by the bankrupt, the date the bankruptcy was proven, and finally, whether the commissioners of the bankruptcy deposed witnesses on a specific sum of money.[25] While this is an extreme example, it was not uncommon for successive questions to contain an element of repetition. In this manner, parties were ensuring deponents had no opportunity to avoid answering questions on specific topics, and by addressing a question from a slightly different angle, they ensured that they attempted to cover every approach. One deponent, the solicitor John King, answered the above three questions simultaneously, further demonstrating the disparity between the ideal approach to examining witnesses set out by the court, and the day-to-day practice in the country.[26]

The formulaic nature of Chancery documents can cause problems for scholars attempting to analyse the creation of narratives. Discussing medieval Chancery bills, Timothy Haskett has shown how in order to be successful, composers needed to abide by a distinct canon of form. Yet, rather than constricting the composers of bills, Haskett argues that the increasing formalisation enabled a greater scope of expression, as 'once the requirements of the form are realised the writer can exploit fully the opportunities that come into existence through the act of formalisation'.[27] This approach can be further extended in early modern depositions, as witnesses were provided a platform, and granted a wide scope of expression, to discuss a particular failure. Where interrogatories and depositions survive in full, deponents' answers' can be cross-referenced to the original questions, enabling an understanding of how certain individuals navigated specific questions via the responses they gave. Yet, even when only interrogatories or depositions survive, these can be compared to similar documents in separate cases.

Ultimately, by paying close attention to the procedure outlined above, it becomes clear that several witnesses were not directly involved in a commission of bankruptcy and were instead being examined upon a specific aspect of the bankrupt's life or failure.

When discussing narrative construction and the mediated nature of oral testimony within depositions, scholars routinely reference Natalie Zemon Davis' ground-breaking work on pardon tales in sixteenth-century France. Davis concludes that despite the legal process governing their construction, the letters of remission tendered by the supplicants 'are one of the best sources of relatively uninterrupted narrative from the lips of the lower orders', and reflect, 'where the documents allowed it, the supplicant's own language and ordering of events'.[28] Legal evidence can be used to illuminate widely held attitudes and beliefs, rather than as evidence of verifiable facts or historical accounts. However, as scholars now routinely approach these sources as 'fictive', there is a danger this not only undermines the value of incidental details attached to the narrative, but according to Alexandra Shepard, 'leaves depositions curiously detached from the witnesses who provided them'.[29] Throughout Chancery depositions, it is fair to conclude that the answers of some witnesses to the same question are interchangeable. Yet, at the same time, there is an individuality about certain answers which cannot be attributed to the formulaic nature of the legal process. As Joanne Bailey succinctly concludes, 'Simply put, different people sound different'.[30]

Within these documents, individual narratives concerning credit, debt, and bankruptcy can be accessed, but it is important to remember that such narratives were created through the legal processes outlined above. This can raise certain methodological issues, and it is worth charting how historians have used depositions to overcome such problems. Returning to *True Relations*, Dolan claims that historians 'who describe legal depositions as "fictions" or "stories" do so in order to acknowledge their limitations as evidence'. Scholars often make disclaimers about the highly-mediated nature of court depositions, and then employ terms such as 'nevertheless' or 'nonetheless' to use the documents as evidence. As Dolan concludes, 'many of us feel that we must suppress our knowledge of evidentiary problems to get on with the work at hand'.[31] In an attempt to overcome such mediating difficulties and access unique voices, scholars undertake a variety of strategies. For example, when scholars quote from depositions and remove legal formulae – often by replacing 'this examinant' or 'this deponent' with 'he' or 'she' – they are doing so because they feel that such formulae distract the modern reader.[32]

Explanations for this process are usually hidden away in notes, and rarely given a full and detailed discussion. Mirandor Chaytor states, 'narratives have been returned to the first person singular', while Garthine Walker repeats the phrase and further explains, 'examinations, depositions and petitions are rendered in the first rather than the clerical third person'.[33] Bernard Capp simply states he has 'chosen to avoid technical terms and modernize quotations in order to make the social and cultural world of our ancestors more readily accessible'.[34] Finally, Laura Gowing explains that 'legal forms have been removed from this quotation for clarity'.[35] These are attempts to return to a supposed pure form of a first-person narrative prior to the mediation of a clerk. While their intention is to obscure the reader's awareness of the clerk, this raises serious epistemological questions, as their final outcome is a creation in and of itself, rather than a return to origin.[36]

Such discussions and attempts to return to first-person narratives centre on the reliability of the clerk, the accuracy of transcriptions, and the authenticity of original speech. Discussing the work of scribes in the consistory court, Laura Gowing has claimed that 'clerks wrote, making a lengthy, clumsy, but technically unimpeachable statement'.[37] Lawrence Stone has insisted that the result of transcription in the ecclesiastical courts, 'is a full, and sometimes more-or-less verbatim, account of what was said by dozens, or hundreds, of persons, protagonists, witnesses, lawyers, and judges, who gave evidence or argued a given case. As a result we can eavesdrop on the conversations of men and women of all sorts and conditions'.[38] For Stone, the reliability of the clerk allows the historian to recreate the early modern courtroom and almost act as a fly on the wall, retelling the stories they have overheard. Garthine Walker uses the same terminology as Stone, describing these accounts as being recorded 'more or less verbatim', while Miranda Chaytor goes further, arguing that despite altering witnesses' statements – such as placing them in the third person – clerks 'wrote at the plaintiff's diction, changing nothing and omitting nothing. Or so the internal evidence of these narratives suggests'.[39] While it is impossible to check a clerk's accuracy – or the degree to which the final transcription reflected the direct speech of the deponent – this last statement seems overconfident and rather unlikely, as accuracy must have varied from clerk to clerk, and certainly between jurisdictions.[40]

Within these discussions, the role of the clerk has been defined as a transcriber, which firmly places them after the creation of the original narrative. However, as Dolan reminds us, clerks were not simply receivers of testimony who recorded accurately or otherwise, but rather shaped 'the statement before and as it is solicited, dictated, and revised'.[41] Similarly, parties and their legal representatives carefully formulated the questions, deponents responded to the questions posed, and clerks transcribed the answers; all of which took place within the overarching legal framework of the court. As such, there is a need to pay attention to the specific circumstances of the production of legal documents in order to fully understand their creation. While there were certain similarities in the process and procedure of collecting and presenting evidence to early modern courts, scholars either routinely highlight these similarities to make comparative analysis easier or fail to adequately explain the complex differences between jurisdictions.

The court of Chancery had specific rules governing how evidence was to be collected in the country, and while this regimen was not always followed as closely as possible, many aspects were unique to the court. These specificities alter the way the document was created and the manner in which we can interpret such sources. Returning to Natalie Zemon Davis' work, it needs to be stressed that Davis deals not only with a sixteenth-century foreign court, but with individuals presenting a judicial supplication in order to persuade the king and courts of the extenuating circumstances that would lead to a pardon. This document creation bears little or no resemblance to the variety of depositions that occurred throughout a wide range of local and central courts, as well as occurring at differing stages of a criminal or civil proceeding and across centuries of medieval and early modern examination.

Finally, some caution should be exercised over the use of the word collaboration, which is seen as synonymous with such terms as 'cooperation' or working 'in partnership' with other parties. To an extent, this is true. As outlined above, it is clear that several

individuals worked together to create depositions. However, it cannot be said that these individuals were working towards the same goal or intended outcome, as they would have had different, and often competing aims. Furthermore, we can never be certain as to who contributed what to the finalised narrative, presented to us in the written documents that survive. Ultimately, we should accept that the *voice* that we *hear* has been created by the court – and the people utilising the court – under examination.

Narratives of bankruptcy and personal decline

Having outlined the collaborative process of collecting evidence in the country, and provided a methodological framework for utilising depositions, this section analyses the specific words and phrases found in these documents. To begin with, it is worth analysing one case, and particularly the account of a single witness, to illustrate how such narratives have been constructed within the overarching framework of the court.

In *Hoar v Darloe* (1737), both sets of depositions centred on the discovery of a bag of gold in a family home in Penzance, Cornwall in 1737. The plaintiffs were creditors of the bankrupt, Thomas Darloe, and the defendants were the bankrupt's brother, William Darloe and his wife Susannah. Thomas Darloe previously lived in the house with his wife, Ellen, who had subsequently died. After Ellen's death, the bankrupt's brother William took over Thomas' trade and moved into the house. Mary Douglass, who was originally a servant for Thomas, stayed on to clean the house for William, and was the individual who discovered the bag of gold. While the case centres on who held legal ownership of the gold for the purposes of the post-bankruptcy distribution of goods, Mary Douglass provides a detailed narrative of the discovery of the gold. In the plaintiff's third interrogatory, they asked:

> Did you or any other person find and where particularly in the said House and whether in any Chest of Drawers … [a] purse pocket or Fobb and was any money or any other thing and what contained therein … was the same Gold or silver or both and what Number of pieces of each might the same contain or what Quantity might the same be and of what there of at any time and when after you delivered the same in whose Custody did you or did you not see the said Money told or telling over if yea what did such person in whose Custody you saw the same say to you or any one else in your presence concerning the same and what did such person do when you saw the said Money telling.[42]

The defendants asked a similarly straight forward question: 'Do you know any thing touching a bag of money being found in an old Chest of Drawers … and when and by whom was the same found and how much Money was Contained in the Said Bag'.[43] This demonstrates that both sides of the dispute sought statements from Mary outlining the discovery of the gold. Mary answered the plaintiffs' questions first, and so provided a much more detailed account, which is worth quoting at length:

> on Drawing out the Drawers which were First in Number in Order to Clean the same this Deponent Discovered a Bag of Money lying between the under most Drawer but one upon the Bottom that Parted that same Drawer from the under one it being a false Bottom which Bag being made of yellow Canvas and about the length of a Quarter of a Yard was Pinned with Two Pins One of which this Deponent taking out in order to Open the Bag Found the same to be Gold which by the Bulk and Weight of it this Deponent Doth verily Believe was more than Two hundred and Fifty Pounds and this Deponent Crying out that

> she had Found a Bag of Money the Defendant Susannah then being in the same Room with the Defendant William her husband Drinking Tea or Coffee she the Defendant Susannah Snatche the said Bag out of this Deponents hand and lockt up the same instantly in a side Cubbart in the same Room where they usually kept their Cash but at the time of taking it from this Deponent as aforesaid Pretended that the said were Leads such as are usually Worn in Womens Gowns Sleeves tho at the same time when this Deponent had Pulled out one of the Pins a Broad piece of Gold Tumbled out of the said Bag and had Fallen to the Ground If the Defendant Susannah had not Catcht it in her hand.[44]

Mary goes on to detail the contents of the bag, which were all gold, and some 'was Old Coin some Picies Thick, some Thin, some Broad, some Small . . . that the said money was not tarnished but looked very bright and seemed to this Deponent not to have lain above a year in the place where the same was found'.

Mary claimed that she and her husband William then retired to their bedroom, and about ninety minutes later they came down the stairs, and 'through a small hole in the wall', they spied the Defendants William and Susannah Darloe examining the money. When they entered the living room, Susannah 'Flung her Apron over the bag' to conceal the contents, 'whereupon this Deponent told the Defendant Susannah she need not Throw her Apron over it to hide it, for that she this Deponent saw it was all Gold and that she would Swear it'.[45] Mary concluded her deposition by stating that some days later:

> 'this Deponent Applied to the Defendant William Darloe she having Bought a pair of shoes and Clogs and a hat, for Money to Pay for them and told him she hoped that he would Give her Money to Pay for them out of the Bag of Gold which she this Deponent had Found but he Refused to do so and Bid her Go to his Wife the Defendant Susannah which this Deponent accordingly did and she the said Susannah likewise Refused and Told her twas a Lie for that it was no Gold she had Found but that it was Lead that belonged to her Cousins Gowns sleaves and thereupon this Deponent Discovered the finding the said Gold to the said Thomas Darloe after which the said Defendants William Darloe and Susanna his wife offered this Deponent to give her two Guineas upon condition she would say no more nor make any further discovery of finding the said money which this Deponent refused to accept'.[46]

What is clear in this case, is that Mary Douglass was called as a witness to provide her own account of a specific historical event relating to a sole bankruptcy. Both the plaintiffs and the defendants presented interrogatories that appear to have been constructed solely for the deposition of Mary, who was neither a named party in the suit, nor a creditor or debtor in the commission of bankruptcy. Specific words and phrases were stated in the interrogatories and then repeated in the depositions. We see reference to the chest of drawers, the bag of money, and a description of the quantity and quality of the pieces of gold. Yet, the degree of individuality surrounding this recollection is striking. Mary provides much more detail, describing the layout and number sequence of the drawers, the colour of the bag and how it was fastened with pins, the defendants drinking tea or coffee, their refusal to reimburse her for work clothes, and finally, the failed attempt to bribe her.

However, the methodological approach put forward in the previous section, means that it is not necessary to debate whether or not it is Mary Douglass' authentic, spoken, recollection of events we are interpreting. Instead, while there are clearly individual

words, sentences, and descriptions encompassed within these documents, we can analyse and interpret them as being collectively created by the people involved in the legal process and presented to us in the written documents that survive. While scholars have attempted to highlight, edit, or even remove complex legal formulae in order to gain access to the unique voices of deponents, we can see here that such an endeavour is at best misguided, and at worst, methodologically unsound.

With this in mind, we are able to analyse the particular and evocative words, phrases, and idiosyncratic details employed in depositions, in order to illuminate attitudes towards bankruptcy within the wider community. During this period, Dolan has claimed that 'legal culture was popular culture', while Christopher Brooks has suggested that the law was one of the principal discourses through which early modern people conceptualised society.[47] For example, witnesses used legal and economic terms, such as 'absconding', in numerous ways to establish that an individual had acted in a fraudulent, deceitful, and criminal manner. Analysing the use of these terms can inform us of how such judgements were made by wider society, particularly in relation to the public nature of the actions of debtors.

The bankruptcy of Tobias Lambert – litigated across two suits – details the personal decline of the bankrupt. The plaintiffs in *Dodson v Denison* (1722) asked whether before 13 November 1719, Lambert did 'on what day or night and in what month and year and on what hour of the Day or Night abscond secret and Conceal himself or Cause or order himself to be secreted or Concealed from or deny'd to any and which of his Creditors or any and what other person or persons ... that Came to endeavour to Arrest him'. Depositions from Tobias Lambert, his wife Sarah, and their three children all confirm that Tobias ordered his family to deny entry to any of his creditors.[48] Sarah stated that leading up to her husband's failure, her husband kept himself concealed, and he 'only Sometimes peeped out into the Shop ... But neither Stayed or Satt downe there as she Remembers, being afraid of an arrest or Dunn from Some of his Creditors'. Similarly, she recalled several creditors coming to demand repayment, including a Robert Dennison, who was so outraged at her husband's failure to repay him, that he suggested Lambert 'had the devil in him'.[49] Tobias corroborates his wife's account, and confirmed that Dennison said he had 'the devil' in him. He further stated that while he 'Sometimes did curiously look into his Shop' he did so 'but with fear of being arrested and made no long stay' and 'never appeared so publick in his trade as he did before'.[50]

In response to the same question, a family friend and 'perriwiggmaker' named Edward Brogden, specified that on 15 November he went to see Lambert at his home, where he seemed very 'pensive and melancholy'. He asked 'what the matter was with him and if any Losses had happened'. He realised that Lambert was experiencing severe financial difficulties, as he recalled that Lambert, 'at any time before had lost Ten or Twenty pounds usually told this Deponent of it they being so very Intimately acquainted'. However, according to Brogden, upon this occasion 'it was A Great deale worse, for that he had been Casting up his Books the week before and he Could not make both ends meet and also that he had received one or more threatening Letter or Letters from some or One of his Creditors at London', and might be forced to flee the next morning. While Lambert did not flee, Brogden estimated his debts to be approximately £2500, and under

the strain of such pressures, Lambert fell 'Crying to this Deponent'.[51] In this instance, Brogden's portrayal of bankruptcy can be seen as an ongoing decline in Lambert's economic, psychological, and emotional health.

Further depositions seem to confirm this description of Lambert's decline. For example, the defendants asked, 'of what Creditt and Reputation was the said Tobias Lambert as to his Trade . . . did he appear publickly and attend his shop and Business'. In response, Christopher Heblethwait, a saddler from Leeds, stated that when he entered Lambert's shop, the bankrupt's wife Sarah was working, but the pair failed to come to an agreement on the sale of certain goods. As such, Lambert entered the shop about nine o'clock with 'his Stockings untyed and his Cravatt Loose about his neck, and Sold to this Deponent the Goods'.[52] Hablethwait's decision to mention the state of Lambert's dress in his formulation of the bankrupt's credit and reputation is a notable inclusion. Being in a state of undress was both an attack upon established social hierarchies, as well as being a clear signifier of psychological decline during this period. Clothing held symbolic value as a marker of social standing and was considered a valuable financial resource that could quickly and easily be pawned, sold, or traded.[53]

Responding to a similarly worded question in the second suit, Henry Hall, a-39-year-old cloth worker, recollected that prior to his demise, Lambert used to walk 'publickly before his shop Door in the street' and according to his usual Custom he would regularly 'shake this Deponent by the hand, and Desire him to walk into the house and Drink with him, which this Deponent did, and stayed with him two or three hours'. However, since his failure, this had become a rare occurrence.[54] Within these depositions, Tobias Lambert is depicted as not only voluntarily removing himself from social ties, by keeping house and absconding, but also as in a serious decline of his physical, economic, and mental health. The bankrupt is portrayed at his lowest point, as a desperate man and one who is separated from the accepted norms of society.

In these examples, we see detailed responses to interrogatories, demonstrating how individuals responded to questions, highlighting the presence of distinctive phraseology in depositions. However, in certain cases no such responses were recorded – or survived – and we must turn our attention to the formulation of narratives in the interrogatories themselves. In *Hopkins v Newton* (1718), the creditors asked whether the bankrupt John Hopkins was in 1705 and 1706, 'known or generally reputed to be a thriving man' or whether he was known 'to abscond and withdraw himself'. It appears that the creditors were seeking to establish what the common assessment of Hopkins was during this period, assuming that Hopkins' credible or deceptive behaviour would be well known to the trading community. However, they also asked whether Hopkins was 'reputed to be in a flourishing condition or did he conceal himselfe soe that it was difficult to speak to him or procure him to be arrested'.[55]

It becomes clear that in this situation the creditors saw these two actions as mutually exclusive. A person can either be seen to be acting in a credible manner, appearing publicly and continuing with their trade; or they can be acting in a deceitful manner by concealing themselves from public view. In this context, the use of the term 'thriving' was commonly associated with an individual who increased their worldly and physical estate by honest, sincere, and generous causes. Commentators made reference to the English proverb, 'Ill gotten goods seldom thrive', which was built upon the passage of scripture Mark 8:36: 'For what shall it profit a man if he shall gain

the whole world, and lose his own soul?'.[56] To 'thrive' or to 'prosper' were generally taken as the same thing, and men who sought to achieve this not only had increasing estates, but were sound in mind and soul.[57] By attempting to make the deponents choose between Hopkins as a thriving man or one who absconded, they were portraying him as an extremely deceitful individual, who at no point had acted in a trustworthy manner.

More broadly, in sixteen cases the interrogatories explicitly mention absconding, and twelve cases refer to decline in terms of an individual's credit, trust, reputation, or circumstances. In *Andrews v Vaughan* (1734), the plaintiffs asked whether between 1719–1721, the bankrupt did 'begin to sink in the world'. Of the four witnesses – three of which answered this question – only Thomas Blayney repeated the term 'sink'. He suggested that between 1719–1721, the bankrupt held a 'very good creditable reputation', and it was not until 1729–1730, 'when it was reported he began to sink in the world'.[58] While it seems that Blayney had simply repeated the terminology employed in the question, the use of the word 'sink' as set out in the interrogatory is interesting. During the early modern period, the term was used in relation to moral and ethical religiosity, and to sink in the world, meant to lapse or degenerate into some inferior moral or social condition.[59] By using the term, 'sink' in their interrogatory, the plaintiffs were insinuating that not only had the bankrupt declined in financial terms, but had also fallen below the accepted standards of moral, religious, and neighbourly conduct within the community.

In *Buckworth v Peart* (1730), the plaintiff and creditor of the bankrupt carefully constructed nineteen lengthy interrogatories. Of these, the tenth question asked whether a Captain Michaele was reputed to be a 'ready moneye man and a person of good Circumstances in the World or of ability to purchase the reale Estate' of the bankrupt.[60] This was an explicit reference to the availability of Michaele's disposable money. Ready money was seen as distinct and separate from estate, goods, and even credit. It seems that within this case, the plaintiff was seeking to establish whether Michaele was in a position to purchase the estate of the bankrupt, or whether it was fraudulently assigned in order to prevent the creditors gaining access to it. Only one deposition survives, whereby a fifty-five-year-old gentleman named Henry Morris simply answered a question relating to a deed and a letter of attorney relating to the transfer of property. However, in a further five suits, reference is made to the bankrupt's 'circumstances', a term that was largely associated with material and worldly goods, rather than credit or trust. In his treatise on the subject, Isaac Watts suggested that being of 'low circumstances in the world' was diametrically opposite to being rich, while Humphry Smith stated that 'Men of very low Circumstances in the World' were 'utterly destitute of any secular Advantages'.[61] Within these five suits, we see further reference to attempting to establish the bankrupt's 'estate', 'fortune', or 'stock and substance', meaning that creditors sought to determine the physical, material, and financial valuation of individual worth. Throughout these examples, we see the formulation of language in interrogatories change according to the specific details of the case. Creditors – acting as plaintiffs or defendants – employed terms and used language that spoke to both the bankrupt's credibility and trustworthiness, as well as their economic value in terms of money and moveable goods.

While the language used to denote financial failure reflected a decline of personal circumstances, we can see narratives concerning the deterioration of mental health come in to play. Michael MacDonald has argued that by the early seventeenth century, the language of madness had become 'rich and pervasive … words and phrases about insanity were part of the common coinage of everyday speech and thought, negotiable everywhere in England and not restricted to a small circle of medical and legal experts'.[62] The early modern period exhibited a specific and deliberate use of language, so much so, that to ramble, speak too quickly, quietly, or loudly were tell-tale signs of mental disorder. MacDonald's case study of the medical practitioner Richard Napier has shown how financial hardship could directly lead to mental anguish, as somewhat unsurprisingly, 'debt was by far the greatest single source of anxiety'.[63] It is interesting to see MacDonald use economic metaphors to discuss popular culture and the narratives surrounding insanity, as economic and mental decline were closely connected.

While more research needs to be conducted to effectively link bankruptcy to narratives of insanity, some preliminary observations can be made from the above analysis. Ultimately, it was the observations and anxieties of family members, neighbours, and the wider community which formed the social structure and the defining process of *both* lunacy and bankruptcy. While the taint of madness may have been more severe, the attachment of the label 'mad' or 'bankrupt' had a seriously detrimental effect on a person's social reputation and standing within the community. A debtor had no control over the initiation of a commission of bankruptcy, while those with perceived mental disorders had a similarly limited control over their fate. As the Restoration poet Nathaniel Lee declared upon his committal, 'they said I was mad; and I said they were mad; damn them they outvoted me'.[64] Those declared insane and those declared bankrupt had their situation determined to them from without, and the build-up to such determinations could follow similar paths. Throughout Chancery depositions, we are often confronted with an individual bankrupt who had fought long and hard to remain solvent. This process of economic decline is often mirrored in discourse concerning insanity, as the terms surrounding madness were used to refer to a build-up of behavioural signs rather than a specific action.[65] For example, excessive solitude was a deviation from the accepted norms of society, alienating individuals from their community. A reputable trader would need to be seen to be acting in a public manner at certain agreeable times. As such, a private and solitary individual – whether absconding from creditors or showing signs of melancholy – was seen to be disrupting socially accepted norms. Throughout Chancery depositions, we see narratives concerning economic, personal, and mental decline formulated and presented in numerous ways as individuals sought to look back and appraise the actions and words of those involved in debt recovery.

Conclusion

Returning to the discussion outlined in the introduction, Tim Stretton suggests that, while scholars must remain vigilant in their approach to archival material, 'they do not have to settle on a single unified approach to all legal records'.[66] In her work on maternity and justice, Amanda Capern has argued that the legal rhetoric used in Chancery, 'observed certain rules of maternal performance that fashioned speech acts according

to the strategic legal needs of the case in the arena of Chancery and in direct relation to its jurisdiction'. As such, the words used could not be directly transferrable to other jurisdictions in order to 'prove' an individual's character, because as Capern summarises, 'the cases were about different things'.[67] While there was a specific and deliberate use of language in relation to maternity in Chancery, so too was there a specific and deliberate use of language in relation to bankruptcy, failure, and decline within the court. In any adversarial process there is never one set and accepted plot, story, or script, to which we can gain access. Instead, individual narratives can be accessed, but it is important to remember that such narratives were created through the legal processes outlined above. By paying close attention to the procedure put in place for asking questions, providing answers, and recording the process, it becomes apparent that Chancery was not only a court that mediated in social and financial affairs, but was also an institution which helped to create narratives.

I have argued that the scholarly endeavour to try and uncover the unique voices of deponents is misguided, especially if this comes at the expense of acknowledging the active role of commissioners, clerks, and witnesses. However, this does not mean that we cannot identify and analyse the specific, evaluative, and particular language used in Chancery depositions. Indeed, we have seen how rich and evaluative language was used in order to comment on the physical, emotional, and psychological turmoil of bankruptcy and its effect on those who experienced such failure. Witnesses commonly provided detailed – and often lengthy – descriptions of specific activities, providing an insight into the process of appraisal of those embroiled in debt-recovery. The words used to denote failure and decline mirrored wider conceptions of morality, credibility, and ethical behaviour within the community, as bankrupts were depicted as denigrating from a respectable position, to that of an untrustworthy individual. However, these were not necessarily stock phrases and conventions that were conveniently used to conform to legal requirements. Rather, we see the formulation of language change according to the specific details and history of the case, highlighting the fact that creditors, debtors, witnesses, and others involved in the process, maintained a high degree of control over their use of specific words and phrases.

This article has undertaken a social and cultural history of bankruptcy, and through the process of analysing the specific words and phrases used in the formulation of narratives concerning economic failure, we can illuminate wider attitudes towards personal decline. Ultimately, the appraisal of a debtor came to rely on the public nature of their actions, which has wider ramifications for our understanding of the assessment of worth, status, and credibility in wider society.

Notes

1. Tim Stretton, 'Women, Legal Records, and the Problem of the Lawyer's Hand', *Journal of British Studies*, vol.58, no. 4 (2019): 684–700, 696.
2. Frances E. Dolan, *True Relations: Reading, Literature, and Evidence in Seventeenth-Century England* (Philadelphia: University of Pennsylvania Press, 2013), 113–118.
3. Alexandra Shepard and Tim Stretton, 'Women Negotiating the Boundaries of Justice in Britain, 1300–1700: An Introduction', *Journal of British Studies*, vol.58, no. 4 (2019): 677–683.

4. Christine Churches, '"The Most Unconvincing Testimony": The Genesis and the Historical Usefulness of the Country Depositions in Chancery', *The Seventeenth Century*, vol.11, no. 2 (1996): 209–227.
5. D.E.C Yale, ed., *Lord Chancellor Nottingham's Chancery Cases*, 2 vols. (London: Quaritch, 1957), vol.1, cxiv.
6. Heather Falvey, 'Relating Early Modern Depositions,' in *Remembering Protest in Britain Since 1500: Memory, Materiality and the Landscape*, ed. Carl J. Griffin and Briony McDonagh (Cham: Palgrave Macmillan, 2018), 81–106, 93; for a similar approach in relation to the legal definition of traders, see Aidan Collins, 'Bankrupt Traders in the Court of Chancery, 1706–1750', *Eighteenth-Century Studies*, vol.55, no. 1 (2021): 65–82.
7. Alexandra Shepard, *Accounting For Oneself: Worth, Status, and the Social Order in Early Modern England* (Oxford: Oxford University Press, 2015), 36; Alexandra Shepard and Judith Spicksley, 'Worth, Age, and Social Status in Early Modern England', *Economic History Review*, vol.64, no. 2 (2011): 493–530.
8. See J. A. Sharpe, *Crime in Early Modern England 1550–1750* (London: Longman, 1999).
9. Julian Hoppit, *Risk and Failure in English Business 1700–1800* (Cambridge: Cambridge University Press, 1987); Henry Horwitz and Patrick Polden, 'Continuity or Change in the Court of Chancery in the Seventeenth and Eighteenth Centuries?', *Journal of British Studies*, vol.35, no. 1 (1996): 24–57.
10. Churches, 'The Most Unconvincing Testimony', 210.
11. The commissioner's oath and the clerk's oath were written on a small piece of parchment and attached to the top left of the interrogatories and depositions, for legible examples see TNA, C11/2331/23, 'Haill v Camp' (1748).
12. Churches, 'The Most Unconvincing Testimony', 210–212.
13. TNA, C11/2331/23, 'Haill v Camp' (1748).
14. Churches, 'The Most Unconvincing Testimony', 210.
15. TNA, C11/2323/13, 'Finch v Robinson' (1742); C11/1934/9, 'Perrins v Gyles' (1736).
16. Churches, 'The Most Unconvincing Testimony', 210–212.
17. Ibid., 215.
18. England and Wales Court of Chancery, *A Collection of Such of the Orders Heretofore Used in Chauncery* (London: 1649), 28; further examples were printed in 1652, 1660, 1661, 1669 and 1676.
19. Philodemius Philostratus, *The Seasonable Observations on a Late Book Intitvled A System of the Law* (London: 1654), 21, italics in original.
20. W. S. Holdsworth, *A History of English Law*, 16 vols. (London: Methuen and Co. Ltd., 1926–1966), vol.9, 353.
21. Writs were written in Latin before 1733 and English thereafter. The date for returning documents varied but was usually between two to three weeks after a completed deposition.
22. For an example of this, see TNA, C11/2331/17, 'Haill v Randall' (1746).
23. Henry Horwitz, *Exchequer Equity Records and Proceedings, 1649–1841* (Kew, Surrey: Public Record Office Handbook No. 32, 2001), 27.
24. TNA, C11/1368/4, 'Carril v Savage' (1729), Interrogatories submitted by George Savage.
25. Ibid, Interrogatories submitted by William Hodges, Elizabeth Wood, Kenard Delabere, William Baggoll, and Frances Haynes.
26. TNA, C11/1368/4, 'Carril v Savage' (1729), Deposition of John King.
27. Timothy S. Haskett, 'The Judicial Role of the English Chancery in Late-Medieval Law and Literacy', in Kouky Fianu and DeLloyd J. Guth eds., *Écrit et Pouvoir dans les Chancelleries Médiévales: Espace Français, Espace Anglais* (Louvain-La-Neuve: Federation Internationale des Instituts d'Etudes Medievales, 1997), 313–332, 329.
28. Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford: Stanford University Press, 1987), 5, 21.
29. Shepard, *Accounting For Oneself*, 8.
30. Joanne Bailey, 'Voices in Court: Lawyers' or Litigants'?', *Historical Research*, vol.74, no. 186 (2001): 392–408, 393.

31. Dolan, *True Relations*, 25–26.
32. Ibid., 121–122.
33. Miranda Chaytor, 'Husband(ry): Narratives of Rape in the Seventeenth Century', *Gender and History*, vol.7, no. 3 (1995): 378–407, 401, n.1; Garthine Walker, 'Rereading Rape and Sexual Violence in Early Modern England', *Gender and History*, vol.10, no. 1 (1998): 1–25, p20, n.4; Garthine Walker, *Crime, Gender and Social Order in Early Modern England* (Cambridge: Cambridge University Press, 2003), xv.
34. Bernard Capp, *When Gossips Meet: Women, Family and Neighbourhood in Early Modern England* (Oxford: Oxford University Press, 2003), vii.
35. Laura Gowing, *Common Bodies: Women, Touch and Power in Seventeenth-Century England* (New Haven: Yale University Press, 2003), 210, n.1.
36. Dolan, *True Relations*, 121–128.
37. Laura Gowing, *Domestic Dangers: Women, Words and Sex in Early Modern London* (Oxford: Oxford University Press, 1998), 45–46.
38. Lawrence Stone, *Broken Lives: Separation and Divorce in England 1660–1857* (Oxford: Oxford University Press, 1993), 4.
39. Chaytor, 'Husband(ry): Narratives of Rape in the Seventeenth Century', 381.
40. Dolan, *True Relations*, 120.
41. Ibid., 120.
42. TNA, C11/412/20, 'Hoar v Darlow' (1737), Interrogatories submitted by John Hoar and John Smith.
43. TNA, C11/412/20, 'Hoar v Darlow' (1737), Interrogatories submitted by John Hoar and John Smith; Interrogatories submitted by William Darloe and Susannah Darloe his wife.
44. Ibid, Deposition of Mary Douglass.
45. Ibid; for a discussion of the convention and legitimacy of peep holes, see Dolan, *True Relations*, p.146.
46. Ibid, Deposition of Mary Douglass.
47. Dolan, *True Relations*, 120; Christopher W. Brooks, *Law, Politics and Society in Early Modern England* (Cambridge: Cambridge University Press, 2008), i.
48. TNA, C 11/2762/22, 'Dodson v Denison' (1722), Interrogatories submitted by Thomas Denison and Robert Denison.
49. Ibid, Deposition of Sarah Lambert.
50. Ibid, Deposition of Tobias Lambert.
51. Ibid, Deposition of Edward Brogden.
52. Ibid, Deposition of Christopher Heblethwait.
53. See Jonathan Andrews, 'The (un)Dress of the Mad Poor in England, c.1650–1850. Part I', *History of Psychiatry*, vol.18, no. 1 (2007): 5–24, 12; Part II, *History of Psychiatry*, vol.18, no. 2 (2007): 131–15.
54. TNA, C11/2769/14, 'Denison v Paine' (1722), Deposition of Henry Hall.
55. TNA, C11/1330/22, 'Hopkins v Newton' (1718), Interrogatories submitted on behalf of the plaintiffs.
56. Jennifer Speake ed., *Oxford Dictionary of Proverbs* (Oxford: Oxford University Press, 2015), 162.
57. James Donaldson, *The Undoubted Art of Thriving* (Edinburgh, 1700), 1–3.
58. TNA, C11/1931/3, 'Andrews v Vaughan' (1734), Deposition of Thomas Blayney.
59. OED; Phillip Goodwin, *Dies Dominicus Redivivus* (London: 1654), 230; James Ellesby, *A Caution Against Ill Company* (London: 1705), 63.
60. TNA, C11/1931/30, 'Buckworth v Peart' (1730), Interrogatories submitted on behalf of Everard Buckworth.
61. Isaac Watts, *Discourses of the Love of God* (London: 1729), 235; Humphry Smith, *The Divine Authority, and Usefulness, of Ecclesiastical Censures, Asserted* (Exeter: 1708), 4.
62. Michael MacDonald, *Mystical Bedlam: Madness, Anxiety, and Healing in Seventeenth Century England* (Cambridge: Cambridge University Press, 1981), 122–123.
63. Ibid., 67.

64. Quoted in Roy Porter, *Mind-Forg'd Manacles: A History of Madness form the Restoration to the Regency* (London: The Athlone Press, 1987), 2.
65. Peter Rushton, 'Lunatics and Idiots: Mental Disability, the Community, and the Poor Law in North-east England, 1600–1800', *Medical History*, vol.32, no. 1 (1988): 34–50, 37.
66. Stretton, 'Women, Legal Records, and the Problem of the Lawyer's Hand', 687.
67. Amanda Capern, 'Maternity and Justice in the Early Modern English Court of Chancery', *Journal of British Studies*, vol.58, no. 4 (2019): 701–716, 707.

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