

## *Studies in Documents*

### **Bleak House Revisited: *The Records and Papers of the Court of Chancery of Nova Scotia, 1751-1855***

by **BARRY CAHILL\***

For any student of the legal history of Nova Scotia who has read the first chapter of Dickens' famous novel, it may not be difficult to imagine a time before the middle of the nineteenth century when justiciable matters such as the administration of trusts and estates; fraud; dissolution of partnerships; "specific performance" of agreements; foreclosure of mortgages; control of the property of married women, minors, and mentally incompetent persons; custody of children and appointment of guardians; and committal of insane persons, lay severally within the jurisdiction, not of a half-dozen different civil courts, from the Small Claims through the Supreme, but of a unique superior court of record known as Chancery. For most of the period before 1884, when the first *Judicature Act* successfully completed the 'fusion' of law and equity and Rules of Civil Procedure were adopted,<sup>1</sup> law and equity were dispensed independently by separate tribunals. Unlike the common law courts, the Court of Chancery administered justice "according to the system of equity," and was often resorted to when the judgment of the Supreme Court in civil actions was perceived to be unjust and subject to an equitable remedy. Exercising powers of injunction and review comparable to those now possessed by the Supreme Court of Nova Scotia, Appeal Division, the Court of Chancery functioned as a general court of appeal in the province for most of its century-long existence. A Chancery injunction could stay proceedings in a court of law; a Chancery writ could compel their transfer from a lower court to a higher. If the Attorney-General, for example, was unable to obtain a 'true bill' of indictment from the grand jury, he could apply to the Court of Chancery for an 'information' to enable him to prosecute in the Supreme Court, without the interposition of the grand jury.<sup>2</sup> As in England, today, moreover, where the Chancery Division of the High Court of Justice deals with the interpretation of wills and the administration of estates, the Court of Chancery had the power to hear appeals from the Court of Probate.

As it had never been formally and explicitly established by commission, instructions, ordinance, or statute, the Court of Chancery in royal colonies such as Nova Scotia, unlike the common law courts, was entirely a creature of the prerogative. It did not become operational, moreover, until the governor chose to exercise judicially the powers of that office which devolved on him as custodian of the Great Seal, i.e., Chancellor. Possessing by analogy the same powers of judicature as the Lord

Chancellor of England, the governor could in theory convene a court of chancery and adjudicate as sole or chief judge any equitable matter of which the High Court of Chancery took cognizance. The commission to Governor Edward Cornwallis in 1749 conferred on him a general power to establish courts "for the hearing and determining all causes as well Criminal as Civil according to Law and Equity." His Instructions were quite specific as to the number and nature of the courts to be established. According to Article 66, for example:

One Principal ... Court of Judicature should be and is hereby established to be held twice a Year or oftener as you shall judge expedient by the Name of the General Court, And to have Jurisdiction of all Causes Real and Personal at Common Law above the Value of five Pounds, *to act as a Court of Chancery* ... as also to try all Criminal Cases that may come before them; which said Court ... should consist of Our Governor or Commander in Chief and Our Council of Our said Province for the time being, any five whereof to be a Quorum.<sup>3</sup>

Having conferred plenary judicial power on the governor and council, Article 66 seems to treat the "Court of Chancery" as if it were synonymous with the civil jurisdiction of the General Court. Although the criminal jurisdiction of the General Court, together with its civil jurisdiction as a court of error and appeal, was transferred to the newly created Supreme Court in 1754, its civil jurisdiction as a court of first instance was not transferred. In Judge Townshend's words, "[t]he residuum of judicial power originally committed to the Governor and Council as a Court of Chancery was still retained."<sup>4</sup>

Governor and Council collaborated in adjudicating equitable matters until 1764, in which year the new governor determined wholly to remodel the local institution on the High Court of Chancery of England. Among factors contributing to the reform was the assumed impropriety of the governor's sharing with the councillors the unique judicial power which belonged to him as Chancellor, just as he shared with them his executive power. Another was confusion between the Chancery as a court of original jurisdiction, and the governor and council as a court of error hearing appeals from the common law courts. Still another was the assumption by the Supreme Court of original jurisdiction in civil matters, where before it had been limited to hearing appeals from the Inferior Court of Common Pleas. Where previously the governor had been presiding judge in Chancery, he now, as Chancellor, became sole judge. Three "Masters in Chancery," i.e., judicial assistants, were appointed to advise him: these were the present and former first justice of the Inferior Court of Common Pleas of Halifax County, John Collier and Charles Morris, and the Secretary of the province, Richard Bulkeley.<sup>5</sup> Although none of these men was a lawyer, they all happened to be councillors, and so would already have had some experience of Chancery adjudication. The reform of 1764, which accomplished the separation of the Court of Chancery from the Council, is important not only because it concentrated a hitherto diffuse equitable jurisdiction in the hands of the Chancellor, but also because it restricted the judicial function of the governor and council to its constitutional role of a court of error and appeal in common law proceedings. Despite the fact that equity litigation is recorded to have begun as early as 1751, it is not until 1764 that one may properly speak of the Court of Chancery as an independent tribunal administering justice according to equitable principles.<sup>6</sup>

Prior to the establishment of the Supreme Court in 1754, the Court of Chancery (whose bench was indistinguishable from that of the General Court) had served as a court of appeal from judgments rendered in the County Court/Inferior Court of Common Pleas. The first 'bill' filed in Chancery, in March 1751, sought relief from a judgment of the County Court which had resulted in the attachment of the complainant's property, but which was quashed by the resulting decree of the Court of Chancery.<sup>7</sup> When in 1764 the Supreme Court assumed a limited original as well as appellate jurisdiction in civil actions, however, the Court of Chancery likewise assumed an appellate jurisdiction with regard to trial judgments of the Supreme Court in civil actions. There was a greater prospect of obtaining equitable relief in Chancery, which in effect undid the judgment of the Supreme Court, than of obtaining redress in the Court of Error. The appropriate writ in any case could only be directed to the Supreme Court by the governor in his capacity as Chancellor; and there was a substantial minimum monetary consideration not required in Chancery. The latter had the peculiar advantage of being a court of original jurisdiction possessed of *de facto* appellate powers, but quite unrestricted in its adjudication by those articles of the Instructions which governed the operation of the Court of Error. An action in Chancery was often nothing more than a covert appeal from a judgment of the superior common law court, which issued in a retrial of the original suit. The aggrieved party often had no recourse but to the Court of Chancery, where the scope of equitable relief was broad enough to include miscarriages of justice in the Supreme Court. Like the Supreme Court of Canada before 1949, Chancery was the court of next-to-last resort; beyond it lay the Privy Council, an appeal to which was allowed only in exceptional circumstances.<sup>8</sup> Unlike the Supreme Court of Canada, however, Chancery was a general court of appeal for Nova Scotia which lacked an explicit statutory or constitutional basis. Its paramount jurisdiction had evolved out of the Instructions, yet was firmly grounded in the custom and usage of a political culture in which the Court of Chancery embodied the governor's authority as the highest legal and judicial functionary in the colony.

*Bernett v. Jones* in 1751 was but the first of some 1900 'actions' (suits) and 'matters' (*in re*) of which the centenarian Court of Chancery took cognizance. The number of extant documents per case file varies from two to hundreds. Every file does not now by any means contain all its papers, nor has every file survived, although the vast majority remain extant. The case files, taken together with administrative records of the court such as lists and indexes; registers of writs and orders; action books; entry books; minutes of proceedings; financial records; dockets; and commissions, make up a closed fonds d'archives which is extensive if not complete. Although there were few actions in the Court of Chancery of Nova Scotia quite rivalling the notorious "Jarndyce and Jarndyce" in complexity, destructiveness or longevity, the case files vary greatly in size depending on the nature and progress of the action; the number of suitors or parties; and the length of time before a decree was issued or a settlement reached.

Since Chancery was the penultimate stage in the judicial process, the case files are cumulative: they contain records of courts where the action originated or through which it may have passed, as well as original documents submitted in evidence (e.g., correspondence; deeds, mortgages and bonds; maps and plans; wills; and financial or business records). The representative Chancery file includes the bill of

complaint (i.e., plaintiff's declaration); writs of subpoena and notice of service; defendant's answer; complainant's replication; defendant's rejoinder; pleas; petitions; orders; motions; 'interrogatories' or 'inquisitions'; affidavits and depositions; exceptions; demurrers; references to and reports by Masters in Chancery; bills of costs; and finally the decree, or judgment of the court. Some actions or matters went into Chancery but never emerged. Prosecution of the suit may have been abandoned by the complainant. If he was dissatisfied with the original declaration, however, the complainant might file a supplemental or amended bill; whereupon the defendant might reply with a "cross bill," thus instituting a separate action of his own. If the suit had abated, moreover, then a bill of "revivor" might be filed to restart the proceedings. The diplomatic of the Chancery papers poses as great a challenge to archivists and legal historians as did the volume and complexity of equity business to the Registrar of the court, whose task it was both to expedite and to document it.

The reformation of the Court of Chancery in 1764 gave birth to a true Chancery bureaucracy in the formal commissioning of lawyer Archibald Hinshelwood as 'register' [registrar] or chief clerk of the court.<sup>9</sup> Hinshelwood who, as Deputy Secretary of the province since 1756, had frequently acted as clerk of the Court of Chancery, thus provided continuity with the formative period of its existence. The position of Registrar in Chancery was similar to that of Prothonotary and Clerk of the Crown in the Supreme Court. Both were responsible for drawing up, issuing, and filing copies of official documents; keeping minutes of proceedings in each case; and in general for daily administration. Although Chancery proceedings from 1751 onwards were recorded elsewhere than in the minute-book of the Council, it was not until the Court had achieved a separate existence quite independent of the Council that the necessary bureaucratic infrastructure was created and a secretariat began to function. According to Hinshelwood's commission, he was "to Keep due & faithfull Record of all Orders & Decrees of sd. Court & to transact & file all Proceedings by Bill and Answer and to make out Writts of Subpoena and to file and Register Affidavits & make Copies of the same ... ." Further to regulate and formalize procedures, an 'Examiner' was appointed whose task it was to interrogate witnesses and take depositions.<sup>10</sup>

The substance of Hinshelwood's commission was repeated to his successor, James Burrow, an immigrant office-holder from England, ten years later.<sup>11</sup> When Burrow became Registrar on Hinshelwood's death in 1773, he not only took a particular interest in preserving the non-current records of the Court, but also introduced more exacting standards of record-keeping. Burrow not only annotated and indexed the solitary book of Chancery proceedings which Hinshelwood and his predecessor had left behind, but also opened some fourteen new ones, among which the "Register's Minute Book," "General Writ Book," "Order Book," "Table of Fees," and commission-book are extant.<sup>12</sup> Burrow was confirmed in his post of Registrar by the new governor, Francis Legge, a professional soldier who took his duties as Chancellor and ex officio judge in equity very seriously indeed. With regard to arrangement and to levels and depth of description, the years 1773 to 1775 represent an achievement of record-keeping and records management in the Court of Chancery that was not duplicated until the mid-1830s. Burrow went to England in the summer of 1775 on political business of the governor's, however, and did not return to Nova Scotia.

The absent Registrar's heavy responsibilities devolved entirely on Burrow's clerk, John Slayter, who had been appointed in December 1774.<sup>13</sup> Slayter carried on as best he could for nearly two years. Then, in March 1777:

The Attorney General laid before the Council a representation respecting the Rolls and other Papers belonging to the Court of Chancery, and the Custody of them, that the person lately Appointed Register [Burrow], and to whom said Papers had been committed is totally unqualified and Now Absent, and the Papers in Possession [of] a private Person [Slayter], therefore praying that the papers be removed to the Office of the Secretary of the Province, and that he be appointed Register of the said Court, as had been heretofore and has been invariably the Practice in every Government in America.

Which having been taken into Consideration, It was Agreed to and Resolved that the Secretary of the Province be appointed Register of said Court, and take the said Papers into his Custody.<sup>14</sup>

Burrow's dismissal had less to do with his being absent, unqualified or incompetent than with his being a protégé and supporter of the despised Governor Legge, who had been recalled in the interim. The result in any case was that Slayter was ordered "forthwith [to] deliver" the Chancery records to the Secretary's office,<sup>15</sup> and that Richard Bulkeley was commanded to assume the very duties which Archibald Hinshelwood had performed in the Court of Chancery after his appointment as Deputy Secretary of the province in 1756. A further result was that Bulkeley was unable to combine the duties of Registrar with those of Master in Chancery, and was therefore succeeded in the latter post by Attorney-General Nesbitt, the Examiner. Yet another was that record-keeping in the Court of Chancery declined, both quantitatively and qualitatively, so that by 1782 it appears to have ceased altogether. "From the year 1775, in fact, but more so from 1777 and 1778, the whole record of the proceedings in Chancery seems to have dropped,"<sup>16</sup> despite the fact that the clerk of the Council, Francis Shipton, served also as clerk of the Court of Chancery until his death in 1788. In 1782 Bulkeley was appointed Master of the Rolls, or vice-chancellor, and his judicial responsibilities had thereafter completely precluded his acting as Registrar in anything but name.

The resumption of record-keeping was due to an initiative of Lieutenant-Governor John Parr, who in June 1788 ordered that the Court of Chancery would meet in the Council chamber three times a year, at times previous to the terms of the Supreme Court.<sup>17</sup> Shipton's successor, the Loyalist lawyer James Gautier, an experienced clerk, notary and translator, did his best to restore the *status quo ante* 1777. For the duration of Gautier's twenty-year incumbency, a systematic and thorough record of proceedings was kept. In May 1792, about two years after Gautier's diligence had been rewarded by appointment as Deputy Registrar, the Master of the Rolls deposited with him the "Chancery Box in the Secretary's Office,"<sup>18</sup> the contents of which had presumably lain undisturbed since the coup of 1777. Of Burrow's fourteen record-books from twenty years before, a few had already gone missing, one of which, the Table of Fees, was later recovered. Otherwise, the records which Gautier inherited were substantially the same as those which exist today.

The fact that James Gautier served for so many years as chief clerk of the Court of Chancery is evidence of its dynamic administrative relationship, not only with the office of Secretary but also with the Council, of which Gautier was also clerk. From 1782 to 1813, moreover, the offices of Master of the Rolls and Registrar in Chancery were simultaneously held on an *ex officio* basis by the Secretary of the province.<sup>19</sup> In 1814 the two offices were separated and the Deputy Secretary, lawyer Henry Hezekiah Cogswell, became Acting Registrar, later being confirmed in that post in 1818. The office of Master of the Rolls was vacant from 1813 to 1825, and this fact may partly explain the apparent absence or loss of the minutes of proceedings from about 1810 to 1834. Other possible explanations are that during the nine-year tenure of Simon Bradstreet Robie as Master of the Rolls (1825-1834), Chancery proceedings were allegedly "conducted in a loose and informal manner,"<sup>20</sup> and that in March 1832 a fire occurred in the "Chancery room" at Province House.<sup>21</sup> Although it is not known whether any Chancery case files actually perished in the fire, many sustained damage, and their "state of disarrangement and confusion" afterwards was blamed on it.

Robie retired as Master of the Rolls in 1834 and was replaced by Solicitor-General Charles Rufus Fairbanks. Retaining for the time being his seat as member of the House of Assembly for Halifax Township, Fairbanks in February 1835 moved that £25 should be provided to cover the cost "of arranging the Minute Books, Records and other Papers, of the Courts of Chancery and Vice-Admiralty; and placing them in proper files and Boxes, in one of the Rooms of the said [Province] Building."<sup>22</sup> Although the motion was defeated on a division, it was resolved a week later in the Committee of Supply to pay £25 "for procuring Shelves, Boxes, &c. necessary for the proper disposal of Papers for the Courts of Chancery and of the Vice-Admiralty."<sup>23</sup> It was therefore on the initiative of Fairbanks that a comprehensive effort was made to preserve and arrange the near ninety-year accumulation of case files and records of the Court of Chancery.

In April 1837, the House resolved to ask the Lieutenant-Governor to provide a return of Chancery causes from 1826 to 1836 inclusive.<sup>24</sup> Two months later the Master of the Rolls engaged John McGregor, a junior barrister with long experience of the Prothonotary's office, to arrange the case files and prepare both a catalogue of causes entered up to May 1836 and an alphabetical list of names of all the complainants and defendants.<sup>25</sup> The remainder of the story is best told in McGregor's own words, because his petition to the House of Assembly for compensation for his work describes the state of preservation in which the case files were to be found for the next 150 years:

That on entering upon this task, Petitioner found the whole of the papers and Documents of *Twelve hundred Actions* from Seventeen hundred and fifty one to Eighteen hundred and thirty Six inclusive to be then Contained in Three Large Chests in which they had been collected subsequent to the Fire in the Chancery room in the Year one thousand eight hundred and thirty two.—

That the papers were in a State of great Confusion and it became requisite to sort them into their several Causes and to refold nearly the whole of them for that purpose.—

Next it was necessary to arrange the Causes in their order of time and to restore in many instances, papers that had been misplaced.—

Your Petitioner was directed by the Master of the Rolls to number every Cause in order of time from the beginning to Eighteen hundred and thirty Six: — to put the papers in each cause in a stout brown paper cover, neatly folded, and tied up with a strong twine cord; and to write on the back of each cover the name of the Cause, and its number, in a clear legible hand.—

That your Petitioner accordingly devoted a great deal of time and labor to the performance of this ... work and cases having been prepared with proper Divisions to the number of one hundred and twelve and upwards for the reception of them. Petitioner sorted them into those cases conformably to an Index prepared for reference.—

That the Decrees were all numbered and enveloped in brown paper, and tied, with the name and number of the Cause, and the number of the Decree indorsed on the envelope.

That those Decrees were made up into bundles of Twenty each with a General Envelope on which the numbers of the Decrees enclosed are specified. [T]he Decrees so prepared were then transferred into boxes in which they remain for reference.—<sup>26</sup>

This chronologic-numeric scheme of arrangement was not invented by McGregor — it was begun by James Gautier or perhaps even by James Burrow — but was further developed and implemented by him as a file classification system and method of retrieval; the control number became the access point. The ‘catalogue’ and index prepared by McGregor, moreover, have served as file-level finding aids for the Chancery papers from his time to the present. The former, which originally stopped at 30 May 1836 (#1164) but was updated by McGregor some thirty years later, is a 185-folio chronological list of causes arranged by file number.<sup>27</sup> The following are the descriptive elements, as they appear in columns on each folio: name(s) of plaintiff(s); name(s) of defendant(s); nature of suit; number of cause; papers in box; decree/number and box; and date of filing the bill of complaint. Each box or case was divided into seven segments or compartments, and each could accommodate an average of 203 bundles.<sup>28</sup> The number of bundles per compartment would naturally have depended on the bulkiness of individual documents in the case files. A.1 to A.7, for example, varied in capacity from sixteen bundles to thirty-eight. The decrees were separately wrapped in bundles of twenty and placed in twenty-seven boxes; the boxes were labelled “A” through “B.B.,” no distinction being made between ‘I’ and ‘J’.<sup>29</sup> The decrees end at 7 October 1835. Less than half of them (537 out of a possible 1131, or 47.4 per cent) existed when McGregor began his work.

Although McGregor’s catalogue does not now reflect the physical disposition of the papers — the decrees are not filed separately from the other documents, and the bundles were removed from the boxes less than twenty-five years after being deposited there — the principle of original order has been applied as far as possible to the arrangement of the case files. A few of them are unnumbered.<sup>30</sup> Some unrelated

case files, moreover, either have the same number or are distinguished fractionally: e.g., 533/1, 533/2. Some numbers were not used at all; other case files had disappeared before McGregor began his work; still other papers had been misfiled or had strayed from their original file. Confusion resulted when a supplemental or amended bill, bill of revivor, or cross bill was filed, because the same cause might then be assigned two numbers, in order to preserve the chronological arrangement. In that event, all the papers were filed together according to one or the other number. This practice led some archivists wrongly to conclude that more case files were missing than is actually the case. Of the 1904 reference numbers in McGregor's chronological list, scarcely more than twenty (1 per cent) represent files which are no longer extant, in whole or in part, while forty-three were either unused or combined with others for filing purposes.

The alphabetical index of names of suitors gives every plaintiff and defendant in every cause from 1751 to 1841, together with the cause number.<sup>31</sup> The alphabetizing is by first letter of surname only and reflects the chronological order of the case files. It is unclear why the index was extended from 1836 to April 1841 (#1344), but no farther. Some 560 causes (29.4 per cent) were therefore left unindexed. The suspension of work may have had something to do with the death of Fairbanks, which took place the same month; neither of his two successors took any interest in the subject of preserving the Chancery records. The principal responsibility for their creation, maintenance, and use lay in any case with the Registrar, Nathaniel Whitworth White.<sup>32</sup> In July 1837, for example, while McGregor's project was already underway, White produced for the House of Assembly a "Return of the number of Causes commenced in the Court of Chancery, and of the Decrees passed therein, from the First day of January, in the year One Thousand Eight Hundred and Twenty-six, ... to the Thirty-first day of December, One Thousand Eight Hundred and Thirty-six, distinguishing in such Return the several years when such Causes were commenced in the said Court."<sup>33</sup> This return includes 458 causes (#719 to #1177), giving the number of the cause; its title; date of filing the bill of complaint; and whether a decree was issued.

Fairbanks' sponsorship and recommendation of McGregor's work was grounded in his perception of the administrative and legal value of the Chancery records and papers, especially in guardianship or lunacy matters and where the title to real estate had been litigated. Regardless of whether Fairbanks acted out of concern for the conservation and preservation of this material as historical documents, his highest priority was to ensure easy access to and quick retrieval of the case files. The exercise of records management functions such as these was necessary not only for the Master of the Rolls as "responsible adviser and judge of the Court", but also for the Registrar as chief clerk and administrator. Viewed from the records management perspective, therefore, the events of 1837 may be interpreted as an attempt both to survey the accumulated records to produce an inventory and to schedule current and semi-current records. The method of storage and retrieval introduced by McGregor, not to mention the file classification system which he rationalized and perfected, continued in use long after the arrangement and description project initiated by Fairbanks had come to an end. McGregor himself not only received £30 from the Legislature,<sup>34</sup> but was also rewarded by the Master of the Rolls with appointment as Assistant Registrar and Junior Examiner in Chancery.

Prothonotary James Walton Nutting, McGregor's patron, also had a professional interest in Chancery adjudication. Beginning as an ordinary solicitor, in 1833 he became a Master, and in 1840 the Senior Master, in which capacity he sometimes presided during the absence of the Master of the Rolls.<sup>35</sup> This quadrumvirate of Chancery records managers and administrators was completed by Charles Twining, a solicitor who later became a Master and Inspector/Accountant-General of the court. Soon after Fairbanks became Master of the Rolls in 1834, Twining began to keep special minutes: "Chancery of Nova Scotia. Minutes of Decisions pronounced by Charles R. Fairbanks Master of the Rolls and others in causes argued in Chancery & The Rolls Court &c.—Halifax, with notes of cases commencing 1 Sept. 1834. Vol. 1st."<sup>36</sup> This work is especially significant because it was the earliest attempt at equity reporting. Although the Official Reporter, who was not appointed until January 1845, had responsibility for the courts of equity, common law, and vice-admiralty, only a handful of Chancery decisions were reported before the abolition of the court in 1855.<sup>37</sup>

The early 1830s saw the beginning of agitation among political reformers for the abolition of the Court of Chancery, which was perceived by its opponents to be expensive, inefficient, and unnecessary.<sup>38</sup> The achievement of "responsible government" in 1848, moreover, made radical judicial reform not only possible but inevitable. The Judges Act, passed that year, endeavoured to make the judges of the Supreme Court and the Master of the Rolls independent of the Crown by providing for their removal through joint address of both houses of the Legislature to the lieutenant-governor. A Chancery abolition bill was originally introduced in the Assembly in 1851, but failed to pass the Legislative Council and was not enacted into law until 1855.

In the meantime, both the Registrar and the Senior Master were occasionally being summoned to report on various aspects of Chancery adjudication. In 1853, for example, J.W. Nutting was called on to submit a return of funds administered by the Court and financial transactions from January 1835 to December 1852.<sup>39</sup> This document, which consists of thirty-one folios, provides detailed information about the disposition of moneys in the custody of the court, whether sequestered assets or revenue from sales. Statistical returns such as this, which served the ad hoc purposes of the commission appointed successfully to redraft the Chancery abolition bill, thus contributed indirectly to the demise of the very institution the efficient operation of which they were meant to demonstrate. Statistics concerning the number of bills filed; the nature and frequency of suits; and the length of time required to dispose of an action, were viewed on one hand by the Master of the Rolls and other officers of the court as justifying the indefinite prolongation of its existence, while on the other by the Reform/Liberal government of Premier James Boyle Uniacke and Attorney-General William Young, both of whom were solicitors and frequent Chancery litigants, as demanding the court's immediate statutory abolition. It is a moot point whether the Legislature had the constitutional power to abolish a prerogative court such as Chancery, whose very *raison d'être* was the royal Commission and Instructions to successive governors since before the Legislature even existed.

*An Act for abolishing the Court of Chancery, and conferring Equity Jurisdiction on the Supreme Court* passed the Legislature on 31 March 1855 and came into operation on 1 August.<sup>40</sup> The Master of the Rolls and Registrar were superannuated,<sup>41</sup> and "all suits remaining undetermined in chancery, together with all the rolls,

records, and proceedings of the court, ... transferred to the supreme court.” Assistant Registrar McGregor petitioned the Assembly, asking not for a pension but to be made custodian of the records of the Court; the Select Committee to which his petition was referred failed to report on it before the end of the session.<sup>42</sup> The last Chancery action which culminated in a decree began on 17 March 1855, while the abolition bill was making its way through the Assembly. The last actions for which papers are extant commenced on 23 June. The minutes ceased on 9 June — there are no entries for April or May — and the entry book on 13 July; but the court continued to sit every, or every other, Tuesday, right up until 31 July. The docket records proceedings in four causes that day, but any action which was commenced after 23 June is not entered in McGregor’s catalogue.<sup>43</sup>

The accumulated Chancery records and papers presumably remained undisturbed in their pigeon-holes in the “Chancery room” for as long as the superior courts continued to sit in Province House. In 1860, however, the courts moved to a handsome new building on Spring Garden Road,<sup>44</sup> and the documentary residue of the Court of Chancery accompanied them. Now that equitable jurisdiction had been conferred on the Supreme Court, Prothonotary Nutting was able to interest himself officially in preserving the Chancery records. Their transfer to the new courthouse had been conducted rather haphazardly. “[A]ll the Chancery papers,” it was afterwards reported, “were removed from the Province Building ... without any regard to their order, and thrown promiscuously in a dark, damp room, in the basement story of the new Court House. The files got loose, the papers got mixed together, and were in a perfect state of disorder and confusion.”<sup>45</sup> Fearful that the Chancery records might be entirely destroyed through abuse or neglect, Nutting in 1863 or 1864 — the date is uncertain — approached Premier and Attorney-General James William Johnston and Provincial Secretary Charles Tupper with a proposal that John McGregor resume the work which he had laid aside nearly thirty years before. Permission was granted, and in September 1867 it was reported that McGregor had “completed the arrangement and classification of the Records of the Chancery Court of this Province — embracing all the Records of that Court from 1751 to 1855.”<sup>46</sup> He updated the file list from #1164 (May 1836) to #1904 (May 1856 [*sic*]), adhering to the format of the ‘catalogue’ in everything but the storage of the papers, which had long since been disrupted.

Apart from the fact that they were shifted from the basement to the attic of the courthouse, nothing more is heard of the Chancery records until the late 1890s, when Charles James Townshend commenced his research. Townshend was a puisne judge of the Supreme Court of Nova Scotia, whose interest in the Court of Chancery had no doubt been sparked by youthful recollections of his maternal grandfather, Alexander Stewart, the last Master of the Rolls. Townshend’s “History of the Court of Chancery in Nova Scotia” began life as a paper delivered before the Nova Scotia Historical Society in November 1899.<sup>47</sup> It was not published in the Society’s *Collections*, however, but was serialized in the *Canadian Law Times*, 20 (1900) and then published as a monograph by Carswell of Toronto. When Townshend undertook the research which led to this paper, he discovered the Chancery records “stored away in the lumber rooms of the Court House, covered with the dust of many years, rendering any study of their contents a work of great difficulty and patience.”<sup>48</sup> Judge Townshend nevertheless persevered, and one of the services he

performed in the course of his paper was to transcribe or paraphrase several of the more interesting and important documents. He also inadvertently paid tribute to the labours of the indefatigable John McGregor: "The papers and documents embodying the proceedings and decrees in the various suits are also to be found carefully filed, numbered, and indexed."<sup>49</sup> Townshend's essay is not only a landmark in the historiography of the Court of Chancery, but also a comprehensive and still valuable introduction to its records as an archival fonds.

The Chancery records and papers remained "in the archives of the County Court House," as Townshend grandiloquently described their situation,<sup>50</sup> until 1931 or 1932, when they were transferred to the newly created Public Archives of Nova Scotia. The boxes were unpacked, and an attempt made to determine how many of the case files were missing, but otherwise little or nothing was done for the next forty-five years. The entry in the first edition of the *Union List of Manuscripts in Canadian Repositories* (1968) mentions only selected records, some of which are inaccurately described, and omits the papers altogether.<sup>51</sup> When the Public Archives of Nova Scotia adopted the record group concept about 1973, the Court of Chancery was denominated "RG 36." The Chancery records were not mentioned in the "Preliminary Short Inventory," which appeared in 1972, and the *Inventory of Manuscripts in the Public Archives of Nova Scotia* (1976) has only a brief introductory note on the history of the court.<sup>52</sup> Until December 1977, the case files were stored in elaborate wooden display cases with cupboards or drawers underneath; then they were stuffed upright into manuscript boxes, as many of McGregor's bundles as could be made to fit standing next to each other. Causes #1 to #100 were removed from their ancient manila wrappers and placed in file folders, although the documents themselves were not unfolded. Both the boxes and the individual record-books were listed, and a finding aid combining these two levels of description was produced; a revised version is currently in use on an interim basis. Unlike the Chancery records per se, the case files are accessible chiefly by means of those contemporary finding aids (i.e., lists and indexes) which themselves form part of the fonds.

To perfect the arrangement and description of the Chancery papers, it is intended to survey all the extant case files; to re-create the provenance and restore the original order of those which, in about 475 instances (25 per cent), has been lost; to remove those documents which were not endorsed for filing purposes by the Registrar and therefore, strictly speaking, are not Chancery records; to determine the number of documents per file; to stamp and number each document in the file; and to arrange all the documents belonging to each cause in folders and boxes according to its catalogue number.<sup>53</sup> There are not many extant case files for which original reference codes are unavailable; these will be inserted at the appropriate place in the chronological sequence. McGregor's file list is being superseded by a 10,000-entry card index in which the names of every complainant and defendant, or subject, in every cause have been arranged in strict alphabetical order. Each entry will also indicate the number of the cause; original date of filing; and whether the name, personal or corporate, is that of a complainant or a defendant. The absence of such information, moreover, will signify that the cause is technically a 'matter' rather than an 'action.' The feasibility of such a project is grounded in the unique historical importance of the Court of Chancery of Nova Scotia, which was the earliest established equity court in British North America.<sup>54</sup> Only when easy access to and quick retrieval of

its case files have been assured, moreover, can the history of equity jurisprudence in what is now Canada begin to be researched and written in a systematic way.

***Description of Record-Books and Manuscript Volumes*<sup>55</sup>**

- 1 *Guardianship, Lunacy & Causes in Chancery (Law Side) 1761 to 1802 [sic: 1836]* (RG 36, vol. 74<sup>a</sup>). 26 folios. Gives name(s), nature of petition, number of cause and abstract of proceedings. Four "Petty Bag"<sup>56</sup> actions; twenty-one "lunacy" matters (no guardianship). Causes numbered consecutively from 1 to 25 and correspond to McGregor's numbers as follows: #1 (1877), 2 (1878), 3 (1879), 4 (1885), 5 (1880), 6 (1881), 7 [?], 8 (1885), 9 (1882), 10 (1883), 11 (1884), 12 (1885), 13 (1887), 14 (1888), 15 (1889), 16 (1891), 17 (1890), 18 (1898), 19 (1902), 20 (1899), 21 (1893), 22 (1901), 23 [?], 24 (1900), 25 (1892). Handwriting of Charles Twining.
- 2 "*Chancery Action Book C. From Novr 12th 1791 To Decr. 6 1810*" (RG 36, vol. 74<sup>c</sup>). 77 pages. Chronological list of causes at beginning. Abstract of proceedings in #106 to #174. Pp. 78-87 (#175 to #184) a later addition. Entry of causes continued from Action Book D. 13 January 1845 – 13 July 1855. 21 pages. (N.B.: Two manuscript volumes bound together out of sequence as one book.)
- 3 *Chancery Action Book D* (RG 36, vol. 74<sup>d</sup>). 1817-1843. 385 numbered folios. Gives the cause number; names of plaintiffs and defendants; nature of the bill; date of filing; and an abstract of proceedings and orders made in the cause. Arrangement is by cause number, as follows: #270, 702, 744, 760, 761, 800, 828, 864, 922, 945, 958, 968, 1014/1060, 1033, 1035, 1038, 1040, 1042, 1044, 1047, 1048, 1058, 1061, 1064, 1065, 1073, 1075, 1077, 1079, 1094, 1100, 1104, 1109, 1114, 1117, 1118, 1123, 1127, 1132, 1134-1139, 1141-1145, 1147-1149, 1151-1155, 1157-1420.
- 4 "*Chancery. The old Book And only one formerly kept in that Court*" (RG 36, Vol. 75<sup>a</sup>). 1751-1770. 128 fol. Contains the following note by James Burrow, dated 14 February 1774: "From the Records & papers, put into my possession, as Registrar of the Court of Chancery in this Province, I have selected all the Minutes I could find in each cause, and have accordingly put them together into this book / from folio 43, it being brought up no further / agreeably to their dates, in order to make it, as complete, as the materials would allow; — Also formed an Index, by which the contents, are at one View seen. ... N.B. This, and a parchment covered Book, [No. 5 below] / which contained fair copies of the articles inserted in this from Folio 1 to folio 14, and seemed to have been designed to be continued / were all the books belonging to this Court that I received."
- 5 "*Province of Nova Scotia. Court of Chancery. Register's Minute Book*" (RG 36, vol. 75<sup>b</sup>). 20 October 1773 – 6 January 1778; 31 August 1780 – 23 December 1782. 121 numbered pages (pp. 107-121 blank). "Causes since Mr Burrow's appointment as Register. ...Regularly [sic] Entered from the hearings of every Cause, & the proceedings of this Court." Index commenced but not continued. Four-page memorandum by James Burrow affixed to p. 3. REVERSE. Writs, summonses, subpoenas, minutes: 20 September – December 1751. Contains the following note by Burrow, dated 14 February 1774: "This Book Contains, from

Fo: 1 to Fo: 11 fair Copies of the Articles / & Seems to have been designed to be Continued / inserted in the Marble Covered Book [No. 4 above] / which were the only Ones, delivered to me as belonging to this Court / from Fo: 1 to Fo: 14.”

- 6 “*Minutes of the Sittings of the Court of Chancery in Nova Scotia, Halifax, from 3d March 1789 to 12 Sepr. 1791*” (RG 36, vol. 75<sup>c</sup>). Inclusive dates: 2 August 1787 to 26 April 1810. Two manuscript volumes bound together as one book. The first ends at 24 January 1797 and has 52 numbered pages; the second at 26 April 1810 and has 31 pages (29 numbered). Hiatus from 12 September 1791 to 22 January 1793. Alphabetical index by first letter of name of complainant at beginning. Also, lengthy memorandum by James Gautier, ca. 27 May 1792, concerning the disposition of the Chancery records. Contains account of fees payable to Master of the Rolls and other officials, various memoranda, journal of court days, etc.
- 7 “*Chancery minutes*” (RG 36, vol. 75<sup>d</sup>). 18 August 1834 – 19 October 1840. 238 numbered pages.
- 8 “*Chancery of Nova Scotia. Sittings Before Charles R. Fairbanks Master of the Rolls at Halifax. Minutes of Proceedings From 2d January 1837 To the [ ] of [ ] inclusive. Volume 2d.*” (RG 36, vol. 75<sup>f</sup>). Ends at 15 April 1839. 120 numbered pages. Handwriting of Charles Twining.
- 9 *Minutes of proceedings* (RG 36, vol. 75<sup>e</sup>). 4 May 1839 – 8 February 1841. 116 numbered pages (“77” duplicated). Handwriting of Charles Twining.
- 10 “*Docket Book from 2d. Novr. 1841*” (RG 36, vol. 75<sup>h</sup>). Ends at 2 August 1844. Unnumbered pages. Gives names of solicitors and litigants, and brief abstract of proceedings in each cause.
- 11 “*Docket & Minute Book*” (RG 36, vol. 75<sup>j</sup>). 5 November 1844 – 3 November 1846 (docket); 3 November 1846 – 15 January 1851 (minutes). Unnumbered pages (some blank). Under date 31 October 1846 appears the following note by N.W. White: “This Book henceforth is appropriated solely to the keeping of the Minutes of the Court.” Includes copies of correspondence of Master of the Rolls, December 1850. Several pages between 29 March and 29 May 1849 torn out. (N.B.: Formerly RG 1, vol. 485, PANS.)
- 12 “*Docket Book from 1st. Novr. 1846*” (RG 36, vol. 75<sup>j</sup>). Ends at 31 July 1855. Unnumbered pages.
- 13 “*Minute Book from February 1851*” (RG 36, vol. 75<sup>k</sup>). 4 February 1851 – 9 June 1855. Unnumbered pages. Includes copies of correspondence of Master of the Rolls and Registrar.
- 14 Godfrey Schwartz v. Daniel McCra *et al. Cause No. 187. For an Injunction. Bill filed 25 April 1811* (RG 36, vol. 76<sup>a</sup>). MSS. volume consisting of thirty original documents. Concludes with the following note, dated 10 May 1815, by Judge Brenton Halliburton, Master in Chancery: “The foregoing Interrogatories, answers, Instruments and Papers herein contained, were annexed by me to the Commission issued out of this Honourable Court bearing date the 7th day of January in the year of our Lord 1815 and are returned therewith by me as the due execution of the said Commission.” (N.B.: Transferred to case file.)

- 15 *"Chancery Court Book 1808 to 1841" [on spine]* (RG 36, vol. 76<sup>b</sup>). Ends at 10 August 1841. Unnumbered pages. Consists of (i) Memorandum of instructions to John McGregor [1836]. (ii) Solicitor's admission papers for Lewis Morris Wilkins, 27 November 1808; and S.G.W. Archibald, 13 January 1809. (iii) Entry-book, 30 January 1809 – 30 May 1836, giving information under the following heads: date of filing bill, plaintiff, defendant, when subpoena returnable [discontinued December 1817], complainant's solicitor, defendant's solicitor, "Remarks & proceedings." Cause numbers added afterwards by Charles Twining: #175 to #1164 inclusive. (iv) Docket ("In Chancery. List of causes"), 4 July 1836 – 10 August 1841. N.B. Under date 1 July 1836 appears the following note by N.W. White: "Transferred to Action Book D [No. 3 above]. Page 129. This is a Docket Book henceforth." Between the end of the Entry Book and the beginning of the Docket are two original letters from Secretary Sir Rupert Denis George to Fairbanks, MR: 24 December 1836; 1 May 1837 — both pasted on to the page. REVERSE. Original entries, 15 October 1808 (#173) — 16 November 1810 (#184). Also, six commissions to Masters, etc., 1818-1833.
- 16 *Entry-book of causes ["Docket"]* (RG 36, vol. 76<sup>c</sup>). 9 January 1830 – 9 April 1832. 8 pages. Arrangement chronological by date of filing bill of complaint; gives names of plaintiff, defendant and solicitor.
- 17 *[No title]* (RG 36, vol. 76<sup>d</sup>). Three manuscript volumes bound together as one book: (i) "Exact Copy, of all Writts issued out of this Court, and the Returns made thereon..." 16 April 1774–9 July 1778. 58 numbered pages (pp. 22ff. blank). (ii) Order-book, 26 October 1773–15 December 1777. 56 numbered pages (pp. 36ff. blank). (iii) Unused.
- 18 *Commission-book* (RG 36, vol. 76<sup>e</sup>). Consists of smaller manuscript volumes bound together as one book due to unity of subject matter: (i) "An Account of all the officers Councillors and Sollicitors belonging to the Court of Chancery, and when appointed," 1765-1774; (ii) "Exact Copies, of the Commissions, Warrants, or other Appointments, by which Officers are made or Admitted in this Court," 29 July 1774 – 6 September 1775; (iii) omnibus commissions, 30 November 1818 – 1 May 1851.
- 19 *"Memoranda concerning The Court of Chancery in Nova Scotia with Abstracts of various adjudged Cases cited in Argument or in which Judgments herein have proceeded. Halifax, N.S. 1838. Vol. 1"* (RG 36, vol. 76<sup>f</sup>). 21 numbered pages. Pp. 1-5: "Memoranda"; pp. 6, 16-21 blank; pp. 7-15: detailed minutes of proceedings, 14 March 1839, in the cause *Bond et al. v. Bingay et al.* (#1266). Bill for "Account & Settlement of the Estate [of Joseph Norman Bond]" filed 27 December 1838. Handwriting of Charles Twining.
- 20 *"Chancery Rules of Practice A"* (RG 36, vol. 76<sup>g</sup>). Three manuscript volumes bound together as one book, the first volume being composed of three parts. (i) The Procedure of the Rules & Practice of the High Court of Chancery as they arise upon the several Pleadings & proceedings in Causes according to their Order" [date?]. 31 pages: double columns. #1 to #251/"A Collection of Rules & Orders used in Chancery" [date?]. 11 pages. #1 to [?]. 15 October 1640–17 February 1678/"In Chancery" [date?]. 57 pages. #1 to #89.<sup>57</sup> (ii) "In Chancery. Rules of Court." 26 December 1833. 8 pages. #1 to #22. (iii) General Rules and Orders.

- 25 August 1846 – 4 May 1853. 45 pages.<sup>58</sup> Also, “In the Equity Court at Halifax Monday first day of February 1869 — *Rules made and pronounced by the Judge in Equity [James William Johnston] ...*”<sup>59</sup> 2 pages.
- 21 “*List of Accots and Tables of Fees claimed by the Officers of the High Court of Chancery and their Deputy’s*” (RG 36, vol. 76<sup>h</sup>). [Date?]. 39 numbered pages. Contemporary transcription. Endorsed on back (in another hand), “Tables of Fees taken in the High Court of Chancery in England — laid before the House of Commons & printed by their order.”
- 22 “*Return of the Causes commenced in the Chancery of Nova Scotia from 1st January 1832 to 31 December 1835 with the Chancellors Fees therein*” (RG 36, vol. 76<sup>i</sup>). 11 January 1832 (#1/ #981)–19 December 1835 (#169/#1147). 6 folios. Gives number of cause, date of filing bill, plaintiff, defendant, nature of suit, date of decree, fees, remarks. Certified by Registrar on 12 March 1836.
- 23 “*Nutting & Sawers’ Precipe Book in Chancery 1819*” (RG 36, vol. 76<sup>j</sup>). 13 February 1819 (#353) – 3 April 1832 (#993). 87 pages. Abstract of rules, orders, writs, etc. N.B. The principals, James Walton Nutting (1787-1870) and William Quincy Sawers (1796-1869), were law partners and Chancery solicitors. REVERSE. “In Chancery 1839.” Return of information under the following heads: cause, services, date, charge [fee], solicitor.
- 24 “*Rolls Court. Nova Scotia*” (RG 36, vol. 76<sup>k</sup>). 7 May – 24 December 1838. 29 pages (some blank). Minutes of proceedings before James W. Nutting, Master in Chancery, sitting for the Master of the Rolls.
- 25 “*Return of all Sums received and how disposed of in Causes and Sales in CHANCERY conducted by James W. Nutting Master in Chancery from the 1st day of January 1835 to the 31st of December 1852*” (RG 36, vol. 79). 31 folios. Six columns of information under the following heads: amount received; date; cause (names of suitors and nature of suit); how disposed of; if invested; loss, if any, and remarks. Names of solicitors also given.
- 26 [No title] (RG 36, vol. 80<sup>a</sup>). Abstract of proceedings and schedule of solicitor’s fees. 20 December 1839 (#1181) – 17 October 1844 (#1454). 69 folios. Index at beginning by first letter of name of plaintiff.
- 27 [No title] (RG 36, vol. 80<sup>b</sup>). Abstract of proceedings and schedule of solicitor’s fees. 9 August 1844 (#1457) – 13 February 1851 (#1564). 83 folios. Index, as above.

## Notes

- \* I am grateful to Sandra Haycock, Regional Editor of *Archivaria*, and Head of the Public Records Division at the Public Archives of Nova Scotia, for her encouragement of this paper; and to Professor Philip Girard of the Dalhousie Law School, whose thoughtful comments preserved me from various errors.
- 1 (1884) 47 Vic., c. 25. That the transfer of equity jurisdiction to the Supreme Court in 1855 did not complete the fusion of law and equity is suggested by the appointment nine years later of a "Judge in Equity" to transact the business of the former Court of Chancery. See *infra*.
  - 2 Examples of other common law writs sought in the Court of Chancery of Nova Scotia were *audita querela* (for relief from a judgment); *certiorari* (for transfer of a cause from a lower to a higher court); *de lunatico inquirendo* (to determine whether the party charged was mentally competent); *ne exeat* (to prevent a defendant from absconding outside the jurisdiction of the court); "prohibition" (to compel a lower court to desist from prosecuting a cause that lay outside its jurisdiction); *scire facias* (to repeal letters patent, revive a judgment, etc.); even *habeas corpus* (to set at liberty persons imprisoned for debt).
  - 3 Public Record Office [hereafter PRO], CO 218/3/31 (mfm. at Public Archives of Nova Scotia [hereafter PANS]). The only monograph is Charles J. Townshend, *History of the Court of Chancery in Nova Scotia* (Toronto, 1900), pp. 61-98. For a general introduction to the subject, see Stanley N. Katz, "The Politics of Law in Colonial America: Controversies over Chancery Courts and Equity Law in the Eighteenth Century," in Donald Fleming & Bernard Bailyn, eds., *Law in American History* (Toronto, 1971), pp. 257-284. For comparative purposes, see Elizabeth Brown, "Equitable Jurisdiction and The Court of Chancery in Upper Canada," in (1983) 21 *Osgoode Hall Law Journal*, at [275]; H.T. Holman, "The Early History of the Court of Chancery on Prince Edward Island" [unpublished paper, ca. 1980], 84 pages. For a contemporaneous jurisprudential treatment see Beamish Murdoch, *Epitome of the Laws of Nova-Scotia*, IV (Halifax, 1833), [44]-93. ("Nova Scotia's Blackstone" was himself later to become a Master in Chancery.)
  - 4 Townshend, *op. cit.*, p. 64.
  - 5 PANS, RG 1, vol. 164, pp. 260-261. The following month Collier and Morris were appointed assistant judges of the Supreme Court, thus inaugurating the sixty-year-long tradition of puisne judges also serving as Masters in Chancery.
  - 6 For a contemporary account of the structure and procedure of the Court of Chancery of Nova Scotia, see report by Attorney-General Suckling to the Governor and Council of Quebec, 1 November 1764; transcribed in W.R. Riddell, "The First Court of Chancery in Canada [sic]," in (1922) 2 *Boston Univ. Law Rev.* at 236. George Suckling had practised as an attorney in the courts of Nova Scotia, and was familiar with Chancery both as a solicitor and as a litigant. For a detailed contemporary account of the courts of judicature, see PRO, CO 217/21/130-136, enclosure in Wilmot to Lords of Trade, 17 December 1764.
  - 7 PANS, RG 36, #1 ("Bill for Relief from contract of purchase"); RG 37 [HX], vol. 1a, p. 75 (#46). See Townshend, *op. cit.*, pp. 68-69. The Chancery file now consists only of two documents: the complainant's petition to the Chancellor for judgment and the six-page judgment itself. Further documentation, however, may be obtained from the contemporary record-books: PANS, RG 36, vols. 75<sup>a</sup>, 75<sup>b</sup>.
  - 8 The value in litigation had to exceed £500. Only one Chancery cause is known to have been appealed to the Lords Committee of the Privy Council for Trade and Plantations: *Cochran & Cochran v. Akins et. al.* (RG 36, #138). The Privy Council confirmed the original decree in favour of the defendants.
  - 9 PANS, RG 1, vol. 164, p. 260.
  - 10 *Ibid.*, p. 261.
  - 11 PANS, RG 1, vol. 168, pp. 213, 362.
  - 12 Townshend, *op. cit.*, pp. 72-73.
  - 13 PANS, RG 36, vol. 76<sup>c</sup>, p. 3.
  - 14 PANS, RG 1, vol. 189, p. 422.
  - 15 PANS, RG 1, vol. 136, p. 246.
  - 16 Quoted in Townshend, *op. cit.*, p. 77.
  - 17 *Nova Scotia Gazette & Weekly Chronicle* (Halifax), 1 July 1788, p. 3.
  - 18 Quoted in Townshend, *op. cit.*, p. 76.
  - 19 The exception was James M.F. Bulkeley, who did not succeed to either of his father Richard's Chancery offices on becoming Secretary in 1792. Bulkeley père remained Master of the Rolls and

Registrar until shortly before his death in 1800. His record of thirty-six years' continuous service in the Court of Chancery was unequalled.

- 20 Townshend, *op. cit.*, p. 86. If Townshend's statement on page 85 is to be credited, however, then the minute-book kept during Robie's tenure may have disappeared between the late 1890s, when Townshend did his research, and the early 1930s, when the records were transferred to the Public Archives.
- 21 *Journal of the House of Assembly of Nova Scotia* (hereafter *JHA*), 12, 16 March 1832; Appendix No. 30, p. 44.
- 22 *JHA*, 6 February 1835.
- 23 *JHA*, 11 February 1835.
- 24 *JHA*, 17 April 1837.
- 25 For McGregor's background and training see the *Morning Herald* (Halifax), 6 September 1884, p. 3. A "Memorandum" of his agreement with Fairbanks is at the beginning of PANS, RG 36, vol. 76<sup>b</sup>.
- 26 PANS, RG 5, Series P, Vol. 43, No. 20 (15 February 1838). Appended to McGregor's petition is a three-page testimonial from Fairbanks, MR dated 31 January 1838, and a copy of the Memorandum, as above.
- 27 PANS, RG 36, vol. 72. Its title is "List of Causes in Chancery Equity Side."
- 28 A. 1 to A. 7 (Causes #1 to #210); B. 1 to B. 7 (Causes #211 to #385); C. 1 to C. 7 (Causes #386 to #621); D. 1 to D. 7 (Causes #622 to #819); E. 1 to E. 7 (Causes #820 to #1019); F. 1 to F. 5 (Causes #1020 to #1164). Disposition of papers terminates at 30 May 1836.
- 29 A. 1 to A. 20 (#1 to #74) ... BB. 1 to BB. 15 (#1101 to #1129). Disposition of decrees terminates at 7 October 1835. "Y. 19" (#1141) and "Y. 20" (#1146) are out of sequence.
- 30 E.g., *The King v. Hamilton* (ca. 17 September 1783); *Wilson v. Stocombe* (6 October 1851).
- 31 PANS, RG 36, vol. 74<sup>b</sup>.
- 32 N.W. White, a barrister and solicitor, succeeded H.H. Cogswell as Registrar in 1832 and held the post for twenty-three years. Writing about the same time as White assumed the office, Murdoch described its duties thus: "The register (or registrar) attends the court when sitting, takes minutes of the directions given, arranges them, and draws the decrees and orders. He also furnishes parties with copies of proceedings in the court. He files and takes charge of the papers and records. In Nova Scotia, he takes charge of monies paid into the court" (*Epitome*, IV, 46).
- 33 *JHA*, 6 February 1838; Appendix No. 12, pt. 2, pp. 57-65.
- 34 *JHA*, 11 April 1838. The Committee to whom McGregor's petition had been referred "examined the Books and Papers referred to in the Petition, and are satisfied from the mode of entries and arrangement, ... that such a work was necessary to facilitate the business of the Court of Chancery" (Appendix No. 27).
- 35 Although Nutting was an important official of the Court of Chancery for twenty-five years, this aspect of his career has heretofore been completely overlooked: *Dictionary of Canadian Biography*, IX (1976), pp. 601-602.
- 36 PANS, RG 36, vol. 75<sup>c</sup>. Ends 6 March 1837. 136 pages (132 numbered).
- 37 Among these was the famous *Uniacke v. Dickson* (#1495; #1504), the leading case in the reception of English law in Nova Scotia, which is reported at (1848) 2 N.S.R. p. 287. Historians of constitutional law erroneously identify it as "Supreme Court" or "Court of Appeal," though it was argued and determined at a time when the Court of Chancery had original jurisdiction (co-ordinate with the Supreme Court) in foreclosure, which was the subject of the action. The Chancellor presided, assisted by the Chief Justice and a puisne judge of the Supreme Court, only because Stewart, MR had "been engaged in the cause, when at the bar, for the complainant." The other reported Chancery cases were *Caldwell v. Kinsman* (#1486): (1847) 2 N.S.R. p. 398 ("The last suit not entered by Mr White in any Book, the Bill of Complaint cannot be found & consequently not entered in its place."); *Woodin v. Bushen* (#1636): (1849) 2 N.S.R. p. 429; and *Collins v. Story* (#1734): (1851) 2 N.S.R. p. 141. Alexander James, who was appointed Official Reporter in January 1845, subsequently thanked the Master of the Rolls for "handing to me, at my request, a number of valuable decisions in Chancery" (*op. cit.*, p. viii).
- 38 The product of the first reform movement was the statute (1833) 3 Wm. 4, c. 52, *An Act for amending the Practice of the Court of Chancery*, which confirmed the Master of the Rolls as "responsible adviser and judge of the Court" but circumscribed his judicial authority by implicitly recognizing appeals from his decisions to the Chancellor. The Legislature went much farther in 1839 by passing "An Act to Regulate Appeals in the Court of Chancery," which would have made all decretal orders, decisions and decrees of the Master of the Rolls subject to appeal to the Chancellor assisted by the judges of the Supreme Court. Fairbanks, MR protested vehemently,

- however, and Lieutenant-Governor Sir Colin Campbell, who had not been consulted, withheld his assent. See, in general, Philip Girard, "Married Women's Property, Chancery Abolition and Insolvency Law Reform: The Theory and Practice of Law Reform in Nova Scotia, 1820-1867," in P. Girard and J. Phillips, eds., *Essays in the History of Canadian Law, III: The Nova Scotia Experience* (Toronto, 1990) [forthcoming]; J. Murray Beck, *The Government of Nova Scotia* (Toronto, 1957), pp. 130-131; Charles J. Townshend, "Life of Honorable Alexander Stewart, C.B.," in *Collections of the Nova Scotia Historical Society*, 15 (1911), 95ff.; Townshend, *Chancery*, 92ff.
- 39 PANS, RG 36, vol 79. Cf. "List of causes brought in the court of chancery, from the 1st March, 1851, to 7th February, 1855," *JHA*, 9 February 1855; Appendix No. 19, pp. 148-151. The list was compiled by N.W. White, Registrar.
- 40 (1855) 18 Vic., c. 23; cf. "Of Proceedings in Equity," *R.S.N.S.* 1864, c. 124, ss. 1-5.
- 41 White was shortly after appointed a Master on the "equity side" of the Supreme Court: *Acadian Recorder* (Halifax), 1 September 1855, p. 3. Such an appointment was provided for by s. 10 of the Act.
- 42 *JHA*, 23 March 1855; *Debates*, 23 March 1855, (p. 103).
- 43 The chronological arrangement ends at #1869 (17 March 1855). The thirty-five subsequent files range from 1761 to "1856" (*sic*) and consist mostly of matters — i.e., guardianship; lunacy — together with some actions, or suits. The status of the last bill allegedly filed in Chancery, on 20 May 1856, some nine months after the court officially ceased to exist, is unclear because the papers are not extant. The subject of *Maxwell v. Maxwell & Maxwell* (#1904) was the disposal of the financial assets of a mentally incompetent person. The mere fact that the cause was assigned a number leads one to suppose that the entry in the catalogue must be a clerical error. The absence or loss of the papers also suggests that proceedings in the cause continued after 31 July 1855, and that the file was transferred to the Supreme Court. The papers of "suits remaining undetermined in chancery" at the time of the court's abolition would be difficult to trace among Supreme Court records, because not only numerous cause files but also proceedings for the years 1850 through 1856 are missing. An exception is *Tobin et al. v. Tobin et al.* (#1810), which commenced in February 1853. The cause was duly transferred to the Supreme Court, but the final decree was nevertheless filed with the Chancery papers, as was the writ of error directed by the Lieutenant-Governor as president of the Court of Appeal to the Chief Justice: PANS, RG 39, "C" series [HX], box 192 (1858); RG 39, "J" series, vol. 73, pp. 386-387.
- 44 Now 5250 Spring Garden Road, where sits the Halifax Provincial Court.
- 45 *Unionist & Halifax Journal* (Halifax), 2 September 1867, p. 2.
- 46 *Ibid.*
- 47 The original typescript is in PANS, MG 20, box 680, no. 10b. Delivery of the paper was reported in the *Halifax Herald*, 17 November 1899, p. 5.
- 48 Townshend, *Chancery*, pp. 65-66.
- 49 *Ibid.*, p. 67.
- 50 *Ibid.*, p. 66.
- 51 *ULMCR*, 460. The docket- and entry-books appear both to have been mistaken for "judgement books."
- 52 See p. 330. The information was taken from Townshend, *Chancery*.
- 53 This project has been completed, thanks to funds provided by the Canadian Council of Archives under its Arrangement and Description Backlog Reduction Cost Shared Cooperative Programme.
- 54 Quebec acquired a Court of Chancery, modelled on that of Nova Scotia, in 1764; New Brunswick, in 1785; Upper Canada, in 1837. The longest continuously existing Court of Chancery was that of Prince Edward Island, which was only abolished in 1974 (23 Eliz. 2, c. 65) after two centuries of life. New Brunswick's had been abolished the year before Nova Scotia's by *The Administration of Justice in Equity Act*: (1854) 17 Vic., c. 18.
- 55 Excludes those volumes which have been fully described in the text and notes: PANS, RG 36, vols. 72, 74<sup>b</sup>, 75<sup>c</sup>.
- 56 "An office formerly belonging to the Common Law jurisdiction of the Court of Chancery, for suits for and against solicitors and officers of that Court, and for process and proceedings by extents on statutes, recognizances, scire facias, to repeal letters patent, etc." (*The Oxford English Dictionary*). Just as the Court of Exchequer at Westminster Hall had an 'equity side,' now continued in the Federal Court of Canada, so the Court of Chancery had a 'law side.' Cf. (1875) 38 Vic., c. 11: *The Supreme and Exchequer Court Act* (ss. 58, 59).
- 57 On the Irishness of procedure in the eighteenth-century Court of Chancery see Townshend, *Chancery*, pp. 79-80. The source of all or part of these rules and precedents was probably either or

both of the following books: *Rules and orders appointed to be used and observed in the ... Court of Chancery in Ireland, for preventing ... abuses.... By ... Michael...Archbishop of Armagh ... Lord High Chancellor, etc.* (Dublin, 1685) and *The Practice of the High Court of Chancery in Ireland*. To which is added, all the Rules of that Court, since the year 1724 (Dublin, [1755?]). It may be significant that the first two Chief Justices of Nova Scotia — Jonathan Belcher, 1754-1776, and Bryan Finucane, 1776-1785 — were both members of the Irish bar.

- 58 Cf. *Chancery. Rules of Practice*. Halifax: Printed at the Royal Gazette Office, June 1848. 16 pages.  
59 Cf. (1870) 5 *N.S.R.* 836. The appointment of an Equity Judge in the Supreme Court was provided for by the statute (1864) 27 *Vic.*, c. 10.