

James Muir, *Law, Debt, and Merchant Power: The Civil Courts of Eighteenth-Century Halifax*. Toronto: [University of Toronto Press for the Osgoode Society](#), 2016. xiv + 282pp., appendices, notes, bibliography, index. Cloth; ISBN 978-1-4875-0103-7, Cdn \$70.00, Paper; ISBN 978-1-4875-2316-9, Cdn \$34.95.

After its foundation in 1749 as the capital of Nova Scotia, Halifax quickly acquired a full range of civil courts: a supreme court; courts for equity, admiralty law, and prohibited marriage and divorce; and an inferior court of common pleas. Compared to other contemporary jurisdictions, Halifax was exceptionally litigious: case files and/or court minutes survive for almost 5,000 civil cases during the period to 1766, and there were undoubtedly more cases than this. More than 90 per cent of them were in the inferior court, which is the principal focus of James Muir's book. Although the extent of documentation varies among cases, there is ample evidence for a study focused on who used the courts and on the workings of "day-to-day legal practice (p 9)." For example, more than 1,400 cases provide an occupation for both plaintiff and defendant, which allows a nuanced socio-economic analysis. One finding, explored in a thoughtful appendix on occupational designations in a colonial setting, is that the most frequent litigants nearly all appeared with more than one occupational or status description; fifteen of them had six or more. The implication is that those who were rarely involved in legal actions cannot be assumed to have had a fixed and definitive occupational title either.

Drawing on this large data set and using a few selected cases for detailed illustration, the core of the book is five chapters that address the stages in the legal process from initiation of an action to the exhaustion of avenues of appeal. The chapter on appeals also considers the workings of the other, less frequently used, courts. In Muir's period, there was just one fully trained lawyer in Halifax, Jonathan Belcher, sent from England as Chief Justice of Nova Scotia in 1754. A number of men included the practice of law among their activities, however; and lay justices of the peace sitting in Quarter Sessions, as elsewhere in the British legal system, administered civil and criminal justice at the inferior level. The system worked well for the everyday disputes that dominated court dockets, because fine-grained legal principles were seldom involved.

There were costs to pursuing a case; that plaintiffs did so with such frequency shows that incurring them made sense. Facing costs of their own and the risk of being charged the plaintiff's costs, defendants in turn had to choose whether to defend an action or let it go by default, as often happened. Cases of high value or in which there was a genuine dispute, as in whether a contract had been properly fulfilled or in which the value of offsetting claims was at issue, were the most likely to go to trial. A defendant might take this option also as a delaying tactic or in hopes of negotiating a settlement. Similar calculations were involved in the loser's decision to appeal a judgment. Actions that went to trial were decided by a jury unless the parties chose to refer the case to arbitration. Arbitrators could be expected to understand the workings of the local economy, as could many jurors. In a small community, jury duty was a recurring obligation for those eligible, and some men accumulated a great deal of trial experience, both as jurors and litigants.

A large majority of claims were for debts, typically for amounts of £20 or less, recorded either in book accounts or on notes and bonds. Only about six per cent of such actions were for £100 or more. As Muir's title indicates, he views the courts as part of the business system and a site of

merchant power, arguing that the legal system was “framed in such a way as to regularly secure the interests of creditors over debtors, trade over production, merchants over craftspeople (p 9).” Yet in a credit-based economy, as he recognizes, creditors were also debtors. Trade and production were also more intertwined than these dichotomies suggest; if artisans brought fewer actions than merchants and traders, that reflected the differing scales of their business operations. Nor, given the role of knowledgeable juries and arbitrators in adjudicating disputes and the probability that most debtors had voluntarily taken on the debts that they now could not or would not pay, is it clear how the system was unfair to debtors, as this phrasing might suggest.

As Muir would agree, approaching the business system through the courts is akin to studying marriage from the records of divorce. Although he does not directly address the question, it seems that these legal actions, for all their frequency, collectively represented only a small fraction of the business activity in Halifax. What they reveal, he argues, is the particular uncertainty of doing business in a new place, “a community whose members had few ties to one another (p. 185)”, where economic prospects fluctuated widely and transiency was common. Because war was one element in those fluctuations, it is of considerable interest that the military hardly appears in the records of the civil courts – it was rare for officers to be involved in civil litigation, and if ordinary soldiers and sailors were, they were not identified as such.

This is the 103rd book published by the Osgoode Society for Legal History since 1981, part of a sustained effort to understand the law, the courts, and practitioners over the whole of Canadian history and from many perspectives. Is there a chance that the CBHA can help to shape a comparable collective project on Canada’s business past?

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