Bankruptcy, Failure, and the Appraisal of Worth in the Court of Chancery, 1674-1750

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This paper is based upon my recently completed thesis, which was the first substantial work to analyse the manner in which the procedure of bankruptcy was litigated within the court. As the legal requirements of the court altered as the suit progressed, I argue that scholars can only understand how bankruptcy — or indeed any type of suit — was litigated 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. Throughout this paper, I hope to set out my plans for a new research project as I seek to diversify my research agenda. For example, the first two chapters of the thesis examined the Pleadings — Bills of Complaint and their subsequent Answers — stage of proceeding. I undertook a five-year sample and analysed 228 cases that were initiated within the court. I have discovered a further 743 Pleadings that were not utilised in the thesis, which will form the basis of the project.

The paper is divided into three sections. The first section briefly provides some background to bankruptcy procedure and the court of Chancery in order to illustrate how the two interacted within the debt-recovery process. The second section analyses one case — *Hancock v Halliday* (1742-1752) — in detail. This section will show how the multifaceted nature of these suits destabilised the appraisal of an individual's worth and credibility in wider society. Untangling these complex cases can illuminate how the flow of information and circulating judgements about individual failure were played out within the court. The final section provides some concluding remarks, as I demonstrate how failure — as a social construct at law — was established by the court in order to mediate in social and financial affairs. Undertaking such an approach has the potential to 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.

Bankruptcy procedure was simple enough in theory. If the indebtedness of an individual was seen as permanent, with little or no chance of appeasing their creditors, then a debtor could be forced into bankruptcy proceedings. Single or multiple creditors could petition the Lord Chancellor and a commission of bankruptcy would be taken out as a matter of course. A meeting of the creditors would be arranged, whereby assignees would be elected — usually the largest creditors — to collect and distribute the bankrupt's estate.[1] However, the practical implementation of this process was far more complicated, as certain stipulations applied which dramatically limited the scope and jurisdiction of bankruptcy. Firstly, certain trades and professions were excluded, as only those 'seeking his or her Trade of Living by Buying and Selling' could become a bankrupt.[2] Julian Hoppit has claimed that the intention of this 'trading' distinction was 'to keep the jurisdiction of bankruptcy away from the landowning and farming community'. As such, the law was meant to be limited to the business community, and its introduction during the sixteenth century demonstrates the assumption that 'only overseas traders were liable to the sorts of losses and used the sorts of credit which the law sought to deal with'.[3]

Secondly, an individual must have committed an 'act of bankruptcy' which sought to deny a creditor the satisfaction of their claim; being defined as 'any such Person … which shall keep his or

[1] Julian Hoppit, *Risk and Failure in English Business 1700–1800* (Cambridge: Cambridge University Press, 1987), pp.35–41.
[2] 13 Elizabeth. I c.7 (1571).
[3] Hoppit, *Risk and Failure,* p.24.

their Houses, or flee to Parts unknown, as is aforesaid, or intent to delay or defraud their Creditors deceitfully by Covin or Collusion'.[4] These statutory defined acts demonstrated the debtor's intent to delay, obstruct, or defraud their creditors, and can be seen as the law's attempt to identify failure. It was from this point whereby an individual became a bankrupt in the eyes of the law and the wider community, as they were seen to have disturbed the social order by removing themselves from public view and concealing their activities. Finally, a debtor had to have owed more than £100 to one creditor, £150 to two or more creditors, or £200 to three or more creditors.[5] Again, this stipulation was straightforward in theory, but as William Jones has surmised, this benchmark was often a fiction, declared in order to initiate proceedings, and often included the total value of penalties as well as the actual capital debt.[6] Ultimately, this is just a basic overview of the three main legal stipulations applied to bankruptcy. In their day-to-day implementation, these were far more complicated.

As a court of equity, Chancery had a specific procedure designed for delving into individual circumstances, and attempting to establish the truth of a complaint, in order to render appropriate relief based upon the concepts of conscience, fairness, and justice. Cases took the form of a trial process, in which each substantial stage of proceeding was recorded in writing.[7] Plaintiffs had to prove that defendants had acted against conscience, while defendants needed to refute these claims by showing that they had acted reasonably.[8] In this manner, the past actions of the bankrupt — and often their associates, trading partners, and family members — were described, debated, and assessed by individuals from the trading community, while the bankrupt was forced to defend their actions. As such, Chancery was not only a court to be used and utilised as a debt-recovery mechanism, but was also an institution which helped to give social and cultural meaning to narratives of credit, debt, and failure.

Hancock v Halliday was an extremely complex case — consisting of 84 separate documents — that was litigated in the court between 1742-1752. Due to time constraints, this paper will focus on the main complaints from the plaintiffs, and the main responses from the defendants, in the pleadings section of the documents. What is striking in this suit, is that Edward Halliday had been declared a bankrupt nine years previously, in December 1733.[9] As such, the snapshot in Chancery relates to a narrative of bankruptcy which had been ongoing since 1733 and was still contested as late as 1752. The first bill of complaint was submitted on 1 May 1742. The plaintiffs were three assignees — Jonathan Hancock, Richard Hooper, and Abraham Clavey — and two further creditors — Nathaniel Mortimer and Stephen Skurray — of Edward Halliday, a clothier. The named defendants were the bankrupt Edward Halliday, his mother Mary Halliday, John Phelps, and Robert Mears, all of whom resided in Somerset.[10] The complaint stated that several 'Writts of Extent' were issued out of the Court of Exchequer against the lands and goods of the bankrupt for 'a large sum of His Majesties Money' in December 1733.[11] Subsequently, the Sheriff 'Extended Inventoryed and appraised His household goods Dyeing Intensills Dye Stuff Wool Yarn Lint Oil Soap and other Materials for Dyeing and making Cloth' which were in the bankrupt's dwelling house in Froome, Somerset. However, in order to prevent the estate from being sold, Mary Halliday asked several family

[4] 34 & 35 Henry VIII c.4 (1543).
[5] 21 James I c.19 (1624).
[6] W. J. Jones, 'The Foundations of English Bankruptcy: Statutes and Commissions in the Early Modern Period', *Transactions of the American Philosophical Society*, vol.69, no.3 (1979), pp.1-63, p.31.
[7] Henry Horwitz, *A Guide to Chancery Equity Records and Proceedings 1600–1800* (Kew, Surrey: Public Record Office Handbook No. 27, 1995), p.14.
[8] Ibid, pp.3-4; Dennis Klinck, *Conscience, Equity and the Court of Chancery in Early Modern England* (Surrey: Ashgate, 2010).
[9] The *London Evening Post* declared that Edward Halliday was indicted for failing to surrender to the commissioners, 14 December 1736, p.3.
[10] TNA, C11/549/27, 'Hancock v Halliday' (1742), Bill of Complaint.
[11] The OED describes a Writ of Extent as 'a writ to recover debts of record due to the Crown, under which the body, lands, and goods of the debtor may be all seized at once to compel payment of the debt'.

members — George Locke the bankrupt's uncle and Jane and Elizabeth Hippie, the bankrupt's aunts — to give their bond to pay the debt to the Crown. As these three family members were now creditors of the bankrupt, Mary persuaded them to take out a commission of bankruptcy against Edward on 8 December 1733.[12]

The plaintiffs claimed that while the assignees raised money out of the estate to pay the Crown, they permitted the bankrupt to live in the same residence, and 'carry on his Trade the same as he did before some times in the name of his son an Infant some times in the name of his Mother the Defendant Mary Halliday'. The assignees, 'permitted the Bankrupt and his family to keep his possession of and live in the Same house use the Same household Goods and carry on the Same Trade with the Same Utensills and in the same manner after his Bankruptcy as he had done before'. Ultimately, the utensils were 'worn out and greatly lessened in Value' as the assignees refused to take them and 'turn them into money'.[13] As such, the plaintiffs sought to replace the corrupt assignees and petitioned the Lord Chancellor on 25 March 1740, complaining of the 'misbehaviour of the Commissioners and assignees' and asking for the commission to be superseded. On 26 April 1740, the Lord Chancellor superseded the old commission and named Jonathan Hancock, Richard Hooper and Abraham Clavey — who had subsequently died — the new assignees. The three assignees took possession of the bankrupt's estate on 12 August 1740.

However, in 1741, Mary Halliday brought an action in Common Pleas against the new assignees for 'breaking and Entering her Dwelling house Dye house Warehouse'. Put simply, Mary was suing the three plaintiffs in the common law courts and the plaintiffs had initiated a suit in Chancery in order to get an injunction against the suit. While the bankrupt Edward, and his brother John both provided answers, these were short and to the point, stating that they knew nothing about the initial commission of bankruptcy, or the bond issued to the Sheriff. From this point on, the case focuses on the actions of Mary Halliday, as she provides three answers to the plaintiffs' bills.

In Mary's answer, she acknowledged that the bond given to the Sheriff, as well as the original commission of bankruptcy, were taken out at her request. However, Mary asserted that she lived in the same estate as her son and the plaintiffs had illegally entered her property and seized several of her own, personal goods. Indeed, Mary provided the will of her mother — named Elizabeth Hippie and dated 15 April 1723 — which Mary claimed proved that the furnaces and several utensils had been inherited by her upon her mother's death in 1725. Mary claimed that at the time of his bankruptcy, Edward owed her over £1000 in rent and other debts.

In response, the plaintiffs drew attention to a number of discrepancies between Mary's three answers. They asked whether in her first answer she claimed to have 'made about Twenty pieces of Broad Cloth after your son became Bankrupt in which he assisted you', whereas in her third answer this had risen to fifty. In response, Mary claimed to be eighty two years old, and the difference between the two answers 'was occasioned … by reason of this examinant not having her said Books to refer to at the time of putting in her said Answers and the decay of this Examinants memory and Understanding by reason of this Examinants said great Age'. When trying to explain why she 'did not forbid the Sherriffe' from taking and appraising her own goods, Mary claimed this was 'because of the great Concern and Affliction which this Examinant was then in on Account of the Misfortunes of her said Son which at that time had so great an Effect upon this Examinant as to prevent her from taking the proper precautions necessary'.[14] Here, we gain an insight into Mary's age and emotional state, as she claimed to be unable to act in the correct and proper manner. She stated that she had actually taken out a formal 'Notice of Distress' against her son in order to claim back her rental arrears. As such, she is clearly a creditor to her son. In 1752, the final decree explained that the case never returned to the common law, as 'the Partys have Agreed to refer the terms in difference to arbitrators on Condition that the said £175 shall be first paid back to the said Plaintiffs'.[15] Ultimately,

[12] TNA, C11/549/27, 'Hancock v Halliday' (1742), Bill of Complaint.
[13] Ibid.
[14] Ibid, Answer of Mary Halliday.
[15] TNA, C33/397, 'Hancock v Halliday', 4 June 1752, f.428.

after ten years of litigation in Chancery, and nearly twenty years since the bankruptcy of Edward Halliday, both sides had agreed to meet with arbitrators to settle their outstanding financial accounts.

In this suit, we can see that Chancery was less concerned with concluding a case in a definitive manner, but was rather and institution that mediated in social and financial affairs, becoming part of the wider culture in which economic knowledge was disseminated and shared. To summarise the details of the case, Mary Halliday claimed she inherited several utensils from her mother, and it was her sisters — alongside her uncle — who had given the bond to save the estate. It seems that Edward had destroyed a family business that rested on the energies of women, with implications for Edward's status, honour, and credit within his own family. Indeed, the emotional 'charge' of this case was also quite potent, in that it appears to be documenting the deterioration of the mother-son relationship, as she even goes as far as to issues a 'notice of distress' against him to recoup rental arrears. At the same time, the person at the 'centre' of the case, the bankrupt Edward Halliday, seems to recede to the periphery as the proceedings increasingly focus on his mother.

One aspect that might be useful to explore in the future is uncovering how this concept of 'failure' — as a social construct at law — was established to mediate in bankruptcy cases. This holds the potential to further complicate our understanding of exactly what is meant by failure. In its simplest terms, Edward Halliday had legally and morally failed to pay back a debt in a satisfactory period. But there are several other types of failure in play here, especially in an equity court that dealt with issues of conscience and fairness. As the case narrows and focuses on the bankrupt's mother — who was also a creditor — the plaintiffs were suggesting that she herself had failed to act in a respectable manner and in good conscience. However, the sheer complexity of the case and the interconnected nature of family indebtedness makes this notion unrealistic and rather simplistic, as we see the very intense way that failure was complicated and manifested within families. In a broader sense, both commissions of bankruptcy had failed. As such, the very fact of coming to Chancery could itself be seen as a failure, especially when we consider the time, expense, and energy in such a process. This is especially true of those living outside of London and in places like Somerset.

One final consideration is whether or not the individuals in this process could ever recover from such a failure? My own view is probably not as things have gone too far. In this manner, it seems that everybody's credibility and reputation is up for grabs by the time a case comes into Chancery, and not just the bankrupt who had legally and morally failed. Ultimately, untangling cases such as this will illuminate contemporary understandings of what was considered right and wrong, honourable and deceitful, and criminal and compassionate, within debt recovery. This will have wider ramifications for our understanding of how the court came to make decisions, problematizing the idea of delegated conscience as a juristic principle, and the role of equitable jurisdictions in wider society.