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Résumé de l'article

Trudi Johnson vérifie ici l'hypothèse selon laquelle les concepts de propriété et la succession par ordre de primogeniture, tels que définis par le common law anglais, favorisaient les héritiers mâles et désavantageaient les femmes lorsqu'elles se mariaient. En étudiant les testaments faits à Terre-Neuve au XIXe siècle, l'auteure constate que les conditions économiques particulières de la colonie ont amené ses habitants à ne pas scrupuleusement respecter certaines traditions juridiques séculaires lorsque le bien-être de leur famille était enjeu. Comme tout était subordonné aux besoins immédiats et à long terme de la famille, il arrivait que l'on contournât la ligne d'hérédité mâle au profit des femmes, ce qui donnait lieu à des pratiques de succession plus égalitaires. Ces pratiques, à leur tour, contribuèrent à la mise en place d'un système de propriété matrimonial, et ce, bien avant que l'on adopte des lois pour protéger la propriété des femmes mariées.

Women and Inheritance in Nineteenth-Century Newfoundland

TRUDI JOHNSON

For centuries, in English common-law jurisdictions, inheritance has been the main method of transmitting real property[1] and personal property[2] to the next generation. Until the passage of the Property Act[3] in 1925 in Britain, the descent of heritable interests in land to the *heir* distinguished real property from personal property. Different bodies of law determined what happened to each upon death. Further, the distribution of that property depended on the heir's social status, place of residence, and gender. Under the common law of inheritance, the heir-at-law to the deceased would already be entitled to take the deceased's real property, but would receive an equal part of the children's share of personal property as well. Thus if a widower died intestate leaving three sons and four daughters, the eldest son was the heir and took all the real property but all seven children shared the personal property equally.[4] In the event that there were no children, the wife would receive one-half of the estate and the rest would be distributed equally among the next-of-kin of the deceased.[5] By the Statute of Distributions (1670), the husband was entitled to the deceased wife's personal estate absolutely, to the exclusion of other relatives if she had made no will with his consent or if no settlement had been made providing for the contrary.[6] If no children survived, the widow split the personal property

1 Real property is land and generally whatever is attached to the land, fixtures, as well as the rights and profits annexed to or issuing out of the land. H.G.S. Halsbury, ed. *The Laws of England* (2nd ed.) vol. 29, (London, 1937), "Meaning of Real Property," p. 572.

2 Personal property legally includes all property other than freehold estates and interests in land. Personal property was called "chattels" by the common law and often referred to as "moveable goods," which included such items as money, debts, clothing, household goods, and food and all other moveables and the rights and profits related to them. Halsbury, ed. Laws of England (3rd ed.) vol. 29, (London, 1960), "Definition of Personal Property," p. 355.

3 Law of Property Act (1925), 15 Geo. 5, c. 20.

4 P.V. Baker, ed. *Megarry's Manual of the Law of Real Property*, 5th ed. (London, 1975), 263.

5 An Act for the Better Settling of Intestates' Estates (Statute of Distributions, 1670), 22 & 23 Car.II, c. 10.

6 James Armstrong, *Laws of Intestacy in the Dominion of Canada* (Montreal, 1885), 52.

with the husband's next-of-kin.[7] These rules, which were clearly outlined in Blackstone's *Commentaries* in 1764,[8] served as the basic pattern for intestate division of personal property in English common-law jurisdictions for centuries. In both Britain and the American colonies, children inherited two-thirds of the intestate's personal property if there was a widow surviving. They divided the entire estate if there was no widow. Thus, the common law dictated primogeniture descent for land and the Statute of Distributions specified equal division of personal property among widows and legitimate children. In addition to primogeniture, as early as the thirteenth century, English common law had established the doctrine that any property which a wife had owned as a single woman became her husband's when they married.

Theoretically, married women in English common-law jurisdictions were disadvantaged by the principles of coverture[9] until the passage of married women's property legislation in the late nineteenth-century. Recent studies in women's legal history, however, have challenged ideas about the restrictions of coverture by examining their impact at the everyday level, and suggesting that in many communities under English common-law jurisdiction, the rules of coverture were unworkable for a variety of reasons.[10] Furthermore, those who have studied English colonial jurisdictions have found that in some instances, the majority of women neither called for reform nor supported it when it was proposed.[11] Such was the case in Newfoundland where there appears to have been no popular movement advocating reform of the restrictions signalled by coverture or the property rights of married women. Instead, local customary

7 There were exceptions. London, Wales, and the north of England had slightly different rules of division that under certain circumstances gave more to widows and less to the children and the eldest son.

8 The full rules of descent are given in William Blackstone, *Commentaries on the Laws of England* (1764) (Buntingford, 1966), vol. 2, c. 14, 200 - 240.

9 Coverture refers to the legal status of a married woman but is often used to describe a married woman's loss of legal personality which formerly existed at common law, whereby, for example, a married woman could not own property free from her husband's claim or control. *Black's Law Dictionary* (6th ed.), 366.

10 Amy Louise Erickson's extensive study of married women's property rights in early modern England examined what was practiced in the absence of or ignorance of the law of coverture. Amy Louise Erickson, *Women and Property in Early Modern England* (London, 1993). Maxine Berg's study of women's property in Britain during the nineteenth century also showed that many women found "alternative legal arrangements" to protect their property within marriage. Maxine Berg, "Women's Property and the Industrial Revolution," *Journal of Interdisciplinary History* 24/2 (Autumn 1993): 233-50.

11 For an elaboration of these arguments regarding recent histories of married women's property legislation, see Philip Girard and Rebecca Veinott, "Married Women's Property Law in Nova Scotia, 1850 - 1910," in Janet Guildford and Suzanne Morton, eds. *Separate Spheres: Women's Worlds in the 19th Century Maritimes* (Fredericton, 1994), 67-91.

practices emerged in areas where, for a variety of reasons, the law was uncertain, inapplicable, or inappropriate.

While English law operated in Newfoundland from the earliest days of European contact, its formal reception and the manner in which laws could be applied to local circumstances remained an issue throughout the nineteenth century. The laws pertaining to property, inheritance, and marriage were clearly defined by English common law, but it was not always possible or appropriate for local authorities to enforce the formal rules of common law. Alexis de Tocqueville, observing American colonial practices, for example, concluded that the Americans were more inclined to egalitarianism because of the influence of democratic principles.[12] In Newfoundland, the conveyance and inheritance of property reflected to a large extent the customary practices that evolved in a colony that depended upon a highly variable fishery. Both real and personal property in Newfoundland were passed on to the next generation in the nineteenth century by at least five means: will, intestacy, deed of gift, conveyance, and marriage settlement. These clearly were important issues. Interestingly, one of first statutes passed by the local legislature in 1834 was the Chattels Real Act,[13] which addressed the law of inheritance in Newfoundland. The statute raised the question whether the English law of inheritance had applied in Newfoundland and led to a series of conflicting interpretations after 1834. Under the Chattels Act, the land of those dying intestate would be inherited as personal property and distributed equally among the surviving spouse and children. Legislators had apparently decided that because of the limited size and value of estates on the island, the act would accomplish two goals: confirm the inappropriateness of primogeniture and recognise the impartibility of small estates.

For those residents who left wills, the size and nature of the bequests were determined by considerations such as custom, duty, affection, fairness, and the need to provide some measure of economic security to the immediate family, as well as to acknowledge past and future contributions of family members. This essay examines wills of both men and women in nineteenth-century Newfoundland and will attempt to show how customary practice framed three components of the inheritance system: the ownership of property, the partibility of inheritance, and the social expectations of parents. For the analysis, 423 wills were used, dating from 1759 to 1899. Of these, eighty-one (or twenty percent) represent the wills written by women as widows, single women, and

12 Alexis de Tocqueville, *Democracy in America* (reprinted Chicago, 2000), 558-62.

13 An Act for declaring all Landed Property, in Newfoundland, Real Chattels. *Journal of the House of Assembly*, March 1834. 4 Wm. IV, c. 18 (Nfld.).

married women. Wills were selected from each decade to determine whether testation practices changed significantly over time.[14]

Because of the importance of the island to the English fishery, private ownership of property was formally discouraged from the earliest days of English arrival. Nevertheless, beginning in the eighteenth century, inhabitants chose and cleared pieces of ground on which to build for the purpose of carrying on the fishery. Over time, most of the population could receive "quiet and peaceable possession" of property by petitioning the governor. Possession was granted as long as fences were kept up and the property was occupied and properly maintained. Gradually, these lands were recognised in the communities as belonging to the family of the individuals who had cleared it. Just as local disputes were regularly mediated outside the formal rules of common law, matters of inheritance and ownership of property often took on their own complexion in small, isolated communities where in the absence of or ignorance of a local authority, boundaries of property were recognised and sanctioned by the community. Property was passed on to family members of the next generation who were close at hand. Sons and sons-in-law built houses on the land owned by the previous generation. The family was expected to take care of its own needs unless the husband, father, and collateral kin were no longer present or refused assistance. Property ownership was gradually permitted, confirmed by statutes, and administered by registration of deeds in the early nineteenth century.

The fluctuating success of the fishery year after year was a major component of the economic vulnerability of the residents. Therefore, testators of both sexes needed to ensure that property stayed within the family as a means of providing a measure of security in a society based on a precarious foundation. The land was valued, not as an indicator of wealth, but by its proximity to the sea, the very source of livelihood. Fishing rooms, boats, flakes, and stages[15] were essential for economic survival and remained the most important property one might inherit in the nineteenth century. As long as the fishery continued to be the primary occupation on the island, testators would ensure that their property was passed on to whom they considered their rightful heirs.

In fishing communities where there was a heavy dependence on the shore fishery, actual title to property was not as important to married couples as

14 Wills are located at: Provincial Archives of Newfoundland Labrador (PANL), GN 5/1, Registry of Wills, GN 5, Court records, Collections; the Registry of Deeds, Miscellaneous Deeds and Wills, 1744-1810; and the Centre for Newfoundland Studies Archives Collections, Memorial University (CNS).

15 A fishing room or ships-room is a tract or parcel of land on the waterfront of a cove or harbour from which a fishery is conducted: the stores, sheds, flakes, wharves, and other facilities where the catch is landed and processed and the crew housed. *Dictionary of Newfoundland English* (DNE), 184. A flake is a platform built on poles and spread with boughs for drying codfish on the shore. DNE, 187. A stage is a narrow, wooden building projecting into the water where the fish, when taken out of the boats, were headed, split and salted. DNE, 525.

the public recognition of their possession of land on which to build a house near the shoreline, close to fishing rooms, stages, flakes, and wharves. They needed only a small plot of land on which to cultivate a few vegetables or pasture domestic animals. Property boundaries in small fishing communities were arbitrarily drawn according to need, consensus, and compromise. Documentation was not always required to convince local authorities of ownership as individuals simply relied on the support of members of the community or the reputation of the family to sanction ownership of property. For example, Mrs. Elizabeth Gobbett of Ferryland petitioned Governor Drake in 1750 for the right to the property known as Pidgeon's Plantation, which consisted of three ships rooms in Ferryland. Although Mrs. Gobbett had mislaid the original patent, possession was granted to "her and her assigns forever" by virtue of her family name.[16] Similarly, in 1771 Governor Byron granted quiet and peaceable possession of property to Mrs. Anne Williams. She claimed property that originally had belonged to her grandfather, Major John Jenkins, although the property had been unoccupied since his death. Community recognition of Mrs. Williams' relationship to Major Jenkins was sufficient for her to receive possession of the property.[17]

Women's role in the transition from a migratory to a resident fishery aided in the development of a partible system of inheritance. Their contribution, acknowledged in wills, was vital to the continued survival of the family and the community. As the shore fishery expanded in the eighteenth century, women became vital participants in the fisheries and continued to carry on their domestic chores of baking, cleaning, cooking, and caring for children as well as their shore work. Many were also engaged in subsistence activities which included making clothes, gardening, and raising poultry, pigs, cattle, and sheep.[18] Some married women were paid to wash clothes for single men in their community. This work was regarded not as independent of their husbands' efforts but as their collaborative contribution to the family's survival.

The end of the Napoleonic Wars in 1815 marked an economic decline in Newfoundland's international markets.[19] Planters (resident fishermen) came to rely more and more on household labour in the production of cod. Women and children became a valuable part of the shore crew who unloaded fish, split and

16 PANL, GN 2/1A, Colonial Secretary's Office, Outgoing Correspondence, Ferryland, 31 August 1750.

17 PANL, GN 2/1A, Colonial Secretary's Office, Outgoing Correspondence, vols. 5 & 6, 22 October 1771.

18 Sean Cadigan, *Hope and Deception: Merchant-Settler Relations in Newfoundland, 1785 - 1855* (Toronto, 1995), 79.

19 By the Napoleonic era, Newfoundland had a substantial resident fishery and trade and by the end of the wars in 1815, a population of 40,568. Shannon Ryan, "Fishery to Colony: A Newfoundland Watershed, 1793 - 1815," in *Canada Before Confederation*, eds. P.A. Buckner and David Frank (Fredericton, 1985), 130.

salted it, and spread it on the flakes for drying. The quality of the fish depended to a large extent on the women's ability to cure it, to decide when it needed to be turned or covered, and when it could be taken up and stored or carried to the local merchants. Merchants paid for fish according to quality and only the best quality obtained the highest prices. At the same time, many planters began to diversify by engaging in sealing, trapping, ship-building, and logging to supplement their incomes.[20] Government policy permitted enough land to raise vegetables.[21] Women took the responsibility for subsistence agriculture made all the more challenging by the climate and poor soil. This seasonal work took many hours of the day, yet women continued to carry out their domestic responsibilities as well.[22] The production of cod, subsistence farming, and in a few areas, commercial farming, brought together husbands and wives in a joint effort to sustain their households in the face of fluctuating markets and uncertain fishing seasons.[23]

Thus it is not surprising that most men who left wills sought to provide continued support for their widows, and for their children who were single or dependent. Furthermore, it was so important that the property remain in the family that many fathers and widows protected its ownership from sons-in-law in their wills, fearing it would, at some future date, move outside the family. Fathers and mothers were also concerned that sons should be economically secure through their inheritance since they would be the future providers for their families. In families where the son inherited the all-important property required to execute the fishery, he was expected to provide for the security and maintenance of other claimants, including the widow, who had legally inherited by means of common law at least one-third of the estate. In Newfoundland, this often meant that unmarried children and the widow would remain in the family home regardless of who held title to it.

Wills of the nineteenth century place women in one of three categories: spinsters (single women), married women, and widows (or relics). When a woman became a widow, her legal identity changed. Widows were often

20 Cadigan, *Hope and Deception*, 38.

21 Sean Cadigan, "Whipping Them into Shape: State Refinement of Patriarchy among Conception Bay Fishing Families, 1787 - 1825," in *Their Lives and Times: Women in Newfoundland and Labrador, a Collage*, eds. Carmelita McGrath, Barbara Neis, and Marilyn Porter (St. John's, 1995), 50.

22 For a further description of the gender division of labour in the fishing economy of Newfoundland as well as the changing role of women in Newfoundland history see McGrath, Neis and Porter, eds., *Their Lives and Times: Women in Newfoundland and Labrador: A Collage*; Marilyn Porter, "'She was Skipper of the Shore Crew': Notes on the Sexual Division of Labour in Newfoundland," *Labour/LeTravail* 15 (1985):105-123.

23 Sean Cadigan, "Economic and Social Relations of Production on the Northeast Coast of Newfoundland, with Special Reference to Conception Bay, 1785 - 1855," Ph.D dissertation, Memorial University (1991), 195.

appointed to administer their late husbands' estates. They went to court to claim payment of debts owed to their late husbands and to complain of any trespassing on their husbands' property. Occasionally they had to go to court to recover items taken by other relatives or members of the community who tried to take advantage of them. Mary Shepherd, for example, successfully petitioned the court on 25 September 1878 to obtain a feather bed and a silver watch that had been her husband's property but had been taken by the wife of their eldest son.[24] In 1823, Governor Hamilton received a petition from Mrs. Elizabeth Halfyard stating her intention to carry on the fishery in her late husband's fishing room in Oakerspit Cove. Hamilton denied the rival application of Samuel Bowlin and John Inkpen and informed the Surrogate, Oliver St. John, of the widow's right to the fishing room.[25]

Wills left by women illustrate a concern for women's economic vulnerability in a domestic economy so dependent on men's work and success in the fishery. The loss of a husband/father would likely mean a woman's total dependence on her family or the charity of the community. Like men, widows who left wills were concerned for the equitable distribution of property among family members. Such was the case of Frances Gosse of Bread and Cheese Cove who, in 1836, left land to her three married daughters, Rachel Smith, Catherine Landmaid, and Julia Smith. The remaining land in Bread and Cheese Cove left to the widow by her late husband, Richard, was bequeathed to their grandchildren. Her son, Thomas, received land in Carbonear and Spaniard's Bay.[26]

Wills by women in their second marriages are quite rare, probably because they had surrendered their inheritance from their first marriages to their children or collateral kin. Nevertheless, if a widow married again, she was then entitled legally to convey property that she held from her first marriage. In her will dated 14 May 1814, for example, Mary Neill, formerly the wife of Constantine Neill but at that time the wife of James Dalton, left to her sons, Owen and Constantine, her "house, meadows, and gardens, boat and craft (a fishing boat), netts and sains" in equal shares.[27]

While women and men appear to have shared some concerns about equitable distribution of property, there were important gender differences. The wills left by men which contain itemised personal effects focus on the inheritance of members of the nuclear family rather than collateral kin. Husbands and fathers were clearly more concerned about holding real property within the

24 PANL, GN 5/1/B/1, box 1, 1787 – 1788, Harbour Grace Surrogate Court Minutes.

25 PANL, GN 5/1/B/1, Harbour Grace Surrogate Court Minutes, Governor Hamilton to Oliver St. John, 4 September 1823.

26 PANL, GN 5/1, Registry of Wills, vol. 1, Will of Frances Gosse, Bread and Cheese Cove, 7 September 1836.

27 PANL, GN 5/1C/6, Ferryland Surrogate Court Records, correspondence, 24 May 1814.

family than they were about the fate of personal items upon their deaths. Women's wills, on the other hand, often provide detailed descriptions of each item and women were more likely to spread these items widely among various family members. Widows seem to have held a more emotional attachment to personal property,[28] likely because the home and its contents were the woman's domain. For example, included in an extensive list of personal property, Mary Stretton, a widow in Harbour Grace, bequeathed:

> to Sarah Pike, my wedding ring, purple silk gown, my own bed and bedstead, and bedding, one sheet, two blankets, one counterpane, two pillow cases, one bolster case, two towels, and my light striped cotton gown, also a small round table, a looking glass;
>
> to my brother, Charles Parsons, a pair of silver sleeve buttons and to his wife, Susannah Parsons, my large table cloth;
>
> to nieces, Susannah Parkin, a gold diamond ring set and spice box, Julia, a small black portmanteau, and Louisa, the looking glasses in the small room;
>
> to nephew, William, son of Jonathan Parsons, two backed and four Windsor chairs, the small square painted table and one brass candlestick;
>
> to nieces, daughters of Jonathan Parsons; Mary, wife of William Parsons, cable laid gold ring, Emma, a counterpane, Ann, a chest of drawers, Rachel, a bed quilt, Mrs. Roe, a plaid; and finally to niece and executrix, Mary Parsons, blue silk petticoat, cloth coat, and painted knife box.[29]

Most wills by men list property such as land, fishing rooms, farms, money, and boats while carefully designating the beneficiaries of these items. Remaining personal effects and goods were generally left to widows and children, on an equitable basis. Where there was no immediate family, testators divided the property among collateral kin, and occasionally, to friends and community organisations such as the church. For example, William Munden of Brigus left his land, house, and moveable property to his wife, Olivia, and their children. A piece of land and a small portion of money were left to his grandchildren and to the Wesleyan Missionary Society.[30] John Barnes, a fisherman

28 Maxine Berg reached a similar conclusion in her investigation of women's wills and the treatment of women in men's wills in eighteenth and nineteenth-century Great Britain. She draws attention to the precise description women assigned to each item while men tended to be more general and vague in their descriptions of personal property. Maxine Berg, "Women's Property and the Industrial Revolution," *Journal of Interdisciplinary History*, 24/2 (Autumn 1993): 246.

29 PANL, GN 5/1, Registry of Wills, vol. 1, will of Mary Stretton.

30 PANL, GN 5/1, Registry of Wills, vol. 2, will of William Munden, Brigus, 13 November 1851.

in Greenspond, left his house to his sister, Prescilla Blake, and his fishing room, land, and stores to his nephews, Peter Blake and George Blake. His money was divided among his nieces and nephews.[31]

The simple will of Charles Tucker, a planter in Ship Cove, was typical of nineteenth-century wills by men. He left his property to his wife, Mary, for use throughout her life. At her death, the property was to be divided among their sons and daughters.[32] One variation was to give the widow discretion to divide the property among the children as she wished. In 1832, for example, Michael Stack left all real and personal property to his wife, Margaret, for her to share with the children "in such a way as she may conceive most beneficial for herself and the children."[33] Other wills stated precisely what was left to the widow and what was designated for each of the children. In wills where the husband mentioned both a surviving wife and children, the widow's inheritance commonly reverted equally to the children upon her death, that is, whether the widow received her husband's full estate or only a portion of it.

The inheritance received by children also reflected a partible inheritance system. Most sons and daughters who received real and personal property from their fathers and mothers through a will did so in an equitable way. This provision was expressed in twenty-three percent of the wills examined by the common phrase, "share and share alike." A substantial portion of the remaining wills which included bequests to children also reflected this equitable practice of distributing property, although the phrase "share and share alike" was not used. "Share and share alike" did not mean that the estate was distributed equally among the children because estates consisted of different types of property with different monetary and sentimental values. Rather, the practice implied that each child would receive so much of the estate in more or less equal value and more importantly, according to his or her needs.

Sons and daughters inherited both real and personal property. Interestingly, incidences of the eldest son receiving real property to the exclusion of his siblings are quite rare. In fact, some testators were quite aware that property distribution in England favoured primogeniture unlike practices on the island. For example, when on 4 February 1843, Jane Comer of Harbour Grace, widow of William Smith Comer, petitioned the court regarding her husband's property, she indicated that she expected his property in Newfoundland to be equally distributed among their seven children, while noting that some property situated in London should be inherited by their eldest son (according to practice there).[34]

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31 PANL, GN 5/1, Registry of Wills, vol. 4, will of John Barnes, Greenspond, 3 December 1880.

32 PANL, GN 5/1, Registry of Wills, vol. 1, will of Charles Tucker, Ship Cove, 27 January 1832.

33 PANL, GN 5/1, Registry of Wills, vol. 1, will of Michael Stack, Torbay, 13 March 1832.

34 PANL, GN 5/3/B/19, Magistrates Court Records, Harbour Grace, box 81, file 3, Civil Process, 1840-1849, Petition of Jane Comer to the Honourable Chief Justice Bourne of the Supreme Court of Newfoundland.

Similarly, the practice of ultimogeniture (leaving real property exclusively to the youngest son) was rarely followed. One of these cases arose in 1826, when Thomas Brenton, a boatkeeper in Burin, left his house, stages, flakes, boats, nets, and seines to his youngest son, Henry, with the condition that he would look after his mother and not deprive her of a home. Brenton's money was left to his wife and on her death, to their children equally.[35] Since the will is the only record of the circumstances of the Brenton family, there is no indication why youngest son Henry inherited property to the exclusion of his siblings. Had the elder brothers already established themselves, with less or no need for the property? In only a few wills, the youngest son was given preference over his siblings although each inherited a portion of the property. Nathan Clarke of Brigus left his house to his youngest son, Samuel, and personal property to his remaining sons. One condition to Samuel's inheritance, however, was that his mother, Jane, be permitted to live in the house as long as she lived, provided she did not remarry. Nathan's money was left to his wife but if she remarried, the money was to be divided equally among the children with his daughter receiving only one-half as much as her brothers.[36]

The type of property which children inherited depended primarily on their age and marital status. Children who were under the age of inheritance tended to receive personal property immediately but provision was made for them to take their full inheritance when they reached twenty-one years. Sons were more likely to inherit fishing rooms, boats, nets, seines, and other items pertaining to the operation of the fishery if their sisters were married. Among the men who left at least one daughter as a beneficiary, sixty-five percent inherited *both* real and personal property. For male testators with at least one son, the percentage increased to eighty-two percent. Personal property (including clothing, furniture, and household effects) was divided equally or kept in the family home for the use of the children or widows.

Daughters also received gardens, land, or houses. Those who inherited fishing rooms and other fishing-related property did so either in the absence of brothers or equally with their brothers. Wills in which daughters received land, houses, or fishing rooms to the exclusion of the brothers are quite rare. Among the wills examined, there are only two instances in which a daughter inherited real property and her brother did not. One belonged to John Hartery of St. John's whose will was drawn in 1826. Hartery left a watch, tools, and a tool chest to his son, Haret; a bed, bedding, and a chest to his second son, George; and land situated in Bay Bulls, household furniture, dogirons, and a looking glass to his only daughter, Mary.[37] The will does not reveal the ages or marital

35 PANL, GN 5/1, Registry of Wills, vol. 1, will of Thomas Brenton, 23 October 1826.

36 PANL, GN 5/1, Registry of Wills, vol. 1, will of Nathan Clarke, Brigus, 6 December 1851.

37 PANL, GN 5/1, Registry of Wills, vol. 1, will of John Hartery, St. John's, 24 May 1826.

status of the children. A second example is the will of Michael Mara who at the time of the writing of his will in 1827 had been living in St. John's for fifty-nine years. Mara left his wife, Mary, the house they had lived in along with "two other tenements" as well as the furniture, four feather beds, bedding, and bedsteads. His son, Thomas Mara, inherited one bed with bedding, six silver tablespoons, one silver watch, and all the linen. Mara's daughter, Mary, who was married, received one bed, bedding, and bedstead along with the fishing room that her father owned in Magady Cove, which according to the will, had been a grant from a former governor, James Webb. Michael Mara insisted that Mr. Burn, his daughter's husband, was not to have any claim whatever on this property and that Mary should not sell or dispose of it in any way. After her death, the income from the property would be given to the children of Thomas Mara.[38]

Those daughters who did not inherit real property were compensated by receiving additional money or other personal property that was left for their "sole use." Only in a few cases did fathers deny their daughters an inheritance at all. In such instances, they allowed the daughters the right to stay in the family home or claimed that they would be taken care of by someone else. While Amos Blackler, a planter in Back Harbour, Twillingate, left his house, furniture, and effects to his wife, Catherine, his fishing rooms, gardens, stores, and flakes were left to his two sons, James and Arthur, to "remain in the family and not to be mortgaged." It was Blackler's expressed wish that the same property would descend to his male heirs. Blackler's daughters, Mary Anne and Martha, retained "right of residence" with their mother.[39]

Testators of both sexes were inclined to include specific conditions to protect their children's inheritance. These conditions placed on sons and daughters reflect the social expectations of parents and generally fall into three categories: provisions to keep the property in the family for the mutual benefit of all family members; provisions to protect the inheritance of widows or single, married, and widowed daughters; and provisions which directed the behaviour of family members.

Several men left property to their wives under the assumption that although the women had ownership, the property would actually be used by their sons and grandsons for the fishery. In 1829, Thomas Cooper left his fishing rooms in Lower Island Cove to his wife, Jane, with the condition that the rooms would be used by their two sons and grandsons and that they were to take care of Jane for the rest of her life.[40] Thus, while the wife assumed ownership, the family

38 PANL, GN 5/1, Registry of Wills, vol. 1, will of Michael Mara, St. John's, 2 April 1827.

39 CNS Archives, col. 150, Peyton Family, f. 107, wills and documents, 1838-1910, will of Amos Blacker.

40 PANL, GN 5/1, Registry of Wills, vol. 1, will of Thomas Cooper, Lower Island Cove, 25 December 1829.

understood that the sons and grandsons would use the property for the mutual benefit of all concerned.

Widows who inherited equal shares of their husbands' fishing rooms and plantations with their children sometimes gave up title immediately to a son or daughter with a specific understanding. Most often, the mother was permitted to remain in the home "for her use and benefit"[41] for the rest of her life. The inheritance of some children was also contingent upon the financial support they gave to their mother. In 1829, John Green distributed property among his children but required them to support their mother for the remainder of her life; should she leave them, they were to provide her with £20 a year for the rest of her life.[42] Henry Garland of Lower Island Cove left all his property, including a plantation and a fishing room, to his wife. Upon her death, the property was to be divided between their two sons, James and John, while personal effects would be divided equally among the younger children. However, James and John were required to remain with their mother in the family home during her life and provide for her and the two younger children.[43]

For some male testators, the prospect of their widows remarrying was not appealing. Restrictions placed on the widows' inheritance suggest that these testators were concerned for two future possibilities: that family property would become the property of another man and that the widow would "disgrace" herself by remarrying or at the very least, being seen in the company of another man. From the husband's point of view, giving over one's property to the widow without this restriction made way for the possibility that another man would indeed have everything he had worked for and ever owned. This clearly was an unacceptable prospect.

Almost twenty-two percent of men who left wills in which widows are mentioned included a "remarriage clause" to keep property within the family. This provision is expressed by such phrases as "long as she keeps my name" and "as long as she continues to be my widow."[44] If the widow remarried, the property that she had inherited from her deceased husband reverted to the children of her first marriage, and in the absence of children, to their collateral kin. There are a few variations. Some widows lost their inheritances completely when they remarried. Charles Fagan's will was typical of this category:

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41 PANL, GN 5/1, Registry of Wills, vol. 1, will of John Pittman, Duricle, Placentia Bay, 29 March 1831.

42 PANL, GN 5/1, Registry of Wills, vol. 1,will of John Green, Placentia, 30 March 1829.

43 PANL, GN 5/1, Registry of Wills, vol. 1, will of Henry Garland, Lower Island Cove, 17 May 1823.

44 PANL, GN 5/1, Registry of Wills, vol. 1, will of William Harnett, Carbonear, 23 January 1830; and PANL, GN 5/1/B/9, Trinity Surrogate Court, estate matters, 1815-1825, will of Joseph Burrage, 1815.

> In the first place I give and bequeath to my beloved wife, Susan...all I possess with the dwelling house that I am now living in and the dwelling house in Foxtrap Head, also stable, cellar, cultivated and uncultivated land including the land on Foxtrap Head, also horse, cart, harness, fishing boat, flakes, stages, herring net, two grapnels and fishing gear. My said wife, Susan, is to have and to hold all above mentioned and by her freely possessed as long as she lives and remains in my name.[45]

For some husbands, the prospect of their widows remarrying must have appeared less daunting, as widows simply had their inheritance reduced if they remarried. Such was the case of Charlotte Parsons whose husband Jonathan left most of his real and personal property to her with the condition that

> in the event of my said wife Charlotte Parsons again marrying she shall from the period of such marriage be entitled to one-third only of such my estate and effects, the remainder being reserved for my children respectively until they become of age.[46]

Other husbands stated clearly what would happen if their wives married again. In 1815, Joseph Burrage of Trinity instructed the trustees of his will to

> allow the widow, Susanna Burrage, to reside with her family at Heart's Content and to have good and sufficient meat, drink, and wearing apparel (in the discretion of the said trustees) so long as she continues to be my widow, but should she marry again, she is then to take only her clothes and nothing after.[47]

Most testators clearly were not comfortable with the prospect of another man stepping into their place. Susan Fagan was not to take "any article of furniture out of the house only her own clothing."[48] Peter Healey of Carbonear expressed strong feelings towards the notion of his wife remarrying. He left Jane, the house, part of the plantation, money, goods, and chattels. However,

> these presents also provide that if my wife should marry again or otherwise disgrace herself by a companion she is to be paid only one shilling and all money, goods, and chattels to be divided between my beloved daughter, Mary, and the children of my beloved daughter, Margaret (Healey) Hamilton.[49]

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45 CNS Archives, col. 103, Francis Morris, will of Charles Fagan, Foxtrap.

46 PANL, GN 5/1, Registry of Wills, vol. 1, will of Jonathan Parsons, St. John's, 9 May 1831.

47 PANL, GN 5/1/B/9, Trinity Surrogate Court, estate matters, 1815-1825, will of Joseph Burrage, 1815.

48 CNS Archives, col. 103, Francis Morris, will of Charles Fagan.

49 PANL, GN 5/1, Registry of Wills, vol. 1,will of Peter Healey, 28 February 1826.

Jordan Henderson, a merchant in Harbour Grace, was also quite clear in his will that he did not approve of the possibility of his wife's remarriage. His will gave

> to Elizabeth, my dearly beloved wife, the sum of £50 yearly for her maintenance to be raised and levied out of my estate and paid her annually by my executor for and during the full term of her widowhood and no longer and in case she should again enter into wedlock I do hereby revoke the said grant and order that from thenceforth she shall not be entitled to any part of the property whatever.[50]

Similarly, William Bragg, a fisherman in Port aux Basques, left his wife, the "partner of my joys and sorrows for 36 years," his land, house, furniture, stages, flakes, and boats. If she remarried, she forfeited her inheritance "unless the children were inclined to share." Bragg's son, Nelson, was also required to be a "good boy" and stay with his mother.[51] Robert Sheppard, a planter in Cupids, required his wife Sarah to remain a Protestant in order to receive her inheritance.[52]

Richard Taylor, a planter in Carbonear, left his fishing room to his son in 1827. In the event that his son died without children and his widow married "anyone other than a Taylor," the property in question would devolve to surviving brothers equally.[53] Occasionally, this restriction pertaining to marriage extended to the children who were not permitted by the will to have claim on the house if they married and had houses of their own. John Chaytor of Chamberlains ended his will with the condition, "if my wife marries again she shall have no further claim on my house, or anything or furniture in it, also when either of my children married and has a house of their own, they have no further claim on my house."[54]

The second category of conditions in wills applied to the inheritance of daughters. Daughters were generally not excluded from their fathers' wills, but fathers assumed that their daughters would be provided for by their husbands, current or future. Thus, unlike their brothers, the inheritance of daughters depended on whether they were single, married, or widowed. Their treatment ranged from receiving somewhat less than their unmarried male and female siblings to having the property placed in their names with the understanding that their husbands would use it and their children would inherit it. In some instances, unmarried daughters maintained their inheritance only until such

50 PANL, GN 5/1, Registry of Wills, vol. 1, will of Jordan Henderson, Harbour Grace, 10 December 1818.

51 PANL, GN 5/1, Registry of Wills, vol. 4, will of William Bragg, Channel, Port aux Basques.

52 PANL, GN 5/1, Registry of Wills, vol. 4, will of Robert Sheppard, Cupids, 24 January 1878.

53 PANL, GN 5/1, Registry of Wills, vol. 1, will of Richard Taylor, 17 November 1827.

54 CNS Archives, col. 103, Francis Morris, will of John Chaytor, Chamberlains.

time as they married and became the legal responsibility of another man. Other unmarried daughters had their inheritances protected from future husbands by their fathers placing the property in trust.

Some fathers acknowledged the contribution of single daughters to the family economy. Their inheritance was contingent upon their behaviour and their work contributions. Simon Jacobs of Twillingate, for example, left his property to his wife, Mary Ann, in 1852, as long as she remained unmarried. Upon her death, the property was to be passed to their two sons, Jonathan and Solomon. Their unmarried daughters, Lydia and Phoebe, were given the right to live in the house while they remained unmarried, "rendering reasonable assistance as may be in their power and to receive a maintenance therefrom."[55] Similarly, Charles Warr of Little Harbour ended his lengthy will by stating that his wife, Elizabeth, could enjoy the use of his property and was required to "maintain decently" their daughters, Emily and Fanny. The daughters in return could enjoy their inheritance "as long as they remain unmarried and behave themselves virtuously and dutifully...doing all such work as women are accustomed to do in this country."[56]

The greatest variation in inheritance practices pertains to provisions for married daughters. Some fathers who feared the possibility that sons-in-law would desert the family and take their wives' property with them. Many married daughters, therefore, received only money or personal items. In addition, both widows and fathers often included a clause which specified property was to be for the "sole use" of their daughters to protect the inheritance from sons-in-law who were legally in the position to take advantage of property bequeathed to their wives. Parents frequently tried to get around this situation by leaving property to married daughters with the stipulation that it remain free of the debts and use of their present or future husbands. This practice was often expressed by such phrases as "notwithstanding her coverture," or "for her sole and separate use." James Cowan, like many other fathers, included a clause in his will to ensure that his daughter's inheritance would be "at all times absolutely free from the control, debts, agreements or interference of her present or any future husband."[57] When Robert Howell, a planter in Carbonear, left land to his married daughter, Ann, he designated the property as hers as long as she did not remarry. If she did, the property would pass to Robert's wife (Ann's mother) along with the rest of the property which his wife had inherited.[58] In 1830, John White, a planter in Twillingate, divided his estate between

55 PANL, GN 5/1, Registry of Wills, vol. 2, will of Simon Jacobs, Twillingate, 21 May 1852.

56 CNS Archives, col. 150, Peyton Family, f. 104, Register, wills and other documents, 1858-1892. Will of Charles Warr, Little Harbour, 1 June 1869.

57 PANL, GN 5/1, Registry of Wills, vol. 1, will of James Cowan, Harbour Grace, 25 June 1827.

58 PANL, GN 5/1, Registry of Wills, vol. 1, will of Robert Howell, Carbonear, 7 November 1823.

his two married daughters, although the division was unequal. Elizabeth, wife of James Moore, received five shillings while Anne, wife of William Short, inherited her father's fishing room, household goods, furniture, goods, chattels, seines, craft, gardens, and lands.[59] William Murray, a mariner, left property in Ferryland to his married daughter, Mary Barron, for the remainder of her life and after her death, to her children "share and share alike." [60]

It is likely that certain property, such as fishing rooms, when left to married daughters would be used by their husbands. Many fathers, however, took steps to ensure that their married daughters inherited the property and that it would pass on to their children. In 1828, Isaac Richards, a planter in Bareneed, left most of his estate to his wife, Elizabeth, for the rest of her life. A fishing room in Bareneed was divided between two sons, William and John. Upon Elizabeth's death, the house, gardens, flakes, and stages were to pass to their two sons as well, while money was to be divided among six daughters. Another fishing room in Port de Grave was also left to the two sons, except for a stage occupied by son-in-law, Thomas Liston. The stage was left to Isaac and Elizabeth's daughter, Amy, and upon her death, to her son. Household furniture and other personal effects were divided by Elizabeth at her discretion.[61]

Some provisions in wills applied to widowed daughters. Thomas Tizzard of Twillingate willed his property in Back Harbour to his family. The "dwelling house, outhouses, stages, flakes, gardens, boats, skiffs and nette" were bequeathed to his sons, John and Robert, while his daughter, Susan, was given "the right of residence on the room and maintenance therefrom so long as she continues unmarried and as long as she rendered such reasonable assistance to her brothers." A second daughter, Jane Warr, widow of James Warr, inherited part of her father's fishing room and garden as long as she remained a widow. Upon her remarriage or death, the property would pass to her sons and daughters for their mutual benefit.[62]

The property that the widow sacrificed when she remarried was most often divided among the children of the first marriage. Children were also the beneficiaries of their mother's property when she died. She had the right as a widow to make her own provisions, but the wills generally concur with the husbands' wishes for their children. Widows left their property, carefully itemised, to sons and daughters, grandchildren, nieces, nephews, and friends. Like their husbands, they included specific conditions regarding behaviour or provisions to protect their children's inheritance. Seventeen percent of widows' wills examined for this research include a provision which protected property from current or future husbands of their daughters.

59 PANL, GN 5/1, Registry of Wills, vol. 1, will of John White, Twillingate, 9 September 1830.
60 PANL, GN 5/1, Registry of Wills, vol. 1, will of William Murray, 17 August 1833.
61 PANL, GN 5/1, Registry of Wills, vol. 1, will of Isaac Richards, Bareneed, 20 November 1828.
62 CNS Archives, col. 150, Peyton Family, will of Thomas Tizzard, 16 April 1845.

Women seem to have been particularly interested in protecting their daughters or female relations. For example, in 1834, Jane Furneaux, a widow in Port de Grave, provided a long list of personal items lovingly bequeathed to sons, daughters, and granddaughters. Nevertheless, her primary concern was for her female relatives. Rents arising from her premises at Cupids were equally divided among daughters, Lucinda, Amelia, Anne, and Harriet and one share each of property given to granddaughters, Amelia, Jane, and Harriet.[63] She also placed conditions on the children's inheritance:

> To my son, Joseph Furneaux, the dwelling house, garden, and eastern half of the potato garden, large family Bible, nine silver tea spoons, and to assist his sister Lucinda should she stand in need of it;
>
> To my son, William, the interest held in Andrew's room at Ship Cove, the whole of the remaining part of Snow's room at Port de Grave, and household furniture;
>
> My daughter Harriet shall be supported by my sons, Joseph and William, in a manner suited to her station in life, as long as she remains unmarried and in the event of their not doing so agreeably...half the property will become Harriet's.

Her sons, John and William, were expected to support John Snow, whose relationship to the family is not identified in the will. A list of bequests of personal items concluded the will:

> to my four daughters, Lucinda, Amelia, Anne and Harriet, all my wearing apparel to be divided into four lots, Lucinda taking the first choice and so on in rotation according to their age.
>
> to my daughter Harriet Furneaux, one pair of silver sugar tongs, one half dozen large silver teaspoons; one volume of encyclopedia; one pearl ring and broach with gold chain and one mourning broach;
>
> to my daughter Amelia Freeman, one mourning ring, one locket and one black broach;
>
> to my daughter Lucinda MacPherson, money to buy a silver spoon;
>
> to my daughter Anne Baird, one silver teaspoon;
>
> to my granddaughter Jane Bursell, one silver teaspoon and one plain gold ring;
>
> to my granddaughter Amelia Bursell, one mourning broach;

63 PANL, GN 5/1, Registry of Wills, vol. 1, will of Jane Furneaux, 23 February 1834.

to my granddaughter Agnes MacPherson, one twisted gold ring;

to my granddaughter Caroline MacPherson, one plain gold ring;

to my son Robert Furneaux, one mourning ring, one pair silver sleeve buttons, one silver tablespoon and two volumes of Encyclopedia;

to my son William Furneaux, one silver tablespoon, one mourning ring, and one plain ring.[64]

Another interesting case was that of Lucretia Hoyles Dickson, a wealthy spinster who lived in St. John's at mid-century. Her lengthy will indicates that her wealth came from her mother's family. She took great care to provide for her female collateral kin. Most of her estate was left to her grandmother and her three cousins, Anna Cooke, Harriet Hoyles, and Fanny Wilson and their heirs. Rents and profits from the property were to be paid to each cousin annually until their respective marriages at which time, the rents, interests, and profits were settled on them for their "sole and separate use." Upon the deaths of the three women, each share of the estate passed to their children or grandchildren, but if none existed, the estate was to be divided equally among the "next of kin by my mother's side." Personal property was itemised as follows:

my piano to Anna Cooke;

twelve spoons, jug and basin and two dessert spoons, eighteen tea spoons, jug and basin, one tablespoon, three dessert spoons and sugar tongs to Fanny Wilson;

two dessert spoons and the mustard pot to Harriet Hoyles;

soup ladle, gravy ladles and pearl ring to Susan Rennie;

the toast rack to Mary Wilson;

the casters to Anne Row;

the work box to Jean Hoyles;

the watch chain to Bertha Cooke;

the book case to Sarah Row;

Blunt's sermons to Grandmamma;

64 PANL, GN 5/1, Registry of Wills, vol. 1, will of Jane Furneaux, 23 February 1834.

> the chest of drawers, bed, mattress, blankets etc. after Grandmamma's death to Kitty Drew;
>
> my books between Hugh and William Hoyles.[65]

In another case, Sarah Heaney, a widow in St. John's, appeared to favour her daughter over her son in her will, but was also adamant about keeping her property in the family. Bequests to a daughter did not extend to a son-in-law. Sarah had one son, Hugh, who inherited £70 and one-half of the garden. Her daughter, Margaret, received £100, one-half of the garden, and the family house. The rents rising from a second house were to be put in trust for her board and education. Sarah also specified that if the house should burn down before Margaret came of age, then £20 was to be taken from Hugh's inheritance to be given to support Margaret. The intention of the will was to exclude in-laws from the inheritance that their spouses would receive:

> In the event of her getting married the property entails on her issue if any, but in default of issue it becomes the property (immediately after her death) of my son, Hugh, or his lawful issue, in order to exclude her husband from any right or title whatsoever to any part thereof and it is my express will and desire that her husband or Hugh's wife shall on no account either before or after their death have any right or claim on the property and if it shall happen that she survive her brother Hugh she is to have his share at his death provided he has no issue, but in the event of his having lawful issue his share is entitled to his lawful issue, and if neither my said daughter or son shall have issue the whole of the property is intended and hereby given to my nearest relation (Hugh's wife and Margaret's husband excepted) the rents of the garden with the interest thereon is also to be reserved until my children become of age.[66]

Women also used their wills to protect their daughters' property interests from husbands. In 1823, Susannah Warne, a widow living in St. John's, had a will drawn up to place all her property, real and personal, in trust for the "sole and separate use" of her daughter, Susannah. Mrs. Warne was the widow of James Warne, a mariner from Poole, England. Her will stated that her daughter's "present or future husband shall not intermeddle therewith, neither shall the same be subject or liable to his control, debts or engagements." Furthermore, upon her daughter's death, the residue of property was to be divided among the female children of Susannah Weston Haire and her present husband, Alexander Haire.[67]

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65 PANL, GN 5/1, Registry of Wills, vol. 1, will of Lucretia Hoyles Dickson, 10 March 1851.

66 PANL, GN 5/1, Registry of Wills, vol. 1, will of Sarah Heaney, St. John's, 30 July 1832.

67 PANL, GN 5/1, Registry of Wills, vol. 1, will of Susannah Warne, 6 February 1823.

Even the anticipation of a young woman's marriage was enough to encourage the testator to protect her future inheritance. Martha Butt of Crokers Cove, Conception Bay, left her property (which included a plantation, fishing room, dwelling house, and outhouses) to her niece, Jane Parsons, with the provision that in the event that Jane married, her husband, "shall have no claim, act or part in the disposal of the said premises."[68]

The social expectations of parents are also reflected in the conditions placed in wills directing the future behaviour of family members. Some inheritors were required to take care of family members while others were expected to behave in a certain manner and co-operate with their siblings. No indication is given as to how these "conditions" on behaviour would be enforced and the conditions applied to both sexes. Nevertheless, they provide interesting reading. Elizabeth Wrapson of Jenkins Arm, Twillingate, bequeathed her property to Edward and Ann Slade (no relationship given) and upon their deaths to their sons, James and Edward. The Slades' two daughters, Mary Anne and Elizabeth, were encouraged to live with their brothers, "as long as they remain unmarried" and do "all such reasonable work as it is customary for women to do."[69]

Michael Henesy, a planter in Carbonear, left his land, plantation, and dwelling house to his son while his personal effects and household effects were divided among his other children with the stipulation that the daughters take possession of their property until they were lawfully married. They were also required to "conform to the rules of the Church and their sex."[70] In 1829, Samuel Howlett of Adams Cove left three-quarters of his fishing room, boat, and fishing equipment divided equally among his three sons, Joseph, John, and Samuel, on the condition that they stay with their mother as long as she lived.[71] According to the will of Nicholas Wall of St. John's, Catherine Wall, his daughter, was obligated to agree with her mother if she wanted to receive any benefit from her property she inherited from her father.[72] In 1812, William Coughlan, a farmer in St. John's, left one-third of all property, goods, and chattels to his wife, Catherine Brazil Coughlan, and two-thirds to his son, Patrick, and two unmarried daughters, Mary and Elizabeth, on a "share and share alike" basis. Coughlan's will included the instruction that should Patrick, Mary, and Elizabeth act "incorrigibly" to their mother, then their mother was empowered to deny them their inheritance and give it instead to the most deserving of their children.[73]

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68 PANL, GN 5/1, Registry of Wills, vol. 1,will of Martha Butt, 30 November 1811.

69 CNS Archives, col. 150, Peyton Family, will of Elizabeth Wrapson.

70 PANL, GN 5/1, Registry of Wills, vol. 1, will of Michael Henesy, 25 November 1827.

71 PANL, GN 5/1, Registry of Wills, vol. 1, will of Samuel Howlett, 4 February 1829.

72 PANL, GN 5/1, Registry of Wills, vol. 1, will of Nicholas Wall, St. John's, 1833.

73 PANL, GN 5/1, Registry of Wills, vol. 1, will of William Coughlan, St. John's, 18 February 1812.

Conditions were sometimes extended to attempt to control the behaviour of collateral kin. William King of Broad Cove, for example, expressed concern for the behaviour of his daughter-in-law in his will of 22 February 1823. King left his fishing room (which he had procured through a deed of gift from William Walden) to his sons. John would receive one-half while his three sons (Joseph, James, and Henry) would divide the remainder. King added the condition that

> if my son, James, in consequence of his matrimonial union with his present wife, Hannah Butt, cause a discord or disagreement on the premises, James loses his right to the property and must leave so the remaining children can live in quiet and peace.[74]

The need for family members to get along with each other reflected the importance of the family economy and was encouraged through the wills. In 1824, John Penny of Brigus left his land to be divided among his three sons, John, Thomas, and Joseph on the condition that they "maintain my dearly beloved wife and furnish her with what little necessary this world requires. If they do not agree to maintain her, she is to have use of the land undisturbed and unmolested."[75] In 1831, James Stapleton left two-thirds of his farm and house to the four children of his late son, Bartholomew, and the remaining one-third to the two children of his late son, James. In the absence of the directions of their fathers, James Stapleton implored his grandchildren to "manure, cultivate and till the said plantation and farm for their mutual use and benefit without quarrelling or dispute." He placed his two daughters-in-law in charge of a quantity of rum and molasses to be peaceably disposed of for the support of themselves and their families. Stapleton's wife, Elizabeth, received the furniture, bed, and bedding from the house for her own use, as well as the right to stay in the house for the rest of her life.[76] Similarly, James Gould left one-half of his house and farm to his son, James Jr., on the condition that he support his mother, Catherine Gould, and his siblings. He was directed to keep the ground and fence in perfect order and instructed not to measure the ground while Catherine was alive. His children were directed to "aid and assist each other without any disturbance or contradiction in cultivating the ground" and to give excess produce from the ground to Catherine Gould for her disposal. A second son, Michael, was to take possession of the other half of the house and land and to have it measured as the family wished. James Jr. was "to finish the new

74 PANL, GN 5/1, Registry of Wills, vol. 1, will of William King, Broad Cove, 22 February 1823.

75 PANL, GN 5/1, Registry of Wills, vol. 1, will of John Penny, Brigus, 26 February 1824.

76 PANL, GN 5/1, Registry of Wills, vol. 1, will of James Stapleton, Harbour Grace, 19 April 1831.

house at his own expense, keep up the horses, and give half of what he earns to his mother."[77]

This examination of nineteenth-century wills clearly indicates that testators of both sexes were primarily concerned for the domestic security of the family rather than following common-law practices of primogeniture or coverture. Thus, the dominant feature of the inheritance system was to keep property within the family and to find the most convenient means of ensuring that the needs of family members were met. Testators did so with the immediacy of the moment uppermost in their minds. Widows and children of those men who died intestate shared their real and personal property generally on a one-third, two-thirds basis. Those men and widows who left wills addressed the needs of their inheritors by dividing both their real and personal property on a "share and share alike" basis, a practice which remained consistent in Newfoundland from the late eighteenth-century to the late nineteenth-century.

Carrying out a successful cod fishery and maintaining subsistence farming depended on the participation of family members. Keeping property such as fishing rooms, houses, stores, and stages within the family was vital to a society in which residents made a living from the sea and generation after generation grew up in the same community. The family home, which legally belonged to the husband, was maintained for the lifetime of the parents and inherited by the child or children who needed it, often with the understanding that the remaining parent, whether father or mother, would remain in the home in their care. The male line of descent, a dominant feature of inheritance practices in English common law, was subordinated to the immediate and long-term needs of the family. Practice reinforced the egalitarianism of the partible system of inheritance that had been shaped by an economy almost exclusively based on the cod fishery. These customary practices, as reflected in wills throughout this period, were the basis of a matrimonial property system already established by the time statutory reforms regarding married women's property were introduced in the late nineteenth-century.

77 PANL, GN 5/1, Registry of Wills, vol. 1, will of James Gould Sr., 13 June 1831.