

**‘With intent to injure and diffame’: Sexual slander, gender and the church
courts of London and York, 1680-1700**

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Abstract

This thesis contributes to research on sexual slander, gender and reputation in the early modern church courts through a detailed study of the sexual slander cases sued in the Bishop of London's Consistory court and the Archbishop's Consistory court for York in the years 1680-1700. It engages with three of the main historiographical interpretations of these topics: the 'double standard', the 'women's court' and the 'decline' of defamation. By doing so, it further develops the work of previous historians who have debated the extent to which these interpretations reflect the reality of the sexual slander business sued in the church courts.

The latter decades of the seventeenth century were chosen as the period on which to base this study as the majority of previous studies of sexual slander, defamation and reputation have focussed on the period 1560-1640. In a further effort to broaden our understanding of the sexual slander business of the church courts this thesis also suggests – and employs – alternative methods for its evaluation. It examines sexual slander business as a proportion of the overall business of the courts and it explores the extent to which sexual slander cases would be sued in the courts; both of which are methods of research that have not been thoroughly utilised. It also questions whether the proportion of sexual slander business and the extent to which it was sued underwent any patterns of change from the first to the last decades of the seventeenth century. The overarching aim of this thesis, therefore, is to facilitate a re-examination of the ways in which gender, sexual slander and reputation have been researched in previous years.

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I dedicate this work to my family; my parents, grandparents and brother, whose love and encouragement means the world to me.

Author's Declaration

I declare that this thesis is a presentation of original work and I am the sole author. This work has not previously been presented for an award at this, or any other, University.

Introduction

In May 1680, Barbara Powell gave testimony in a defamation dispute at the Bishop of London's Consistory court. She recalled how in the first week of March she and Elizabeth Stephens were both sitting at work together in the window of Mrs. Elborough's house when they heard a noise in the yard outside. It was as they looked out of the window and into the yard that they witnessed Elizabeth Goldwyn 'scolding at and abuseing' Elizabeth Elborough with 'base and scandalous language'.¹ Amongst the insults used, Elborough was told she was 'a whore, and ... ran oft with an other womans Husband into Ireland, and hadst two Children by him'. Barbara recalled how 'she believeth the sayd M[rs] Goldwyn abusd the sayd producent in a manner as is by her p[re]deposed *with an intent to take away her good name* as she believeth because she uttered the words aforesayd in a great deale of Heat and passion'. Her fellow witness, Elizabeth Shepard, also believed the words were spoken '*with an intent as this dep[onen]t believeth because the sayd words were spoken in a passion, to take away the sayd producents good name, who otherwise is of Modest and Civill behaviour*'.²

Just over a decade later, the Archbishop's Consistory court for York recorded a defamation dispute that involved a witness (Robert Boothroyd) who was present when a slander aimed at another man impugned on the honesty of his (Boothroyd's) own wife.³ Robert White (the plaintiff in this cause) claimed that Anne Davey had said that he 'the s[ai]d Rob[er]t White was an harlott & A whoremaster and Mary Buthroyd was his whore ... that the said Robert White was and is A dishonest man and had com[m]itted the detestable Crime of ffornication or Adultery with the said Mary Buthroyd'.⁴ When called to testify, Robert Boothroyd claimed that Anne Davey 'is a scolding heckloring woman & of a proud & high Spirit and he verily believes That she spoke the words p[re]deposed to *with a designe & or purpose to injure & defame* the

¹ Elizabeth Elborough c. Elizabeth Goldwyn (1680), DL/C/239, p. 321.

² Ibid, p. 323.

³ The creators of the cause paper database for the Borthwick Institute for Archives have standardised the spelling of names; in this case both 'Boothroyd' and 'Buthroyd' are alternate spellings of the same family's surname.

⁴ Robert White c. Anne Davey (1694), CP.H.4354, p. 3.

s[ai]d Rob[er]t White & purely out of malice'.⁵ He also stated how his wife 'has a cause now depending in this Court for the words p[re]deposed' which he (Boothroyd) did enter 'upon his owne accord in his wife's name & not in the least at ye request or by the advice & direct[i]ons of Rob[er]t White'.⁶ He was so determined to have his wife's name cleared of the slander that he procured the citation from the original cause (the case of Robert White c. Anne Davey) and 'came himselfe to Yorke on purpose for it & gave Instru[c]tions for the Libell & promised to pay charges & has paid part already'.⁷ The intention to defame – and the resulting recourse to defend an injured reputation in the church courts – provided a steady supply of blistering testimony in England between 1680 and 1700. Any man or woman in any county of the country had the potential to appear before the church courts as either the defamer or their victim, and those that were victims of slanderous attacks were not afraid to pursue the allegations and defend their reputation in the church courts.

In early modern society few elements in life were more important than a firmly established, unblemished reputation. Any threat to this (whether it was an insinuation of wrongdoing or an outright accusation of sexual misbehaviour) would have a significant impact and, if the issue could not be resolved amicably, would require suit in the ecclesiastical courts. Fay Bound's "An Angry and Malicious Mind" provides a clear definition of sexual slander (based on the Constitution of Oxford [1222]):

'Firstly, the imputed crime had to be ecclesiastically punishable, in other words, the spiritual rather than the secular courts had to have jurisdiction over the offences alleged in the slander. This covered a range of offences including fornication and bastardy. Secondly, slander had to cause "ill-fame"; in other words, it could not exist if it was spoken between two persons; it was the "public" nature of slander that made it an offence. Thirdly, the slander had to derive from *malice* [her italics]'.⁸

⁵ Ibid, p. 9.

⁶ Ibid, p. 9.

⁷ Ibid, p. 9.

⁸ Fay Bound, "'An Angry and Malicious Mind'? Narratives of Slander at the Church Courts of York, c.1660 – c.1760," *History Workshop Journal* no. 56 (2003): 64. See R. H. Helmholz, "Canonical Defamation in Medieval England," *American Journal of Legal History*, 15 (1971): 257 for the Latin (and translated English) version of the Constitution of Oxford (1222).

Reputation, therefore, was a social construction.⁹ The laws that defined sexual slander explicitly stated that if the words were spoken publicly, with the clear intent to defame the victim, and if there was common knowledge of the slander (if not also a communal acceptance that the slanderous words could, potentially, be true), only then could the words be defined as sexual slander. Throughout her article Bound explores how ‘more important than whether or not the contested words were in any sense *true*, therefore, was the claim that they were spoken with the *intent* of causing “ill-fame” and therefore that they caused social conflict [her italics]’.¹⁰ The intention to wound a reputation was a long established reason for a slander suit to be filed, as evidenced in John Godolphin’s *Repertorium Canonicum* (1678) which defines slander as ‘the uttering of Reproachful speeches ...[which]... aim at some prejudice or damage to the Party defamed ...[and]... proceed ... of malice’ and Henry Conset’s *Practice* (1700) that describes how if ‘the Words [in contest] were reproachful, he shall obtain the Victory: And then the Party uttering them, is to be punished ... the reason is, because those Words were uttered out of a malicious and angry mind’.¹¹

The social nature of slander was reflected in the customary moral policing exacted by early modern communities. Paul Griffiths echoes the results of many other studies when he describes how ‘in terms of recorded complaints, the largest share of insults and injuries resulted from neighbourly tiffs’ as ‘in typical cases, insults did not surface suddenly from out of the blue, they were expressions of people involved in long-running neighbourly squabbles that might drag on for years’.¹² As such, ‘more often than not there was a steady build-up of offences by troublemakers until one day patience drained away, leaving neighbours with little choice but to bring prosecutions’.¹³ The attempts by members of the community to mediate in rapidly

⁹ Susan Dwyer Amussen, *An Ordered Society: Gender and Class in Early Modern England* (Oxford: Basil Blackwell Ltd, 1988), 98. See also: Alexandra Shepard, “Manhood, Credit and Patriarchy in Early Modern England c.1580-1640,” *Past & Present*, no. 167 (2000): 77; Elizabeth Foyster, “Male Honour, Social Control and Wife Beating in Late Stuart England,” *Transactions of the Royal Historical Society* 6, Sixth Series (1996): 215.

¹⁰ Bound, ““An Angry and Malicious Mind’?”” 64.

¹¹ John Godolphin, *Repertorium Canonicum: or, an Abridgement of the Ecclesiastical Laws of this Realm*, (London: 1678), 515 and Henry Conset, *The Practice of the Spiritual or Ecclesiastical Courts*, Second edition, (London: 1700), 335.

¹² Paul Griffiths, “Punishing Words: Insults and Injuries, 1525-1700,” in *The Extraordinary and the Everyday in Early Modern England: Essays in honour of the work of Bernard Capp*, ed. Angela McShane and Garthine Walker (Houndmills: Palgrave Macmillan, 2010), 77.

¹³ *Ibid*, 77.

dissolving relationships was one that Susan Dwyer Amussen argues came grudgingly; ‘neighbours did not like the task of keeping order in other households, but they would do so when necessary’ and normally neighbours would strive to resolve squabbles without recourse to the ecclesiastical or secular courts.¹⁴ Therefore, when a slander occurred it was normally in a situation where tensions between two (or more) neighbours had moved beyond the point of reparation and words that could not be easily ignored or revoked were uttered. In the instances that *did* require ecclesiastical mediation the ‘restoration of communal harmony’ was the main goal of the court officials and this was reflected and entrenched in a system that ‘encouraged out-of-court negotiation and settlement’.¹⁵ As such, most cases brought to the courts were not completed by the sentencing of a judge but were more commonly ended due to a lack of money to pursue the claims, a cooling of tempers or via an out of court settlement.¹⁶

From the time of Keith Thomas’ article “The Double Standard”, historians have steadily built an impressive amount of research on sexual slander, honour and reputation in the early modern period.¹⁷ How people in the past expressed themselves is of great interest to historians because ‘if we could reconstruct the shared understandings that people in the past had about themselves in relation to society, we might then be able to explain why they acted as they did’.¹⁸ Amussen has explained how ‘since the mid-1960s, historians have become ever more aware of the diversity of English society, and so have turned increasingly to local or regional study’, so much so that James Sharpe has described how ‘the local context is now seen as a vital one for historical study, and research on a local level has become a major growth area among historians’.¹⁹ In the years since it has become commonplace for social history

¹⁴ Amussen, *An Ordered Society*, 98.

¹⁵ Richard Adair, *Courtship, Illegitimacy, and Marriage in Early Modern England* (Manchester: Manchester University Press, 1996), 149.

¹⁶ *Ibid*, 150.

¹⁷ Keith Thomas, “The Double Standard,” *Journal of the History of Ideas* 20, no. 2 (1959): 195-216.

¹⁸ Henry French and Jonathan Barry, “‘Identity and Agency in English Society, 1500-1800’ – Introduction,” in *Identity and Agency in England, 1500-1800*, ed. Henry French and Jonathan Barry (Basingstoke: Palgrave Macmillan, 2004), 1.

¹⁹ Amussen, *An Ordered Society*, 5 and J. A. Sharpe, *Early Modern England: a social history, 1550-1760*. Second Edition (London: Arnold, 1997), 77.

studies to locate and investigate the minutiae of past daily behaviour in its contemporary circumstances – an approach also employed by this thesis.²⁰

Peter Earle has described the plentiful, useful material recorded in the church courts and provides convincing encouragement to utilise these records. He used the witness depositions recorded in the London church courts (especially in the period 1695-1720) because he felt they are ‘magnificent source materials which do not exist in the same quality and quantity for any other period’ and ‘they provide the researcher with a mass of data which could not be found in any other source’.²¹ Tim Meldrum has perfectly summarised the views of many other historians when he states that the records of the early modern church courts provide the essential backbone for histories of early modern gender and sex.²² He has argued that ‘studies of a major component of these courts’ staple business, the defamation case, have largely focused on the provinces to the neglect of the extremely busy courts of the metropolis’ and justifies his selection of this court with the statement that ‘the surviving records contain thousands of depositions given by an extremely wide range of Londoners’.²³ Correspondingly, a number of studies of gender and sexual slander are either partly based on or make reference to the business of the London church courts. The selection of the Bishop of London’s Consistory court as one of the courts of study in this thesis was thus based on the evidence of the popularity of this court for contemporaries suing for defamation and on the insights this court has provided for historians studying these cases.

Correspondingly, the popularity of the study of the records of the church courts in the Southern province has also been reflected by those historians who study the courts in

²⁰ Examples of this include: Jane Cox, *Hatred Pursued Beyond the Grave: Tales of our ancestors from the London church courts* (London: HMSO, 1993); Faramerz Dabhoiwala, “The pattern of sexual immorality in seventeenth and eighteenth century London,” in *Londinopolis: Essays in the Cultural and Social History of Early Modern London*, ed. Paul Griffiths and Mark S. R. Jenner (Manchester: Manchester University Press, 2000); Bound, ““An Angry and Malicious Mind?””; Bernard Capp, “Life, Love and Litigation: Silbey in the 1630s,” *Past & Present*, no. 182 (2004).

²¹ P. Earle, *A City Full of People: Men and Women of London, 1650 – 1750* (London: Methuen London, 1994), xi and 264.

²² Tim Meldrum, “A Women’s Court in London: Defamation at the Bishop of London’s Consistory Court, 1700-1745,” *The London Journal*, 19, no. 1 (1994): 1.

²³ *Ibid*, 1 and Tim Meldrum, *Domestic Service and Gender 1660-1750: Life and Work in the London Household* (Harlow: Pearson Education Limited, 2000), 8-9.

the Northern province. Sharpe has enthused about the potential held in the records of the church courts in York, claiming they are among ‘the more voluminous and rich’ of this type of source.²⁴ As the administrative centre of the Northern province, York was home to a number of church courts.²⁵ Its three ecclesiastical courts all had jurisdiction over defamation of which, ‘in the number of suits dealt with, the two most important were the Consistory court and the Chancery court’.²⁶ He did find, however, that while ‘the records of the York church courts are substantial’ they were not easy to use.²⁷ He also cautioned that the survival of the Cause Papers is limited and while only the libel may survive in some cases, it is this document that ‘gave the details of the words upon which the suit rested’ which he classified as vital to his study.²⁸ In her selection of 100 cases from the York Consistory court between the years 1660 to 1760, Bound also found ‘some of the testimony that survives is scant or damaged’ but she argues that it nevertheless ‘contains a considerable body of material suitable for analysis’.²⁹ Carson I. A. Ritchie has described the Archbishop’s Consistory court for York as ‘undoubtedly the busiest court at York’, so much so that its busyness ‘resembled the Court of Arches in London’.³⁰ The availability of material from the York Consistory court, and the fact that York has been described as ‘England’s “second city”, between 1561 and 1700’, made it an irresistible location with which to compare the voluminous material held in the same court in the diocese of London.³¹

The new wave of interest in social history and in women’s history during the 1980s created a snowball effect and, as can be seen in the few examples detailed above, an increasing number of studies were utilising the previously untouched church court records in an effort to delve deeper into everyday history of our predecessors. The

²⁴ J. A. Sharpe, “‘Such disagreement betwix neighbours’: litigation and human relations in early modern England”, in *Disputes and settlements: law and human relations in the West*, ed. John Bossy (Cambridge: Cambridge University Press, 1983), 171.

²⁵ *Ibid*, 171.

²⁶ *Ibid*, 171-2.

²⁷ J. A. Sharpe, “Defamation and sexual slander in early modern England: the church courts at York,” *Borthwick Paper*, no. 58 (1980): 6.

²⁸ *Ibid*, 6-7.

²⁹ Bound, “‘An Angry and Malicious Mind’?,” 61.

³⁰ Carson I. A. Ritchie, *The Ecclesiastical Courts of York* (Arbroath: The Herald Press, 1956), 18. For appeals from other dioceses being heard in York see also: Barry Till, “The Church Courts 1660–1720: the Revival of Procedure,” *Borthwick Paper*, no. 109 (2006): 12.

³¹ Chris Galley, *The Demography of Early Modern Towns: York in the Sixteenth and Seventeenth Centuries* (Liverpool: Liverpool University Press, 1998), xiv.

overwhelming majority of studies that do so have, however, focussed their attention on the study of a single diocese. This thesis is deliberately comparative and focusses on two diocese; York in the Northern province and London in the Southern province. The frequency in which the church courts of London and York have, individually, been selected by previous historians as the courts on which to base their studies encouraged this author to compare the two in this study. Ritchie was cautious, however, in his comparison of the church courts of York and London since ‘nothing is more usual than for an ecclesiastical court of the time to adopt individual modes of procedure, special wordings of documents, and applications of local custom’.³² His warning was taken into consideration but, with one of the main intentions of this thesis being to deliberately highlight regional differences in the defamation business of the church courts, it was ultimately discounted.

Meldrum has stressed how church courts and sexual slander have been the subject of a sizeable number of studies of which few have concentrated on the period after 1660.³³ He has also highlighted how such studies ‘have demonstrated the early modern popularity of these courts, especially for the prosecution of defamation, but also their decline (in terms of the volume of business) in the late seventeenth and eighteenth centuries’.³⁴ To expand historical understanding, therefore, this thesis focuses on the period that has received much less historical investigation – the last two decades of the seventeenth century. It provides a coherent study, focussing on both a limited period and a limited geographical area and examines the sexual slander defamation business recorded in the Bishop of London’s Consistory court and the Archbishop’s Consistory court for York between the years 1680 and 1700.

While debate is a sign of lively and interesting historical research, there are common themes concerning sexual slander that the historiography agrees upon; namely the explanation of a ‘double standard’ in early modern society in which women’s and

³² Ritchie, *The Ecclesiastical Courts of York*, 70.

³³ Meldrum, *Domestic Service and Gender*, 8. For examples of those who have investigated sexual slander and the church courts in the period after the Civil War see: Meldrum, “A Women’s Court,” 1-20 and Sharpe, “Defamation and sexual slander,” 1-36.

³⁴ Meldrum, *Domestic Service and Gender*, 8.

men's reputations were defined through separate indicators of honesty (women's were based purely on their sexual "honesty" while men's would be based upon a wider range of topics, including their economic "credit"), and the corresponding depiction of the church courts in the seventeenth century as a 'women's court' (due to the disproportionate proportion of women that accessed its services). Sections one and two of this introduction will, respectively, assess the 'double standard' and the 'women's court' and will provide the foundation for the review of previous studies on the topic. These sections will consist of an exploration of the historiography of the church courts – with a focus on defamation cases in particular – and will examine what such cases can suggest about the gendering of reputation. The final section of this introduction will expand upon the methodology and aims of this thesis and will provide a brief overview of the main focuses of each chapter.

1. The 'double standard'?

The 'gendered' concept of reputation is based on the work of Thomas and his innovative description of the early modern sexual 'double standard' in 1959.³⁵ In this study he described how women's unchastity was a serious offence in early modern society, whereas any sexual misbehaviour by men was pardonable.³⁶ He states simply that 'both before and after marriage men were permitted liberties of which no woman could ever avail herself and keep her reputation...if a woman once fell from virtue her recovery might be impossible'.³⁷ Further, 'the double standard, therefore, was but an aspect of a whole code of social conduct for women which was in turn based entirely upon their place in society in relation to men'.³⁸ It was not until the 1980s, however, that Thomas' work really began providing inspiration for debate about the gendering of reputation.

Historians who study sexual slander, for the most part, agree with the idea that while sexual honesty was an important component of both male and female reputations, in

³⁵ Thomas, "The Double Standard," 195-216.

³⁶ Ibid, 195.

³⁷ Ibid, 195, 213.

³⁸ Ibid, 213.

the case of women it was the sole determiner of their honesty and value in society.³⁹ Consequently ‘women’s reputations were more easily threatened than were men’s’ and as such ‘the charges they complained of were far more likely to be vague allegations of wrongdoing than were men’s’.⁴⁰ Often only the utterance of the word ‘whore’ was all that was required for women to bring a suit forward.⁴¹ Conversely, while sexual slanders would also have had an impact on male reputations, their concern would be with a wider variety of insults. Accusations of ‘bastard getting’ or ‘fornication’ with women in their community would certainly land men in hot water, and could be the sole reason for bringing a slander suit to court, but typically ‘the insults complained of by men concerned a much broader range of activities than those complained of by women’.⁴² Accusations of thievery, cheating, lying and general dishonesty would typically go hand in hand with slanders such as ‘rogue’, ‘rascal’ and ‘knave’. As a result historians have largely surmised that ‘while the general insults for women have sexual connotations, those for men have social ones’.⁴³

Amussen defined reputation as ‘a gendered concept in early modern England’.⁴⁴ She argues that ‘appropriate behaviour in early modern villages was defined by gender’ and because of its importance, ‘villagers played close attention to the sexual and social relations of their neighbours’.⁴⁵ Through the analysis of ‘two separate systems of social hierarchy: those of rank or class, and gender’ she examined ‘the internal relations of family and village’.⁴⁶ While both systems appeared to have clear power

³⁹ Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford: Oxford University Press, 1996), 3; Jenny Kermode and Garthine Walker, “Introduction,” in *Women, Crime and the Courts in Early Modern England*, ed. Jenny Kermode and Garthine Walker (London: UCL Press, 1994), 13; Laura Gowing, “Language, power, and the law: women’s slander litigation in early modern London,” in *Women, Crime and the Courts in Early Modern England*, ed. Jenny Kermode and Garthine Walker (London: UCL Press, 1994), 30; Bernard Capp, *When Gossips Meet: Women, Family, and Neighbourhood in Early Modern England* (Oxford: Oxford University Press, 2003), 61, 189; Garthine Walker, “Expanding the Boundaries of Female Honour in Early Modern England,” *Transactions of the Royal Historical Society* 6, Sixth Series (1996): 244; Alexandra Shepard, *Meanings of Manhood in Early Modern England* (Oxford: Oxford University Press, 2003), 153; Elizabeth Foyster, *Manhood in Early Modern England: Honour, Sex and Marriage* (London: Addison Wesley Longman Limited, 1999), 147; Ina Habermann, *Staging Slander and Gender in Early Modern England* (Vermont: Ashgate Publishing Company, 2003), 3.

⁴⁰ Amussen, *An Ordered Society*, 103.

⁴¹ Meldrum, “A Women’s Court,” 8.

⁴² Amussen, *An Ordered Society*, 102.

⁴³ *Ibid*, 104.

⁴⁴ *Ibid*, 105.

⁴⁵ *Ibid*, 104.

⁴⁶ *Ibid*, 3.

with, respectively, social superiors (and men) expecting obedience from their social inferiors (and women) she argues instead that these expectations were often not met and the reality was of a situation in which conflict between the hierarchies was common.⁴⁷ Due to the gendered nature of reputation in her period of study she found the sources of reputation differed for women and men, and women's was defined in primarily sexual terms.⁴⁸ Significantly, she also found that 'when men brought suits against women after 1660, they were more than twice as likely to complain of specific sexual allegations than they were against men: the social distance between women and men meant that a woman could dent a man's reputation only with details'.⁴⁹

A similar argument underpins Laura Gowing's work, in that the prevailing belief in England in the seventeenth century was that men's and women's sexual behaviour was 'incommensurably different'.⁵⁰ She argues that 'sexual insult belonged to a culture that perceived women's virtue, honour, and reputation through their sexuality' and 'at a much deeper level, there was no suggestion that men were morally culpable for illicit sex to the same degree – or even in the same terms – as women'.⁵¹ Thus morality was very often read as women's sexual conduct, and as such sexual 'honesty' was fundamental to the female reputation 'so much so that a woman's sexual and non-sexual honesty were indivisible'.⁵² She states how 'insults presumed not just an entirely gendered morality, but a whole order of sexual difference predicated, very largely, on that morality'.⁵³ Compared to the personal, verbal, social and institutional sanctions against 'whores' and 'bawds', there was no counterpart for men'.⁵⁴ Instead, men fought cases over insults like 'whoremonger' or 'cuckold', concerning not their own sexuality but that of women for whom they were in some sense responsible.⁵⁵ In this situation she further explains how 'sexual responsibility between men and women

⁴⁷ Ibid, 3.

⁴⁸ Ibid, 99-100, 102, 103, 104, 119. For a more detailed breakdown of Amussen's evidence for the gendered nature of reputation and insult please see footnote number 16 on page 102 of *An Ordered Society*.

⁴⁹ Ibid, 104.

⁵⁰ Gowing, *Domestic Dangers*, 3; Gowing, "Language, power, and the law," 28.

⁵¹ Gowing, *Domestic Dangers*, 2.

⁵² Ibid, 3.

⁵³ Ibid, 1.

⁵⁴ Gowing, "Language, power, and the law," 29.

⁵⁵ Ibid, 29-30; Anthony Fletcher, *Gender, Sex and Subordination in England 1500-1800* (New Haven: Yale University Press, 1995), 269.

remained the same: sexual blame continued to be laid almost entirely on women, by women as much as men'.⁵⁶ 'As the primary target of insults, women occupied a very particular place in the negotiation of sexual guilt and honour' and as such the 'insults of women played on a culpability for illicit sex that was unique to them'.⁵⁷ She argues that 'women who used the language of insult claimed for themselves responsibility for the definition of honest femininity'.⁵⁸ Hence how more than sex, slander was about gender.⁵⁹

Jenny Kermode and Garthine Walker explain how 'given the ways in which women's lives were circumscribed and constrained, the ways in which women used the courts to bring their own concerns into an officially sanctioned arena is telling'.⁶⁰ They propose that 'women involved in defamation suits were evidently knowledgeable of legal procedures, and could manipulate versions of stereotyped femininity accordingly'.⁶¹ They explored the investment women had in their communities and believe that 'by appropriating certain concerns as their own, even those which might easily be used against them, as in the case of sexual reputation, women could and did wield a considerable amount of power'.⁶² However they could find this power a double-edged sword, and an insightful example given is the circumstance whereby adulterous husbands were brought to the church courts by their wives through the wife's defamation of the *mistress*.⁶³ In doing so 'women were complicit in supporting a dual standard that placed responsibility and culpability for sexual misdemeanour not with the adulterous husband, but with his mistress'.⁶⁴

Meldrum's focus on the 'women's court' narrative has also led him to the conclusion that 'female sensitivity to sexual slander was far greater than male in a qualitative as well as a quantitative sense'.⁶⁵ He uses 'cuckold' as an example of this, and argues it

⁵⁶ Gowing, *Domestic Dangers*, 65.

⁵⁷ Gowing, "Language, power, and the law," 29.

⁵⁸ *Ibid*, 36.

⁵⁹ *Ibid*, 36.

⁶⁰ Kermode and Walker, "Introduction," 7.

⁶¹ *Ibid*, 11.

⁶² *Ibid*, 14.

⁶³ *Ibid*, 14.

⁶⁴ *Ibid*, 14.

⁶⁵ Meldrum, "A Women's Court," 10.

‘had far more potency when it was taken to mean sexual infidelity by wives, instead of their husbands’ failure to maintain patriarchal control over them’.⁶⁶ He also draws to the apparent ‘lesser gravity of sexual slander against men’, and highlights how some men ‘appear to be well aware of the effects of their slanders and to enjoy the power they held over women’.⁶⁷ Martin Ingram also summarises how ‘for both men and women (but more especially for the latter), sexual reputation or “credit” was conventionally regarded as important’.⁶⁸ He argues that ‘women were more sensitive, and probably more subject, to sexual slander because fornication and adultery were more seriously regarded in the female than in the male and the passive, home-based roles assigned to women meant sexual reputation was more central to the female persona’.⁶⁹ The high numbers of female plaintiffs and the unspecific slanders they brought to trial can reflect, to some extent, he argues, ‘a double standard of morality’.⁷⁰

Yet Ingram argues ‘it is clear that the notion of a double standard must not be pressed too far: it was in this period a matter of degree rather than an absolute dichotomy between the ways in which male and female reputations were regarded’.⁷¹ Men were also found to be sensitive to sexual slanders and ‘many moralists claimed the morals of men were lax and attacked the idea of a “double standard”, which ran counter to the Christian principle that immorality was equally reprehensible in men and women’.⁷² Meldrum echoes the point raised by Ingram as he highlights how ‘the nature of slander brought by men and women differed, although on the face of it, there appears to be a degree of equivalence in the type of slander employed for both’ and uses this point to illustrate why historians have deemed Thomas’ ‘double standard’ theory as oversimplistic.⁷³ Even in the early eighteenth century, almost all the male plaintiffs in Meldrum’s study ‘brought cases over slander avowedly sexual in character’ and he also finds ‘that men could be sensitive to slurs on their sexual reputation’.⁷⁴

⁶⁶ Ibid, 10.

⁶⁷ Ibid, 10.

⁶⁸ Martin Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (Cambridge: Cambridge University Press, 1990), 318-19.

⁶⁹ Ibid, 302.

⁷⁰ Ibid, 302.

⁷¹ Ibid, 303.

⁷² Ibid, 154, 303; Thomas, “The Double Standard,” 203-204.

⁷³ Meldrum, “A Women’s Court,” 8, 11.

⁷⁴ Ibid, 10.

Sharpe's initial evaluation of the cause papers of the Archbishop's Consistory Court for York in the 1590s and 1690s found 'male plaintiffs were less affected by purely sexual defamation but, of the three quarters of the males in our two samples who were so affected, almost all initiated suits against language very similar so that used when the sexual honour of women was defamed'.⁷⁵ He argues that this evidence shows that for both men and women sexual reputation was very important and while he is tempted by the 'double standard' theory as the explanation, he does not define it explicitly as such.⁷⁶ He explains instead that while men may have been slandered for a wider range of activities than women, this was probably due to the contemporary attitudes to sex roles; however, 'this possibility is raised as no more than a hypothesis which awaits testing against evidence from defamation cases brought before other courts'.⁷⁷

His unwillingness to commit to the 'double standard' (and his call for more studies into defamation and reputation) has been enthusiastically received since his initial studies in the 1980s. Faramerz Dabhoiwala, for example, maintains that to reduce reputation and honour to questions of gender is 'a serious over-simplification'.⁷⁸ He believes that 'as long as her sexual "honesty" was not called into question, a woman's overall "honour", "reputation", "credit" or "condition", like that of a man, was linked to her social and economic position'.⁷⁹ So a woman's reputation 'could increase or decrease through matters that had nothing to do with sexual continence'.⁸⁰ He instead believes that reputation 'pretended to universal standards, but could potentially be manipulated in rather more subjective fashion' and was 'not static but subject to considerable fluctuation over time'.⁸¹ He concludes: reputation 'its rhetoric and concepts were highly flexible; ... both male and female reputation should be understood as a compound of social and moral status; and finally, that this is true even of the most gendered aspect of reputation, namely that relating to sexual behaviour'.⁸²

⁷⁵ Sharpe, "Defamation and sexual slander," 16.

⁷⁶ Ibid, 16-17, 28.

⁷⁷ Ibid, 28-29.

⁷⁸ Faramerz Dabhoiwala, "The Construction of Honour, Reputation and Status in Late Seventeenth- and Early-Eighteenth Century England," *Transactions of the Royal Historical Society* 6, Sixth Series (1996): 201-02, 212.

⁷⁹ Ibid, 208-09.

⁸⁰ Ibid, 208.

⁸¹ Ibid, 202.

⁸² Ibid, 212.

In her 2004 article “Honesty, Worth and Gender”, Alexandra Shepard disagrees with previous historians and their work on defamation and the church courts. She argues that their view of ‘the gendered distinction between chastity and trustworthiness’ has been too much of a preoccupation.⁸³ Instead, she argues that ‘it is clear that women’s reputations were far more broadly founded than admitted by the narrow jurisdictional parameters of ecclesiastical law, which determined the predominantly sexual content of defamation suits’.⁸⁴ Shepard believes the historiography of “honesty” and the various ways it was defined (and applied) within slander cases is hindered for two main reasons.⁸⁵ Firstly, the debate between the definition of honesty in terms of a person’s chastity and their economic honesty (and the fact that these two definitions are not easily separated) she feels ‘over-simplifies the complexity of concepts of honesty; which combined assorted social, moral and economic meanings and informed notions of honour and reputation in a wide range of contexts’.⁸⁶ Secondly, she argues that historians ‘will not fully understand the ways in which concepts of honesty were related to gender without also exploring the ways in which they served other status distinctions’ and believes honesty was variously invoked ‘not only according to gender difference, but also in relation to differences of social status, age, and marital status’.⁸⁷

Perhaps most importantly, Bernard Capp’s article “The ‘Double Standard’ Revisited” proposes that ‘men’s anxiety over sexual reputation was more important than historians have generally assumed, and might provide women with a valuable means of redress or effective leverage in a variety of circumstances’.⁸⁸ He argues that the authority women had as defenders of community norms was normally exercised over other women; however, defamation cases in church courts that were sued by women

⁸³ Alexandra Shepard, “Honesty, Worth and Gender in Early Modern England, 1560-1640,” in *Identity and Agency in England, 1500-1800*, ed. Henry French and Jonathan Barry (Basingstoke: Palgrave Macmillan, 2004), 89.

⁸⁴ *Ibid.*, 89. See also: Walker, “Expanding the Boundaries,” 235-245; Martin Ingram, “Law, Litigants and the Construction of ‘honour’: Slander Suits in Early Modern England,” in *The Moral World of the Law*, ed. Peter Coss (Cambridge: Cambridge University Press, 2000), 134-160; Shepard, *Meanings of Manhood*, chps. 6-7.

⁸⁵ Shepard, “Honesty, Worth and Gender,” 89.

⁸⁶ *Ibid.*, 89.

⁸⁷ *Ibid.*, 89.

⁸⁸ Bernard Capp, “The Double Standard Revisited: Plebeian Women and Male Sexual Reputation in Early Modern England,” *Past and Present*, no. 162 (1999): 71; Capp, *When Gossips Meet*, 94.

were as likely to be brought against female as male slanderers.⁸⁹ Women often had grievances against men other than their husbands and were often ready to stand their ground and trade insults, but such a response carried its own risks.⁹⁰ Men would be likely to smear the woman's sexual reputation – a weapon far more powerful than any at her own disposal.⁹¹ While his work reiterates a summary of the general recognition by historians of the 'gendered' definitions of reputation (for women this centred on sexual honesty while for men their reputation more commonly focussed on their 'credit' in society) he states how 'both contained multiple elements'.⁹² Therefore, 'the importance and fragility of sexual reputation, utilised by men for centuries to control or damage women, were qualities that might also be harnessed by women for their own ends against men'.⁹³ He even identifies women who 'introduced sexual reputation into disputes with men that had broken out over entirely different issues' which he found 'remarkably bold in the context of the double standard, their behaviour confirms the potency of sexual defamation as a weapon against both sexes'.⁹⁴

2. The 'women's court'?

Meldrum first used the phrase 'women's court' in his, appropriately titled, 1994 article "A Women's Court".⁹⁵ In his study he analysed defamation cases at the London Consistory court from two decades in a previously underutilised century; 1700-10 and 1735-45.⁹⁶ His examination found that by 1745 'women formed around 95 per cent of slander litigants, and almost 80 per cent of the total litigants, i.e. plaintiffs and defendants'.⁹⁷ He believes that by 1745 the London Consistory court was following a national trend in becoming a 'women's court', with its high percentage of female litigants, and it is this development that has also been reflected in other studies.⁹⁸

⁸⁹ Bernard Capp, "Separate Domains? Women and Authority in Early Modern England," in *The Experience of Authority in Early Modern England*, ed. Paul Griffiths, Adam Fox, and Steve Hindle (London: Macmillan Press Ltd, 1996), 131.

⁹⁰ *Ibid*, 135.

⁹¹ *Ibid*, 135-136.

⁹² Capp, *When Gossips Meet*, 253.

⁹³ Capp, "The Double Standard Revisited," 100.

⁹⁴ Capp, *When Gossips Meet*, 258.

⁹⁵ Meldrum, "A Women's Court," 1-20.

⁹⁶ *Ibid*, 1.

⁹⁷ *Ibid*, 1, 5-6, 15.

⁹⁸ *Ibid*, 1, 5-6, 15. For example: R. B. Outhwaite, *The Rise and Fall of the English Ecclesiastical Courts, 1500-1860* (Cambridge: Cambridge University Press, 2006), 43; Foyster, *Manhood in Early Modern*

Therefore, when comparing his data with others' studies of the late-sixteenth and seventeenth centuries, Meldrum can, justifiably, summarise how his results 'appear to be in line with a long-term, nationwide trend for defamation litigants at the church courts'.⁹⁹ He also highlights another particularly female led element to reputation as he found 'we are particularly made aware of the local solidarities amongst women, with women abused both by other women and men being supported by mostly female testimony'.¹⁰⁰ He confirms that while 'the nature of slander brought by men and women differed ... there appears to be a degree of equivalence in the type of slander employed for both'; but while men could also be sensitive to sexual slanders 'female sensitivity to sexual slander was far greater than male'.¹⁰¹ However, he rejects Thomas' notion of the 'double standard' as over-simple.¹⁰²

The development to a majority of female litigants suing (and being sued) for defamation summarises the 'women's court' in its first sense. It has *also* been implicitly suggested by historians that because the church courts were open to women to sue for defamation (in a world where women did not have many opportunities for their voices to be heard in an official arena) that they became, in a sense, 'women's courts'.¹⁰³ This section will analyse both Meldrum's definition of the 'women's court' and the corresponding implicit suggestion of a 'women's court', and will argue that the reliance on these explanations has narrowed the focus of research into sexual slander and has limited the scope in which new findings in this area can be made.

England, 148; Gowing, *Domestic Dangers*, 12, 34, 37, 61; Sharpe, "Defamation and sexual slander," 27-28; Shoemaker, "The Decline of Public Insult," 114.

⁹⁹ Meldrum, "A Women's Court," 1-20 (especially 5-6).

¹⁰⁰ Meldrum, "A Women's Court," 14.

¹⁰¹ Meldrum, "A Women's Court," 8, 10.

¹⁰² *Ibid.*, 11.

¹⁰³ For example: Gowing, "Language, power, and the law," 28-30; Kermode and Walker, "Introduction," 12; Ingram, *Church Courts, Sex and Marriage*, 302; Katherine Crawford, *European Sexualities, 1400-1800* (Cambridge: Cambridge University Press, 2007), 172; Gowing, *Domestic Dangers*, 11; Dabhoiwala, "The Construction of Honour," 208; John Addy, *Sin and Society in the seventeenth century* (London: Routledge, 1989), 117; Susan Dwyer Amussen, "Gender, family and the social order, 1560-1725," in *Order and disorder in early modern England*, ed. Anthony Fletcher and John Stevenson, (Cambridge: Cambridge University Press, 1985), 214; Laura Gowing, *Common Bodies: Women, Touch and Power in Seventeenth-Century England* (New Haven: Yale University Press, 2003), 10; Laura Gowing, "Gender and the Language of Insult in Early Modern London," *History Workshop*, no. 35 (1993): 1; Faramerz Dabhoiwala, "Sex, social relations and the law in seventeenth- and eighteenth-century London," in *Negotiating Power in Early Modern Society: Order, Hierarchy and Subordination in Britain and Ireland*, ed. Michael J. Braddick and John Walter (Cambridge: Cambridge University Press, 2001), 88.

Sharpe's historical investigations in the 1980s centred on the defamation cases heard in the ecclesiastical courts in York brought between the late sixteenth and the early eighteenth centuries.¹⁰⁴ He found that defamation cases remained an important area of business for the church courts as 'between 1665 and 1705 causes for defamation doubled in number, and by 1720 had nearly trebled'.¹⁰⁵ He hypothesises that the inhabitants in Tudor and Stuart England were very sensitive to slights on their reputation and this can explain why 'from the mid-sixteenth century onwards, the tribunals of both the common and ecclesiastical law experienced a rapid increase in the number of suits for defamation'.¹⁰⁶ The gender composition of his cases found that for men and women sexual reputation was very important, however 'it would appear that the concern for sexual reputation, fairly evenly divided between the sexes in the late sixteenth century, was far more a female preserve in the late seventeenth'.¹⁰⁷ He noticed a 'marked fall in the proportion of males appearing as plaintiffs in church court defamation causes in general and in suits for sexual slander in particular ... in the 1590s, 49 per cent involved male plaintiffs ... in the 1690s ... only 24 per cent involved male plaintiffs'.¹⁰⁸

Ingram's study of the church courts in Wiltshire between 1570 and 1640 found a 'predominance of female plaintiffs' in cases of sexual slander with '60-70 per cent of cases brought by females'.¹⁰⁹ He also found that sexual slander cases were popular in the church courts during his period of study and 'for both men and women (but more especially for the latter), sexual reputation or "credit" was conventionally regarded as important; to an extent it was also of real significance in everyday life, quite apart from the fact that individuals were legally liable for personal immorality'.¹¹⁰ While his study might slightly precede the period of interest for this thesis, he also draws

¹⁰⁴ Sharpe, "Defamation and sexual slander," 1-36 and Sharpe, "Such disagreement betwix neighbours," 167-87.

¹⁰⁵ Sharpe, "Defamation and sexual slander," 9. See also: Sharpe, "Such disagreement betwix neighbours," 172.

¹⁰⁶ Sharpe, "Such disagreement betwix neighbours," 171, 168. See also: Sharpe, "Defamation and sexual slander," 24-5.

¹⁰⁷ Sharpe, "Defamation and sexual slander," 15, 16-17, 28.

¹⁰⁸ *Ibid*, 27-28.

¹⁰⁹ Ingram, *Church Courts, Sex and Marriage*, 302.

¹¹⁰ *Ibid*, 318-19.

attention to ‘the tendency for such cases increasingly to involve women as the seventeenth century approached and lengthened’.¹¹¹

Gowing has also found that ‘in the most popular type of litigation, suits alleging sexual slander, women brought cases up to five times more often than men did’.¹¹² While church courts across the country were also facing a predominantly female composition of litigants ‘it was in London that they took the most advantage of this opportunity’.¹¹³ She claims that sexual morality was rooted not in the church but in popular practice and ‘while the use of law was increasingly part of the fabric of social relations and popular culture, the burgeoning opportunities of interpersonal litigation were very largely closed to women both by law and by social custom. The church courts were an important exception’.¹¹⁴ Within a system whereby men’s and women’s sexual conduct was held by two sets of ‘incommensurable values’, the language of slander was often used by women to perform functions for which men could far more easily turn to official, institutional and legal spheres.¹¹⁵ She found that from 1570 ‘women were suing about half of all sex and marriage cases; over the next fifty years, as patterns of litigation changed, their part in it rose as high as 80 per cent. Between 1570 and 1640 the London church courts witnessed a transformation that put women, uniquely for any court, at the centre of their business’.¹¹⁶ She also found that ‘in a legal system where women’s testimonies were rarely accorded the same measure of credit as men’s, defamation cases also involved higher numbers of female witnesses than other suits’.¹¹⁷ Consequently, between 1570 and 1640 she recorded ‘around 1,800 suits over sexual slander or marriage, of which 85 per cent had at least one female litigant, and nearly 6,000 witness testimonies in such cases, of which 43 per cent came from women’.¹¹⁸ Her examinations of the defamation business of the London Consistory court can be summarised thus: ‘defamation cases, always more likely to be brought by

¹¹¹ Ibid, 302-04.

¹¹² Gowing, “Language, power, and the law,” 26.

¹¹³ Gowing, *Domestic Dangers*, 11.

¹¹⁴ Ibid, 11. See also: Gowing, “Gender and the Language of Insult,” 1; Gowing, “Language, power, and the law,” 28-30 Gowing, *Common Bodies*, 10.

¹¹⁵ Gowing, “Language, power, and the law,” 28-30; Gowing, *Domestic Dangers*, 4.

¹¹⁶ Gowing, *Domestic Dangers*, 12.

¹¹⁷ Gowing, “Language, power, and the law,” 27, 37. See also: Meldrum, “A Women’s Court,” 14; Capp, “Separate Domains,” 135-36.

¹¹⁸ Gowing, *Domestic Dangers*, 12.

women, rose enormously; and women litigants in all cases about sex and marriage increased'.¹¹⁹

Similarly to Gowing's findings, the cases from this thesis' sample from the London Consistory court also found that 65% of sexual slander defamation business was fought between female litigants and, in total, female plaintiffs brought 94% of these cases (Table 5). From the earlier part of the seventeenth to the early eighteenth century, then, the sexual slander defamation business in the London Consistory court does appear to be part of Meldrum's depiction of a 'women's court'.¹²⁰ A similar picture also appears to emerge from this thesis' York sample as 75% of sexual slander defamation cases in this court were brought by female plaintiffs. However, the majority of cases in the York sample (56%) were sued against *male* defendants, and the most common type of case (47%) were those in which a woman brought suit against the words of a man – only 30% of this sample were cases sued between two women (Table 16). This raises questions as to the universality of the 'women's court'. Evidence has also been found, in certain studies, for male involvement in sexual slander to have increased over the course of the sixteenth to eighteenth centuries. Robert Shoemaker's evaluation of the sexual slander business in the London Consistory court between 1660 and 1800 found 'a shift in the gender balance of the insulters and the insulted, as the public insult was to some extent taken over by men in the eighteenth century'.¹²¹ The evidence he cites of the defamers 'also points to a strong, and indeed increasing, male presence'.¹²² Concurrently, however, he also found that 'women became the only plaintiffs, the targets of insults, to prosecute in the London Consistory court'.¹²³

An important point about the demography of early modern urban areas must be raised here. Studies have found that, by the period of this study, urban populations typically

¹¹⁹ Ibid, 12.

¹²⁰ Meldrum, "A Women's Court," 1-20 (especially 5-6).

¹²¹ Shoemaker, "The Decline of Public Insult," 114.

¹²² Shoemaker, "The Decline of Public Insult," 114.

¹²³ Shoemaker, "The Decline of Public Insult," 114.

‘contained a disproportionately high number of women’.¹²⁴ Earle has explained how many things might have caused this ‘but the most plausible reason is the change in demand for domestic servants’, whereby both the increase in the number of people employing servants and a different gender breakdown of servants meant that ‘by the 1690s ... about eighty per cent of all domestic servants in City households were female’.¹²⁵ Sharpe proposes that as a consequence of the urban areas offering ‘country girls and older women numerous employment opportunities as domestic servants ... in some towns women exceeded men by a ratio of five to four’.¹²⁶ London, in particular, ‘had once had a large male surplus in its population, but, by the 1690s if not earlier, this situation had been reversed and early eighteenth-century London was a city in which women considerably outnumbered men’.¹²⁷ The sheer number of women living in urban areas may partly explain the greater frequency in which they were recorded as litigants and witnesses in the church courts – if the numbers of women living in these areas outnumbered men logically, then, there were more opportunities for women to slander each other and to be slandered themselves.

The main criticism of the ‘women’s court’ is that it can arguably be said to have misjudged the importance and existence of male involvement in sexual slander.¹²⁸ The inclusion of an investigation of the male experiences of sexual slander in the church courts is as important as the evaluation of the female experiences. Men have been shown to have maintained a steady interest in sexual slander and acted as both slanderers (and plaintiffs) through the seventeenth and early eighteenth century. It seems counter-productive, therefore, to remain focussed on the common ‘gendered’ explanation of sexual slander (that has been numerous cited by historians) as further insights would be gained by employing a more equal evaluation of all those involved in this business in the church courts. The focus on the female experience, and an exclusive focus on the ‘women’s court’ narrative, is a narrow perspective within which

¹²⁴ Sharpe, *Early Modern England*, 80. See also: Galley, *The Demography of Early Modern Towns*, 25-6 and 141-4, esp. Table 1.4 on p. 25; Earle, *A City Full of People*, 39-40.

¹²⁵ Earle, *A City Full of People*, 39-40.

¹²⁶ Sharpe, *Early Modern England*, 80.

¹²⁷ Earle, *A City Full of People*, 39.

¹²⁸ Capp, “The Double Standard Revisited,” 71, 72; Capp, *When Gossips Meet*, 94; Foyster, *Manhood in Early Modern England*, 10; Fletcher, *Gender, Sex and Subordination*, 103; Addy, *Sin and Society*, 114; Amussen, “Gender, family and the social order,” 208; Walker, “Expanding the Boundaries,” 235.

to evaluate sexual slander. This is especially relevant as the evidence in church courts records can also be argued to point to the importance of evaluating the enduring trend for men to bring suit for defamation, especially against their own gender (though arguably maybe not in as many numbers as women). The emphasis on women's use of church courts in their defamation suits has led to less exploration of how many men were defendants in defamation cases and to the few men who were plaintiffs and the large numbers of men who were witnesses.

4. Methodology and aims

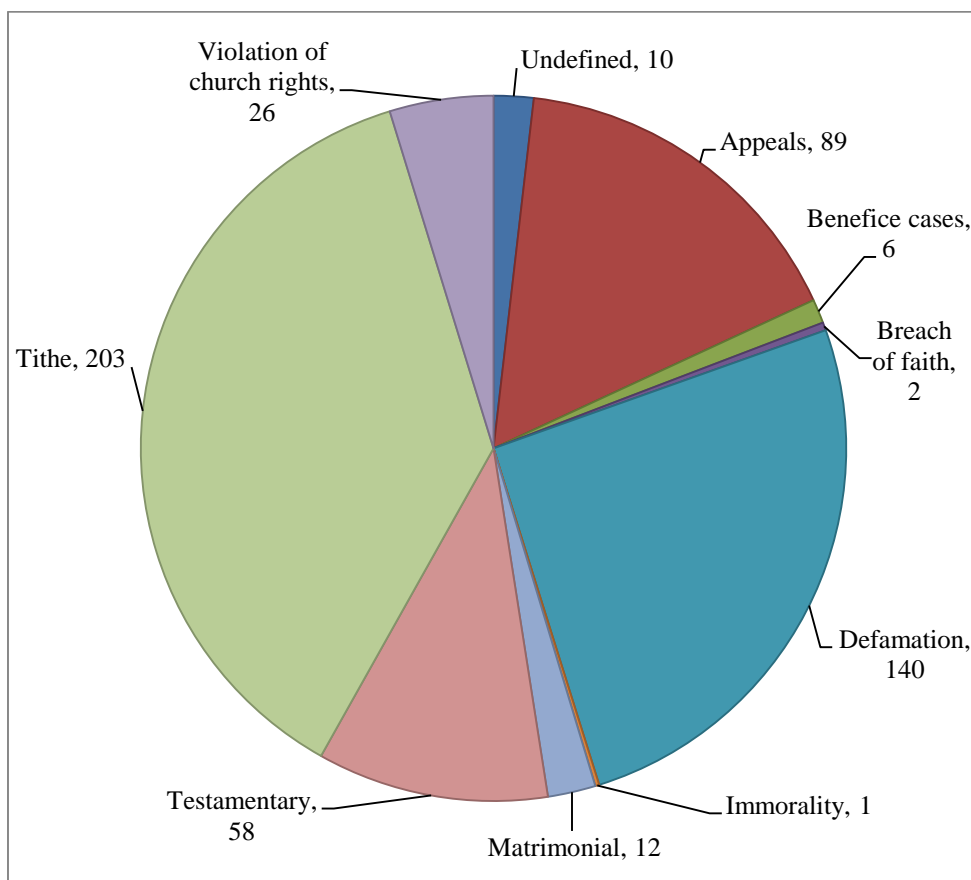
In this study the term sexual slander refers to any cases brought before the courts involving accusations that injured the reputation of the plaintiff by implying sexual impropriety on their behalf. This includes – but is not limited to – accusations of: adultery, fornication, whoredom, cuckoldry, fathering (or producing) a bastard child, and so on. Where it is appropriate the term “sexual slander” has been substituted by “defamation” to avoid repetition of the former on the author's behalf, but it has also been used as a contemporary term when quoting from the primary source material.

There were 140 defamation cases recorded in the York Consistory court between 1680 and 1700 (Fig. 1). However of those 140, only 130 contain sexual slanders and will be used in this thesis. The 10 excluded cases were removed because while they do contain defamatory words they are not those which qualify as sexual slander (Table 14).¹²⁹ For example, two of the excluded defamation cases contain accusations of theft: John Wilson asked Nicholas Hall ‘how now thou Theife art thou come to steale more of my

¹²⁹ The excluded cases were given category and sub-category classifications by the team that created the online catalogue of the cause papers held in the Borthwick Institute for Archives. They classified 23 sub-categories of defamation, of which five sub-categories have been excluded from this thesis. The excluded cases are: “Defamation - Arbitration” in the case of Mercy Jackson c. John Blackley (1685), CP.H.3673; “Defamation - Character” (although two cases in this category did contain sexual slanders and are included in the thesis data, but the four that did not are listed here) in the cases of Matthew Bolton c. John Wrightson (1699), CP.H.4565, John North c. John Oxley (1680), CP.H.5297, Jeremiah Welfitt c. Alice Wood (1685), CP.H.3668 and Henry Redhead c. Anne Taylor (1681), CP.H.4977; “Defamation – Citation only” in the case of Dorothy Aves c. Isabel Kid (1695), CP.H.5784; “Defamation - Theft” in the cases of Nicholas Hall c. John Wilson (1681), CP.H.3493 and George Raynes c. Frances Thompson (1691), CP.H.4261; and “Defamation – Theft/Character” in the cases of George Barker c. Judith Salkeld (1696), CP.H.4547 and Samuel Wardman c. John Ackroyd (1681), CP.H.4900.

kiddes and poles’ and Francis Thompson told George Raynes that ‘she did not take money and cloathes out of a house as he did’.¹³⁰ While these words impugned the honesty and reputation of the plaintiffs, they do not contain words such as “whore” or “whoremaster” which would denote sexual slander. The defamation business in the London Consistory court in the same period was too numerous to be surveyed in total in the time available and so was sampled for the years 1680, 1685, 1690 and 1695 (Tables 4 and 4a). This allowed for close analysis whilst also offering the most constructive way to compare and track the level of business in the two Consistory courts, and provided a sample of 181 sexual slander defamation cases. However, the data from the year 1680 (55 cases) have been used sparingly because the corresponding Allegations, Libels and Sentence Book is unavailable for consultation and, as a result, it is not possible to track the cases through the whole litigation process – one of the main aims of the first chapter.

Fig. 1 – The overall business of the court, 1680-1700 (York).



¹³⁰ Nicholas Hall c. John Wilson (1681), CP.H.3493 and George Raynes c. Frances Thompson (1691), CP.H.4261.

In total this thesis is based upon a study of 311 cases of sexual slander: 181 from the Bishop of London's Consistory court and 130 from the Archbishop's Consistory court for York. The analysis of the records has been part of a twofold process. A quantitative approach provides evaluation of, for example: the gender composition of the litigants (the proportion of male c. female, female c. female etc. cases that were brought); the level of business in the courts; the extent to which cases were sued; and an assessment of the witnesses (the average number of witnesses per case and the frequency of male and female witnesses, for example). In an effort to reinsert the slanders into their appropriate context a detailed qualitative analysis of the records was also made. This was, however, undertaken within an understanding of the limits such an evaluation will have, as outlined below.

Walker highlights the most pressing issue historians face when accessing court records: 'the complex relationship between language, event and interpretation' and the subsequent problems faced when trying to locate events (in her article rape, but in this thesis sexual slander) 'as a historically specific rather than as a transhistorical phenomenon'.¹³¹ She persuasively explains how our modern understanding of (incidents such as) rape should not have an influence on the way we interpret records since 'accounts of subjective, personal experiences are produced and made sense of within available collective, cultural meanings' and as such 'cannot be read off the page by historians'.¹³² Her bid to 'historicise' rape is one that many historians can benefit from; it encourages the study of records in their appropriate context and not through the parameters set by researchers themselves.

Another key issue historians face when using court records is summarised by Elizabeth Horodowich when she explains how 'all those who study the history of oral culture necessarily grapple with the thorny methodological problem of how to recover orality from written documents'.¹³³ She echoes the call to 'move past the idea of searching

¹³¹ Garthine Walker, "Rereading Rape and Sexual Violence in Early Modern England," *Gender & History* 10, no. 1 (1998): 1.

¹³² *Ibid.*, 3.

¹³³ Elizabeth Horodowich, "Introduction: Speech and Oral Culture in Early Modern Europe and Beyond," *Journal of Early Modern History* 16, issue 4/5 (2012): 306. See also: Adam Fox, *Oral and Literate Culture in England, 1500-1700* (Oxford: Clarendon, 2000), 52; Meldrum, *Domestic Service*

for “pure” oral expression and accept the intermingling of media as a fact of this period’.¹³⁴ Historians cannot help but be removed from the societies in which they study. However, she believes this issue is made even more complicated when ‘even sources that purport to record oral communication necessarily remain at a degree of removal from actual speech itself’.¹³⁵ Bound echoes this frustrating fact because ‘although it was a legal requirement that the testimony of deponents was transcribed *verbatim* [her italics], it was nevertheless influenced, shaped and structured by habits of regional practice, the influence of the proctors or lawyers, and the idiosyncrasies of the court scribe’.¹³⁶

Walker faces a similar issue in her attempt to tease the *personal* experiences of rape victims from their depositions (arguably a prime example of the inability for those working for the courts [men] to truly reflect the personal experience of those whose depositions they were taking [women]) and echoes the suspicion of the true recording of their words; however, she feels instead that ‘depositions were likely to have been transcribed by clerks more or less *verbatim*’.¹³⁷ Although she does admit that ‘the specific audience for whom the story of rape was told influenced its form. The success of a rape tale depended upon the responses of those who heard it. Its structure therefore reflected the presence of one or more legal officials who listened to complainants, defendants, and witnesses’.¹³⁸ Sara Mendelson and Patricia Crawford’s extensive use of church court records thus highlights how ‘while female testimony appears to offer direct access to women’s own voices, the historian must be constantly aware that every

and Gender, 9; Meldrum, “A Women’s Court,” 13; Cox, *Hatred Pursued Beyond the Grave*, 38; Capp, *When Gossips Meet*, 2, 194; Sara Mendelson and Patricia Crawford, *Women in Early Modern England* (Oxford: Clarendon Press, 1998), 11, 213, 214-5; Bound, ““An Angry and Malicious Mind”?,” 60, 63; Foyster, *Manhood in Early Modern England*, 14; Sara Heller Mendelson, ““To shift for a cloak’, Disorderly Women in the Church Courts,” in *Women & History: Voices of Early Modern England*, ed. Valerie Frith (Toronto: Coach House Press, 1995), 3-18; Gowing, *Domestic Dangers*, 233; Andrew Foster, “Churchwardens’ accounts of early modern England and Wales: some problems to note, but much to be gained,” in *The Parish in English Life, 1400-1600*, ed. Katherine L. French, Gary Gibbs, and Beat A. Kümin, (Manchester: Manchester University Press, 1997), 85.

¹³⁴ Horodowich, “Introduction: Speech and Oral Culture,” 306.

¹³⁵ *Ibid*, 306.

¹³⁶ Bound, ““An Angry and Malicious Mind”?,” 63 and 60. See also: Walker, “Rereading Rape and Sexual Violence,” 8; Fox, *Oral and Literate Culture*, 83.

¹³⁷ Walker, “Rereading Rape and Sexual Violence,” 8.

¹³⁸ *Ibid*, 4.

word spoken by a woman was recorded and edited by male officials'.¹³⁹ Alexandra Shepard argues that 'although they are not straightforwardly representative of everyday life, court records nonetheless provide the broadest access to a wide range of historical actors'.¹⁴⁰ And while they do 'principally supply evidence of the ways in which stories were narrated in the context of a courtroom rather than direct statements of fact or fixed values', she feels depositions provide 'the closest point of contact with the lived experience of many early modern English men and women whose voices would not otherwise have entered the historical record'.¹⁴¹

Consequently, historians engage in avid debate as to the level to which the records they use indicate an accurate representation of the thoughts and experiences of those who made the depositions and the level to which they have been exposed to mediation from court officials. Adam Fox and Daniel Woolf feel that the idea that historians can 'gain direct entry' into the world of the past 'through literary and archival sources' is 'troublesome'.¹⁴² They highlight how Assize judges regularly encountered problems in understanding the different dialects and 'the different vocabulary and pronunciation of people in the various regions' which provides a stark reality for historians; if contemporaries found verbal testimonies difficult for them as 'foreigners' to comprehend then how will historians be able to accurately understand them?¹⁴³ But they think we can 'study the traces of that reality' and 'imagine how those worlds functioned, so long as we also recognize the indirect nature of our evidence'.¹⁴⁴ It is this use of the records of church courts that was implemented in this thesis.

¹³⁹ Mendelson and Crawford, *Women in Early Modern England*, 11, 214-215. See also: Mendelson, "'To shift for a cloak'," 3-18; Gowing, *Domestic Dangers*, 233; Capp, *When Gossips Meet*, 2, 194; Cox, *Hatred Pursued Beyond the Grave*, 38; Bound, "'An Angry and Malicious Mind?'," 60, 63; Foster, "Churchwardens' accounts," 85; Horodowich, "Introduction: Speech and Oral Culture," 306; Robert B. Shoemaker, *Gender in English Society 1650-1850: The Emergence of Separate Spheres?* (London: Longman, 1998), 12.

¹⁴⁰ Shepard, *Meanings of Manhood*, 12.

¹⁴¹ *Ibid.*, 12.

¹⁴² Adam Fox and Daniel Woolf, "Introduction," in *The spoken word: Oral Culture in Britain, 1500-1850*, ed. Adam Fox and Daniel Woolf (Manchester: Manchester University Press, 2003), 11.

¹⁴³ Fox, *Oral and Literate Culture*, 83.

¹⁴⁴ Fox and Woolf, "Introduction," 11.

Henry French and Jonathan Barry propose that the main problem with relying on language is the issue of reductionism, whereby the “discourse” about events is given priority in motivating and explaining action, and the historical subject is depicted as the prisoner of language’.¹⁴⁵ When the individual does ‘appear to identify themselves through common concepts, we cannot be sure that they share common understandings of this “shared discourse”’.¹⁴⁶ Therefore, we need to be aware (before we can assess language) that the people we study may not have necessarily been ‘employing concepts in the same way, for the same purpose, and with the same implied meaning’.¹⁴⁷

Earle states that witness depositions were ‘most important’ in the writing of his book, and that they are ‘unusual in that, on occasion, they do allow us to hear the voices of the past’.¹⁴⁸ While he believes there is ‘considerable evidence of coaching by lawyers in the main body of depositions, this is not true of the answers to the personal questions’ of which he argues the answers were ‘clearly individual to the particular witness’.¹⁴⁹ He argues that the personal questions asked ‘are also of such a nature that there seems little motive for witnesses to lie’.¹⁵⁰ He gives examples of such questions (the ‘origins’, ages and employment of witnesses) and highlights how ‘it should be remembered that the witnesses were on oath and their answers could in most cases be easily checked’.¹⁵¹ While he identifies there is a problem in determining the reliability of witness statements, he concludes that ‘it seems probable that most of the personal information in the depositions was accurate’ which was ‘certainly accurate enough’ for his purposes, and, where it has been used, is accurate enough for the purposes of this thesis also.¹⁵²

In her chapter “Honesty, Worth and Gender” in French and Barry’s *Identity and Agency*, Shepard delves further into the church court records than previous historians

¹⁴⁵ French and Barry, “Identity and Agency,” 18.

¹⁴⁶ *Ibid.*, 21.

¹⁴⁷ *Ibid.*, 32.

¹⁴⁸ Earle, *A City Full of People*, 181.

¹⁴⁹ *Ibid.*, 264.

¹⁵⁰ *Ibid.*, 264.

¹⁵¹ *Ibid.*, 264-5.

¹⁵² *Ibid.*, 264-5.

and turns her attention ‘from the slanderous idiom countered by plaintiffs to the subtler tests of credit undergone by witnesses’.¹⁵³ The advantages in studying witnesses as well as litigants are exemplified here when she highlights how witness testimony gives us ‘access to general statements about a person’s own perceptions of their social standing’ and how ‘witnesses in court asserted their honesty with reference to a far wider range of behavioural norms than featured negatively in allegations of defamation’.¹⁵⁴ The third chapter of this thesis utilises witness testimony (and the information given about the witnesses themselves) alongside the depositions provided by the litigants, as arguably the insights historians can gather from witnesses are equally – if not more – important than the details the litigants provide. Witness testimony allows an insight into the community’s view of sexual slander in general (and also sometimes specifically to the individual case) and can provide precious details on this societal view, on the minutiae of the circumstances surrounding the slander and the witness’ personal view of the situation.

Therefore, a conscious effort has been made through this thesis to remain aware that while the court records claim to document real events they have also been defined as ‘vulnerable’ to story-telling and the apparatus of the court.¹⁵⁵

The aims of this project are threefold: firstly, to examine and compare the experiences of the men and women involved in cases of sexual slander across two decades and across the Northern and Southern provinces. This will be undertaken to determine patterns of behaviour across the country and to examine the extent to which arguments for a ‘decline’ in both the number of cases and importance of suing for defamation represent the sexual slander defamation business of the church courts in the latter seventeenth century. Secondly, to determine the extent to which explanations of a ‘women’s court’ and the ‘double standard’ are applicable to the cases sampled in the London and York Consistory courts in the years 1680-1700. The examination of the

¹⁵³ Shepard, “Honesty, Worth and Gender,” 90.

¹⁵⁴ Ibid, 90, 91.

¹⁵⁵ Meldrum, “A Women’s Court,” 13; Cox, *Hatred Pursued Beyond the Grave*, 38; Capp, *When Gossips Meet*, 2, 194; Mendelson and Crawford, *Women in Early Modern England*, 213; Bound, ““An Angry and Malicious Mind”?” 60, 63; Foyster, *Manhood in Early Modern England*, 14; Fox, *Oral and Literate Culture*, 83.

male participation in the church courts will be assessed through a deeper examination of the ‘double standard’ in the context of an increasing scholarly interest in questions of male honour and sexual conduct. And thirdly, to examine the influence factors such as geographical location, gender, marital status and age had on the circumstances surrounding and outcomes of cases of sexual slander.

It is the aim of this thesis to compare like for like subjects across power dynamics. As such I have not undertaken a study of thousands of cases, nor made sweeping and unfounded generalisations about past society, but I have instead analysed 311 sexual slander defamation cases that represent as full a cross-section of society as possible. The selection of cases of sexual slander has been from the records held in the relevant Allegations, Libels and Sentence Books and Deposition Books from the Bishop of London’s Consistory court and the relevant Cause Papers from the Archbishop’s Consistory court for York in the years 1680-1700. Cases were selected by five year intervals in the London Consistory court (1680, 1685, 1690, and 1695 respectively) to ensure the materials available were sampled in as manageable and representative a way as possible. The focus on the records held in the surviving Allegations, Libels and Sentence Books provides a unique primary source base for this thesis as the historiography surrounding the subject of sexual slander has mainly focused on the records of cases held in Deposition Books.¹⁵⁶ Through the use of these books, then, this thesis aims to broaden the range of historical documents historians have used to study sexual slander, gender and reputation. This methodology is intended to better compare the context of slander across the country and to also compare competently with other studies based in the earlier part of the century.

The first chapter of this thesis provides a quantitative examination of sexual slander cases in the Consistory courts of London and York between 1680 and 1700. It examines the level of defamation business in relation to the overall level of business brought to these courts and argues that the ‘decline’ of defamation business in these courts has been overstated. It finds that while the *number* of cases did decline from a

¹⁵⁶ For example: Gowing, *Domestic Dangers*, 35.

peak period of this business between the years 1560 and 1640, the *proportion* of cases brought remained at a fairly consistent level. An examination of the extent to which cases would be sued in the courts also found that, like the first half of the century, the majority of cases were pursued only to the second stage of litigation in both courts between 1680 and 1700. This could mean that the *culture* of defamation did not decline so dramatically by the end of the seventeenth century, as it can be seen that those people who were sensitive to slights against their reputation still found it important to seek redress for defamation in the church courts.

Following this quantitative examination, the second chapter of this thesis qualitatively examines the sexual slander defamation business of the courts and explores the meanings, uses and effects of slanders. It employs a geographical comparison of the similarities and differences of the circumstances surrounding these cases, how the slanders were used and the insults that were used in them. This examination offers evidence of the fact that litigants and witnesses involved in these cases had a good understanding of which words were actionable in the courts and subsequently knew how to best describe slanderous attacks to the courts.

The third chapter in this thesis concerns the witnesses who testified in sexual slander suits. It argues that to develop our knowledge of gender and reputation (and how it was established and regulated in the church courts), historians need to incorporate a closer examination of the use of witnesses into their studies. Progress has been made in this area by previous historians, for example, Shepard has explored the ways in which witnesses positively claimed their honesty and in doing has moved the discussion away from the allegations of *dishonesty* that historians have focussed on in slander studies, to something that engages more with how individuals saw and defined themselves.¹⁵⁷ Her conclusion that ‘gender difference appears to have been more acutely present in slander litigation over accusations of dishonesty in the church courts than in the strategies for asserting honesty adopted by witnesses in the same forum’ widens the discussion of the influence gender had in the negotiation of honesty by

¹⁵⁷ Shepard, “Honesty, Worth and Gender,” 90.

differentiating between the honesty that could be claimed by litigants and that which was claimed *separately* by witnesses.¹⁵⁸ Conclusions such as this can only be brought by further examination of the use of witnesses and the words of the witnesses themselves. This thesis' examination of the witnesses could not go into as much detail as that which Shepard employed, however, but it does find interesting differences between the two courts. The York Consistory court is found to have most frequently recorded cases sued by a female plaintiff who was defending herself against the words of a male defendant of which, most often, would be supported by *male* testimony. This regional phenomenon would not have been discovered if a closer examination of the witnesses had not been undertaken.

The final chapter of this thesis concludes with an examination of men and sexual slander. It explores both the historiographical evidence and the evidence in these courts that both support and dispute the 'double standard' interpretation of the gendered nature of reputation. It argues that the use of the 'double standard' to explain sexual slander may be over-simple as male reputations *were* vulnerable and they were also sensitive to slurs on their sexual reputations. Unlike women, men also did not necessarily have to be the victim of a *personal* slander to be vulnerable to the words of others; they were sensitive to sexual slanders made against their wives because any slight made on their wives' reputations also had an impact on their own reputation. It was argued, then, that though women brought more suits defending their reputations, the frequency in which women were labelled as 'whores' (and the impact this would have on their husbands' reputations) meant a far greater number of men were affected by sexual slander through the vulnerability they shared with the reputation of their wives. The steady numbers of men that remained involved in cases of sexual slander in these courts suggests that reputation was equally important to men and women – though it may have been attacked and defended in different ways depending on the gender of the defamed party.

¹⁵⁸ Ibid, 101.

Therefore the following chapters aim to answer specific research questions while emphasising the underlying research aim: to facilitate a rethinking of how historians have viewed and researched sexual slander in previous years.

‘And I will prove you naught!’: Church courts and the pursuit of defamation cases, 1680–1700

This chapter explores the overall level of business and the level of sexual slander defamation business in the Bishop of London’s Consistory court and the Archbishop’s Consistory court for York between 1680 and 1700. The overarching purpose of this chapter is to relate these cases to the wider historical debates about the ‘decline’ of defamation business in the church courts. On the one hand it is claimed that the fall in the number of defamation cases brought to the church courts (from a peak period just before the outbreak of the Civil War to a fraction of this number after the Restoration) is evidence of a decline in the courts.¹ On the other hand it is claimed that the *culture* of defamation declined – whereby the importance attached to reputation and the requirement to sue to defend it was deteriorating – which resulted in the decline of the church courts themselves.² From this historiography we know a lot about the levels of business in the church courts in the seventeenth century but we know less about how far defamation cases were sued in the courts, and we know even less about whether this changed over time. The secondary purpose of this chapter, therefore, is to examine how far sexual slander defamation cases were sued in the courts in the last two decades of the seventeenth century. Not only will this explore an underexploited aspect of defamation business, but the comparison with the few examinations that have been made on the earlier half of the century provides an alternative method of assessing the ‘decline’ of defamation business in the courts.

¹ B. D. Till, “The administrative system of the ecclesiastical courts in the diocese and province of York. Part III: 1660-1883: A study in decline,” (Unpublished typescript at The Borthwick Institute for Archives, University of York, York, 1963), 3-12, 56-82; Faramerz Dabhoiwala, “Sex, social relations and the law in seventeenth- and eighteenth-century London,” in *Negotiating Power in Early Modern Society: Order, Hierarchy and Subordination in Britain and Ireland*, ed. Michael J. Braddick and John Walter (Cambridge: Cambridge University Press, 2001), 91; Susan Dwyer Amussen, *An Ordered Society: Gender and Class in Early Modern England* (Oxford: Basil Blackwell Ltd, 1988), 177; Tim Meldrum, “A Women’s Court in London: Defamation at the Bishop of London’s Consistory Court, 1700-1745,” *The London Journal* 19, no. 1 (1994): 2; Barry Till, “The Church Courts, 1660-1720: the Revival of Procedure,” Borthwick Paper, no. 109 (2006): 30; Faramerz Dabhoiwala, “Lust and Liberty,” *Past & Present*, no. 207 (2010): 93.

² Robert B. Shoemaker, “The Decline of Public Insult in London 1660-1800,” *Past & Present*, no. 169 (2000): 99-103, 118, 125, 129 (but he does not believe this resulted in a decline in the importance of the courts); Norbert Elias, *The Civilizing Process: The History of Manners and State Formation and Civilization*, trans. E. Jephcott (Oxford: Blackwell, 1994), 141-9.

Section one of this chapter qualifies the argument that the smaller numbers of defamation cases recorded in the church courts in the years 1680-1700 are evidence of ‘decline’ in defamation business. It outlines the evidence historians have found for a peak period of defamation business in the years 1560-1640 (and their evidence for its decline in the period after the Restoration), it places defamation business in proportion with the population as a whole (and within London and York specifically), and describes the level of overall business and the level of defamation cases in the two courts across the seventeenth century. However, it offers an alternative methodology with which to assess defamation business in the church courts; it examines defamation as a *proportion* of the overall level of business in the courts. By doing so it argues that while the smaller number of defamation cases in the 1680-1700 period are evidence of a decline in this business, when the sexual slander defamation business is assessed as a proportion of the overall business in the courts, suit for sexual slander remained a fairly consistent proportion of the church courts’ business from the first to the last decades of the seventeenth century.

Section two briefly moves away from the quantitative assessment of cases and provides a detailed description of the process the court would follow when considering a suit for defamation. This provides essential context for our understanding of the realities of suing for defamation and aids the examination (in the third section of this chapter) of the extent to which defamation cases were sued in the courts. Section three builds a picture of the average case in both the London and York courts by charting the how far sexual slander cases were sued in the courts, as relatively few historians of church courts have explored if the willingness of litigants to take their suit to judgement changed over time. It shows a consistent pattern for the pursuit of cases that did not differ from that in the period of peak business – most cases, in both London and York, would be pursued to the second stage of litigation and no further.³

³ For example: J. A. Sharpe, “Such disagreement betwix neighbours’: litigation and human relations in early modern England,” in *Disputes and settlements: law and human relations in the West*, ed. John Bossy (Cambridge: Cambridge University Press, 1983), 173; Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford: Oxford University Press, 1996), 39 and 136.

This chapter also provides evidence of *elements* of decline in defamation business at the latter end of the seventeenth century. It argues that while there was a decrease in the number of defamation cases in the London and York courts (in comparison to previous decades in the seventeenth century), the proportion of defamation cases brought to the courts in the latter part of the seventeenth century remained in line with the proportion brought in the decades prior to the Civil War. It also proves that the extent to which the average case would be sued remained the same from the first to the last decades of the seventeenth century, which is evidence against a decline in the *culture* of defamation. Rather, the steady proportion of sexual slander defamation cases brought to the courts in this period, coupled with the consistent number of cases ending at the second (depositions gathering) stage of the litigation process, indicates that for those who were willing to sue the importance in suing cases did not decline by the end of the century. By unpacking the arguments for the ‘decline’ of defamation business in the church courts (through an in-depth analysis of the levels of business they recorded) and by examining the patterns in the extent to which cases were sued in the courts, this chapter offers new insights for historians about the reality of defamation suits in the church courts of London and York in the 1680s and 1690s.

1. The levels of overall business and the levels of sexual slander defamation business in the courts

R. H. Helmholz attributes the rise in the number of defamation cases brought to the church courts after the Reformation to a change in church court jurisdiction whereby actions were permitted to be brought before *convicium* [his italics], so ‘abusive and hurtful language which did not, however, necessarily impute the commission of a crime’ and ‘imputations that were in truth no more than insults – words like “whore of thy tongue”’ appeared in the records.⁴ Previously – under the Constitution of Oxford (1222) – the imputation that a crime had been committed was an essential requirement to sue in the courts ‘and the requirement had had the effect of limiting the number of defamation causes the Church courts heard. This development removed that limit’.⁵ However, he argues that ‘the combination of the civilians’ reluctance to make lawsuits

⁴ R. H. Helmholz, *Roman Canon Law in Reformation England* (Cambridge: Cambridge University Press, 1990), 58.

⁵ *Ibid*, 58-9.

of every exchange of insults, a natural unwillingness on the part of the litigants to sue except where a real point of honour was at stake, and the availability of writs of prohibition where the slander was trivial seem together to have limited the extent of the expansion of ecclesiastical jurisdiction'.⁶ He found that the majority of defamation causes 'continued to be brought for imputations of ecclesiastical offences' and 'the expanded definitions of defamation, therefore, did not wholly replace the traditional English rule that slanderous words normally included the imputation of a crime'.⁷

In terms of the level of business they received, then, church courts across England were in their prime in the period 1560-1640; it was at this point that they recorded both the greatest level of overall business and the highest level of defamation business.⁸ Paul Hair estimates about half of the 5-9 million cases sued in the church courts between the years 1300-1800 were recorded in the 1450-1640 period.⁹ Martin Ingram found defamation cases had 'increased in numbers in most areas after about 1560 to jostle with tithe suits as numerically the most important class of litigation in the decades preceding the civil war'.¹⁰ He features the counties of Wiltshire and York as prime examples of this busyness and describes how in the last two decades of the sixteenth century 'sexual slanders represented about 85 per cent of cases' in their church courts.¹¹ James Sharpe's examination of the church courts in York in this period found that 'something like a third of new causes entering the Consistory court in the 1590s, ... about a third of those entering the Chancery court in the 1630s, ...

⁶ Ibid, 63.

⁷ Ibid, 63-4.

⁸ Ibid, 58; R. B. Outhwaite, *The Rise and Fall of the English Ecclesiastical Courts, 1500-1860* (Cambridge: Cambridge University Press, 2006), 20-21, 22; R. A. Marchant, *The Church under the Law: Justice, Administration and Discipline in the Diocese of York 1560-1640* (Cambridge: Cambridge University Press, 1969), 1, 20, 61, 62, 194; Gowing, *Domestic Dangers*, 37; Laura Gowing, "Language, power, and the law: women's slander litigation in early modern London," in *Women, Crime and the Courts in Early Modern England*, ed. Jenny Kermode and Garthine Walker (London: UCL Press, 1994), 27; Sharpe, "Such disagreement betwix neighbours," 170-2; Rosemary O'Day and Felicity Heal, "Introduction," in *Continuity and Change: Personnel and Administration of the Church of England, 1500-1642*, ed. Rosemary O'Day and Felicity Heal (Leicester: Leicester University Press, 1976), 21; Dabhoiwala, "Sex, social relations and the law," 91.

⁹ Paul Hair, ed. *Before the Bawdy Court: Selections from church court and other records relating to the correction of moral offences in England, Scotland and New England, 1300-1800* (London: Paul Elek Books Ltd, 1972), 24-5.

¹⁰ Martin Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (Cambridge: Cambridge University Press, 1990), 299.

¹¹ Ibid, 300. For York, see also: Outhwaite, *The Rise and Fall*, 20-1; and Marchant, *The Church under the Law*, 62.

were for defamation'.¹² R. B. Outhwaite argues that the expansion in the number of cases entering the Consistory court of York from the mid-sixteenth to the second decade of the seventeenth century represented a high point in activity, after which numbers 'appear to have stagnated at approximately 300 cases a year'.¹³ Similarly, Laura Gowing found the business of the London Consistory Court was transformed over the course of her study. In 1572 it was 'dealing with roughly equal numbers of its traditional kinds of business, tithes cases, testamentary disputes, church discipline, marriage contracts and separations, sexual defamation' but by the 1630s 'its deposition books were filled with suits of sexual defamation'.¹⁴ She estimates that 'from a third of litigation in the 1590s, defamation suits rose to represent three-quarters of it in the 1630s'.¹⁵ Robert Shoemaker corroborates Gowing's findings and describes how London experienced a 'peak of defamation cases in the 1620s and 1630s'.¹⁶

Conversely, the years after the Restoration have been regarded as the period that saw a pronounced decline in the number of defamation cases brought to the church courts and a decline in the level of business of the courts overall.¹⁷ Outhwaite describes how 'the hundred years from the 1540s to the 1640s saw, therefore, both a remarkable expansion in the activities of the ecclesiastical courts and their sudden death'.¹⁸ Faramerz Dabhoiwala claims 'the Civil War fatally undermined ecclesiastical jurisdiction and in contrast to its prominence at the beginning of the century, by the end of the seventeenth century less offenders were punished in its courts'.¹⁹ In a later work he attributes this change to the 'politicians, theologians and moralists who

¹² Sharpe, "Such disagreement betwix neighbours," 172. See also: Marchant, *The Church under the Law*, Table 8, p. 62 and Table 9, p. 68 and Till, "The administrative system of the ecclesiastical courts," 250.

¹³ Outhwaite, *The Rise and Fall*, 18. See also: Marchant, *The Church under the Law*, 62.

¹⁴ Gowing, *Domestic Dangers*, 37.

¹⁵ *Ibid.*, 32. See Table 1 and Fig. 3 on p. 33 of *Domestic Dangers* for more details.

¹⁶ Shoemaker, "The Decline of Public Insult," 100. See Table 1 on p. 101 of this article for his quantitative data.

¹⁷ Meldrum, "A Women's Court," 2; Till, "The administrative system of the ecclesiastical courts," 1-190; Shoemaker, "The Decline of Public Insult," 100; Gowing, *Domestic Dangers*, 267; A. J. Fletcher, "Honour, Reputation and Local Officeholding in Elizabethan and Stuart England," in *Order and Disorder in Early Modern England* ed. Anthony Fletcher and John Stevenson (Cambridge: Cambridge University Press, 1985), 216; Sharpe, "Such disagreement betwix neighbours," 172; Ingram, *Church Courts, Sex and Marriage*, 347; J. A. Sharpe, "Defamation and sexual slander in early modern England: the church courts at York," *Borthwick Paper*, no. 58 (1980): 9, 27; Amussen, *An Ordered Society*, 102, 177; Dabhoiwala, "Sex, social relations and the law," 91; Dabhoiwala, "Lust and Liberty," 93.

¹⁸ Outhwaite, *The Rise and Fall*, 22.

¹⁹ Dabhoiwala, "Sex, social relations and the law," 91.

wanted to crack down harder on sexual offences – for example, make them punishable by death mutilation [etc.] ... rather than whipping, fining, public shaming and imprisonment'.²⁰ It was this change that 'limited the moral jurisdiction of the re-established church courts after 1660, and severely curtailed it after 1688'.²¹ Tim Meldrum argues that the decline in defamation business in the London Consistory court in the early eighteenth century was a result of the attractive alternative criminal jurisdiction provided 'which, in comparison, was flexible and cheap'.²² A summary of these historiographical conclusions has been provided by Barry Till who states that 'Consistory courts all suffered the same fate ... as far as their disciplinary and regulatory work was concerned – a gradual decline which began to set in in the 1670s'.²³

An alternative argument is proposed by Shoemaker. In his study of the London Consistory court in the years 1660-1800 he argues that the decline of defamation business was a result of 'the substantial changes that took place in the *character* of those prosecutions. These changes suggest that the very nature, function and significance of the insult was changing over this period [his italics]'.²⁴ Most importantly, he argues that insult became less public and 'the decline of defamation was part of a broader cultural change in the role played by the community, and the spoken word, in establishing individual reputations. Reputation was still important, but it was less frequently attacked and defended through publicly performed oral insults and litigation over such insults'.²⁵ Secondly he argues that the change in the character of defamation prosecutions was 'accompanied by a shift in the gender balance of the insulters and the insulted, as the public insult was to some extent taken over by men in the eighteenth century. Concurrently, however, women became the only plaintiffs, the targets of insults, to prosecute in the London consistory court'.²⁶ The point he makes is that 'a decline in suits for female defamation does not mean that

²⁰ Dabhoiwala, "Lust and Liberty," 93.

²¹ Ibid, 94.

²² Meldrum, "A Women's Court," 1-2, 4-5.

²³ Till, "The Church Courts, 1660-1720," 30. See also Till, "The administrative system of the ecclesiastical courts," 73.

²⁴ Shoemaker, "The Decline of Public Insult," 108.

²⁵ Ibid, 108 and 125.

²⁶ Ibid, 114.

it became more acceptable to call into question a woman's sexual reputation; rather, it was no longer seen as respectable to discuss such matters in public'.²⁷ He concludes that 'the decline of the public insult was thus part of a multifaceted transformation of the very nature of public and private life, a transformation which Norbert Elias labelled as the "civilizing process"'.²⁸ He denies that the decline was the result of an ineffective court and argues that these claims were the result of 'hostility to the church's disciplinary powers independent of the crown' and that the courts 'were still available for those who wanted to use them' across the entirety of his 1660-1800 timespan.²⁹

Before individual assessments of 'decline' in the London and York Consistory courts can be made, however, the level of business in these courts need to be placed in context with the population of both London and York in the latter part of the seventeenth century. The population of England rose in the late sixteenth and early seventeenth centuries – from three million inhabitants in 1550 to just over five million in 1650 – and, with a slight fall after a population peak in the mid-seventeenth century, remained fairly static until the 1730s.³⁰ There is no doubt, however, in the population explosion London experienced. In 1550 London was the largest city in England and boasted a population of 120,000 people.³¹ By 1600 this had risen to 200,000, by 1650 to 375,000 and by 1700 was home to 490,000 people.³² The capital was also growing at a rate faster than that of the general population and 'made up 5% of the national population in 1600 and 11.5% in 1700'.³³ The experiences of other urban areas reflect the same,

²⁷ Ibid, 116.

²⁸ Ibid, 130; Elias, *The Civilizing Process*, 141-9.

²⁹ Shoemaker, "The Decline of Public Insult," 103.

³⁰ J. A. Sharpe, *Early Modern England: a social history, 1550-1760*. Second Edition (London: Arnold, 1997), 37-8 and 41. See also: Figure 1.1 on p. 38 in Sharpe's *Early Modern England*; R. A. Houston, "The population history of Britain and Ireland, 1500-1750," in *British Population History: From the Black Death to the present day*, ed. Michael Anderson (Cambridge: Cambridge University Press, 1996), 118; E. A. Wrigley and R. S. Schofield, *The Population History of England 1541-1871: A Reconstruction* (London: Edward Arnold, 1981), see especially Table A3.3 p. 531-4 for more detailed information; and Amussen, *An Ordered Society*, 7.

³¹ Sharpe, *Early Modern England*, 84. See also: E. A. Wrigley "Urban growth and agriculture change: England and the continent in the early modern period," *Journal of Interdisciplinary History* 15, no. 4 (1985), 686; Houston, "The population history of Britain and Ireland," 122; and Wrigley and Schofield, *The Population History of England*, 166; Chris Galley, *The Demography of Early Modern Towns: York in the Sixteenth and Seventeenth Centuries* (Liverpool: Liverpool University Press, 1998), 5, esp. Table 1.1.

³² Sharpe, *Early Modern England*, 84.

³³ Houston, "The population history of Britain and Ireland," 122 and Wrigley and Schofield, *The Population History of England*, 166.

if markedly smaller, population expansion but ‘during the seventeenth and eighteenth centuries many towns expanded rapidly which caused England to evolve into a predominantly urban society’.³⁴ Sharpe notes ‘the proportion of the population living in towns had at least doubled between the late sixteenth century and 1750’.³⁵ As a result, towns of 10,000 people or more grew faster than the population as a whole.³⁶ Gordon Forster claims it is impossible to make an accurate assessment of the population of seventeenth-century York because the information in parish registers and hearth tax records are incomplete.³⁷ His estimations vary: the parish registers appear to indicate a population rise from 10,000 in 1600 to 12,400 by 1700, while the hearth tax records suggest between 9,558 and 10,900 people residing in York in 1672.³⁸ Nevertheless, he estimates ‘the population of the city had settled at a level between 10,000 and 12,000 by the latter part of the century’.³⁹ When compared with its neighbours this seems like a fairly reliable estimation: the population of Newcastle rose from approximately 16,000 to 29,000 between 1660 and the mid-eighteenth century and the population of Leeds quadrupled from 7,000-8,000 inhabitants in 1700 to 28,000 in 1750.⁴⁰

Hair estimates ‘probably only about 10 per cent of adults appeared before church courts in a life-time, and less than 5 per cent appeared to answer charges of the common moral offences’ and when discussing the cases that involved moral offences, ‘even if the total suggested were doubled, the impression that only a smallish minority of the British community were involved would remain’.⁴¹ The significant proportion of the population living in London (and the rapid rate at which this expanded in the seventeenth century) needs to be placed in context with the proportion of its population involved in defamation. Shoemaker identified 79 defamation cases in 1680 (which

³⁴ Galley, *The Demography of Early Modern Towns*, 4.

³⁵ Sharpe, *Early Modern England*, 78.

³⁶ Houston, “The population history of Britain and Ireland,” 121.

³⁷ For more detailed information of the gaps in York’s parish registers see Galley, *The Demography of Early Modern Towns*, 55-60.

³⁸ G. C. F. Forster, “York in the seventeenth century,” in *The Victoria History of the Counties of England: A History of the County of York: The City of York*, ed. R. B. Pugh (London: Oxford University Press, 1961), 162-3. Please see these pages for more details.

³⁹ *Ibid.*, 163. See also: Galley, *The Demography of Early Modern Towns*, 5 (esp. Table 1.1 on p. 5), 144.

⁴⁰ Sharpe, *Early Modern England*, 80. See also: Houston, “The population history of Britain and Ireland,” 123.

⁴¹ Hair, *Before the Bawdy Court*, 25.

represented 15.8 cases per 100,000 population), 57 cases in 1690 (no information per population was recorded) and 59 cases in 1695 (10.3 per 100,000 population) in the London Consistory court.⁴² What we can ascertain from this is that along with the massive increase in population there was a decline in the proportion of cases that would be brought per 100,000 population: from 15.8 in 1680 to 10.3 in 1695.

What is also obvious from this information is that the numbers of cases Shoemaker records differ from those in this thesis in the same period of study. Shoemaker utilised information recorded in the Act Books, Acts of Court *and* Allegations, Libels and Sentence Books for his study. Whereas this thesis chose to use the Allegations, Libels and Sentence Books and the Depositions Books for two reasons: to follow sexual slander cases throughout the litigation process and to provide a source base that replicated as closely as possible the information recorded in the York Consistory court's Cause Papers. When collecting statistical data, therefore, historians need to be clearer with their definitions of "the number of cases". This data can be thought about in different ways; for example, they could refer to the number of cases that were started in one year *or* how many progressed further than the first stage of litigation.

This chapter (and thesis) refers to the number of cases in terms of those cases that were begun and/or deposed in the selected years of study. In total this thesis is based upon a study of 311 cases of sexual slander recorded between 1680 and 1700: 181 recorded in the London Consistory court and 130 in the Consistory court for York. This chapter mostly focuses on the 256 that offer libels, depositions and sentence information (126 from London and 130 from York), and uses the patchy information available from the depositions of the 55 cases recorded in London in 1680 as a rough indicator of the level of sexual slander business with which to determine patterns of business.

⁴² Shoemaker, "The Decline of Public Insult," 101.

London

The Allegations, Libels and Sentence Book that contains cases for 1680 is excluded from this thesis due to its damage; as a result, only the books that cover the years 1685, 1690 and 1695 are used here.⁴³ In these books a total of 92 libels concerning sexual slander defamation were recorded: 37 in 1685, 32 in 1690 and 23 in 1695. There were 135 sexual slander defamation cases recorded in the Depositions Books: 55 in 1680, 47 in 1685, 15 in 1690 and 18 in 1695 (Table 1).⁴⁴ Once the cases were organised into their appropriate classification (Tables 4 and 4a) a total sample of 181 individual cases was provided.

Due to the time constraints of this project it was not possible to analyse the frequency in which each type of case (matrimonial, testamentary, tithe and so on) was brought before the court between 1680 and 1700. Instead, only an estimation of the overall level of business could be gathered. This was collected by counting the number of cases in the indexes of the Allegations, Libel and Sentence Books for three of the four focus years – excluding the unavailable records for the period including 1680. The indexes of these books were chosen because they recorded every case that was brought to the courts, rather than just those that made it to the second stage of the litigation process, and as such they reflect a more accurate record of the level of business than that which the Depositions Books can provide. By examining the indexes it was found: 144 cases were brought to the court between May 1685 and February 1687/8, of which 73 were defamation cases; 154 cases were brought between February 1690/1 and October 1693, of which 97 were defamation cases; and 142 cases were brought between January 1693/4 and December 1697, of which 97 were defamation cases. This provides an average of roughly 27 defamation cases per year between 1685 and

⁴³ The Allegations, Libels and Sentence Books used in this thesis are: DL/C/144 (microfilm X019/196) for the year 1685, DL/C/146 (microfilm X079/079) for the year 1690 and DL/C/147 (microfilm X019/198) for the year 1695.

⁴⁴ The Depositions Books used in this thesis are: DL/C/238 (microfilm X079/058), DL/C/239 (microfilm X079/059) and DL/C/240 (microfilm X079/060) for the year 1680; DL/C/240 (microfilm X079/060) and DL/C/241 (microfilm X079/061) for the year 1685; DL/C/243 (microfilm X079/063) for the year 1690; and DL/C/244 (microfilm X079/064) and DL/C/245 (microfilm X079/065) for the year 1695.

1687, an average of 36 cases between 1691 and 1693 and an average of 32 cases between 1693 and 1697.⁴⁵

In total, 440 cases were recorded in the Allegations, Libel and Sentence Books between May 1685 and October 1693; of these, 267 were defamation suits and 92 of these 267 were brought in 1685, 1690 or 1695. Defamation suits, therefore, represented 61% of the overall business of the court in this period. Gowing found defamation business represented 51% of the overall business of the London Consistory court in 1624 and rose to represent 73% of the overall business in 1633.⁴⁶ Meldrum has also found “instance” defamation disputes (those that are the focus of this thesis) ‘constituted some 60% of the London Consistory Court’s business in the early eighteenth century’.⁴⁷ Therefore what historians have described as a decline in the business of the church courts in this period may apply here in terms of a fall in the *total* number of cases (when compared to the early decades of the century), but in actuality the *proportion* of defamation business as part of the overall level of business in the court did not fall, and instead remained steadily important in this period.

York

To make the records of the Consistory court for York comparable with their counterpart in London the information in Table 15 was organised and analysed in half-decade segments to replicate the staggered nature of the London data. As can be observed, the 35 sexual slander defamation cases brought in the 1680-1684 period represent the most cases brought in any of the half-decade periods. Nevertheless there

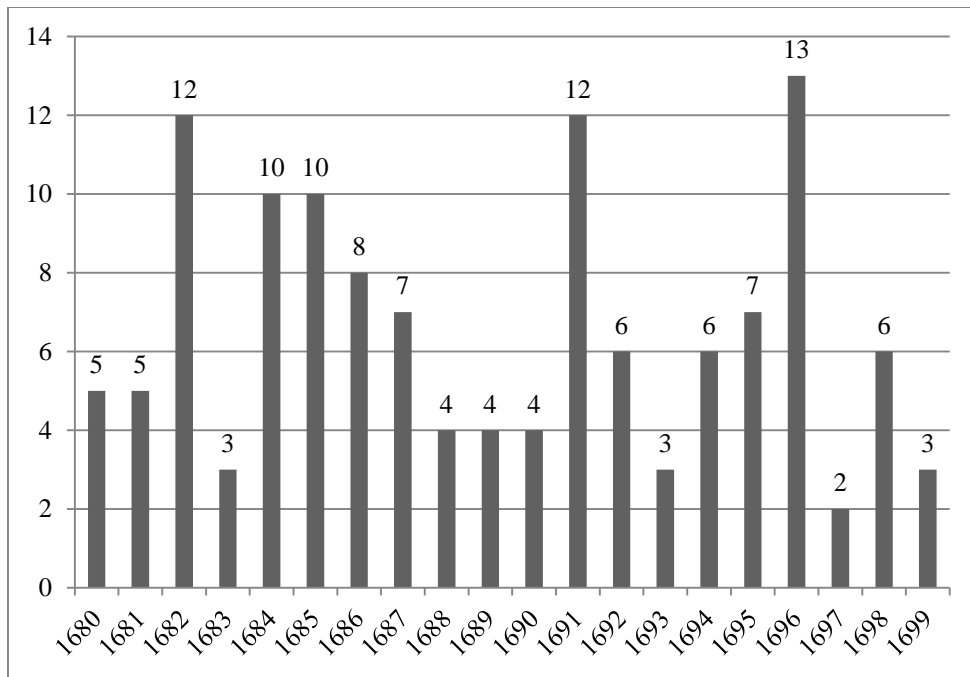
⁴⁵ These totals were calculated by dividing the number of defamation cases by the number of years covered in the period. For example, the 97 defamation cases in the period January 1693/4 and December 1697 was divided by 3 (the number of years covered by the period) which equated 32.3. The statistics in this thesis are rounded to one decimal place so the approximate number of sexual slander cases each year between January 1693/4 and December 1697 is 32.

⁴⁶ Gowing, *Domestic Dangers*, Table 1, p. 33.

⁴⁷ Tim Meldrum, *Domestic Service and Gender 1660-1750: Life and Work in the London Household* (Harlow: Pearson Education Limited, 2000), 51.

was a fairly consistent level of defamation business recorded between 1680 and 1700 (Fig. 2) and at least 31 cases were recorded in every half-decade period (Table 15).

Fig. 2 – The number of defamation cases in the court each year, 1680 – 1700 (York).



To assess whether there was any decline in the business of this court in the latter part of the seventeenth century, we must first establish the number of cases it saw in the period of nationwide peak business. Between 1560 and 1640 the court recorded a total of 3,288 cases, of which there were 670 suits for defamation. On average 41 cases would be brought to the court each year and eight would concern defamation. These numbers dropped in the period 1680-1700 to a total of 547 cases, of which 140 were suits for sexual slander defamation (Table 13). Roughly 164 cases would be entered in this court every two decades between 1560 and 1640, a total not much higher than the 140 (total) defamation cases, or the 130 sexual slander defamation cases brought in the two decades between 1680 and 1700. Also, while the average number of (total) cases sued each year declined from 41 to 27, the average number of defamation cases

brought each year remained consistent: from, on average, eight cases per year between 1560 and 1640 to an average of seven cases each year between 1680 and 1700.⁴⁸

When sexual slander defamation is assessed as a proportion of the overall level of business in the court, the latter part of the seventeenth century also reflects consistency – rather than a decline – in the level of defamation business. The 670 suits for defamation recorded between 1560 and 1640 reflect roughly 20% of the courts’ overall business in these years.⁴⁹ Till also found that between 1660 and 1720 the proportion of defamation business in the Consistory court for York was approximately 20%.⁵⁰ Of the 547 cases recorded between 1680 and 1700, the 140 (total) defamation cases reflect 26% of the court’s overall level of business and the 130 sexual slander defamation cases represent 24% of the court’s overall business.

The fairly consistent number and proportion of sexual slander cases recorded in the Consistory court in the years 1680-1700 is interesting, especially when compared with Sharpe’s examination of the defamation business of the church courts of York. As has been previously outlined he is one among the many historians who found a ‘peak’ of defamation business in the church courts in the decades prior to the Civil War that was not quite matched again after 1660.⁵¹ When investigating the defamation business of the church courts of York he found that ‘the post-Restoration situation is somewhat obscured by an increase in the number of defamation causes being heard by the Chancery court’.⁵² He details how:

‘this institution had begun to deal with defamation at the beginning of the seventeenth century, probably because the Consistory was unable to deal with the volume of such litigation coming before it, and by 1640 was hearing nearly forty causes annually. This trend continued after the

⁴⁸ The statistics for the 1560-1640 period used in this paragraph were calculated by this author from an evaluation of the data held within the Cause Paper database of the Borthwick Institute for Archives.

⁴⁹ *Ibid.*

⁵⁰ Till, “The administrative system of the ecclesiastical courts,” 62-8, esp. tables on p. 67.

⁵¹ Sharpe, “Such disagreement betwix neighbours,” 172. See also: Sharpe, “Defamation and sexual slander in early modern England,” 8; Till, “The administrative system of the ecclesiastical courts,” 62.

⁵² Sharpe, “Defamation and sexual slander in early modern England,” 8.

Restoration, and by the 1720s most defamation business was going to the Chancery where it formed the overwhelming bulk of that court's work'.⁵³

The main business of the Chancery court was not meant to involve defamation suits (its business was concerned with ecclesiastical persons and corrections causes, for example), nevertheless he found it 'frequently supplemented its proper business with litigation over defamation, especially in the two decades before the Civil War and the forty years around 1700'.⁵⁴ He does not offer concrete reasons for this, however, apart from the comment that the causes the Chancery dealt with were broadly similar to those of the Consistory.⁵⁵ What is striking in this thesis' study, then, is that the number of cases and the proportion of cases entered in the Consistory court in the 1680-1700 period remained so consistent at a time when the Chancery courts were busy monopolising the defamation business. This consistency may, however, actually just reflect a trend of the Chancery court appropriating the same number of defamation cases in this period of study as it did in the decades before the Civil War.

2. The procedure of the courts

To understand the cases we first need to explore the procedures which were used when engaging in suit for defamation. The church courts traditionally heard causes involving "spiritual" crimes like simony, sorcery or adultery, but not those which alluded to temporal crimes, which were under the jurisdiction of the criminal courts.⁵⁶ From the basis of the Constitution of Oxford (1222), church courts exercised exclusive jurisdiction over defamation.⁵⁷ They defined defamation within a specific set of parameters and excluded 'imputations of professional unfitness, as well as mere abusive language' to focus on those cases that publicly and maliciously spoke of the

⁵³ Ibid, 8-9. See also: Marchant, *Church under the Law*, Table 9, p. 68.

⁵⁴ Sharpe, "Defamation and sexual slander in early modern England," 6.

⁵⁵ Ibid, 6.

⁵⁶ Canon 109 of the ecclesiastical canons of 1604 in G. Bray, *The Anglican Canons 1529-1947* (Woodbridge: Boydell & Brewer, 1998), 409; Outhwaite, *The Rise and Fall*, 6; Ralph Houlbrooke, *Church Courts and the People During the English Reformation 1520-1570* (Oxford: Oxford University Press, 1979), 39; Helmholz, *Roman Canon Law*, 56; Marchant, *The Church under the Law*, 3.

⁵⁷ R. H. Helmholz, *Canon Law and the law of England* (London: The Hambledon Press, 1987), 9; Helmholz, *Roman Canon Law*, 59; R. H. Helmholz, *The Oxford History of the Laws of England. Volume I: The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford: Oxford University Press, 2004), 572.

(alleged) morally reprehensible behaviour of the plaintiffs.⁵⁸ Defamation, therefore, meant the imputation of a crime.⁵⁹

The defamation cases examined in this thesis are “instance” cases, or cases that were brought when the plaintiff felt they had been slandered by the defendant in a public and malicious way. When this occurred, official proceedings began when the plaintiff or their proctor (by the authority of the judge) cited the defendant to appear in court ‘in order to enter into Suit’ at an appointed day, time and place.⁶⁰ The words ‘*Convittii* or Reproach [his italics]’ and ‘*Defamationis*, or Defamation [his italics]’ were written in every Citation because:

‘if the Plaintiff doth not prove that the Defendant uttered words, which of their own nature were Defamatory, yet if he proves that the words were reproachful, he shall obtain the Victory ... The reason is, because these words were uttered out of a malicious and angry Mind, and besides, and against all fraternal Charity’.⁶¹

More important the proving the words were said, then, was the requirement to prove the defendant disturbed communal harmony and did so maliciously with an intent to cause trouble for the plaintiff.

The citation ‘may be said to be publick, (that is, that which is Executed by a publick Edict in the Church,) or else Private, (which is either verbally Executed upon the Defendants Person, or by notice thereof left at his house)’.⁶² If the party cited cannot be found then the citation would be executed by public edict, whereby a copy of the citation would be ‘(...affixt to the Doors of the House where the Defendant dwells, or the Doors of the Church, within whose Parish he inhabits) or ... by Publication in the

⁵⁸ Helmholz, *Canon Law and the law of England*, 9. See also R. H. Helmholz, “Canonical Defamation in Medieval England,” *American Journal of Legal History*, 15 (1971): 257 for the Latin (and translated English) version of the Constitution of Oxford (1222); Helmholz, *The Oxford History*, 575; Fay Bound, “‘An Angry and Malicious Mind’? Narratives of Slander at the Church Courts of York, c.1660 – c.1760,” *History Workshop Journal* no. 56 (2003): 64; Henry Conset, *The Practice of the Spiritual or Ecclesiastical Courts*, Second edition (London: 1700), 335.

⁵⁹ Helmholz, *The Oxford History*, 572.

⁶⁰ Conset, *The Practice*, 26, 27; Outhwaite, *The Rise and Fall*, 10.

⁶¹ Conset, *The Practice*, 335.

⁶² *Ibid*, 27.

Church, in time of Divine Service’ or through the tolling of a bell, the sounding of a trumpet or the erection of a banner.⁶³ If the cited person *still* did not appear to answer the charges against them they were made excommunicate by the court.

Then the proctor of the plaintiff would present a libel to the court which stated the alleged slander. The structure of the libel was very important for the argument of the injured party. In his *The Practice of the Spiritual or Ecclesiastical Courts* (1700) Henry Conset advised that:

‘... although in a Cause of Defamation, it is said in the Libel, that the words Defamatory were pronounced or uttered maliciously, and in a heat, yet if the words Libelled are Defamatory of their own nature, they are presumed to have been spoke out of a malicious Mind, although the Malice be not proved. But in the aforesaid Causes, when it is sued for reproachful words, the Plaintiff ought to prove by grand Presumptions, as Brawlings, Chidings, (*Scil.* Such as proceed from Malice and Enmity,) that the aforesaid malicious Words were uttered out of a malicious Mind: For otherwise, as was said before, if the Words uttered are not Defamatory of their own nature, they are not presumed to have been spoke out of a malicious Mind) [his italics]’.⁶⁴

Again, it was vital that throughout litigation the plaintiff proved the defendant had attacked them maliciously and with the intent to cause harm. A copy of the libel would be provided to the proctor of the defendant, at which point the defendant could decide if they would submit to or contend the allegation made against them. If they did not submit, the defendant then had the opportunity to reply to the libel and contest parts (or all) of it and offer a counter-case or “allegation” which the plaintiff then had to respond to. In some instances the defendant went further than simply rejecting that they had uttered any defamatory words, and claimed that the plaintiff had also defamed them and would bring their own suit against the plaintiff. This did not supersede the current suit and both parties had to reconvene at a later date.⁶⁵ If both parties were

⁶³ Ibid, 35.

⁶⁴ Ibid, 335.

⁶⁵ Ibid, 339.

proved to have mutually defamed each other ‘a mutual compensation is to be made, both as to the Penance and the Charges’.⁶⁶

The second stage, or “probation” period, began after both litigants had read and replied to the libel and allegation. It was a specific time period allocated for the production and examination of witnesses.⁶⁷ Proctors could have up to three terms to provide these witnesses (sometimes longer, depending on the circumstances and courts), which allowed for reluctant witnesses to be tracked down and provided time for the proctor to produce documents in support of his case.⁶⁸ The witnesses were then placed under oath and examined in private, although their evidence would later be written up and made available for scrutiny by both parties.⁶⁹ The witness would then be brought before the judge and the Register would read their deposition aloud to the court, at which point the judge would interrogate the witness themselves and ask if what the Register read was their true deposition, whether this was the whole truth or if they had anything else to swear, and if the witness was happy with what was read.⁷⁰ If the witness was content with the deposition they provided ‘the Examination is then said to be perfect and compleat’.⁷¹ Before the deposition was accepted by the court the witnesses would also be warned of the dangers ‘both to their Body and Soul’ of perjury by both the Register and the judge, in an effort to ensure complete and honest testimony.⁷² In theory the concurrent testimony of two witnesses was enough to settle most types of cause in the ecclesiastical courts.⁷³ In practice, however, it was usually necessary to produce more than two witnesses; either because two could not testify on the whole range of matters covered by the libel, or because their testimony was challenged.⁷⁴ Either side could then produce “interrogatories” that the witnesses had to answer.⁷⁵ The interrogatories were designed to trip the witnesses up, to show if they had any vested interest in the outcome of the case and to bring doubt upon the other

⁶⁶ Ibid, 339.

⁶⁷ Carson I. A. Ritchie, *The Ecclesiastical Courts of York* (Arbroath: The Herald Press, 1956), 131-2.

⁶⁸ Houlbrooke, *Church Courts and the People*, 40; Marchant, *The Church under the Law*, 6.

⁶⁹ Conset, *The Practice*, 106-7, 112-46; Outhwaite, *The Rise and Fall*, 10.

⁷⁰ Marchant, *The Church under the Law*, 6.

⁷¹ Conset, *The Practice*, 116-7.

⁷² Ibid, *The Practice*, 117.

⁷³ Houlbrooke, *Church Courts and the People*, 40-41. See also Till, “The Church Courts, 1660-1720,” 20.

⁷⁴ Houlbrooke, *Church Courts and the People*, 40-41.

⁷⁵ Conset, *The Practice*, 114-6.

proctor's case while strengthening their own.⁷⁶ At any time during this stage a proctor could also attempt to bolster their case by bringing attention to a relevant fact or piece of evidence that was not present in the libel (through the production of "additional positions"), or through the production of "exceptions" (which could be supported by testimony) against the characters or depositions of the other party's witnesses.⁷⁷

The final stage of the proceedings would commence after the evidence of both sides had been produced and published i.e. after both proctors and their clients had copies of all the documentation that the case had generated up to that point. The judge would eventually assign terms to "propound all acts" and to "conclude", at which point no further evidence could be produced. It was now up to the judge to consider the elements presented throughout the case and conclude with their judgement. While they were weighing the case the "informations" period allowed the proctors from both sides to argue their case (through the points of law) before the judge in a last effort to secure victory.⁷⁸ Finally, the judge would make his decision and would present either a definitive sentence or an informal decree. At this point the losing party had the option to appeal to a higher court.⁷⁹ Otherwise a citation would be made to the losing party to appear again and receive their punishment which could range from apologising to the defamed party, to engaging in a public penance or to excommunication.⁸⁰

The level of punishment depended on the seriousness of the words and the circumstances in which they were said. If they were uttered publicly then penance had to be completed publicly and would normally be completed in the parish church of the person defamed.⁸¹ If the defamatory words were uttered privately 'then the Penance is to be done in the House of the Party defamed, or in the House of some honest Neighbour'.⁸² Both forms of penance required that the party at fault said publicly 'that in saying such and such words, (*Scil.* those words which the Judge has pronounced in

⁷⁶ Ritchie, *The Ecclesiastical Courts of York*, 129 and 140.

⁷⁷ Houlbrooke, *Church Courts and the People*, 41, 66-8; Ritchie, *The Ecclesiastical Courts of York*, 129, 140, 143-4.

⁷⁸ Marchant, *The Church under the Law*, 10.

⁷⁹ Conset, *The Practice*, 160-4, 166-76, 184-250.

⁸⁰ *Ibid*, 337-8, 343, 344; Outhwaite, *The Rise and Fall*, 10; Helmholz, *The Oxford History*, 586-8.

⁸¹ Conset, *The Practice*, 338, 343.

⁸² *Ibid*, 338, 344.

his Sentence, were spoke) he hath defamed the Plaintiff; and therefore he must first beg pardon on Almighty God, and then of the Party defamed, for uttering these words [his italics]'.⁸³ The judge would also have warned the person to be punished that they had to perform their penance 'on such a such day ... or else to appear upon the same day, to see himself Excommunicate'.⁸⁴ But how common was excommunication? In the peak period of business in the church courts (1560-1640) R. A. Marchant found that from a population of one million people (in York, Norwich and Chester) there were 50,000 excommunicates.⁸⁵ Proportionately this represents 5% of this population and 15% of households.⁸⁶ However, Helmholz argues that excommunication was rare and 'sentences formally imposing "silence" on defamers and requiring them to perform a public penance, or at least make a public acknowledgement of fault, became the rule'.⁸⁷ He explains how excommunication was not an appropriate punishment in cases of defamation because 'to be absolved from excommunication one was required to restore the person injured to the position that person had held before the wrongful act if restoration was possible'.⁸⁸ In defamation it was a reputation that had been taken and this was not so simple to restore. In suits for defamation then, 'more than anything else, what needed to be restored was peace between the parties'.⁸⁹

3. The "average" case

Historians have frequently commented that the church courts were actually used by litigants as a method to encourage *out of court* settlement, and that the court officials themselves were complicit – even actively encouraging – of this.⁹⁰ In the peak period of church court business, Gowing found 'most cases were dropped or settled before witnesses were called' and that 'most of the cases that came to the court disappear from the records before sentence was passed'.⁹¹ She indicates that the church courts

⁸³ Ibid, 338, 344. See also: Helmholz, *The Oxford History*, 588.

⁸⁴ Conset, *The Practice*, 344.

⁸⁵ Marchant, *The Church under the Law*, 227.

⁸⁶ Ibid, 227.

⁸⁷ Helmholz, *The Oxford History*, 586-7. See also: Outhwaite, *The Rise and Fall*, 12 and Marchant, *Church Under the Law*, 221.

⁸⁸ Helmholz, *The Oxford History*, 587.

⁸⁹ Ibid, 587.

⁹⁰ Sharpe, "Such disagreement betwix neighbours," 173-8; Gowing, *Domestic Dangers*, 39, 136; Lawrence Stone, *Road to Divorce: England 1530 – 1987* (Oxford: Oxford University Press, 1990), 34; Hair, *Before the Bawdy Court*, 19 and 253.

⁹¹ Gowing, *Domestic Dangers*, 39.

were ‘intentionally flexible’ and they took care to ‘encourage settlement rather than confrontation, peace and reconciliation rather than the imposition of penalties’.⁹² Sharpe argues that only a small number of cases would be fought through to sentencing because once the anger subsided and the litigants remembered the cost and time it would involve to pursue the case, they became significantly less likely to pursue their claim.⁹³ He explains how estimating the average cost of a suit is difficult but ‘fighting a suit through to its conclusion at the York courts in the later seventeenth century would probably have entailed spending £8, a fair sum at a time when a labourer would do well to earn more than a shilling a day’.⁹⁴ This expense is along similar lines to the fee charged in the courts of the capital, which Meldrum estimates as costing between £7 and £10.⁹⁵ These court fees are estimates (and in some cases could be even higher) and ‘as they had to be paid by all charged, including those found innocent (unless excused as paupers), were much resented’.⁹⁶

It has been commonly stated that litigants were likely to enter their defamation disputes in the protracted court process (described above) but, rather than pursue them to a formal conclusion in the courts, they were more often settled outside of the jurisdiction of the church courts. Yet relatively few historians have tested these suggestions in the latter part of the seventeenth century. As a result, we know a lot less about any patterns in the progress of litigation cases after 1660. There is also a lack of understanding about whether the willingness of litigants to pursue sexual slander defamation cases through the courts changed over time. This section tackles these questions.

⁹² Ibid, 39.

⁹³ Sharpe, “Such disagreement betwyx neighbours,” 173.

⁹⁴ Ibid, 173. See also: Till, “The administrative system of the ecclesiastical courts,” 157.

⁹⁵ Meldrum, *Domestic Service and Gender*, 99. Also Gowing, *Domestic Dangers*, 136.

⁹⁶ Hair, *Before the Bawdy Court*, 20.

London

While compiling the data for Table 4 it was noted that 45 cases consisted of a libel only and 34 cases consisted of depositions only (excluding the 55 depositions recorded in 1680 that had no other documents that could be accessed) – and in these cases no other corresponding documents could be found in the same year in which they were recorded.⁹⁷ This, coupled with the 30 cases that contained a libel and depositions but had no evidence (at least, not in the same year in which they were recorded) of reaching the final stage of the litigation process raised important questions: at what stage would cases be dropped? How long would it take a case to pass through the three stages of litigation? And what were the levels of record loss in the courts? It was essential, therefore, to follow up on these cases. The indexes of the Allegations, Libels and Sentence Books, the Depositions Books and one Sentence Book for the entire 1680-1700 period were consulted in an attempt to locate the documents from each of these 109 cases. The results of this search are shown in Table 4a – this is the table that accurately represents how far the sexual slander defamation cases progressed in the court in 1685, 1690 and 1695, and as such is the basis on which the results of this thesis have been gathered.

Of the 53 sexual slander defamation cases brought in 1685, six cases contained a libel but did not have their depositions recorded in the same year (Table 4). By referring to the indexes of the Depositions Books it was found that five of these cases had their depositions recorded between February and May 1686. Therefore only one case remained at the first stage of the litigation process (Table 4a). This suggests that in 1685 almost all cases were pursued to, at least, the second stage of litigation.⁹⁸ 16 of the 53 cases had their depositions but not their libel recorded (Table 4) and by referring to the indexes of the Allegations, Libels and Sentence Books it was found that 15 of these cases *did not* have a libel recorded in preceding years (Table 4a). Because these libels have not been recorded at any point in the previous years it suggests either the

⁹⁷ This total was calculated by subtracting the cases from 1680 from the total of 89 cases with depositions because it is not possible to track these 55 cases' progress through the court.

⁹⁸ The one case that did not record any depositions in the 1680-1700 period was Margaret Drum c. Richard Gripps (1685), DL/C/144.

book (or books) in which they were recorded have not survived or that the libels were not recorded at all. However, every case entered in the court had to have a libel recorded and had to offer the defendant time to respond, long before any depositions could be gathered. It seems more likely, then, that the libels have simply been lost over time. 45% of cases entered in the court in this year remained at the second stage of litigation and represent the point at which the majority of the cases would finish, while 25% of cases were pursued to sentencing.⁹⁹

Of the 39 sexual slander defamation cases recorded in 1690, 24 were libels and did not have their depositions recorded in the same year (Table 4). 15 of these cases *did* have depositions; however, they were recorded between January 1691 and June 1692 (Table 4a). The case of Mary Coxhead c. Matthew Coxhead (with its two depositions recorded in June 1692) would suggest that, in some extreme cases, the court process could stretch over (at least) an 18 month period between the recording of the libel and depositions. Interestingly the case of Anne Clark c. Samuel Baldwyn had three depositions recorded in November 1689. This anomaly could be attributed to human error but could also offer evidence that court officials did not always follow protocol and instead drafted (and then officially recorded) depositions *before* they entered the libels into the Allegations, Libels and Sentence Books. In the same year seven cases had their depositions but no libel recorded (Table 4). Three of these did not have a libel recorded in the preceding years and four had a libel recorded in 1689 (Table 4a). Therefore 63% of libels recorded without depositions in 1690 had their depositions recorded within the next two years and of the seven cases containing only depositions in 1690, 57% had their libel recorded in the preceding years. The majority of sexual slander defamation cases in 1690 also remained, like the majority of cases in 1685, at the second stage of litigation. The cases in this year represent a growing proportion of cases that would remain at the second stage of litigation: from 45% in 1685 to 62% in 1690. Only three cases (or 8% of the sexual slander business in the court in this year) made it to sentencing. This could be attributed to a lack of court efficiency in this year or to the litigants themselves becoming less enthused with the litigation process.

⁹⁹ This information was gathered from the 24 libels and depositions only cases and the 13 libel, deposition(s) and sentence cases.

Of the 31 sexual slander defamation cases in 1695, 15 cases had a libel but did not have their depositions recorded in the same year (Table 4) and it was found that only six of these cases had depositions recorded between January and July 1696. Nine did not have a deposition recorded at any point within the following years which would suggest that these cases were not pursued beyond the initial stage of litigation (Table 4a). In the same year 11 cases had their depositions but not their libel recorded (Table 4) and only four of these cases had their libels recorded in the preceding year. This would suggest that, at least in 1695, either the reliability of the record keeping of the court can be called into serious question or these cases have suffered from an acute incidence of record loss. The libels for these depositions should have been recorded prior to the collection of the depositions, but their absence (when we know the libels survived for other cases in this year) would suggest that they were either not recorded in the first place or have been lost. The information in Table 4a appears to suggest the continuation of the trend for cases to remain at the second stage of litigation across the last two decades of the seventeenth century. However, the 17 cases that contain only libel and depositions information represent 50% of the total number of sexual slander cases brought in this year. This is a marked decline from the 62% in 1690 and a slight increase on the 45% of such cases in 1685. The evidence that this year has missing libel information inhibits much speculation; the cases that, appear, to remain at the second stage of litigation (like the seven cases that appear to only contain depositions) could have been pursued further but it is impossible to know.

The court, surprisingly, managed to ease each case through the litigation process within a calendar year. While there would commonly be a lag between the first (libel and allegation) stage, the second (depositions) stage and between the (potentially final) third stage of sentencing, this thesis' results instead found a relatively short average length of cases. The sample used in this analysis excludes the data from 1680 (because it has no libel or sentence information with which to track the progress of cases) and includes the 65 cases that recorded a libel and depositions and the 16 cases that recorded a libel, depositions and sentence between 1685 and 1695. A total of 81 cases were analysed and provide the results on which this investigation into the length of time it would take to proceed between each stage of the litigation process is based.

Of the 13 cases in 1685 that had a libel, depositions and a sentence it took an average of only five months for each case to be completed. One case took only two months from start to finish: *Mary Clark c. Mary Wilson* had a libel entered in May 1685, its depositions were recorded in June 1685 and a sentence was passed on 4th July 1685.¹⁰⁰ An examination of the time it took for cases to move between each stage of litigation in this year also offered some interesting results. It took, on average, only two months for the 37 cases that reached the depositions stage to progress to this point (24 of whom progressed no further while 13 others continued to sentencing, see Table 4a). Of the 13 cases that continued to the final, sentencing stage of litigation it took an average of three months from the recording of depositions before sentence was passed.

The three cases in 1690 that moved through all three stages of litigation were also completed, on average, within five months. However, the average length of time it took for the 26 cases (Table 4a) to move between the first and second stages was also five months. This data may have been skewed by the case of *Martha Godfrey c. Edward Tilley* which had depositions that took 14 months to be gathered.¹⁰¹ This is further evidenced by the three month average it took for cases to progress from the depositions to the sentencing stage.

It also took an average of five months for the 17 cases to progress from the first to the second stage of litigation in 1695 (Table 4a). This suggests that it was actually taking cases longer to progress between the first two stages of litigation across the entirety of the 1690s. The year 1695 was also a period of polar divide: cases could either take between one and two or three and four months to progress, or could take over nine months to progress between these stages. This could suggest that, by the latter end of this period of study, cases were either eagerly pursued by litigants or were entered to bring disputes to a head but were not meant to reach sentencing. The 66% of cases that moved through the stages in one to four months suggests eager pursuit; in contrast, the remaining 33% that took over nine months to move through the litigation process

¹⁰⁰ *Mary Clark c. Mary Wilson* (1685), DL/C/144 p. 216-8. The depositions information for this case is DL/C/241, p. 185.

¹⁰¹ *Martha Godfrey c. Edward Tilley* (1690), DL/C/243, p. 57, 58, 87, 88.

(none of which were continued on to sentencing), suggests a lack of interest on litigants part to pursue cases to formal completion by 1695.

Overarching trends can also be gathered from these records as a whole. It took longer for sexual slander cases to progress from the first stage of litigation (libel) to the second stage (depositions) in the 1685-1695 period. In 1685 it took an average of two months for depositions to be gathered and this rose to an average of five months across the entirety of the 1690s. When the cases are more closely observed this trend is even more evident: from 81% of cases taking one to two months to reach the second stage of litigation in 1685, this number dropped to 45% of cases in 1690 and a further fall to 33% in 1695. While the number of cases that recorded depositions within one or two months decreased, 27% had their depositions recorded within three to four months in 1690 and 33% had them gathered in three or four months in 1695. This means that in 1690, 72% of cases (45% in one or two months and 27% in three to four months) and 66% of cases in 1695 (33% in both one or two and three or four months, respectively) had this information recorded within four months. So, while it did take longer to move from the first to the second stage of litigation between 1685 and 1695, the delay in the time it took to record depositions is not so dramatic.

No sentence information is available for analysis from 1680 (for the reasons described above) or 1695. In 1695 the only case that recorded a sentence also only recorded a libel but, because it is not known whether this case had depositions recorded that have subsequently been lost or if no depositions were gathered at all, it has been excluded from analysis here.¹⁰² As such, only the sentence information for 1685 and 1690 is used and only cautious conclusions can be gathered. On average it took three months for cases to progress from the second (depositions) stage of litigation to sentencing in both 1685 and 1690. When analysed individually, however, it was found that the amount of time it took to move from the second to final, sentencing stage of litigation was evenly split in 1685: 33% of cases took one to two, three to four, or five to six months, respectively, to move between stages. In 1690, 66% of cases took three to

¹⁰² The excluded case is Elizabeth Walson c. John Bowden (1695), DL/C/147, p. 389.

four months to reach sentencing from the depositions stage. So what is hidden by the average is a trend in which, in actuality, it was beginning to take longer to move from the depositions gathering to the sentencing stage by 1690. What can also be gathered is that 75% of cases took between five and six months to be completed with a sentence in 1685, and this is echoed in two-thirds of cases that ended through sentencing in 1690 taking the same length of time. Across the two decades it can be observed that, on average, it would take cases that were to be completed through sentencing a total of five months to pass through the litigation process, and definitely no longer than six.

York

The five cases that survived as a sentence only and the two cases that recorded only a libel and sentence have been excluded from this analysis of the average sexual slander defamation case in the York court. This is because it is not known if/when the libels (and, potentially, the depositions) of the cases that survive as a sentence were recorded, nor is it known if/when any depositions were recorded for the two cases that only recorded a libel and sentence. All the statistics discussed, therefore, are based on the 37 cases that only contain a libel, the 63 cases that only record a libel and depositions and the 22 cases that were pursued through all three stages of the litigation process; for a total sample of 122 cases (see Table 15).

Between 1680 and 1684, 10 of the 35 sexual slander cases recorded were not pursued further than the first stage of litigation and only contained a libel. 10 cases contained only a libel and depositions and remained at the second stage of litigation and a further nine cases were pursued to the final stage of the litigation process. While 29% of cases did not pass further than the first stage of proceedings, 54% definitely did. This would suggest a good level of this type of defamation business for the church courts in this period as the majority of cases made it, at least, to the second stage of litigation. This period also represents the half-decade that recorded the most cases in all of the four half-decade periods – with a total of 35 cases.

Between 1685 and 1689, eight of the 33 cases were not pursued beyond the first level of litigation. 12 cases made it to the second stage of litigation and contain both a libel and depositions, while a further 11 cases were pursued to the final stage in the litigation process. While 24% of cases were not pursued beyond the first stage of litigation, 70% were. This period represents the half-decade that recorded the most cases that were pursued to the final stage of the litigation process: 11 (or 50%) of the 22 cases that made it to the final stage of litigation in the two decades were brought between 1685 and 1689. The fact that one-third of all the cases brought in this period would be pursued to sentencing, combined with the knowledge that 70% of all the cases in this period were pursued beyond the first stage of litigation, suggests an increased level of sexual slander defamation business from the first half of the decade. When compared with the period 1680-1684, however, there is actually a fairly consistent level of business over the 1680s as a whole; 35 cases are recorded in the 1680-1684 period and 33 are recorded between 1685 and 1689. What we are seeing instead is evidence that both the proportion of cases that would be pursued to sentencing and the proportion of cases that would progress further than the first stage of litigation actually increased over the course of the 1680s.

The years 1690-1694 and 1695-1700 both recorded 31 defamation cases. While these remain the smallest number of cases recorded in the court in the four half-decade periods, they fit in with both the average of 32.5 cases recorded each year and with the pattern of a fairly consistent level of business in the 1680s (see Table 15). The majority of the sexual slander defamation cases between 1690-1694 (15 of its 31 cases, or 48% of all its business) were recorded only in the first level of litigation. While 14 cases (or 45% of the court's defamation business in this period) were pursued to the second stage of litigation, only two cases made it to the final, sentencing stage. Overall this represents 93% of the sexual slander defamation cases heard in the court in this period stalling by, or during, the second stage of litigation. This would suggest a lower level of defamation business for the court as a whole when compared to the previous decade. However, it actually reflects a decrease in the likelihood of cases being pursued to sentencing as a whole but, more significantly, between the two decades: in the 1680s the likelihood of a case being pursued to sentencing was approximately one in three,

which then declined massively to approximately one in sixteen in the early 1690s before becoming non-existent in 1695.

The final period (1695-1700) had four of its 31 cases remain at the first stage of litigation. The remaining 27 cases (or 87% of the business) were pursued to the second stage of litigation. No cases were pursued to the final stage of litigation. This would suggest that by the latter half of the 1690s defamation business as a whole was decreasing in the York Consistory court, especially when both halves of the decade are evaluated together and both show a decreasing tendency for cases to be pursued beyond the second stage of litigation. However, when the number of cases recorded in each half-decade are assessed, the 1690-1694 and the 1695-1700 periods documented only four cases less, respectively, than the period that heard the most business (1680-1684). When the decades are examined separately the 1680s recorded 68 cases of defamation compared to 62 in the 1690s. This steady level of business would suggest that it was not the number of cases that were decreasing by the end of the seventeenth century but rather *how far* the cases would be pursued in the church courts.

Like its counterpart in London, the Consistory court in York also managed to ease its cases of sexual slander defamation through the litigation process within a year – a trend also reflected in the court in the eighty years before the Civil War.¹⁰³ Overall it would take an average of only seven months for cases to be completed through sentencing in the court. Yet it took an increasing amount of time for cases to be completed in the court over the period of study, from an average of five months in 1680-1684 to an average of eight months a decade later (1690-1694).

Also, over the course of the 1680s the pattern of cases that were completed through sentencing changed. At the beginning of the period 70% of cases that went to sentencing were completed within six months but by the end of the decade two-thirds of cases were taking *over* six months to reach sentencing. No cases were taken to

¹⁰³ Ritchie, *The Ecclesiastical Courts of York*, 183-5; Marchant, *The Church under the Law*, 65; Houlbrooke, *Church Courts and the People*, 42.

sentencing at the end of the 1690s so an investigation of sentencing patterns across the decade and between the two decades cannot be made. However, the minimum amount of time it would take for a case to be completed through sentencing can be investigated across the years 1680-1694. In the 1680-1684 period the quickest time it took to complete a case with sentence was two months, this grew to a minimum of three months by 1685-1689 and in 1690-1694 this had risen, again, to five months.

By the end of the 1690s (the only period that had no sentences passed on any cases) we can observe another interesting pattern. 48% of cases took up to two months to have their depositions gathered and another 36% had them gathered within four months. This marks a total of 84% of cases having their depositions gathered within four months in the years 1695-1700 which roughly equates with the three month average it would take cases to get to this stage across the two decades of study. However if it was taking the court longer to get a case to sentencing from 1680 onwards, why does the 1695-1700 period fit with the average length of time it took to gather depositions? It would be assumed that each stage was taking longer to complete by the late 1690s (if the average length of time taken to get a case through to sentencing was continually increasing) but this period's unremarkable length of time spent collecting depositions creates a conundrum. The fact that depositions seemed to have been collected within a reasonable average length of time across the two decades would indicate that it was not the second stage of the litigation procedure that took the time. It could be suggested that the cause of the increasingly lengthy cases might be explained by the length of time it took for cases to go from the depositions to the sentencing stage. In 1680-1684, 74% of cases took between one and four months to move from the depositions to the sentencing stage. This fell to 71% at the end of the decade and by 1690-1694 there was an even split between cases taking three or four months or over 6 months to move from the second to the final stage of litigation. While this does not fully explain the increasing time it took for cases to reach sentencing it offers some support to the idea that either lack of malice, dwindling reserves of money or a declining interest on the part of the litigants was causing the cases to take longer to reach sentencing across the two decades.

In terms of the proficiency of the record keeping in this court, each cause was kept in an individual bundle and should, in theory, have all its associated documents kept together. However, eight cases recorded in the 1680s offer some troublesome issues: five cases consist of a sentence only, one case contains depositions and a sentence only, and two cases record only a libel and a sentence (Table 15).¹⁰⁴ The cases that survive as only a sentence are clear evidence of documentation that has been lost – a case could not reach sentencing if, at the very least, a corresponding libel had not been entered beforehand. The same is true for the case of Elizabeth Speight c. Richard Hanson (1682) which survives with depositions and a sentence but no libel.¹⁰⁵ The lack of corresponding documentation for these cases could suggest bad record keeping on the behalf of the court clerks in the 1680s, especially when compared to the period 1690-1700 which has no cases recorded with noticeably absent documentation. However, as the court appears to have implemented a fairly reliable method of recording cases and organising court documentation, these eight cases most likely represent a small percentage of natural record loss in the court.

The majority of these defamation cases (63 of the 130) were not pursued beyond the second level of litigation i.e. they contained both a libel and depositions but were not entered into the sentencing stage of the litigation process. 37 cases did not even pass the first stage and contained only a libel; and those cases that completed the three stages (i.e. those which contained a libel, depositions and were ended with a sentence), were recorded in a total of only 22 cases (Table 15). This would suggest that once a libel was entered it would, most likely, pass into the second stage of litigation and from then only had a one in three chance of being pursued to the final (sentencing) stage. When considering the point at which, most frequently, cases were no longer pursued (those at the second stage of the litigation process), the majority of these, some 27 cases, were recorded in the 1695-1700 period (Table 15). These five years

¹⁰⁴ The five cases that survive as a sentence only are: Elizabeth Heaton c. Sarah Herst (1680), CP.H.1591I; James Kenworthy c. Joshua Hide (1681), CP.H.5191J; James Kenworthy c. John Hinchcliffe (1681), CP.H.5238A; Anne Mitchell c. Grace Tennant (1682), CP.H.4984; and Margaret Bullard c. John Turner (1685), CP.H.3832.

The case that survives with only depositions and a sentence is Elizabeth Speight c. Richard Hanson (1682), CP.H.6009.

The cases that survive as only a libel and sentence are Edward Calverley c. Barbara Winspear (1684), CP.H.3643A and James Dyson c. John Crossley (1686), CP.H.4428.

¹⁰⁵ Elizabeth Speight c. Richard Hanson (1682), CP.H.6009.

did not record any cases entering into the final stage of litigation which could offer support for the argument of the decline in the use/necessity of the church courts. However, while the latter half of the seventeenth century is credited as the period that experienced a decline in court business, the results of the York court in this period offer some alternative conclusions. The majority of cases that made it to the second stage of litigation (the stage which 48% of cases reached before ending) occurred in the last five years of the century. Correspondingly the level of defamation business remained consistent across the 1680s and 1690s. This indicates instead that the sexual slander defamation business in the Consistory court of York actually remained at a consistent level of litigation, and was an equally valid means of redress for the litigants that utilised it in the late seventeenth century.

This chapter offers evidence and support for the re-evaluation of the interpretation of a ‘decline’ in the defamation business of the church courts, as it provides evidence of only *elements* of decline in this business in the latter part of the seventeenth century.¹⁰⁶ While the number of defamation cases brought to the London and York Consistory courts did not equate with the number brought before 1640, the proportion of defamation cases as a part of the overall business of the courts remained similar to that recorded in the earlier half of the seventeenth century. Sexual slander defamation suits represented 61% of the overall business of the London court in this period which is comparable to the proportion Gowing found of 51% and 73% in the years 1624 and 1633 respectively.¹⁰⁷ Sexual slander defamation reflected 20% of the overall business of the York Consistory court in the peak period of church court business (1560-1640), 20% of the business in Till’s study (between 1660 and 1720), and 24% of the court’s overall business in this thesis.¹⁰⁸ This suggests that at the latter end of the seventeenth century, in a period of apparent ‘decline’, defamation was still an important part of church court business.

¹⁰⁶ See, for example: Hair, *Before the Bawdy Court*, 24.

¹⁰⁷ Gowing, *Domestic Dangers*, Table 1, p. 33.

¹⁰⁸ Till, “The administrative system of the ecclesiastical courts,” 62.

The statistics for the 1560-1640 period were calculated by this author from an evaluation of the data held within the Cause Paper database of the Borthwick Institute for Archives.

The *culture* of defamation also did not seem to decline. Where Gowing found ‘depositions were only taken for between one in five and one in three of the sex and marriage cases’ in London Consistory courts, the evidence here is that 89% of sexual slander defamation cases brought to this court between 1680 and 1700 had depositions taken.¹⁰⁹ In this regard the London court saw cases pursued *further* in the period of ‘decline’ than were pursued in the period of ‘peak’ business. It was also found that cases sued in the last two decades of the seventeenth century were most often pursued up to the second stage of litigation and no further, an identical trend to that of the first half of the century.¹¹⁰ This indicates that for those who were willing to sue for defamation the importance in pursuing cases did not decline by the end of the century, and this period actually records litigants who were more inclined to fight their case further than their counterparts at the start of the century.

A few suggestions can be made for these findings. Litigants in the 1680s and 1690s may have simply been more litigious than those recorded in the earlier half of the century, or the increasing cost of bringing suit in the church courts may have meant that those cases that were brought between 1680 and 1700 were more likely to be seriously pursued than those in the period with cheaper court costs. The consistent proportion of defamation business may represent cases that were brought by litigants to quickly achieve settlement in disputes, but were cases that these litigants had no intention of pursuing to sentencing. Overall it suggests that the determination of litigants to pursue sexual slander defamation claims in the courts did not decline in this period.

¹⁰⁹ This information was calculated from Table 4a the 80 deposition(s) only cases, the 65 libel and deposition(s) only cases and the 16 libel, deposition(s) and sentence cases recorded in the court between 1680 and 1700.

¹¹⁰ For example: Sharpe, “Such disagreement betwyx neighbours,” 173; Gowing, *Domestic Dangers*, 39 and 136.

Sex, words and space

A purely quantitative analysis of ecclesiastical court records allows a glimpse into the meanings, uses and effects of sexual slander. While the findings in the previous chapter highlight the many benefits this type of examination can provide (exposing ‘the extent to which people thought defamation was sufficiently important to merit litigation’, for example), this chapter instead utilises a qualitative approach for the analysis of the courts.¹ For example, Faramerz Dabhoiwala has commented recently that social and cultural historians have a ‘current tendency to value the minute exploration of text, discourses, and subjective experience as the primary ways of understanding the past’.² This he argues – when compared to earlier tendencies to chart long-term changes over time – has narrowed the focus of most works.³ This thesis by necessity heavily relies on the exact tendencies outlined by Dabhoiwala; without a minute exploration of text, discourses, and subjective experience our knowledge of sexual slander would be seriously compromised.

Thus Adam Fox and Daniel Woolf have described how modern historians, ‘are highly dependent on written sources in our efforts to gain access to oral culture’.⁴ Church court depositions have frequently formed the basis of studies of defamation because they are believed to ‘offer largely unmediated access into the minutiae of disputes, as they chronicled the beliefs and motivations of early modern people’.⁵ The different vocabulary and speech of people from different areas means ‘transcriptions of depositions given before the courts can provide a vivid insight into the spontaneous speech of ordinary men and women in this period’.⁶ Fox has found that ‘in cases of

¹ Robert Shoemaker, “The Decline of Public Insult in London 1660-1800,” *Past & Present*, no. 169 (2000): 98.

² Faramerz Dabhoiwala, “Lust and Liberty,” *Past & Present*, no. 207 (2010): 92.

³ *Ibid.*, 92.

⁴ Adam Fox and Daniel Woolf, “Introduction,” in *The spoken word: Oral Culture in Britain, 1500-1850*, ed. Adam Fox and Daniel Woolf (Manchester: Manchester University Press, 2003), 10, 9.

⁵ Fay Bound, “‘An Angry and Malicious Mind’? Narratives of Slander at the Church Courts of York, c.1660 – c.1760,” *History Workshop Journal* no. 56 (2003): 60.

⁶ Adam Fox, *Oral and Literate Culture in England, 1500-1700* (Oxford: Clarendon, 2000), 83.

personal abuse popular speech would often be at its most expressive'.⁷ Examples found here include: 'I have seen such a jeering whore as you goe without a point of her nose'; 'come out you whore, and scratch your mangy arse as I doe'; 'a Ratt a Ratt a Coachman's whore'; 'whores from barne to barne to Tinkers and ffidlers'; and 'he was a mumper and went about the Country from door to door mumping'.⁸

Written sources are not without their shortcomings, however, and Fox thus categorises 'the spoken word, in so far as it can be retrieved from written sources, promises to reveal much about the normative values and basic assumptions of contemporaries'.⁹ Fay Bound pushes this further and argues that the view that church court depositions allow us unmediated access into the oral culture and mentality of the past is simplistic 'for it downplays the shaping influences of legal and court process'.¹⁰ While Fox (and others) are aware that the value of these records must be weighed alongside the significant disadvantage that the mediation of clerks presents, an argument can be made that 'it is still possible in some cases to detect the popular voice sounding through the text'.¹¹ We cannot gain direct entry to the oral world of those whose words we study but 'we are naturally inclined to favour the document, even while recognising that it, too, is incomplete, partial and selective'.¹² This chapter has been written with these words of warning in mind.

Section one of this chapter focuses on the information contained in the libels of sexual slander cases. It outlines the legal framework in which defamation would be defined and highlights the tactics slanderers would use within this framework to justify – or attempt to camouflage – their slanderous words. Section two explores the information contained in the libels and depositions and the descriptions of the places and circumstances of sexual slanders. Sections three and four outline which words were considered slanderous for women (section three) and men (section four), the frequency

⁷ Ibid, 84.

⁸ [female] Jerry c. Henry Balls (1685), DL/C/241; Susan Town c. Jane Adams (1695), DL/C/244; Jane Adams c. Susan Town (1695), DL/C/244; Judith Glendering c. Thomas Ellerton (1685), DL/C/241; Thomas Hewetson c. Thomas Daniel (1699), CP.H.4534.

⁹ Fox, *Oral and Literate Culture*, 52.

¹⁰ Bound, "'An Angry and Malicious Mind'?", 60.

¹¹ Fox, *Oral and Literate Culture*, 83 and 84.

¹² Fox and Woolf, "Introduction," 10, 9.

in which the slanders were used, the various types of slanders and the motives behind the actions of slanderers. This chapter – in its entirety – explores the meanings, uses and effects of sexual slander through the words used in libels and depositions and examines the material and emotional context in which they would be uttered. When combined with the quantitative analysis in the previous chapter, it will provide a solid foundation on which to further explore how witnesses (Chapter 3) and men (Chapter 4) encountered sexual slander.

1. The ‘official’ and ‘popular’ use of legal language

As was outlined in the introduction to this thesis, for insulting words to qualify as defamatory they had to meet the requirements set out by the Constitution of Oxford (1222): they must have been spoken publicly, with malice and with the intent to cause harm to the victim’s reputation.¹³ Bound comments that ‘more important than whether or not the contested words were in any sense true, therefore, was the claim that they were spoken with the intent of causing an “ill-fame” and therefore that they caused social conflict’.¹⁴ The public nature of defamation went hand-in-hand with the definitions of malice and harm. ‘Malice’ was defined as the intention to cause harm, which provides some overlap with the definition of ‘harm’ as the negative impact on a plaintiff’s previously unsullied reputation.¹⁵ Thus John Godolphin (1678) defined slander as ‘the uttering of Reproachful speeches ... [which] aim at some prejudice or damage to the Party defamed’ and persist maliciously.¹⁶ Bound argues that ‘there was no doubt that legal theories of slander prioritised the existence of “malice” in discussions of culpability’.¹⁷ Malice, however, did not require proof.¹⁸ In cases of sexual slander this meant ‘that although the plaintiff was required to allege malice in his positions, normally the burden of proving a *lack* of malice was thrown upon the

¹³ Henry Conset, *The Practice of the Spiritual or Ecclesiastical Courts*, Second edition (London: 1700), 335. See R. H. Helmholz, “Canonical Defamation in Medieval England,” *American Journal of Legal History*, 15 (1971): 257 for the Latin (and translated English) version of the Constitution of Oxford (1222).

¹⁴ Bound, ““An Angry and Malicious Mind’?,”” 64.

¹⁵ R. H. Helmholz, *The Oxford History of the Laws of England. Volume I: The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford: Oxford University Press, 2004), 579 and 585.

¹⁶ John Godolphin, *Repertorium Canonicum: or, an Abridgement of the Ecclesiastical Laws of this Realm* (London: 1678), 515.

¹⁷ Bound, ““An Angry and Malicious Mind’?,”” 64.

¹⁸ Helmholz, *The Oxford History*, 579.

defendant. Otherwise, the legal presumption was enough [his italics]'.¹⁹ Proving malice 'was a constant concern of the ecclesiastical courts.'²⁰ To try and defend themselves against the automatic assumption of malicious intent, 'defendants made affirmative claims that their words had not been malicious. They alleged that they had spoken secretly and for a good purpose' and they attempted to prove the truth of what they said.²¹

R. H. Helmholz describes how the Constitution of Oxford (1222) set a very general standard in which the harm caused by slanderous words needed to be proved.²² He argues that a major exception to this general standard is a situation where there was an absence of actual harm, in the sense that the plaintiff was already of 'ill fame' and so uttering words that simply added to this 'ill fame' were not defamatory.²³ Defendants regularly made the claim that plaintiffs were already of dubious reputation and 'witnesses were frequently asked whether the plaintiff's reputation had been any worse after the slander had been said than it had been before'.²⁴ Whereas 'plaintiffs (and their witnesses) sought to do the exact reverse. They sought to establish their own "prior good fame" and the injuries they had suffered because of the defamatory utterance'.²⁵ Plaintiffs also made claim to 'concrete injuries' to which their witnesses would ratify.²⁶

For a case of sexual slander to have a libel drawn up, therefore, the (alleged) words already met the criteria outlined in the Constitution of Oxford (1222). The structure of libels in the London and York Consistory courts were identical, as a libel selected at random – the case of Lydia Hardy c. Sarah Caldwell (1696) – can illustrate.²⁷ As a rule, the first paragraph reads 'In dei nomine Amen ...' and lists the litigants involved, their employment or marital status, the village, town or city they lived in and the

¹⁹ Ibid, 579.

²⁰ Ibid, 579.

²¹ Ibid, 579 and 582.

²² Ibid, 585.

²³ Ibid, 585.

²⁴ Ibid, 585.

²⁵ Ibid, 585.

²⁶ Ibid, 585-6.

²⁷ Lydia Hardy c. Sarah Caldwell (1696), CP.H.4519.

ecclesiastical officers involved in their case. In the ‘items’ below this paragraph the approximate date and place of the slander is recorded in Latin before the details of the case are outlined (in English). In the case of Hardy c. Caldwell they read as follows:

‘the s[ai]d Sarah Caldwell speaking to or of ye s[ai]d Lidia Hardy Widdow said & reported (licet falso) That she the s[ai]d Lidia Hardy was A whore & whore enough, which words she ye s[ai]d Sarah Caldwell spoke & reiterated diverse & sundry times or once at ye least in ye p[re]sence & hearing of diverse credible witnesses’.²⁸

At the very minimum then: the plaintiff(s) and defendant(s) would be named; the details of the approximate time, date and location of the slander would be recorded; and the defamatory words would be listed along with relevant information as to the manner in which the words were said, if the words were repeated and if there were any witnesses.

The use of the phrase ‘licet falso’ will give us pause for a moment. ‘Licet falso’ or as Helmholz translates ‘although falsely’, is recorded only in cases from the Consistory court for York and not in the London Consistory court. In fact, it appears in 115 (or 88%) of the 130 sexual slander defamation cases in the York court.²⁹ Helmholz’s study of the canon law of England found that ‘although the original Oxford constitution did not require that the imputation be false, many of the formularies and libels used in litigation added the word *falso* to the text [his italics]’.³⁰ So why was ‘licet falso’ absent from the London records? If it was standard practice in other courts to use the word ‘falso’ in the libels and other such documents, why was this method of record

²⁸ Ibid, p. 2.

²⁹ R. H. Helmholz, ed. *Select Cases on Defamation to 1600* (London: Selden Society, volume CI, 1985), 18.

The 15 cases ‘licet falso’ was *not* recorded in are: Elizabeth Heaton c. Sarah Herst (1680), CP.H.1591I; Elizabeth Heaton c. Sarah Herst (1680) CP.H.3468; James Kenworthy c. Joshua Hide (1681), CP.H.5191J; James Kenworthy c. John Hinchcliffe (1681), CP.H.5238A; Anne Mitchell c. Grace Tennant (1682), CP.H.4984; Mary Spragg c. Robert Crook (1682), CP.H.5008; Elizabeth Speight c. Richard Hanson (1682), CP.H.6009; Mary Pegg c. Robert Downs (1683), CP.H.3573; Margaret Bullard c. John Turner (1685), CP.H.3832; Grace Burnet c. Margaret Flesher (1687), CP.H.3723; William Batty c. Martha Rich (1688), CP.H.4138; Francis Whateley c. Alice Constable and Everingham Constable (1688), CP.H.3714; Eleanor Gowland c. Elizabeth Nicholson (1689), CP.H.3790; Frances Aslabie c. Edward Greenwood (1691), CP.H.4307A; and Robert White c. Henry Davey (1694), CP.H.4344.

³⁰ Helmholz, *The Oxford History*, 582.

keeping not utilised in the busy court of the capital? This is a question that merits further investigation that, unfortunately, must remain unanswered here.

When discussing the truthfulness of words we have already briefly touched on the defensive claims made by defendants that their slanderous words were truthful, and we will now turn our attention to those defendants who actively claimed the truth of their words as justification enough for their supposedly slanderous words. In his many studies on the topic of canon law, Helmholz has found that ‘whether or not the truth of an imputation served as a valid justification, and therefore furnished the speaker with an answer to a suit brought on the words, was a subject of traditional doubt in the Roman canon law’.³¹ To tell the truth about a crime often served a public good but even a truthful claim could be uttered out of malice, the distinction between which seemed to be rather tricky to work out.³² Under Elizabeth I’s reign the Court of Arches seems to have made a compromise ‘except where the imputation could be justified as a duty imposed on a speaker by his office or some other legitimate obligation, truth would not constitute a valid justification to a plea of defamation’.³³ However, there was ecclesiastical precedent (that also appears to have commonly been put into practice) whereby judges mitigated the penance and the expenses of those truth-telling slanderers.³⁴ He concludes that ‘although there was some disagreement’ the common opinion was that the truth in itself was not a sufficient justification.³⁵

In an effort to exonerate themselves from ecclesiastical punishment, defendants appealed to another situation whereby they claimed their words were justified – provocation by the plaintiff.³⁶ In this situation the defendant would describe their ‘sudden anger for a good reason’, a situation where their malice (akin to

³¹ R. H. Helmholz, *Roman Canon Law in Reformation England* (Cambridge: Cambridge University Press, 1990), 64; Helmholz, *The Oxford History*, 582.

³² Helmholz, *Roman Canon Law*, 64.

³³ *Ibid*, 65.

³⁴ *Ibid*, 65; Helmholz, *The Oxford History*, 583.

For legal precedent of this see: *Precedent Book 11. Commentary rather than formulary. General, no order*. Borthwick Institute for Archives, University of York, p. 5.

³⁵ Helmholz, *The Oxford History*, 582.

³⁶ *Ibid*, 580.

premeditation) was absent.³⁷ However, like their claims to truthfulness, ‘none of these provocations, even if proved, served to exonerate defamers from all blame. They were treated as providing cause to “mitigate the penance” assigned to the defendant, but provocation was not a complete defence’.³⁸ The preferred remedy to this was for the provoked defendant to bring their own suit against the provoking plaintiff which ‘happened often’.³⁹ The aim of this was ‘to correct the erring, and also to restore harmony and reputations where that was possible, as much as it was meant to weigh the legal merits of a case’ because ‘it seemed better to make both parties do penance than to excuse them because both had been equally at fault’.⁴⁰

What the tactics employed by the defendants show us is that ordinary people had a good working knowledge of the courts that they were not afraid to put into practice.⁴¹ Helmholz identifies how this was used in the ‘civilians’ flirtation with the common law’s use of the *mitior sensus* rule’ which held that ‘if words could be construed in a non-defamatory sense, they would be so construed [his italics]’.⁴² This principle ‘gave rise to contention and argument at the time, because milder interpretations could be invented for a great deal of obviously slanderous language’.⁴³ Its origins may have been honourable, to be used ‘as a means of construing truly doubtful utterances’ and as a way of ensuring that real harm had been done and that ‘a real crime have been imputed before the words would be actionable’.⁴⁴ Helmholz argues instead that:

‘for the most part, however, in their sentences the courts themselves stuck with the rule that words should be interpreted in their most natural sense, as they would have been understood among hearers. Thus, to say that a man was “kept as a stallion in the house”, that a woman “had to do with” a particular man ... were all construed as imputations of unchastity, even

³⁷ Ibid, 580.

³⁸ Ibid, 580.

³⁹ Ibid, 580-1.

⁴⁰ Ibid, 581.

⁴¹ Helmholz, *Roman Canon Law*, 66.

⁴² Ibid, 67.

⁴³ Ibid, 67. See also: Helmholz, *The Oxford History*, 577.

⁴⁴ Helmholz, *Roman Canon Law*, 67.

though the words might conceivably have been given a more benign reading'.⁴⁵

Most people would have naturally assumed the worst – that was the test.⁴⁶

The manner in which the (alleged) slanders are said offers another point of comparison between the official and popular use of legal language. Slanders were described through variations of 'abuse' (for example, abusing and abused); they were described as 'defamatory words', 'several [either and/or] divers other scandalous and defamatory words', 'scandalous and reflecting words'; or that the slanderer 'fell abusing' the plaintiff or made comments in an 'angry and passionate manner'. Bound argues that:

'the invocations to "anger", "passion", and "malice" found in court testimony cannot be read as "background" or contextual information to dispute, for they were legally constitutive elements of a suit. Indeed, establishing the "angry manner" in which words were spoken was fundamental to the legalistic definition of a slander and the possibility for plaintiffs to receive a favourable judgement. Moreover, though there is no more access to "real" emotion or feelings through court testimony than through any other source, slander narratives demonstrate the verbal and non-verbal strategies through which anger was constructed and performed in social practice'.⁴⁷

Her study of the Consistory court for York between 1660 and 1760 found that 'whatever pattern of words – "angry and passionate", "angry and malicious", or "malice and anger" – was used by the plaintiff, the exact same formula was used in the testimony of his or her witnesses'.⁴⁸ Which she argues is evidence that that 'there was more involved in the construction of slander narratives than the transparently-reflected speech of litigants' and 'in this context the imputation of a "passionate and

⁴⁵ Helmholz, *The Oxford History*, 577.

⁴⁶ *Ibid*, 577.

⁴⁷ Bound, "'An Angry and Malicious Mind'?", 61.

⁴⁸ *Ibid*, 63.

malicious” mind became a central elements in social and legal definitions of slander’.⁴⁹ While the descriptions from witnesses about the manner in which a slander had been said may have been homogenised by the court officials, they would have been aware that proving a defendant was of an angry and malicious mind was vital to the cause of the slandered party. That the slanderous words were recorded as ‘abuse’, ‘abusive’, ‘defamatory’ or ‘scandalous’ in courts across the country, surely reflects to some extent the actual manner in which slanders would have been perceived by witnesses as well as indicating that litigants and their proctors knew how to manipulate legal language to achieve victory in these disputes.

2. Words and space

The location of a slander is an important element for evaluation; it helps expose the intention behind and circumstances involved in sexual slander. For example, if defamatory words were spoken as part of a drunken argument in an alehouse or if the defendant intentionally slandered a plaintiff in their own shop in front of their family, friends and respectable neighbours. 69% of the cases in London record the location of the slander, while in York this information is only recorded in 58%. In London, defamation most frequently occurred in public (for example, in a market place) or was said in a private residence (either the home of one of the witnesses of the slander or a person unrelated to the case), locations which were recorded in 14% of cases, respectively. The same was true in York; in 40% of cases the slander occurred in the private residence of either one of the witnesses or a person unrelated to the case and 17% were said in public. A further 14% happened in the plaintiff’s home, 13% in an alehouse and 10% even occurred outside the home(s) of the defendant and/or the plaintiff in London. In York, 15% happened in the defendant’s home, 13% in the plaintiff’s home and only 9% occurred in an alehouse. What we can gather from this information is that slanderers in London and York ensured their slanders were heard (or would be spread) by a maximum number of people by slandering their victims in public or in front of witnesses in a private residence.

⁴⁹ Ibid, 63. See also: Martin Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (Cambridge: Cambridge University Press, 1990), 292; J. A. Sharpe, “Defamation and sexual slander in early modern England: the church courts at York,” *Borthwick Paper*, no. 58 (1980): 8; Keith Wrightson, *English Society, 1580-1680* (London: Hutchinson, 1982), 53-4.

The publicity garnered by uttering the defamatory words in these locations is easily seen in the gossip and the rate at which the slander spread after the fact. Sexually slanderous comments appear to have spread at a rapid rate in York and the public knowledge of these slanders were commented on with more regularity than in the depositions from the London court. 21% of cases in the York court contain some description of the slander spreading in the local community, compared to just 5% in the London court. The rate and ability at which a slander spread in the local community reveals the impact sexual slander would have on a plaintiff's life and reflects on the community within which they lived. The frequency in which a slander was spread in York, in comparison to the far fewer instances in London, may reflect the inherent difference between living in the capital city and living in a smaller town community. Robert Shoemaker believes the rapidly growing metropolitan environment of London meant that 'the kind of community-based regulation of reputation so common in the early seventeenth-century City of London (as well as in rural contexts) first became untenable'.⁵⁰ He explains how the frequent geographical mobility of the residents of London meant that 'Londoners did not know or take an interest in the activities of their neighbours as much as they used to'.⁵¹ He does concede that 'particularly perhaps in the lower class, the immediate local neighbourhood of the yard, alley and court continued to be important and the public insult still played a role'.⁵² Increased anonymity and a high turnover of residents in London, then, may explain why there are fewer comments on the spread of the slander in the depositions from this court. As a smaller and northern town there would have been far less turnover of residents in York, and the frequency in which litigants are registered as living in the same village or same area of York explains the greater incidences of the slander spreading; its closer community offered both the opportunity for the quick spread of a slander and also greater reason to spread a slander (to bring further shame on the victim).

When the circumstances of (and the possible reasons behind) the slanders are alluded to in the depositions, a clearer understanding of a fraction of the cases is made possible. In both London and York the circumstances surrounding a slander are identical: the

⁵⁰ Shoemaker, "The Decline of Public Insult," 126.

⁵¹ *Ibid*, 126.

⁵² *Ibid*, 127.

involvement of alcohol is the most common cause for a slander to occur (44% of cases in London and 60% of cases in York record this), and a previous argument between the litigants (which is mentioned in 25% of cases in London and 15% in York) or the involvement of money or some form of debt (recorded in 13% of cases in London and 10% in York), were also common. The cases in York record eight different types of circumstances which may have caused the slander, while the London records contain a varied selection of 13 different circumstances including: two cases where a previous argument between the litigants led to physical injury and a previous trial, two cases where the slander was said ‘without any provocation’ and the case of *Tatehain c. Sherman* in which the defendant claims the plaintiff ‘ruined my Brother’.⁵³ Therefore across sexual slander cases fought between the two sexes and between litigants living in two different regions of the country, of different ages, occupations and social classes; depositions evidence reveals no regional variation in the circumstances and reasons behind the slanders. Money and previous rancour were the deep seated issues that could incite the expense of a suit in the church courts across all regions in seventeenth century England.⁵⁴

3. ‘Whore’, ‘bitch’ and other female slanders

‘Most people knew that “whore” was an actionable word’ so, unsurprisingly, ‘whore’ was found to be the most common insult used against female plaintiffs in both the London and York courts (Table 1).⁵⁵ This simple insult was used in 42% of such cases in London and in 83% of those in York.⁵⁶ To add to the slanderous power of ‘whore’ defendants could, and did, include adjectives which were designed to bring further shame upon the victim. In the London court there were 61 different variations of

⁵³ The serious injury cases are: [female] *Bagshaw c. Anne Stent* (1680), DL/C/239 and *Elizabeth Bagshaw c. Anne Stent* (1680), DL/C/239.

The ‘without any provocation’ cases are: [female] *Turner c. Mary Bathell* (1680), DL/C/239 and [female] *Palten c. Elizabeth Winckle* (1680), DL/C/239.

The ruined brother case is: [female] *Tatehain c. [female] Sherman* (1680), DL/C/238.

⁵⁴ Paul Hair, ed. *Before the Bawdy Court: Selections from church court and other records relating to the correction of moral offences in England, Scotland and New England, 1300-1800* (London: Paul Elek Books Ltd, 1972), 15-6.

⁵⁵ Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford: Oxford University Press, 1996), 66. For legal precedent see: *Precedent Book 11. Commentary rather than formulary. General, no order.* Borthwick Institute for Archives, University of York, p. 27.

⁵⁶ ‘Whore’ was recorded in 73 of the 173 cases with female plaintiffs in the London Consistory court and 83 of the 100 cases with female plaintiffs in the York Consistory court.

‘whore’, 17 more than those recorded in York, the most common of which include: ‘common whore’; ‘impudent whore’; ‘brazen fac[e]d whore’; ‘arrand[t] whore’ and ‘dam’d whore’.⁵⁷ Amongst these were unique and expressive examples of creative brilliance including: ‘ticket buying whore’, ‘a drunken Pisse-pott whore’, ‘lace petticoat whore’, ‘muthering [murdering] whore’ and ‘dog and bitch whore’.⁵⁸ 23 cases across the courts took the accusation of ‘whore’ quite literally and contained insinuations (or plain allegations) that a female plaintiff was a professional prostitute. In York, Joseph Blackburn stated that Anne Scott ‘was a Damned whoore and that she ... reared her selfe against a wall and tooke up her coates and bid him ... come and take the use of her’.⁵⁹ In the London court a dispute was recorded between a Ms. Soune and a Ms. Hammond who, after calling Soune a whore, further claimed that she (Ms. Soune) was said to have ‘lay upon the cellar staires for two bottles of wine’.⁶⁰ However, ‘whore’ – and its many variations – was not the only insult utilized in London or York in this period; ‘words like “quean”, “jade”, or “strumpet”, understood to have a less specific meaning, were used both to amplify “whore” and to modify it’.⁶¹ The courts recorded insults outside the remit of ‘whore’, of which ‘bitch,’ ‘strumpet’ and ‘jade’ (and their variations) were the most common. ‘Drab’, ‘scold’ and ‘jade’ were uttered as ‘reproachful’ rather than purely defamatory words.⁶²

Further regional differences in the use of insults were also found between these courts. In London we find four instances where a female plaintiff was called ‘my husband’s whore’, an insult never recorded in York (Table 7).⁶³ Laura Gowing found that ‘in the idiom of sexual insult there was one phrase that had meaning only between women

⁵⁷ See Tables 7 and 18: ‘Common whore’ was recorded in 22 cases in York and seven in London; ‘impudent whore’ in 14 cases in London and four in York; ‘brazen fac[e]d whore’ in 12 cases in London and six in York; ‘arrand[t] whore’ in 11 cases in York; and ‘dam’d whore’ in four cases in both London and York respectively.

⁵⁸ ‘Ticket buying whore’ was recorded in Alice Galt c. Elizabeth Anderson (1695), DL/C/244; ‘a drunken Pisse-pott whore’ was recorded in Anne Sharpe c. Thomas Collis (1695), DL/C/244; ‘lace petticoat whore’ was recorded in Barbara Johnson c. [Edward] Sturton (1680), DL/C/239; ‘muthering [murdering] whore’ was recorded in Mary Graveson c. Jane Tocketts (1696), CP.H.4548; and ‘dog and bitch whore’ was recorded in Mary Pegg c. Robert Downs (1683), CP.H.3573.

⁵⁹ Anne Scott c. Joseph Blackburn (1687), CP.H.3709, p. 3.

⁶⁰ [female] Soune c. [female] Hammond (1690), DL/C/243.

⁶¹ Gowing, *Domestic Dangers*, 66.

⁶² Conset, *The Practice*, 18.

⁶³ ‘My husband’s whore’ was recorded in: [female] Rann c. Robert Briggs (1685), DL/C/241; Sara Le Feaver c. Margaret Skene (1685), DL/C/241; [Richard] Naggs c. [Alexander] Cutting (1685), DL/C/241; and Elizabeth Tweete c. Joan Ward (1695), DL/C/244.

and it was used again and again: “thou art my husband’s whore”.⁶⁴ ‘Men were most unlikely to refer to even the potential of sexual relations between their wives and other men’ but as she (and the four cases here) found, women complained of their husband’s adultery in great detail and always placed the blame for the affair on the other woman.⁶⁵ Female plaintiffs in the London court were also accused of ‘keeping other women’s husbands company’ and in the case of Harnden c. Raynee, Mrs Raynee accused Ms. Harnden of living elsewhere with her (Raynee’s) husband as man and wife; while in another case Elizabeth Goldwyn pushed her slander further and accused Elizabeth Elborough of not only leaving with her (Goldwyn’s) husband, but also of having two children by him.⁶⁶ The cheated wife would also describe (in great detail) the damages caused ‘in sexual, emotional and financial terms’.⁶⁷ Gowing argues ‘incidents like these reveal the prime concerns of women who suspected their husbands of adultery ... the disruption of marriage through the consequent disorganization of household consumption’.⁶⁸

In 21 cases from York it was found that – alongside the many available insults – the female plaintiffs could have their bodies as a whole slandered, and were accused (or insinuated) to have been a combination of one (or more) of ‘lewd’, ‘dishonest’, ‘lascivious’ or ‘wicked’ women of their bodies – a slander not used in London. The libel of Hester Laycock c. Anne Turner (1686) records ‘that if she [Anne Turner] had had such an Arse as the said Hester Laycock had people would have said that she had had A burnt arse’, to which Anne was ‘Intimateing and meaning thereby that the said Hester Laycock was a lewd wicked and lascivious wooman of her body, and that she had beene A Com[m]on whore & thereby had got the pocks, or was Clapt’.⁶⁹

⁶⁴ Laura Gowing, “Language, power, and the law: women’s slander litigation in early modern London,” in *Women, Crime and the Courts in Early Modern England*, ed. Jenny Kermode and Garthine Walker (London: UCL Press, 1994), 34.

⁶⁵ *Ibid.*, 34.

⁶⁶ [female] Harnden c. [female] Raynee (1680), DL/C/239 and Elizabeth Elborough c. Elizabeth Goldwyn (1680), DL/C/239.

⁶⁷ Gowing, “Language, power, and the law,” 34.

⁶⁸ *Ibid.*, 34.

⁶⁹ Hester Laycock c. Anne Turner (1686), CP.H.3617, p. 3.

Both courts do, however, record a frequent method in which the female body was slandered through insinuations of bastard-bearing – with 19 cases in London and 11 cases in York that included this slander in some form (see Tables 7 and 18). This could vary from the tamer claim that ‘we have a round bellyed mayd in the towne, as round as a plumme’, to the specific claim that the plaintiff left the county to have her bastard or that she was to leave the defendant’s sight and ‘goo seeke a ffather for your Bastard’.⁷⁰

4. ‘Rogue’, ‘cuckold’ and other male slanders

While the female residents of London and York were slandered more often in this period, their male counterparts did not escape the wrath of defamation (see Tables 8 and 19). In 1680 Elizabeth Aborne was taken to the London Consistory court by Thomas Richardson for claiming ‘what he had (meaning ... his privy member) was Rotten with the Pox’.⁷¹ While in York in 1684 Matthew Oxley claimed Joseph Priestley ‘would have ravished’ (attempted to rape) a young woman, had he not been stopped.⁷²

The most common insult used against male plaintiffs in both the London and York Consistory courts was ‘rogue’ and variations of the same (Table 2). In York the term ‘rogue’ was employed in 11 variations including: 12 examples of ‘rogue’, eight of ‘whoremasterly rogue’ and two instances of ‘bastard getting rogue’ (Table 19). Male sexual slander cases in London record only four examples of ‘rogue’ (including 13 variations, such as ‘cuckoldly rogue’ and ‘pitiful rogue’) and the fewer recorded instances of ‘rogue’ as a singular insult does not mean it was employed significantly less than in York. Instead it records 21 alternative insults including ‘cuckold’, ‘son of a whore’ and ‘jealous pated foole and asse’.⁷³ 44% of the slanders involving a male

⁷⁰ A ‘round bellyed mayd’ was recorded in Sara Warren c. Bridget Davies (1685), DL/C/241 and ‘goo seeke a father’ was recorded in [female] Golby c. Jane Larkfield (1690), DL/C/243.

⁷¹ Thomas Richardson c. Elizabeth Aborne (1690), DL/C/243.

⁷² Joseph Priestley c. Matthew Oxley (1684), CP.H.3595.

⁷³ ‘Cuckold’ was recorded in: [female] Batty c. Richard Ward (1680), DL/C/239; [female] Axon c. Elizabeth Lancaster (1680), DL/C/239; [female] Webb c. John Beckett (1680), DL/C/239; [female] Wilton c. Emery Lambe (1680), DL/C/239; Mary Mosbey c. John Biggs (1685), DL/C/241; [female] Holding c. John Harris (1685), DL/C/241; and Jane Adams c. Susan Town (1695), DL/C/244. ‘Son of a whore’ was recorded in: [female] Strong c. [male] Kempster (1680), DL/C/239.

plaintiff in the London court included the term ‘cuckold’ or had ‘cuckoldly’ preceding the insult. Contrarily in York ‘cuckold’ was only recorded in 10% of cases with a male plaintiff but the term ‘whoremaster’ was recorded in 55% – a term that was never recorded in London. Equally to their female counterparts, 11 male plaintiffs in York also experienced the slandering of their bodies through the claim (or insinuation) that they were a ‘dishonest’, ‘lewd’, ‘lascivious’ or ‘wicked’ man of his body.

The actions (or alleged actions) of the bodies of the male plaintiffs were also utilised by slanderers as an opportunity to discredit their reputation through the use of bastardy allegations. Two cases in London insinuated the plaintiffs had fathered bastards, including a case in 1680 whereby Sara Houghlan accused Mr Weekeley of fathering a bastard on his maid and getting another man to marry her.⁷⁴ Bastardy allegations were employed with greater frequency in York; 10% of cases insinuated the male plaintiff had fathered a bastard (with an additional case in which the defendant named the mother of his bastard), 19% of cases accused a man of ‘getting [a named woman] with child’ and in one specific instance Sarah Hammond claimed that William Staniford had ‘bastards or base begotten children which he durst not owne’.⁷⁵

This chapter has explored the uses and effects of sexual slander through a regional comparison of the Consistory courts of London and York. The combination of a geographical and qualitative comparison of the slanderous words has provided a method of deeper analysis than that which could have been provided by a qualitative analysis alone. In doing so it discovered that the recording of ‘licet falso’ in the York court, for example, was a legal phrase that did not exist in the London records – which gave immediate evidence of a regional difference between the legal phrases used across the country. It also found that while the words ‘whore’ and ‘rogue’ were common insults across both courts, the slanders recorded in the London and York Consistory courts each reflected the character of their individual communities. The London court may have recorded the most variety of insults employing the term

‘Jealous pated foole and asse’ was recorded in: Martha Sharpe c. Richard Seale (1685), DL/C/241.

⁷⁴ [male] Weekeley c. Sara Houghlan (1680), DL/C/239.

⁷⁵ William Staniford c. Sarah Hammond (1698), CP.H.4515.

'whore' but it was only in York where the use of 'whoremaster' was recorded, and where both male and female bodies were openly available to insult through their actions (or insinuated behaviour) as 'lewd', 'lascivious', 'dishonest' or 'wicked' men or women. The quantitative and qualitative examinations of the 311 sexual slander cases of this thesis that were employed in the first and current chapter of this thesis will now be continued in the specific exploration of how witnesses (Chapter 3) and men (Chapter 4) encountered sexual slander.

‘Divers and sundry credible witnesses’: Words, witnesses and credibility

In June 1699, Isabel Stone brought suit against John Newbald in the York Consistory court for (allegedly) calling her ‘a whore, a com[m]on whore & a pist arst whore ... a Bitch and a pist arst Bitch’, which words he repeated ‘in the presence & hearing of divers and sundry credible witnesses’.¹ In the allegation he filed with the court, John denied ever speaking the words and claimed instead that:

‘little or noe credit is to be given to the sayings and Deposit[i]ons of William Stone Thomas Offerton and W[ilia]m Castleton witnesses produced sworn and examined in this Cause on the part and behalfe of Isabell Stone ... ffor that they W[ilia]m Stone Thomas Offerton and William Castleton were at the time of their swearing and examination as still they are utter and profest en[e]mies to him the said John Newbald ... and have frequently sworn and declared themselves such, and alsoe that they and every of them would use their endeav[er]s to ruine him’.²

Unfortunately the depositions for this case do not survive so these claims about the credibility of the witnesses and their testimony can never be assessed. What this case does offer is evidence that without a study of witnesses and their testimony historical studies can miss opportunities to gain valuable insights into the words, circumstances and effects of sexual slanders. Analysis of witness depositions (and the witnesses themselves) also provides information about the debates contemporaries could have about the ‘credibility’ of witnesses – and evidence of how the ‘credibility’ of witnesses was assessed in church courts – all of which can tell us a lot more about how reputation was defined in the course of the sexual slander suits fought in the church courts than an examination of only the litigants involved can provide.

Previous studies of defamation have tended to incorporate witness testimony alongside the information provided in the libels and allegations of litigants. The suggestion here

¹ Isabel Stone c. John Newbald (1699), CP.H.4562, p. 3.

² Ibid, p. 5.

to further incorporate the information about witnesses into these studies is not new and witness testimony has already been utilised in original and interesting ways. Laura Gowing's *Domestic Dangers* places the words of witnesses firmly as a central element to her analysis of defamation; while Alexandra Shepard has studied the claims to honesty used by witnesses, rather than focusing on the more common analysis of the *dishonesty* argued in defamation cases, and in doing so has opened up an interesting new way to interpret witness testimony.³ Therefore this chapter expands on the work of previous historians whose work has also examined the information we can gather about defamation from the depositions of witnesses and from the witnesses themselves.

The first section of this chapter outlines how and why witnesses would be used in sexual slander defamation suits (and how their active involvement in some cases could markedly help or hinder the claims of litigants), and makes a comparison of the frequency in which (and number of) witnesses that were called before the London and York Consistory courts in the period 1680-1700. This comparison outlines how the study of witnesses exposes the extent to which litigants were prepared to fight in court in two different areas of the country. Section two evaluates the biographical information of witnesses in both courts and describes the similarities and differences in the gender, age and marital status of witnesses. Through this examination it outlines the ways in which the 'credibility' of witnesses and their depositions were evaluated by the court officials and the litigants, and how previous ideas of the type of witness used in sexual slander suits in the church courts may require further analysis.

1. The use of witnesses

The 'term probatory' would begin when cases moved into the second stage of the litigation process; it was at this point that litigants were given time to have their witnesses produced and examined.⁴ Two witnesses were the minimum required but

³ Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford: Oxford University Press, 1996), esp. Chapter 7: Narratives of Litigation and Alexandra Shepard, "Honesty, Worth and Gender in Early Modern England, 1560-1640," in *Identity and Agency in England, 1500-1800*, ed. Henry French and Jonathan Barry (Basingstoke: Palgrave Macmillan, 2004), 88-102.

⁴ Carson I. A. Ritchie, *The Ecclesiastical Courts of York* (Arbroath: The Herald Press, 1956), 131-2.

‘ten – or even twenty – were not uncommon’.⁵ The production and examination of witnesses, Barry Till argues, was ‘the greatest single cause of delays in the church courts’.⁶ Litigants were required to pay the travel and lodging costs of their witnesses (according to their station in life and how far they had travelled) and in some instances witnesses refused to provide a deposition until they had been thus compensated.⁷ Some witnesses could not be called due to their infirmity or were reluctant to leave work, so a commission to gather their testimony could be called instead.⁸ In these circumstances the witness would appear before a court nearer to their home and answer the court’s questions. The use of a commission would prove very expensive to the party who required their testimony: each commission required the use of the deputy registrar and the two proctors – who charged 6s. 8d. a day – and could take two or three days to complete.⁹ If able-bodied but reluctant witnesses lived outside the judge’s authority they could face a compulsory to attend court, but only when the party who wanted their testimony had proven that this testimony was essential to their case.¹⁰

Witnesses would be admitted, would swear to depose the truth and would be examined privately before a registrar or judge and answer questions from the interrogatory produced by the adverse proctor.¹¹ Their examination aimed to either prove or disprove the truth of the plaintiff’s libel and the interrogatories provided by the adverse proctor were designed to ‘trap the witness into an admission which would prove useful to the adverse party, or at least to establish that he had knowledge of the matters he deposed of’.¹² Questions posed in interrogatories sought to establish not just what the witnesses knew but also how they got their information – did they personally witness the slander or did they hear of it later? Did the witness have any bias that would affect

⁵ Barry Till, “The Church Courts 1660 – 1720: the Revival of Procedure,” Borthwick Paper, no. 109 (2006): 20. See also Ralph Houlbrooke, *Church Courts and the People During the English Reformation 1520-1570* (Oxford: Oxford University Press, 1979), 40-41.

⁶ Till, “The Church Courts 1660 – 1720,” 20.

⁷ Ibid, 20; Henry Conset, *The Practice of the Spiritual or Ecclesiastical Courts*, Second edition (London: 1700), 109, 112-3; Ritchie, *The Ecclesiastical Courts of York*, 137; J. A. Sharpe, ““Such disagreement betwix neighbours’: litigation and human relations in early modern England,” in *Disputes and settlements: law and human relations in the West*, ed. John Bossy (Cambridge: Cambridge University Press, 1983), 173.

⁸ Till, “The Church Courts 1660 – 1720,” 21.

⁹ Ibid, 21.

¹⁰ Ritchie, *The Ecclesiastical Courts of York*, 132.

¹¹ Ibid, 137, 138.

¹² Ibid, 129 and 140.

their testimony; for example, were they friend, a family member or an employee of the litigant? Interrogatories would thus attempt to establish if the witnesses were reliable and if their testimony was credible.¹³ Proctors could also bring ‘exceptions’ against witnesses whose testimony they genuinely believed (or tactically claimed) was false or dishonest.¹⁴ Carson I. A. Ritchie has highlighted, however, that ‘in the ecclesiastical courts no-one ever admitted that anything or anyone brought forward by the opposite party was genuine, unless they saw advantage to themselves by doing so’.¹⁵ The ‘exceptions’ made against witnesses must therefore be read with caution.

Witnesses could prove extremely useful, and sometimes vigorously defended or refuted the claims made by litigants. The York court is unique in recording nine cases where a witness (or witnesses) openly supported the defendant in the case.¹⁶ Six different methods to show this support were recorded; including two cases where there were calls of agreement with the words employed by the defendant, one case (Robert White c. Henry Davey) where it was commented on that Robert had brought Henry to court ‘maliciously, vexaciously and unjustly’ and one case (Barbara Winspear c. Edward Calverley) where witnesses said Barbara ‘was in the greatest fault by reason she was often required to leave of talking but would not’ and one witness commented that he ‘believes and judges her the said Winspear to be in the greatest fault because she first provoaked him [Calverley]’.¹⁷

¹³ Ibid, 140.

¹⁴ Conset, *The Practice*, 340; Houlbrooke, *Church Courts and the People*, 41; R. H. Helmholz, *The Oxford History of the Laws of England. Volume I: The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford: Oxford University Press, 2004), 585; R. H. Helmholz, *Canon Law and the law of England* (London: The Hambledon Press, 1987), 43.

¹⁵ Ritchie, *The Ecclesiastical Courts of York*, 143-4.

¹⁶ Barbara Winspear c. Edward Calverley (1684), CP.H.3643; Joshua Kay c. Joseph Beaver (1691), CP.H.4277; Joshua Kay c. Mary Beaver and Joseph Beaver and Sarah Beaver and Martha Beaver and William Beaver (1691), CP.H.4251; Robert White c. Anne Davey (1694), CP.H.4354; Robert White c. Henry Davey (1694), CP.H.4344; John Barnard c. John Towse (1698), CP.H.4523A; John Barnard c. John Kirkby (1698), CP.H.4523; Richard Owston c. William Spencer (1698), CP.H.4520; and Thomas Hewetson c. Thomas Daniel (1699), CP.H.4534.

¹⁷ The cases that recorded witnesses agreeing with the words of the defendant are: Joshua Kay c. Joseph Beaver (1691), CP.H.4277 and Joshua Kay c. Mary Beaver and Joseph Beaver and Sarah Beaver and Martha Beaver and William Beaver (1691), CP.H.4251; Robert White c. Henry Davey (1694), CP.H.4344; and Barbara Winspear c. Edward Calverley (1684), CP.H.3643.

When the behaviour of the witnesses themselves are examined further it is clear that in York there was more effort (that is, more effort recorded in the official records that survive) made by the witnesses to reconcile the litigants than in London. Three cases in York record witnesses attempting to make peace between the parties by talking to the defendant; including Edward Prockter who attempted to mediate between Dorothy Aves and Isabel Kid when, ‘hearing that there was likely to happen some trouble to ye s[ai]d Isabell Kidd for speakeing the s[ai]d words he went to the s[ai]d Kidd and advised her to aske pardon & make submission & agreement’.¹⁸ Unfortunately his attempts failed as Isabel ‘refused soe to doe & s[ai]d that she was manage what she had said’.¹⁹ In one instance (Sarah Thompson c. Jane Hillhouse) Anthony Beckett was even *asked* to act as ‘a Referee or Arbitrator’ between the litigants.²⁰ Where London, in contrast, had no such actively involved witness negotiators (or none whose actions were officially recorded) and the biggest attempt, on record, to resolve the discord between parties was in the case of Anne Thompson c. Catherine Farmer (1680) when Anne was advised to return home to avoid the slanderous words of the defendant.²¹

However, both London and York record four cases respectively of witnesses who advised the defendant not to make the slanderous accusations and three cases in London record a witness (or witnesses) advising the defendant not to say anything they could not prove.²² Witnesses in 54% of cases in London also described the plaintiff as having a ‘good name, fame [and/or] reputation’ and the good name of the plaintiff was only affirmed in 18% of cases in York. The witnesses in York can thus be described as more actively involved in defending the reputation of litigants in

¹⁸ Margaret Bullard c. John Turner (1684), CP.H.3831; Grace Burnet c. Margaret Flesher (1687), CP.H.3723; Dorothy Aves c. Isabel Kid (1695), CP.H.4359.

¹⁹ Dorothy Aves c. Isabel Kid (1695), CP.H.4359, p. 5.

²⁰ Sarah Thompson c. Jane Hillhouse (1689), CP.H.3792, p. 5.

²¹ Anne Thompson c. Catherine Farmer (1680), DL/C/239.

²² (London) The four cases where witnesses advised the defendant not to make the slanderous accusations are: [female] Whitehead c. David Barine (1680), DL/C/239; Elizabeth Lambeth c. Elizabeth Cunott (1680), DL/C/239; Martha Sharpe c. Richard Seale (1685), DL/C/241; Alice Galt c. Elizabeth Anderson (1695), DL/C/244.

(York) The four cases where witnesses advised the defendant not to make the slanderous accusations are: Millicent Marsh c. Dorothy Hall (1683), CP.H.3564; Mary Edward c. Thomas Moxon, (1684), CP.H.3644; Dorothy Harwood c. Sarah Horseman (1686), CP.H.3688; and Dorothy Aves c. Isabel Kid (1695), CP.H.4359.

The three cases in London where witnesses advised the defendant not to say anything they could not prove are: [female] Ranew c. [male] Penton (1680), DL/C/239; Catherine Watkins c. John Hodder (1685), DL/C/241; and Martha Sharpe c. Richard Seale (1685), DL/C/241.

defamation suits (whether they were the plaintiff or defendant) when compared to their counterparts in London; however, the mediation of clerks in London may have omitted these defences in favour of recording a stock phrase that affirmed the ‘good name, fame and reputation’ of the plaintiff. Robert Shoemaker has also offered an explanation for the apparent lack of interest on the part of the London witnesses to become actively involved in the slanders they witnessed. He argues that it was in the metropolitan environment of London:

‘that the kind of community-based regulation of reputation so common in the early seventeenth-century City of London (as well as in rural contexts) first became untenable. At a basic level, due to frequent geographical mobility eighteenth-century Londoners did not know or take an interest in the activities of their neighbours as much as they used to’.²³

James Sharpe argues instead that ‘there is ample evidence that many Londoners ... appealed on appropriate occasions to a rhetoric of neighbourhood and community’ and that ‘defamation suits from London, for example, demonstrate a concern for honour and reputation as strong as that found in the “face-to-face” rural settlement, and hence throw doubts on the supposed anonymity of the metropolis’.²⁴ The findings in the first chapter of this thesis (that a consistent proportion of sexual slander defamation business was brought to the court from the start to the end of the seventeenth century) offers support for Sharpe’s argument.

London

The London Consistory court recorded depositions in 135 of the 181 (or 75% of) sexual slander cases recorded in 1680, 1685, 1690 and 1695 (Table 3). From these cases it was found that: 9% of cases with depositions had only one witness; 52% had two witnesses; 31% had three witnesses; and only 8% had four or more witnesses (Fig. 3). Interestingly, 1680 was the only year that recorded any instances of more than five

²³ Robert B. Shoemaker, “The Decline of Public Insult in London 1660-1800,” *Past & Present*, no. 169 (2000): 126.

²⁴ J. A. Sharpe, *Early Modern England: a social history, 1550-1760*. Second Edition (London: Arnold, 1997), 90.

witnesses per case and, even then, there were only two such cases: one with six and one with seven witnesses.²⁵ It would be expected that London (as the capital city and the location of one of the busiest courts in the country) would have heard more cases with more than just two or three witnesses. These results are, however, in line with the average number of witnesses found per case in this court in other studies; Laura Gowing's study of 1,800 defamation cases encountered 6,000 witness testimonies, and also found an average of only 3.3 witnesses per case in the 1560-1640 period.²⁶

When compared to York (in which one case in this study recorded 12 witnesses), the number of witnesses used in cases in London seems quite low.²⁷ The busy nature of the courts in London may explain this surprising finding: calling (at the least) two witnesses met the minimum number required for cases to progress in the court which litigants may have felt was enough.²⁸ The expense of litigation may also explain the small number of witnesses called per case. As Tim Meldrum found in his study of the court in the first half of the eighteenth century, cases typically cost between £7 and £10 and usually took several months.²⁹ If a defamation suit cost £10 it would equate to 'more than four and a half months' male wages and over nine months' female wages'.³⁰ Litigants in London may have preferred to limit the number of the witnesses they used in an effort to speed the litigation process up and keep costs down.

²⁵ The case with six witnesses was Elizabeth Hewett c. William Johnson (1680), DL/C/239 and the case with seven was [male] Reeve c. Elizabeth Reeve (1680), DL/C/239.

²⁶ Gowing, *Domestic Dangers*, 32.

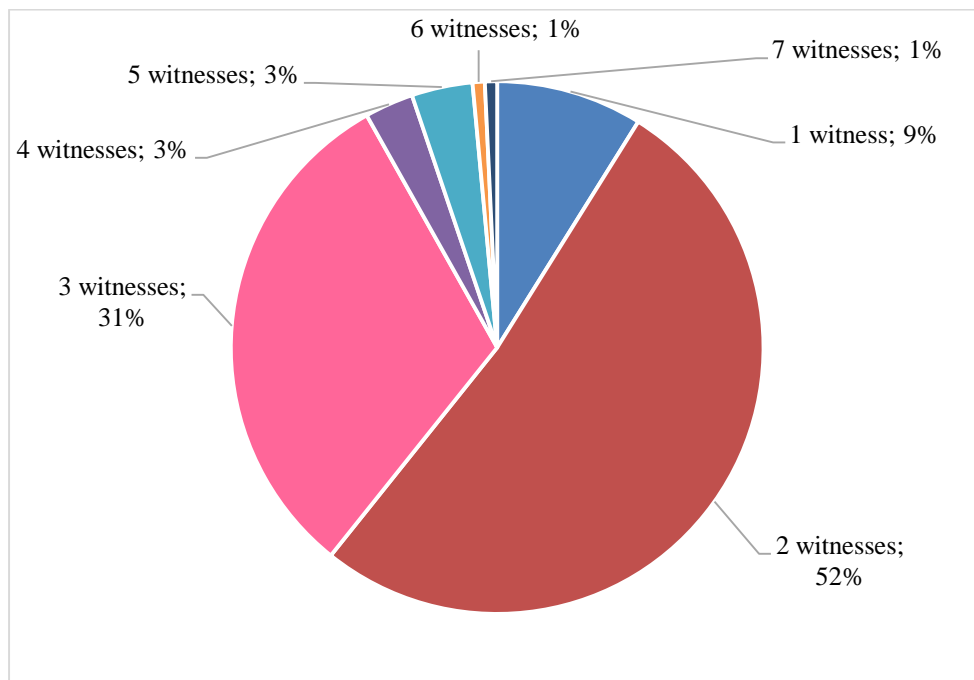
²⁷ The case in York with 12 witnesses is Joshua Kay c. Joseph Beaver (1691), CP.H.4277.

²⁸ Till, "The Church Courts 1660 – 1720," 20.

²⁹ Tim Meldrum, *Domestic Service and Gender 1660-1750: Life and Work in the London Household* (Harlow: Pearson Education Limited, 2000), 99.

³⁰ Tim Meldrum, "A Women's Court in London: Defamation at the Bishop of London's Consistory Court, 1700-1745," *The London Journal* 19, no. 1 (1994): 3. These estimations are based on his use of L. D. Schwarz, *London in the Age of Industrialisation: Entrepreneurs, Labour Force and Living Conditions, 1700-1850* (Cambridge: Cambridge University Press, 1992), 170 and P. Earle, "The Female Labour Market in London in the Late Seventeenth and Early Eighteenth Centuries," *Economic History Review*, Second Series, 42, no. 3 (1989), 328-53, esp. 343 and assume that a waged worker bringing suit for defamation worked full time.

Fig. 3 – Number of witnesses per case, (London).



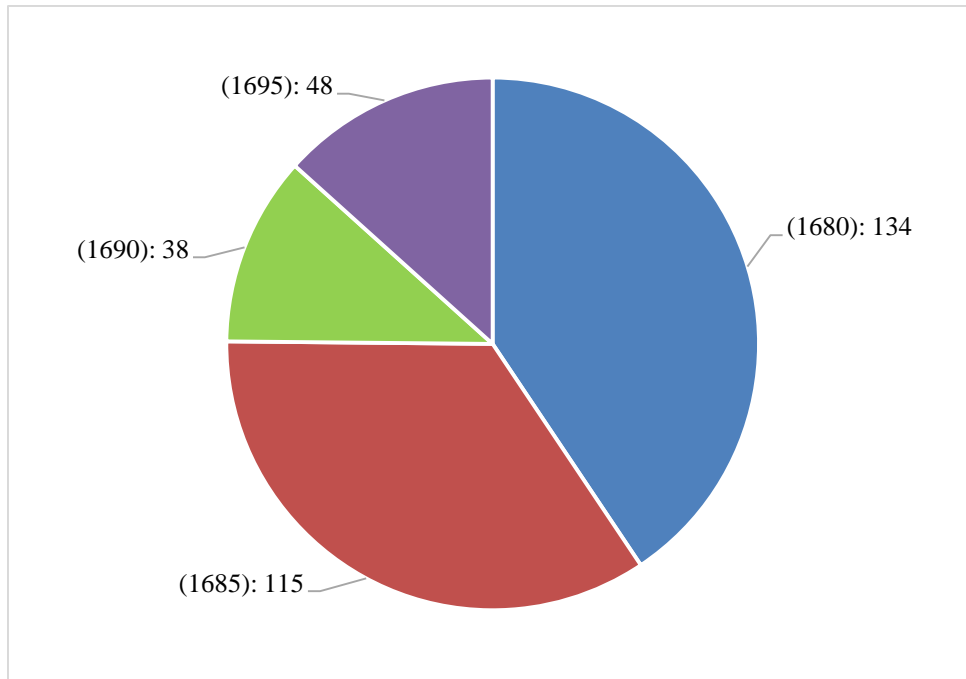
In the London court it was the years 1680 and 1685 in which the highest number of defamation cases were recorded (Table 4a) – and while this is evidence that the court was the busiest in this decade – it was also the period when the most witness depositions were recorded (249, compared to 86 in the 1690s [Fig. 4]), which is evidence that sexual slander cases were also at their most intensively litigated in the 1680s. The cases heard in the 1680s had an average of, at least, two witnesses per case and only eight cases had four or more witnesses (compared to the 1690s when only three cases had four or more witnesses).³¹ This higher number of witnesses and more frequent instances of cases that had four or more witnesses, coupled with the decline in the number of cases in the 1690s, suggests that litigants in the earlier decade were

³¹ The eight cases with four or more witnesses heard in the 1680s are: [male] Reeve c. Elizabeth Reeve (1680), DL/C/239; Elizabeth Hewett c. William Johnson (1680), DL/C/239; [female] Batty c. Richard Ward (1680), DL/C/239; [female] Harnden c. [female] Raynee (1680), DL/C/239; [female] Palten c. Elizabeth Winckle (1680), DL/C/239; [Judith] Naggs c. [Alice] Cutting (1685), DL/C/241; Anne Gabing c. Christian Painter (1685), DL/C/241; and [Judith] Naggs c. [Alexander] Cutting (1685), DL/C/241.

The three cases with four or more witnesses in the 1690s are: Martha Godfrey c. Edward Tilley (1690), DL/C/243; [female] Soune c. [female] Hammond (1690), DL/C/243; and [Alice] Galt c. Elizabeth Anderson (1695), DL/C/244.

more prepared to pursue cases than their counterparts in the 1690s and, therefore, that the 1680s was the period in which defamation cases were at their most litigated.

Fig. 4 – Number of witnesses per year, (London).

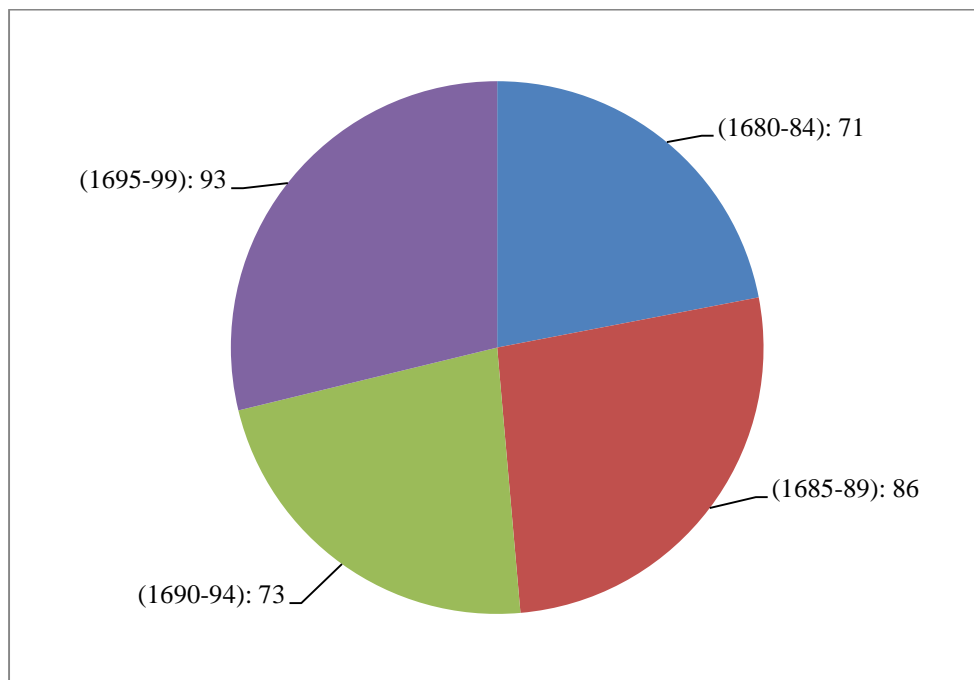


York

The York Consistory court recorded 130 cases of sexual slander defamation between 1680 and 1700, of which 66% recorded witness depositions (Table 15).³² The distribution of these depositions was interesting; the first half of both decades recorded the lowest number of depositions and the second half of both decades recorded the highest (Fig. 5). Even stranger was the extremely similar numbers of depositions recorded through this pattern: 71 and 73 at the lowest number (in 1680-84 and 1690-94 respectively) and 86 and 93 at the highest (in 1685-89 and 1695-99).

³² This total was gathered from the 63 cases that record a libel and deposition(s) only, the one case that records deposition(s) and sentence only, and the 22 cases that record a libel, deposition(s) and sentence.

Fig. 5 – Number of witnesses per year, (York).



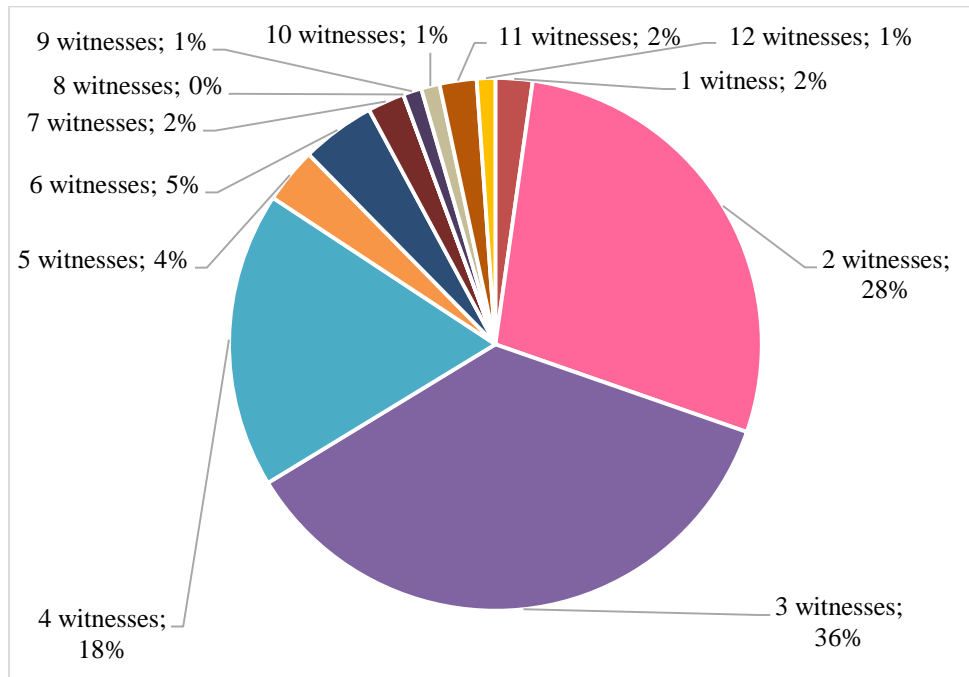
Of the cases that made it to the second stage of litigation; 28% recorded the testimony of two witnesses and 36% recorded that of three (Fig. 6).³³ Cases with either two or three witnesses, therefore, were the most common type of case in both the York and London courts. However, in the York court 18% of cases had depositions recorded from the testimony of four witnesses and another 18% had five or more witnesses, including one case with 10 witnesses, two with 11 witnesses and even one case with 12 witnesses.³⁴ When compared to its counterpart in London, the York Consistory court appears to have catered to a clientele that were more determined to pursue their cases through to, at least, this second stage of litigation. As was highlighted earlier, Till's evaluation of the York court between 1660 and 1720 also found that 'two [witnesses] were the minimum required but ten – or even twenty – were not

³³ This total represents those 37 cases that survive as a libel only. It excludes the two cases that survive as a libel and sentence only and the five cases that survive as a sentence only because it is not possible to know if they recorded depositions that have been lost over time, and it also excludes the one case that survives as deposition(s) and sentence only because it is presumed that this case *must have* recorded a libel that was lost over time.

³⁴ The case with 10 witnesses is: Grace Burnet c. Margaret Flesher (1687), CP.H.3723.
The two cases with 11 witnesses are: Elizabeth Ballard c. Thomas Penrose (1685), CP.H.3692 and Robert White c. Henry Davey (1694), CP.H.4344.
The case with 12 witnesses is: Joshua Kay c. Joseph Beaver 91691), CP.H.4277.

uncommon'.³⁵ The high number of witnesses in the York court could therefore be the result of over-zealous litigants or could be a tactic used by one party to increase the bill of costs (which would have cost £8 if the suit was pursued to its conclusion) and delay the progress of the case in an attempt to ensure an out of court settlement.³⁶

Fig. 6 – Number of witnesses per case, (York).



2. The social profile of witnesses

In the London court a total of 335 witnesses – of which 61% were female and 39% were male – were deposed (Table 9). This greater proportion of female witnesses is also confirmed in other studies.³⁷ Gowing, amongst others, found that in defamation

³⁵ Till, “The Church Courts 1660 – 1720,” 20.

³⁶ Sharpe, “Such disagreement betwix neighbours,” 173. See also: B. D. Till, “The administrative system of the ecclesiastical courts in the diocese and province of York. Part III: 1660-1883: A study in decline,” (Unpublished typescript at The Borthwick Institute for Archives, University of York, York, 1963), 157 and R. B. Outhwaite, *The Rise and Fall of the English Ecclesiastical Courts, 1500-1860* (Cambridge: Cambridge University Press, 2006), 10.

³⁷ For example: Laura Gowing, “Language, power, and the law: women’s slander litigation in early modern London,” in *Women, Crime and the Courts in Early Modern England*, ed. Jenny Kermode and Garthine Walker (London: UCL Press, 1994), 26-7; Meldrum, “A Women’s Court,” 5-6, 14; Martin Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (Cambridge: Cambridge University Press, 1990), 302; Jenny Kermode and Garthine Walker ed., *Women, Crime and the Courts in Early*

cases in general, 46% of witnesses were female and this increased to 60% in those cases fought *between* women.³⁸ The cases sampled here that were fought between two women in the London court also recorded a majority of female witnesses – 66% of these cases were supported with female testimony (Table 10). Gowing argues that ‘the specific conditions of urban gender relations were likely to influence these women’s contact with the courts’.³⁹ The day to day lives of many women (whether they were ‘working in shops in the fronts of their houses, in their own alehouses, or selling goods at markets’) meant they ‘spent much of their time living and working in a predominantly female world. All these circumstances both increased their public profile and made them more likely to be involved in social dispute’.⁴⁰

In the York court, however, from a total of 323 depositions; only 43% were made by female witnesses and the majority (57%) were from male witnesses (Table 20). It is also interesting to note that while the York court had a majority of female plaintiffs (76%), it recorded a majority of male defendants (57%) *and* a majority of male witnesses (57%). In this court male testimony would be used in cases fought, more often than not, by a woman defending herself against the slanderous words of a man (Table 21). One possible explanation is that the greater value placed on the words of men (and the societal belief that the words of men were inherently more trustworthy than women) would have made testimony from male witnesses highly desirable, and would have been used as a tool by litigants to strengthen their case.⁴¹ This would be especially true for the female litigants who utilised male testimony. Interestingly, in her study of the London courts (which recorded a majority of female witnesses) Gowing argues that ‘the gendered dimensions of credit meant that women were less likely to be asked to witness than men’ and ‘once they got to court, women were also likely to be cross-questioned in a particular way’ with ‘women’s interrogatories

Modern England (London: UCL Press, 1994), 12; W. R. Prest, “Law and women’s rights in early modern England,” *The Seventeenth Century* 6, no. 2 (1991): 169-187.

³⁸ For example: Gowing, “Language, power, and the law,” 27, 37, (esp. footnote 5 on p. 44); Gowing, *Domestic Dangers*, 12; Meldrum, “A Women’s Court,” 14.

³⁹ Gowing, “Language, power, and the law,” 29.

⁴⁰ *Ibid*, 29.

⁴¹ Susan Dwyer Amussen, *An Ordered Society: Gender and Class in Early Modern England* (Oxford: Basil Blackwell Ltd, 1988), 101; Bernard Capp, “Separate Domains? Women and Authority in Early Modern England,” in *The Experience of Authority in Early Modern England*, ed. Paul Griffiths, Adam Fox, and Steve Hindle (London: Macmillan Press Ltd, 1996), 135-36; Gowing, “Language, power, and the law,” 27, 37; Meldrum, “A Women’s Court,” 15.

focussed more on credit and especially the vulnerability of women's credit'.⁴² The gender of witnesses, therefore, impacted on the 'credibility' that would be given to their depositions.

The 'credibility' of witnesses would also be assessed by their age, social and marital status.⁴³ Shepard believes 'distinctions of social status were as instrumental as gender in determining access to and attribution of various facets of honesty'.⁴⁴ In her evaluation 'young men and women in service were treated with suspicion because they were dependent, and as a result they were deemed untrustworthy'.⁴⁵ Meldrum goes further still when he describes how 'the need for witnesses to possess a minimum of social "credit" suggests that the youngest and very poorest servants, particularly the poorest women and girls, may have been absent' from the courts.⁴⁶ The findings of this thesis, however, do not entirely support these conclusions. 39 witnesses (12% of the overall witnesses) in London and 18 (5% of the overall witnesses) in York were aged between 16 and 19 years old (see Tables 11 and 22). In total, 9% of witnesses in this sample were under 20 years old. From their youthful age it can be fairly safely assumed that these 57 witnesses were mostly (if not all) servants or apprentices. When their social status was queried further it was found that 43 women in this sample were servants, 14% of whom were 16-19 years old and 16% of whom were aged between 20 and 24; and 14 men were either servants or apprentices, 29% of whom were 16-19 years old and 21% were 20-24 years old. Thus 9% of this sample were servants. As such, both youthful witnesses and those in service (represented by both genders but with an inclination towards the more information that was provided in the biographical summary of female witnesses) represent around one in every ten of this thesis' witnesses.

When the ages of witnesses are examined further it is also interesting to note that the age of both male and female witnesses was frequently recorded as being between 20-

⁴² Gowing, *Domestic Dangers*, 239.

⁴³ Shepard, "Honesty, Worth and Gender," 89, 101; Meldrum, *Domestic Service and Gender*, 9, 98.

⁴⁴ Shepard, "Honesty, Worth and Gender," 89.

⁴⁵ *Ibid*, 92.

⁴⁶ Meldrum, *Domestic Service and Gender*, 9. See also: P. Earle, *A City Full of People: Men and Women of London, 1650 – 1750* (London, 1994), 269-73.

24 years old; in the York court this was the most frequent age recorded (in 18% of cases) and was the second most frequent age (representing 15% of cases) recorded in London. In the both courts, then, younger witnesses were not uncommon. There were differences in the frequency in which each age range would be recorded in the two courts, however. In the London court the most frequently recorded age range (when male and female witnesses were considered jointly) was 30-34 years (18%), followed by 20-24 years (15%) and 25-29 years (14%). In the York court this differed slightly: the most frequently recorded age range (when male and female witnesses were considered jointly) was 20-24 years (18%), then 30-34 years (13%) and 25-29 years (11%). James Sharpe offers a potential explanation for the youthful nature of witnesses in the courts. He highlights how ‘... around 1695 ... 17.46 per cent [of the population of England] was [aged] between 10 and 19. Even in the demographically stagnant circumstances of the late seventeenth century, some 40 per cent of the population was aged less than 20 years’.⁴⁷ If these numbers are accurate it hardly seems surprising that 9% of the witnesses in this thesis were under 20 years old. What should be surprising is that this was not *more* common in the courts.

The marital status of witnesses is another category by which the assessment of the credibility of witnesses can be observed.⁴⁸ It is also a category by which the record keeping of the courts can be evaluated. When compared, the Consistory courts of London and York show an immediate gender discrepancy in the level of information that can be obtained about the witnesses: both neglect to record the marital status of male witnesses, whereas both record significantly more information about the marital status of the female witnesses (see Tables 12 and 23). When the marital status of the female witnesses was not recorded their employment was sometimes recorded instead, although in nowhere near as high a frequency as the male witnesses who defined by their employment. 22 male witnesses (only 7%) from this whole sample were found

⁴⁷ Sharpe, *Early Modern England*, 40.

⁴⁸ For more on marital status determining the power and credibility of women see: Meldrum, “A Women’s Court,” 13; Laura Gowing, “Ordering the body: illegitimacy and the female authority in seventeenth-century England,” in *Negotiating Power in Early Modern Society: Order, Hierarchy and Subordination in Britain and Ireland*, ed. Michael J. Braddick and John Walter (Cambridge: Cambridge University Press, 2001), 43-9; and Bernard Capp, *When Gossips Meet: Women, Family, and Neighbourhood in Early Modern England* (Oxford: Oxford University Press, 2003), 96.

to be married but this information was *only* gathered because the marital status of their wives (as fellow witnesses) was recorded.

In the London court the majority of female witnesses were married (54%), 5% were widowed and none were recorded as either an unmarried woman or a 'spinster'. 41% of these cases did not record a marital status of any kind and these statistics must therefore be used as only an estimation of the marital status of the female witnesses in this court. This may suggest that the London court only recorded the marital status of the female witnesses as either one of two categories; those who had some kind of marital status (married or widowed) and those who did not, so the unmarried women who testified may constitute a large percentage of the 41% who were recorded without a marital status. As we will never know the marital status of these women, however, this must remain a suggestion.

Similarly to London, in the York court the majority of female witnesses were married (48%). However, unlike the London court, 14% of the female witnesses in York were widowed, 32% were of an unmarried or 'spinster' status and only 7% did not have their marital status recorded. What is distinctive between these courts is that the York Consistory court records the frequency of these unmarried or 'spinster' witnesses, and only nine female witnesses had no marital information recorded; which indicates a greater level of care taken to record the witnesses' information in York. The York court is also unique in that it records the marital status of *all* the female witnesses in the period 1680-84, the only period in both the courts in which this information in its entirety is known. Because the York court has, seemingly, made it a priority to record the marital status of its female witnesses it holds an impressive statistic: 93% of the female witnesses it deposed had their marital status recorded, a much higher percentage than the 59% in the London court.

This chapter has investigated how and why witness testimony would be used in the sexual slander defamation suits sued in the London and York Consistory courts in the period 1680-1700. It has shown how the study of witness testimony exposes the extent

to which litigants were prepared to fight in court in two different areas of the country. While there were a similar number of witnesses recorded in these cases in the Consistory courts of London and York (335 witnesses in London and 323 in York), the proportion of cases that recorded witness testimony in these courts was different: 75% of cases in London called witnesses compared to 66% in York. This may suggest that litigants in London were more inclined to pursue their claims as they more frequently called witnesses to their cause. However, in the York court the higher number of witnesses brought *per case* may suggest that litigants here were more inclined to pursue cases because they called (on average) a greater number of people to their cause while defending their claims.

The examination of the biographical information of the witnesses outlined the ways in which the ‘credibility’ of witnesses and their depositions were evaluated and how previous ideas of the type of witness may require further analysis. Similarities were found to previous studies whereby the testimony of male witnesses was taken on its merits but that of female witnesses was measured against their situation in life, and a respectably married woman was seen as more ‘credible’ than her spinster counterpart.⁴⁹ Differences between these courts, and between this study and previous works, were also found. While the majority of witnesses in the London court (some 61%) were female, in the York court the majority of witnesses (57%) were male. The proportion of witnesses in both courts that were under the age of 20 or employed as servants were also found in a larger proportion than has been previously assumed.

While the study of witnesses and their testimony is not a new concept, it has been argued here (and elsewhere) that an evaluation of the words of witnesses – and the witnesses themselves – is an important method of investigating reputation and the sexual slander business of the church courts.

⁴⁹ Meldrum, “A Women’s Court,” 15; Gowing, “Language, power, and the law,” 37.

‘Rogues,’ ‘whoremasters’ and ‘cuckolds’: Men, masculinity and sexual slander

The study of gender began in the 1980s as an offshoot of the burgeoning interest in women’s history. It was by integrating the sexes that ‘gender history has encouraged a more organic understanding of past societies’.¹ It has also been proposed that ‘any lens that historians use to look at the ways that men and women interacted with each other and with society – be it women, men or gender – increases our understanding of the past considerably’.² The popularity of the history of gender, men and masculinity need not be stated here; suffice to say that these fields of historical enquiry have been (and still are) thoroughly examined by historians and sociologists alike.

Alexandra Shepard argues that the history of masculinity ‘is now an essential sub-field of gender history’.³ One of the key issues in the history of masculinity is the debate surrounding the perceptions and manifestations of masculinity and whether they changed or remained the same in the early modern period.⁴ Karen Harvey delineates three distinct phases of ‘men’ in the development of masculinity from 1650 to 1800. She describes ‘a move from a rough-and-ready seventeenth-century manhood, perhaps resting on control over women’s sexuality, but anxious to defend patriarchal authority in public, to a polite and civil eighteenth-century masculinity’.⁵ The household patriarch is taken as the example of a ‘normal’ man prior to 1700; a man who, when he reflects the ‘acceptable and normative masculinity’ Elizabeth Foyster describes, concerns himself with overseeing the behaviour of his household, and especially controlling the sexual behaviour of his wife.⁶ However, Harvey argues this version of

¹ Hannah Barker and Elaine Chalus, “Introduction,” in *Gender in Eighteenth-Century England: Roles, Representations and Responsibilities*, ed. Hannah Barker and Elaine Chalus (New York: Addison Wesley Longman, 1997), 6.

² *Ibid.*, 8.

³ Alexandra Shepard, *Meanings of Manhood in Early Modern England* (Oxford: Oxford University Press, 2003), 2.

⁴ Karen Harvey and Alexandra Shepard, “What Have Historians Done with Masculinity? Reflections on Five Centuries of British History, circa. 1500-1950,” *Journal of British Studies* 44 no. 2 (2005): 279.

⁵ Karen Harvey, “The History of Masculinity, circa. 1650-1800,” *Journal of British Studies* 44 no. 2 (2005): 310.

⁶ *Ibid.*, 298; Elizabeth Foyster, *Manhood in Early Modern England: Honour, Sex and Marriage* (London: Addison Wesley Longman Limited, 1999), 3.

the household patriarch had, by the period of focus in this thesis, evolved into a more civilised form of man and ‘the late seventeenth and early eighteenth centuries feature a distinctive manly type, as the polite gentleman moves centre stage’.⁷ The polite gentleman was a familiar character in the eighteenth century as new concepts of ‘politeness’ and ‘sociability’ and a new framework of masculinity allowed men to look to factors outside of controlling the household’s inhabitants to reassure their masculinity.⁸

However, this distinctive model of phases of change has been criticised on a number of grounds and, most importantly, by Harvey herself. She believes that ‘we still know too little to argue for the ancien régime of masculinity, but we have certainly overstated a modernising sea change’.⁹ After her detailed description of the changes encompassing the history of masculinity, Harvey explains how the polite gentleman could actually be considered a sandwich phase between the period of the household patriarch’s dominance from 1650 and a revival of ‘older modes of manhood’ in the later part of the eighteenth century; therefore, ‘there are signs of a cyclical pattern’ which ‘suggests there is plenty of evidence for continuity’.¹⁰ Shepard highlights how there was ‘an increasing plurality of and fluidity to male identities’ between 1500 and 1700 that ‘remained focussed – if variously reconfigured – around many of the same fixed points’.¹¹ The assortment of male identities Shepard believes were available to men across the entire social spectrum (as unlike Harvey, Shepard’s work maintains the link between the effects the actions of each socio-economic group of males could have on one another) were not ‘the most profound change witnessed during the early modern period’ but this was instead seen ‘in different men’s access to and claims on them as the benefits of patriarchy became subtly redistributed’.¹² Shepard cites

⁷ Harvey, “The History of Masculinity,” 301.

⁸ For more on ‘polite gentlemen’ and the rise of ‘politeness’ and ‘sociability’ see: Michèle Cohen, *Fashioning Masculinity: National Identity and Language in the Eighteenth Century* (New York: Routledge, 1996); Philip Carter, *Men and the Emergence of Polite Society, Britain, 1660-1800* (Harlow: Pearson Education, 2001); Anna Bryson, *From Courtesy To Civility: Changing Codes of Conduct in Early Modern England* (Oxford: Oxford University Press, 1998).

⁹ Harvey, “The History of Masculinity,” 311.

¹⁰ *Ibid.*, 311. See also Harvey and Shepard, “What Have Historians Done,” 279.

¹¹ Alexandra Shepard, “From Anxious Patriarchs to Refined Gentlemen? Manhood in Britain, circa. 1500-1700,” *Journal of British Studies* 44, no. 2 (2005): 281. See also: Shepard, *Meanings of Manhood*, 11.

¹² Shepard, “From Anxious Patriarchs,” 281-82.

‘methodological differences’ as the main cause of profound change in the meanings of manhood.¹³ She argues that the reason why men across the early modern period can appear to be so different is ‘less indicative of a dramatic shift in male identities than attributable to the fact that we are not comparing like with like’.¹⁴ Instead we are comparing ‘different classes, different localities, and different contexts’ so ‘the evidence representing them is incommensurable’.¹⁵ The concept of masculinity, therefore, has been the subject of wide debate and has been ‘continuously redefined’ by historians.¹⁶

Therefore this chapter has not sought out evidence for a specific ‘type’ of man, nor has it compared different classes of men or different contexts of their disputes. The men involved in cases of sexual slander have been examined in terms of their actions, and the possible motivations for these actions, and not through an attempt to distinguish what ‘type’ of man was more often reflected in the defamation disputes of the church courts. The debates surrounding gender and masculinity are, however, useful in locating these men, their actions and their motivations in the contemporary context in which they occurred. The conclusions gathered in this chapter have developed from an examination of the same class of men in the same context – those who acted as litigants in suits for defamation or those who were called as witnesses in these suits in the church courts. However, different localities have been purposefully compared because the study of regional differences between the sexual slander defamation business of the church courts in London and York is a main aim of this thesis. Within these parameters, then, this chapter has found more evidence that the men involved in sexual slander in London and York reflected embodied the ‘rough-and-ready seventeenth-century manhood’ described by Harvey.¹⁷

This chapter explores the roles of men in cases of sexual slander defamation. It examines the numbers of men recorded as plaintiffs, defendants and witnesses; the

¹³ Ibid, 281.

¹⁴ Ibid, 287. See also: Barker and Chalus, “Introduction,” 25-6.

¹⁵ Ibid, 287.

¹⁶ Barker and Chalus, “Introduction,” 6.

¹⁷ Harvey, “The History of Masculinity,” 310.

words used to both discredit and defend male reputations; and the circumstances surrounding male involvement in the sexual slander defamation cases brought in the London and York Consistory courts in the period 1680-1700. The first section of this chapter examines the ‘double standard’, and its subsequent re-evaluation, and describes the extent to which these interpretations explain the incidences of sexual slander defamation in the two courts. The second section focuses its attention on the case of Joshua Kay c. Martha Beaver and William Beaver (1691).¹⁸ This case-study is used to reflect the strength and vulnerability of men’s reputations in the seventeenth century, and the extent to which the ‘double standard’ dictated the ability for men and women to sue and defend their reputations in the church courts. This chapter argues that while sexual slander may not have had as devastating an impact on the lives and reputations of men when compared to their female counterparts, it was still a weapon that could wield considerable power and men would not take allegations of their sexual impropriety lightly.

1. The ‘double standard’ in London and York

The ‘double standard’ has been described in greater detail in the introduction to this thesis. In summary: reputation in early modern England was highly gendered, so much so that women’s reputations were almost exclusively based on their sexual honesty while men’s reputations were based on a wider number of variables. The ‘double standard’ was so long standing that Robert Shoemaker describes how ‘men’s lack of sexual discipline came to be tolerated as an essential male characteristic’.¹⁹ Traditional gender roles in England in the late seventeenth century were upheld by the law, pulpit, custom, and ale-house jokes and there was no serious attempt to challenge them.²⁰ As such, a slur on a man’s worth could be flattened by his social position and there was not one universal standard of male sexual conduct.²¹ Laura Gowing describes how slanderous accusations made by women were ‘pitted against this credit and against all

¹⁸ Joshua Kay c. Martha Beaver and William Beaver (1691), CP.H.4264.

¹⁹ Robert B. Shoemaker, “The Decline of Public Insult in London 1660-1800,” *Past & Present*, no. 169 (2000): 115-6.

²⁰ Bernard Capp, *When Gossips Meet: Women, Family, and Neighbourhood in Early Modern England* (Oxford: Oxford University Press, 2003), 15.

²¹ Faramerz Dabhoiwala, “The Construction of Honour, Reputation and Status in Late Seventeenth- and Early-Eighteenth Century England,” *Transactions of the Royal Historical Society* 6, Sixth Series (1996): 204.

the legal, literary and customary practices of penalizing sexual sin, where only women could be characterised as “whores”, and where men’s honour never involved their sexual behaviour’.²² She argues that ‘when women accused men of sexual misconduct, they put their own reputations on the line first, as if only this could make their words stick’.²³ Susan Dwyer Amussen found that ‘significantly, when men brought suits against women after 1660, they were more than twice as likely to complain of specific sexual allegations than they were against men: the social distance between women and men meant that a woman could dent a man’s reputation only with details’.²⁴ Tim Meldrum found that within his sources ‘the depositions appear to confirm the lesser gravity of sexual slander against men, and that some men, far from worrying about their sexual reputation, positively revelled in their notoriety’.²⁵ There is even evidence of some men defaming women for being ‘whores’ with them.²⁶

A clear example of the ‘double standard’ is evident in those cases of a cheating husband. In these circumstances, ‘women did not threaten men with exposure to their wives’ and ‘instead the wives of adulterous men united with them to condemn their female partners’.²⁷ Four such cases were recorded in the London court, whereby the wife of a cheating husband engaged in a slanderous attack on his mistress and employed the use of the slander ‘my husband’s whore’.²⁸ In one case, Elizabeth Anderson did not directly accuse Alice Galt of being her husband’s whore but merely insinuated it.²⁹ She asked Galt ‘is it not enough to keepe the womans Husband away, but to take the honest womans mony, you whore, you Tickett buying whore’.³⁰ The impact of the accusation ‘my husband’s whore’ and the attribution of blame between

²² Laura Gowing, “Language, power, and the law: women’s slander litigation in early modern London,” in *Women, Crime and the Courts in Early Modern England*, ed. Jenny Kermode and Garthine Walker (London: UCL Press, 1994), 37.

²³ Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford: Oxford University Press, 1996), 72.

²⁴ Susan Dwyer Amussen, *An Ordered Society: Gender and Class in Early Modern England* (Oxford: Basil Blackwell Ltd, 1988), 104.

²⁵ Tim Meldrum, “A Women’s Court in London: Defamation at the Bishop of London’s Consistory Court, 1700-1745,” *The London Journal* 19 (1994): 10.

²⁶ Gowing, “Language, power, and the law,” 37.

²⁷ Gowing, *Domestic Dangers*, 74.

²⁸ The four cases that contain the accusation of ‘my husband’s whore’ are: Margaret Mennell c. Elizabeth Griggs (1685), DL/C/241; Sara Lefeaver c. Margaret Skene (1685), DL/C/241; [Richard] Naggs c. [Alexander] Cutting (1685), DL/C/241; and Elizabeth Tweete c. Joan Ward (1695), DL/C/244.

²⁹ [Alice] Galt c. Elizabeth Anderson (1695), DL/C/244.

³⁰ *Ibid.*, p. 364.

the guilty parties in these cases was mostly aimed at the “other woman” rather than the cheating husband.³¹ As their reputations were based to a greater extent on aspects of their character outside of their sexual behaviour, even when men were publically accused of adultery (another crime punishable in the church courts) it was the *women* involved whose reputations would suffer, not the men.

What is interesting about the 311 cases in this study is that while the male plaintiffs were under-represented in both courts (only 13% of cases here were sued by men), it was men who were most frequently being sued for defamation in the York court (see Tables 5 and 16). The 131 sexual slander defamation cases brought in the York Consistory court recorded 76% of plaintiffs as female (compared to only 24% as male) and 138 defendants, of which 57% were male and 43% were female. In London the gender difference of the plaintiffs was very dramatic: of 181 plaintiffs only 4% were male. The gender difference was reduced between the defendants but female litigants were still in the majority: male defendants were recorded in 31% of the sample of the London court, compared to 69% female. What is even more intriguing is the existence of a majority of male witnesses, again, recorded in the York court: from a total of 323 witnesses, 57% were male and 43% were female; compared to the 335 witnesses recorded in the London court, of which only 39% were male and 61% were female (see Tables 9 and 20).

The type of cases recorded in the courts (female c. female, male c. male, and so on) was also remarkably different between London and York (see Tables 6 and 17). The London court recorded a majority of female c. female cases (65%), compared to 30% in York. Whereas in York the majority (59 cases or 45%) were female c. male, compared to a fairly equivalent number of such cases (53) but a rather different proportion of cases in London; only 29% of the sexual slander defamation cases in the court of the capital were sued by a woman against the words of a man. There was also a strong gender divide between the litigants and the witnesses they would call (see

³¹ Gowing, *Domestic Dangers*, 74.

Tables 10 and 21).³² If the plaintiff was female she would be supported by a strong female majority of witnesses and vice versa for male plaintiffs. This was true in both the London and York Consistory courts: in London 66% of female c. female cases were supported by a majority of female testimony and 100% of the male c. male cases recorded a majority of male supporting testimony; and in York 54% of female c. female cases also had a majority of female testimony and 73% of the male c. male cases were supported by a majority of male testimony. However, in the instances of female c. male cases both courts would (in most cases) find the dispute mediated by a majority of male witnesses: this was recorded in 49% of such cases in London and 59% in York. This is surprising when we have also seen evidence of a strong sisterhood with female plaintiffs relying on the support of their female brethren in female c. female cases. However, it is the gender of the defendant that appears to dictate the gender of witness that litigants would bring. When faced with allegations made by men the female plaintiffs may have had no other recourse but to fight these allegations with the testimony of other men because the ‘double standard’ and this gendering of reputation created a situation whereby the stories men told about sex automatically received more credit than those of women.³³

The majority of female plaintiffs does not, however, mean that men were not also vulnerable to sexual slander. Though they represented the minority of plaintiffs in this sample men brought suit for a range of slanders, from the tamer allegations of simply kissing the wife of another man to accusations of sleeping with the wife of another man.³⁴ In the case of William Batey c. Martha Rich (1688) the libel describes how:

³² Note: the statistics gathered here for the York court exclude those cases that did not record any witnesses. For example, when calculating the percentage of cases that were sued between women which also were supported by the testimony of mostly female witnesses, the 15 female c. female cases were divided by the total number of female c. female cases that *had witnesses* (28) rather than the *overall* total number of female c. female cases (39).

³³ Bernard Capp, “Separate Domains? Women and Authority in Early Modern England,” in *The Experience of Authority in Early Modern England*, ed. Paul Griffiths, Adam Fox, and Steve Hindle (London: Macmillan Press Ltd, 1996), 135-36; Amussen, *An Ordered Society*, 101; Gowing, “Language, power, and the law,” 27, 37; Meldrum, “A Women’s Court,” 15.

³⁴ There were two instances where a man was said to have kissed the wife of another man and both were recorded in the York court: William Batey c. Martha Rich (1688), CP.H.4138 and Thomas Hewetson c. Thomas Daniel (1699), CP.H.4534.

There were three cases, again recorded in the York court, when a man was said to have slept with another woman: James Kenworthy c. John Hide (1681), CP.H.3487; Matthew Bywater c. Elizabeth Brook (1685), CP.H.3662; and Thomas Hewetson c. Thomas Daniel (1699), CP.H.4534.

Martha was with her husband Emor when he said Batey ‘was a whorem[aste]r and [tha]t he had fuck[e]t Joseph Hawksworth’s wife,’ which she stated was true and added that Batey had kissed Mrs Hawksworth as ever her (Martha’s) husband had kissed her.³⁵ In the case of Thomas Hewetson c. Thomas Daniel (1699), Robert Hotham told the court that he was with Hewetson while in ‘the open street in Walmegate’ in York when, ‘thee art[at]e Thomas Daniel passed by them in the said street and hee says that he then & there heard the said Thomas Hewitson say unto the s[ai]d Daniel that the said Thomas Daniel had gott a woman into ye John Scotts entry & and had kist her there’.³⁶ Hotham’s testimony was supported by a second witness (Ambrose Austerfield) who agreed that Daniel was said to have ‘kist a woman in John Scott’s entry ye night before’.³⁷ The third witness (John Pocklington) took the allegation further. Pocklington said he was in his shop with Daniel when he heard Hewetson (who was in the open street outside Pocklington’s shop at the time) call Daniel:

‘Rogue and Knave & a mumper severall times and further said that the s[ai]d Mr Daniel had fuc[ke]t one M[ist]r[es]s Margaret Hutchinson in John Scott’s entry and then showed him ye s[ai]d Mr Daniel the s[ai]d John Scotts Entry and told him that that was the place where he had fuc[ke]t the s[ai]d M[ist]r[es]s Margaret the very night before’.³⁸

Gowing highlights how ‘treatises on defamation discuss the various effects of slander on men but say little about its results for women’.³⁹ For men, slander posed a material threat to profession, inheritance, advancement or livelihood.⁴⁰ Hence, a man’s good name was, as John Godolphin wrote, ‘equilibrious with his life’.⁴¹ After Christiana Needham called Anthony Harland ‘Rogue, Pocky Rogue and Whoremasterly Rogue’

There were three cases, once again, recorded in the York court where a man is said to have slept with / ‘fuckt’ the wife of another man: William Batey c. Emor Rich (1687), CP.H.4135; William Batey c. Martha Rich (1688), CP.H.4138; and Thomas Hewetson c. Thomas Daniel (1699), CP.H.4534.

³⁵ William Batey c. Martha Rich (1688), CP.H.4138, p. 3.

³⁶ Thomas Hewetson c. Thomas Daniel (1699), CP.H.4534, p. 7.

³⁷ Ibid, p. 8.

³⁸ Ibid, p. 5-6.

³⁹ Gowing, “Language, power, and the law,” 38.

⁴⁰ Ibid, 38; Anthony Fletcher, *Gender, Sex and Subordination in England 1500-1800* (New Haven: Yale University Press, 1995), 103.

⁴¹ John Godolphin, *Repertorium Canonicum: or, an Abridgement of the Ecclesiastical Laws of this Realm* (London: 1678): 156.

and ‘further said that the pox had eaten all his teeth out,’ his father claims that ‘the s[ai]d Anthony Harland is much wronged & his Creditt much lessened and impaired by reason of speakeing ye words p[re]deposed for he verry much injured in his trade & reputation thereby’.⁴² It was not only their reputation that men in this period had to worry about, a slanderous accusation made against their wife could also affect their trade. After Dorothy Hall spoke the defamatory words against Millicent Marsh (which were subsequently proven to be false), not only was her (Millicent’s) ‘good name and fame ... much impaired and hurt insoemuch that she is made a generall discourse of within the towne of Nottingham and places thereabouts,’ but the trade of her husband Joseph also suffered and ‘some have refused to goo to their s[ai]d [public] house by reason of these words’.⁴³

As such, ‘men were all too aware that their honour depended on the actions and words of their wives’.⁴⁴ In terms of sexual slander, ‘cuckold’ was a highly damaging insult because it was a gender-specific term; it was applied to men made foolish by their wives’ (alleged) sexual infidelities and insinuated that they were unable to control their wives’ behaviour’.⁴⁵ Thus the use of the word ‘cuckold’ held a dual slander as it could be directed at either a husband or his wife.⁴⁶ Calling a woman a ‘whore’ was also an effective insult if she was married because ‘it represented a two-pronged attack aimed at the wife and the husband: if a married woman was a whore then her husband was a cuckold’.⁴⁷ The involvement of the husbands indicates how sexual slander not only affected a wife’s reputation but also her husband’s – who feared being seen as a cuckold. Therefore in some instances husbands and wives brought slander cases together. Three cases in this study record a husband and wife as either joint plaintiffs/defendants or were found to have a married couple cited individually in a dispute with the same plaintiff.⁴⁸

⁴² Anthony Harland c. Christiana Needham (1696), CP.H.4451, p. 5.

⁴³ Millicent Marsh c. Dorothy Hall (1683), CP.H.3564, p. 7.

⁴⁴ Foyster, *Manhood in Early Modern England*, 2.

⁴⁵ Ibid, 7; John Addy, *Sin and Society in the seventeenth century* (London: Routledge, 1989), 121; Meldrum, “A Women’s Court,” 10; Capp, *When Gossips Meet*, 193.

⁴⁶ Meldrum, “A Women’s Court,” 10.

⁴⁷ Foyster, *Manhood in Early Modern England*, 151-152.

⁴⁸ The case that records a husband and wife as joint plaintiffs is: Elizabeth Righton and William Righton c. Elizabeth Balgey (1684), CP.H.3598.

There are also examples of defamation suits which were brought by women that describe how their husbands were present when they were slandered, and sometimes the slanderer even called for the husband's attention before they launched a slanderous attack on his wife. This situation was recorded in 12 cases in the courts between 1680 and 1700.⁴⁹ Robert Leach was 'drinking at the house of one Richard ffrank' when he said Susannah Midgley 'was a whore, And further said that the said Richard ffrank had fucked her'.⁵⁰ He made these comments while he was in the room next to that of Susannah's husband John, and 'did in a very scur[r]ilous and reflecting manner abuse the artate Susannah Midgley'.⁵¹ The libel in the case of Martha Winnell c. Abraham Beaver (1685) records a more confrontational slander when 'Richard Winnell and Abraham Beever drinking together, And after some ill words past between them, the said Abraham Beever in a malicious manner said to Richard Winnell get thee home thou cuckold thou will find Thomas ffox in Bed with thy Wife'.⁵² These words were reiterated in the testimony of the serving girl at widow Kaddy's (Sara Askwith), who added that Beaver 'meant by the said words that the said Martha Winnell was a whore'.⁵³ On Monday 14th June 1680 in the Low Room of Mr Thomas Whitehead's alehouse (the husband of the plaintiff), at 'about 10 of the Clock at night' Barine (the defendant) 'in a malicious manner' approached John Whitehouse and said 'I saw you ffuck M[ist]r[es]s Whitehead (meaning and speaking of the producent) at M[aste]r Docoses house'.⁵⁴ Barine was warned by those present to 'have care what he sayd' to which he responded his words were true and he would prove it.⁵⁵ Witness statements claim his words were said maliciously and 'with an intent ... to take away the sayd

The case that records a husband and wife as joint defendants is: Francis Whateley c. Alice Constable and Everingham Constable (1688), CP.H.3714.

The cases that record a husband and wife being cited individually to face the same plaintiff are: William Batey c. Emor Rich (1687), CP.H.4135; William Batey c. Martha Rich (1688), CP.H.4138.

⁴⁹ Three cases were recorded in the York Consistory court: Martha Winnell c. Abraham Beaver (1685), CP.H.3641; Susannah Midgley c. Robert Leach (1691), CP.H.4569; Robert Boothroyd c. Thomas Frank (1694), CP.4355.

Nine cases were recorded in the London Consistory court: [female] Whitehead c. David Barine (1680), DL/C/239; [female] Brett c. Henry Gutteridge (1680), DL/C/239; [female] Webb c. John Beckett (1680), DL/C/239; Mary Mosbey c. John Biggs (1685), DL/C/241; [female] Holding c. John Harris (1685), DL/C/241; Martha Sharpe c. Richard Seale (1685), DL/C/241; Edith Allen c. Margaret Slater (1685), DL/C/241; Anne Johnson c. Susan Town (1695), DL/C/244; and Joan Philips c. Katherine Sanderson (1695), DL/C/244.

⁵⁰ Susannah Midgley c. Robert Leach (1691), CP.H.4569, p. 3.

⁵¹ *Ibid*, p. 7.

⁵² Martha Winnell c. Abraham Beaver (1685), CP.H.3641, p. 5.

⁵³ *Ibid*, p. 6.

⁵⁴ [female] Whitehead c. David Barine (1680), DL/C/239, p. 48.

⁵⁵ *Ibid*, p. 47, 48.

producents Good name who otherwise is a very modest civill woman'.⁵⁶ The impact of these words were felt later when:

'the sayd producent ... suffers in her Reputation by reason of the sayd scandalous words for ... two nights agoe he [the witness] heard two women as they were passing by the sayd Mr Whiteheads house, and seeing the sayd producent at the Barre, speaking one to an other, one of them uttered these words or to the same effect vizt. This is the Bold Jade (speaking of the producent) that was Katchd a Bed at the Kings Armes (meaning the sayd Mr Docoses house, which is knowne by that signe) upon which the other sayd That she wondred that she (meaning the producent) could have the Confidence to sit at the Barre'.⁵⁷

The importance for married couples to stand united against a sexual slander allegation is seen when a slanderer took the opportunity to make such allegations about a wife in front of her husband to ensure their slander had as big an impact as possible. As such, Foyster believes that 'it could be argued that the involvement of husbands in the sexual defamation cases of their wives had become so conventional that without his support a married woman defending simply her own reputation was regarded by contemporaries as out of place, and extraordinary'.⁵⁸

Though husbands were expected to support their wives in such cases, many a slandered wife felt she had no option but to bring a defamation suit to clear her name.⁵⁹ In many cases, neighbourhood talk undermined the husband's trust and he stood aside, or turned against his wife as the slander ensured this marital conflict.⁶⁰ Gowing highlights how 'plaintiffs and litigants described how husbands might treat suspicion of their wives' infidelity as a threat to their marriage'.⁶¹ 13 cases in these courts

⁵⁶ Ibid, p. 47, 48.

⁵⁷ Ibid, p. 48.

⁵⁸ Foyster, *Manhood in Early Modern England*, 164.

⁵⁹ Capp, "Separate Domains?," 136; Foyster, *Manhood in Early Modern England*, 156; Gowing, 'Women, Status', 228.

⁶⁰ Capp, *When Gossips Meet*, 96; Foyster, *Manhood in Early Modern England*, 155; Martin Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (Cambridge: Cambridge University Press, 1990), 309; Katherine Crawford, *European Sexualities, 1400-1800* (Cambridge: Cambridge University Press, 2007), 172.

⁶¹ Gowing, "Language, power, and the law," 38.

recorded the reaction of the husband to the slanderous allegations made against his wife.⁶² In 1684 John Turner claimed that prior to her marriage, Margaret Bullard ‘had had a bastard child’ which ‘caused great dissention betwixt the said John Bullard and Margarett insoemuch that the said Margarett complained her life was very much miserable and that it had proceeded from the said John Turners reports’.⁶³ George Snowman (a witness to the slander) describes how he wanted to make peace between Bullard and Turner so shortly after the suit was commenced he took the opportunity to speak with Turner. Snowman told Turner ‘that a suite was likely to goe forward’ to which Turner replied ‘that if she went forward in the suite he would make her ashamed of itt’.⁶⁴ Snowman further comments how ‘the report is now spread over most of the Towne and has caused soe much dissention between the said John Bullard and Margarett to his hearing that he believes will never be reconciled together againe p[re]sently soe long as they live’.⁶⁵ In the case of Elizabeth Madge c. Susan Adams (1690), after being called a whore Elizabeth is said to have:

‘suffered very much by reason of the sayd scandalous words, for her Husband thereupon left her for a while, and though he came back afterwards to her againe, yet he hath never lived at peace with her since, and she hath left her Trade, and has been since to give over her house which was an Inne’.⁶⁶

What these cases show us is that in some instances women would have had no option but to bring suit for sexual slander defamation in the church courts; not only to vindicate their reputation in the eyes of their neighbours, but also to attempt to regain marital harmony with husbands who had cast them out until they had re-established a

⁶² Four cases in the York Consistory court recorded the reaction of the husband to the sexual slander defamation allegations made against his wife: Elizabeth Heaton c. Sarah Herst (1680), CP.H.3468; Elizabeth Speight c. Richard Hanson (1682), CP.H.6009; Margaret Bullard c. John Turner (1684), CP.H.3831; and Anne Mitchel c. Martha Hardcastle (1692), CP.H.4299.

Nine cases in the London Consistory court recorded the reaction of the husband to the sexual slander defamation allegations made against his wife: [female] Axon c. Elizabeth Lancaster (1680), DL/C/239; [female] Webb c. John Beckett (1680), DL/C/239; [female] Couch c. Emery Lambe (1680), DL/C/239; [female] Jackson c. Mary Villiers (1685), DL/C/241; [Elizabeth] New c. [Elizabeth] Nicholls (1685), DL/C/241; Margaret Binfeild c. Alice King (1685), DL/C/241; Martha Sharpe c. Richard Seale (1685), DL/C/241; [female] Constable c. [female] Misson (1685), DL/C/241; and Elizabeth Madge c. Susan Adams (1690), DL/C/243.

⁶³ Margaret Bullard c. John Turner (1684), CP.H.3831, p. 6.

⁶⁴ Ibid, p. 7.

⁶⁵ Ibid, p. 7.

⁶⁶ Elizabeth Madge c. Susan Adams (1690), DL/C/243, p. 170.

good reputation.⁶⁷ Men were therefore affected by proxy by the sexual slanders that attacked their wife's sexual reputation because they were judged through the actions and the chastity of their wives.

While the reaction of husbands to the sexual slanders aimed at their wives offer a rare glimpse into the mentality of men in past society, the reaction of wives to slanderous allegations against their husbands is even rarer. Luckily one such reaction was recorded in the case of *Matthew Bywater c. Elizabeth Brook* (1685).⁶⁸ In the opinion of Anthony Clarke 'the good name fame & credit of the artate Matthew Bywater is hurt and lessened by reason of the speakeing the words P[re]deposed, for that those words are much noised abroad in the Country, and have beene the occasion of much greife and trouble to his the Matthew Bywater's wife'.⁶⁹ Faith Clark (a fellow witness and the 16 year old sister of the plaintiff) also claims 'that the speakeing the words p[re]deposed has caused some disagreement betweene the s[ai]d Matthew Bywater and his wife,' a statement echoed in the testimony of the third and final witness, Henry Slater.⁷⁰ This case shows us that, like the husbands in the cases discussed above, the wives of slandered husbands would also suffer from the reaction of the community when their spouse was the topic of a sexually slanderous allegation. While there is less detail offered as to what exactly the 'greife and trouble' Mrs Bywater suffered was, we can assume the local community voiced its displeasure at the (alleged) actions of her husband not only through comments made to him but also to her. This could have extended to the community's opinion of his (or their) economic credit falling, and affected the financial transactions they both engaged in in their daily lives. Also, the fact that the allegations 'caused some disagreement' between the two offers a glimpse into Mrs Bywater's opinion of her husband (or the actions he was said to have engaged in). The tension created between the two can be seen as evidence that the sexual reputation of men was important to them – and obviously their wives – if it could cause rifts in the marriages of both husbands of slandered wives and wives of slandered husbands.

⁶⁷ Capp, "Separate Domains?," 136.

⁶⁸ *Matthew Bywater c. Elizabeth Brook* (1685), CP.H.3662.

⁶⁹ *Ibid*, p. 9.

⁷⁰ *Ibid*, p. 10.

2. The ‘double standard’?: A case-study

Men’s vulnerability to sexual slander is well represented in the case of Joshua Kay c. Martha Beaver and William Beaver (1691).⁷¹ This dispute offers detailed examples of the reasons why both men and women ascribed a great deal of importance to maintaining a good reputation and highlights the various tactics they employed when defending their reputation and discrediting that of others. The libel reads:

‘the said Martha Beever speaking to of and against the said Joshua Kay said & reported (licet falso) that he the said Joshua Kay was a whoremaster & had comitted the crime of fornic[ati]on with her the s[ai]d Martha had severall times had the Carnall knowledge of her body and had got her with Child which said words or the like in effect she the s[ai]d Martha Beever said & reported divers & sundry times or once at the least to of & against the said Joshua Kay in the p[re]sence & hearing of Div[er]s credible witnesses’.⁷²

The (alleged) use of the word ‘whoremaster’ made the slander actionable in the church courts.⁷³ While this would have given him cause enough to bring suit, Martha’s (alleged) claims that they had engaged in sexual intercourse on several occasions and that this resulted in the conception of a bastard child marked Joshua as a man who was not in control of his actions and as someone who gave little thought to their consequences. The claim he fathered their bastard child also made Joshua liable to financial penalty and responsible for its maintenance.⁷⁴ These (alleged) slanders on his reputation – coupled with the repetition of the slander in front of ‘credible witnesses’ – compounded the power of Martha’s (alleged) words. In early modern England it was imperative to be seen as a credible person (both in terms of your economic *and* moral trustworthiness) in the eyes of your peers.⁷⁵ As these factors were all combined in one

⁷¹ Joshua Kay c. Martha Beaver and William Beaver (1691), CP.H.4264.

⁷² Ibid, p. 2.

⁷³ Precedent states that ‘in a Libell of diffamaton, where the words be direct and playne, such as will beare Acc[tion] in our Eccl[es]ia[stic]all Court, as Whore, Strumpet, Whoremaster,’ *Precedent Book 11. Commentary rather than formulary. General, no order.* Borthwick Institute for Archives, University of York, p. 27.

⁷⁴ Alexandra Shepard, “Brokering Fatherhood: Illegitimacy and Paternal Rights and Responsibilities in Early Modern England,” in *Remaking English Society: Social Relations and Social Change in Early Modern England*, ed. Steve Hindle, Alexandra Shepard and John Walter (Woodbridge: The Boydell Press, 2013), 50-1, 60.

⁷⁵ Amussen, *An Ordered Society*, 152; G. J. Barker-Benfield, *The Culture of Sensibility: Sex and Society in Eighteenth-Century Britain* (Chicago: The University of Chicago Press, 1992), 87; Alexandra

slander, the power of the allegations made against him offered Joshua little option but to turn to the church court if he wanted to protect his name. The libel continues and claims Martha approached Godfrey Bosville Esq and Sir John Kay (Justices of the Peace in York) and made oaths to them declaring that the allegations in the libel were true, which Joshua attributes to her ‘falsly & maliciously intending and designing further to injure and diminish’ his good name and reputation.⁷⁶ He concludes his statement by reflecting on Martha’s decision to involve the court authorities with the assertion that:

‘when in truth & reality the said Martha Beever never was delivered of a Child nor was with Child begotten by the said Joshua Kay or any other man neither ever had he the s[ai]d Joshua the Carnall knowledge of her body & so much she the said Martha Beever knows in her conscience to be true’.⁷⁷

The battle over reputation continued in Martha’s personal response to the libel. She denied ever calling Joshua a whoremaster and stated instead that he ‘is not a man of good fame life and Conversation, or soe reported or accounted within the parish and places Artate, but hath been aspersed and reported to be guilty of the Crime of [F]ornication with divers women, and more p[ar]ticularly with this R[esp]ondent’.⁷⁸ She insisted she never spoke ‘any diffamatory or scandalous words to or of the Artate Joshua Kay mallitiously or with any intent to injure or defame him’ and upon her oath declared that he *did* have the carnal knowledge of her body and she ‘did once verily believe had got her with Child, and soe did the physicians with whome this R[esp]ondent did at that time consult did declare. Tho[ugh] afterwards the same proved but a Misconcept[i]on’.⁷⁹ She also claimed the (alleged) actions happened when she was living (alone with him) in his house as his servant, which hinted at her vulnerability and affirmed Joshua’s power and responsibility for the situation.

Shepard, “Honesty, Worth and Gender in Early Modern England, 1560-1640,” in *Identity and Agency in England, 1500-1800*, ed. Henry French and Jonathan Barry (Basingstoke: Palgrave Macmillan, 2004), 89, 91, 93-4, 98.

⁷⁶ Joshua Kay c. Martha Beaver and William Beaver (1691), CP.H.4264, p. 3.

⁷⁷ *Ibid*, p. 3.

⁷⁸ *Ibid*, p. 4.

⁷⁹ *Ibid*, p. 4-5.

Martha's position was more precarious than that of Joshua; as a woman, as the sole female servant in the house of a bachelor and as someone who admitted to committing the 'crime of fornication', she faced inherent challenges in her ability to defend her reputation and prove her honesty. While defending her reputation she appears to have employed methods of defence that also provided offensive advantages. She described her old employment as Joshua's lone servant to emphasise her vulnerability, which is especially important as she mentioned this alongside her comments that the community already had knowledge of Joshua's reputation as someone who is 'aspersed and reported to be guilty' of fornicating with multiple women.⁸⁰ By doing so she firmly asserted her position as Joshua's victim and defended this position with her claim that her actions were borne out of necessity (fearing she was carrying a child she could not support alone), rather than from malice or 'with any intent to injure or defame'.⁸¹

Her decision to involve physicians also affirmed her position as the injured party but, more importantly, insinuated that she was telling the truth when she claims she thought she was pregnant – by involving the opinion of those who were above reproach morally (the physicians) she could, potentially, bring support to her claims from a source whose credibility Joshua would be hard pressed to challenge. Her visit to the physicians is also very interesting because the sheer expense of visiting a doctor would be an unnecessary strain on her financial resources – if she was suing for any malicious reason – because, as a servant, the cost of suing the case alone could represent nine months (or more) of her wages, never mind the additional expense she faced from the physicians.⁸² The effort and expense she put into her visits to the physicians for an assessment of her condition implied she genuinely believed she was carrying Joshua's child – regardless of the fact that she did not prove to be pregnant, in the eyes of the judge her commitment to proving the truth of her claims may have proved convincing enough for sentence to be passed in her favour. Perhaps this is why there is no record

⁸⁰ Ibid, p. 4.

⁸¹ Ibid, p. 4-5.

⁸² Meldrum, "A Women's Court," 3. These estimations are based on his use of L. D. Schwarz, *London in the Age of Industrialisation: Entrepreneurs, Labour Force and Living Conditions, 1700-1850* (Cambridge: Cambridge University Press, 1992), 170 and P. Earle, "The Female Labour Market in London in the Late Seventeenth and Early Eighteenth Centuries," *Economic History Review*, Second Series, 42, no. 3 (1989), 328-53, esp. 343 and assume that a waged worker bringing suit for defamation worked full time.

of a sentence in this case; Joshua may have been intimidated by the weight of evidence against him and decided to settle the matter out of court before Martha could escalate her claims further.

Martha also claimed ‘there was a Com[m]on noyse and fame’ at the time that they had been intimate and she was carrying his child, and that Joshua ‘divers times dureing her Cohabitation with him and after did own and confess that he had had the carnall knowledge of her body’.⁸³ The declaration that their local community was aware of their actions had two benefits for Martha: it alluded to the number of witnesses that could be called before the court who, if they did have knowledge of this ‘Com[m]on noyse and fame,’ would provide verification for Martha’s claims.⁸⁴ It also substantiated the legality of her claims because a ‘common fame’ of their actions would have been enough justification for Justices of the Peace to bring herself and Joshua to court, but by citing the common knowledge of their actions herself Martha proved she had a viable reason to bring suit. She also justified notifying these court authorities with the claim that she did not do it maliciously or with the intent to defame but instead because, after asking the advice of some friends and believing she was pregnant, she ‘was advised to goe before some Justice of the peace to the end some legall course might be taken to make the said Joshua Kay keep the Child’.⁸⁵ She concludes with a direct counter to Joshua’s version of events by further stating that (although it transpired she was never pregnant) he *had* had the ‘carnal knowledge’ of her which she ‘knows in her Conscience to be true’ and although she has often repeated her claim to credible witnesses it was not with the intention to defame, and that Joshua’s ‘good name fame and reputation’ was not in any way ‘impaired or lessened’ because of her words.⁸⁶

Joshua made exactly the same allegations against Martha’s father, William. He claimed that William called him whoremaster, accused him of committing the crime of fornication with his daughter and left her pregnant after having the carnal knowledge

⁸³ Joshua Kay c. Martha Beaver and William Beaver (1691), CP.H.4264, p. 5.

⁸⁴ Ibid, p. 5.

⁸⁵ Ibid, p. 5.

⁸⁶ Ibid, p. 5-6.

of her body several times.⁸⁷ All of which William is said to have repeated ‘divers & sundry times in the p[re]sence & hearing of divers & sundry Credible Witnesses’.⁸⁸ William’s personal response is a replica of his daughter’s: he contends that he did not call Joshua whoremaster and that Joshua is not a man with a good reputation (so his name is not hurt by the alleged slander) because he is said to be a person guilty of the crime of fornication with many women (including Martha).⁸⁹ William does expand upon his involvement in the situation, however, and further claims that after Martha told him that Joshua ‘had had the Knowledge of her body and gott her with Child’ he ‘did advise her to goe before some Justice of the peace and to p[ro]cure a Warrant against the said p[ar]ty Agent, in order to complell him to give security to maintaine the Child’.⁹⁰ While he admits that he repeated his daughter’s allegations to some of his friends, he claims it was ‘not with any malicious designe or intent to diffame or injure’.⁹¹

No sentence was passed in this case (it was either settled outside the official negotiation space of the Consistory court or was simply not pursued any further after the depositions were recorded), so we have no means of knowing whose words (and thus reputation) were judged to be the most honest. The case is proof, however, at how sensitive men could be to slurs on their sexual reputations.⁹² It offers support for Bernard Capp’s re-evaluation of the ‘double standard’ theory, especially because it shows how fiercely men would defend their reputations against the equally damaging words of both men *and* women.⁹³

⁸⁷ Ibid, p. 6-7.

⁸⁸ Ibid, p. 7.

⁸⁹ Ibid, p. 8.

⁹⁰ Ibid, p. 8.

⁹¹ Ibid, p. 8.

⁹² Godolphin, *Reporatorium canonicum* (London: 1678), 156; Bernard Capp, “The Double Standard Revisited: Plebeian Women and Male Sexual Reputation in Early Modern England,” *Past and Present*, no. 162 (1999): 72; Meldrum, “A Women’s Court,” 10-1; Laura Gowing, “Gender and the Language of Insult in Early Modern London,” *History Workshop*, no. 35 (1993): 3; Ingram, *Church Courts, Sex and Marriage*, 302-3; Fletcher, *Gender, Sex and Subordination*, 103; Gowing, “Language, power, and the law,” 38.

⁹³ Capp, “The Double Standard Revisited,” 71; Capp, *When Gossips Meet*, 94.

In this chapter men have been shown to be sensitive to slurs on their sexual reputations. However, they did not necessarily have to be the victim of a *personal* slander to be vulnerable to the words of others. They were also sensitive to slights on their wives' reputations as this type of sexual slander also had an impact on their own reputation. As such, if a man's sexual honour was slandered in this period he was most likely to go to the church courts to defend himself and he would expect his wife to do the same.⁹⁴ Therefore, sexual reputation was also a significant component of male honour.⁹⁵ It can be argued, then, that though we may not have the same number of male plaintiffs suing for defamation in these courts, the frequency in which women were labelled as 'whores' (and the impact this would have on their husbands' reputations) meant a far greater number of men were affected by sexual slander through the vulnerability they shared with the reputation of their wives. It is also evidence that the vulnerability of the wives provided an easy target for slanderers to attack their husbands who, especially in the cases when the husband and not the wife was present at her slander, were the real target of the slanderous attack.

Therefore, as Ingram has concluded, 'the notion of a double standard must not be pressed too far' because it is 'a matter of degree rather than absolute dichotomy between the ways in which male and female reputations were regarded'.⁹⁶ Men can also be seen to have spent their fair share of time as active participants in cases of sexual slander as they represented 45% of the defendants (or those whose defamatory words caused suit to be brought) studied here. Overall, men also represented 48% of the witnesses recorded in the London and York courts (39% of the witnesses recorded in London and 57% of those in York). The steady numbers of men involved in cases of sexual slander in these courts suggests that reputation was equally important to men and women, though it may have been attacked and defended in different ways depending on the gender of the defamed party.

⁹⁴ Foyster, *Manhood in Early Modern England*, 10, 148-64; Meldrum, "A Women's Court," 6, 11; Shepard, *Meanings of Manhood*, 154.

⁹⁵ Capp, "The Double Standard Revisited," 72; Addy, *Sin and Society*, 114; Susan Dwyer Amussen, "Gender, family and the social order, 1560-1725," in *Order and disorder in early modern England*, ed. Anthony Fletcher and John Stevenson, (Cambridge: Cambridge University Press, 1985), 208; Garthine Walker, "Expanding the Boundaries of Female Honour in Early Modern England," *Transactions of the Royal Historical Society* 6, Sixth Series (1996): 235.

⁹⁶ Ingram, *Church Courts, Sex and Marriage*, 303.

Conclusion

This thesis investigated gender, reputation and sexual slander through an analysis of 311 cases of sexual slander defamation recorded in the Consistory courts of London and York in the years 1680-1700. The findings of this thesis were compared to three of the main interpretations of these topics: the ‘double standard’, the ‘women’s court’ and the ‘decline’ of defamation. In an effort to broaden our understanding of the sexual slander business of the church courts it suggested alternative avenues of evaluation and offered evidence in support of the re-examination of these historiographical interpretations.

One of the main interpretations assessed was that of the ‘double standard’ and the gendering of reputation in early modern England. The ‘double standard’ that applied to men’s and women’s reputations (whereby women’s reputations were defined solely through their sexual honesty while male reputations were assessed through a number of factors, of which their sexual probity was but one) was – to some extent – found here.¹ 88% of the 311 cases of sexual slander defamation sampled in this thesis recorded female plaintiffs. This could suggest that female reputations in London and York in the late seventeenth century were based solely on their sexual honesty, any slander made against them had to be sued in the church courts in order to recover a ‘good name’. Or it could suggest that female reputations were easier to slander and because of this the majority of people suing to defend their reputation were female.

However in recent years the ‘double standard’ has been argued to be a simplistic explanation of sexual slander and the gendering of reputation, and this thesis similarly found more evidence to support the calls for its re-evaluation.² Men in this period were also concerned with maintaining a good reputation and a sexual slander made against them would affect their trade, their neighbourhood relationships and could cause

¹ Keith Thomas, “The Double Standard.” *Journal of the History of Ideas* 20, no. 2 (1959): 195-216.

² For example: Bernard Capp, “The Double Standard Revisited: Plebeian Women and Male Sexual Reputation in Early Modern England,” *Past and Present*, no. 162 (1999): 70-100.

disharmony within their marriages.³ A slander made against a man's wife also offered a method of attack to slanderers that would cause recourse to the church courts. If a married woman was called 'whore' it implied she had been unfaithful to her husband – and made him a 'cuckold' by default – or the express use of the word 'cuckold' implied that a man had no control over the lustful actions of his wife.⁴ In either case recourse to the church courts was essential and some husbands refused to engage with their wife until the slur on her name (and subsequently his) had been lifted.⁵ Men did not, however, have to be married to face economic and social consequences to slanders against their name and unmarried men would also use the church courts defend themselves against slanderous attacks. What may be a better explanation than the 'double standard', then, is that those people who felt a sexual slander strongly impacted on their lives would turn to the church courts to clear their names, whether they were female *or* male.

The interpretation of the church courts as a 'women's court' by the end of the seventeenth century – defined as such because the majority of litigants suing for sexual slander in the courts were female – was also assessed.⁶ Simultaneously, a different interpretation of a 'women's court' (in the sense that the church courts were the only option available to the women who sought recourse against slanders made against them) was also examined.⁷ The cases in this thesis can offer support to these

³ Anthony Fletcher, *Gender, Sex and Subordination in England 1500-1800* (New Haven: Yale University Press, 1995), 103; Laura Gowing, "Language, power, and the law: women's slander litigation in early modern London," in *Women, Crime and the Courts in Early Modern England*, ed. Jenny Kermode and Garthine Walker (London: UCL Press, 1994), 38.

⁴ Elizabeth Foyster, *Manhood in Early Modern England: Honour, Sex and Marriage* (London: Addison Wesley Longman Limited, 1999), 2, 7; John Addy, *Sin and Society in the seventeenth century* (London: Routledge, 1989), 121; Tim Meldrum, "A Women's Court in London: Defamation at the Bishop of London's Consistory Court, 1700-1745," *The London Journal* 19 (1994): 10; Bernard Capp, *When Gossips Meet: Women, Family, and Neighbourhood in Early Modern England* (Oxford: Oxford University Press, 2003), 193.

⁵ Gowing, 'Women, Status', 228; Bernard Capp, "Separate Domains? Women and Authority in Early Modern England," in *The Experience of Authority in Early Modern England*, ed. Paul Griffiths, Adam Fox, and Steve Hindle (London: Macmillan Press Ltd, 1996), 136; Foyster, *Manhood in Early Modern England*, 156.

⁶ For example: Meldrum, "A Women's Court," 1-20 (especially 5-6); R. B. Outhwaite, *The Rise and Fall of the English Ecclesiastical Courts, 1500-1860* (Cambridge: Cambridge University Press, 2006), 42-43; Foyster, *Manhood in Early Modern England*, 148; Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford: Oxford University Press, 1996), 12, 34, 37, 61.

⁷ Gowing, "Language, power, and the law," 28-30; Faramerz Dabhoiwala, "The Construction of Honour, Reputation and Status in Late Seventeenth- and Early-Eighteenth Century England," *Transactions of the Royal Historical Society* 6, Sixth Series (1996): 208; Addy, *Sin and Society*, 117;

interpretations of a 'women's court' as the majority of plaintiffs (88%) and the majority of defendants (58%) in the suits were female. In the London court, not only were the majority of cases sued between two women (65%) but the majority of witnesses called to testify were also women (61%).⁸ In the York court, however, although the majority (75%) of plaintiffs were female, the majority (57%) of defendants were male and 45% of suits (those most frequently recorded in this court) were sued by a female plaintiff against the (alleged) words of a male defendant.

However, the number of women living in London and York in the years 1680-1700 may have had an effect on the frequency in which women were suing and being sued in the church courts. Examinations of the demography of early modern towns and cities have found higher numbers of women living in urban areas by the period of this study.⁹ James Sharpe has found that 'in some towns women exceeded men by a ratio of five to four' and Peter Earle found that London in particular 'had once had a large male surplus in its population, but, by the 1690s if not earlier, this situation had been reversed and early eighteenth-century London was a city in which women considerably outnumbered men'.¹⁰ The sheer number of women living in urban areas may partly explain the greater frequency in which they were recorded as litigants in the church courts – if the numbers of women living in one area outnumbered men, then logically there were more opportunities for women to slander each other and to be slandered themselves. Historians have found it easy to refer to the church courts as a 'women's court' but has been argued here that is counter-productive to remain focussed on the common 'gendered' explanation of sexual slander without seeking the potential for further insights.

Laura Gowing, *Common Bodies: Women, Touch and Power in Seventeenth-Century England* (New Haven: Yale University Press, 2003), 10

⁸ Gowing, "Language, power, and the law," 27, 37, (esp. footnote 5 on p. 44); Gowing, *Domestic Dangers*, 12; Meldrum, "A Women's Court," 14.

⁹ Chris Galley, *The Demography of Early Modern Towns: York in the Sixteenth and Seventeenth Centuries* (Liverpool: Liverpool University Press, 1998), 25-6 and 141-4, esp. Table 1.4 on p. 25; J. A. Sharpe, *Early Modern England: a social history, 1550-1760*. Second Edition (London: Arnold, 1997), 80; P. Earle, *A City Full of People: Men and Women of London, 1650 – 1750* (London: Methuen London, 1994), 39-40.

¹⁰ Sharpe, *Early Modern England*, 80 and Earle, *A City Full of People*, 39.

An overarching theme found in studies of sexual slander defamation is that by the end of the seventeenth century the ‘decline’ of suit for defamation was a well-established trend in the church courts. The first element of this ‘decline’ argument asserts that the number of cases of defamation that were sued in these courts dropped significantly in the decades after 1660, from a period of peak business in the years 1560-1640.¹¹ After examining the number of cases brought to both the London and York Consistory courts in the period 1680-1700, in comparison to the number of cases brought in the ‘peak’ period of business (1560-1640), it was found that there *were* fewer sexual slander defamation cases brought in the last two decades of the seventeenth century. However, this thesis employed an alternative method of assessing this ‘decline’ when it examined the *proportion* of sexual slander defamation business as part of the overall level of business brought to the courts at the beginning and the end of the century. Laura Gowing found that in 1624 defamation business represented 51% of the overall business of the London Consistory court and rose to 73% of the overall business in 1633.¹² This thesis found the level of sexual slander defamation business sued in this court in the years 1680-1700 represented 61% of the overall business brought to this court in the two decades. Sexual slander defamation reflected 20% of the overall business of the York Consistory court in the peak period of church court business (1560-1640), 20% of the business in Barry Till’s study (between 1660 and 1720), and 24% of the court’s overall business in period covered by this thesis.¹³ Therefore the way in which previous historians have assessed the sexual slander defamation business in these courts through an assessment of the *number* of cases brought may in fact hide evidence of a consistent *proportion* of these cases being sued as part of the overall level of business of the courts in the seventeenth century.

The second element in these decline debates proposed that the *culture* of defamation suffered a decline. It argues that the importance attached to defending reputation in the church courts was waning in the last half of the seventeenth century and this caused

¹¹ For example: Outhwaite, *The Rise and Fall*, 20-21, 22.

¹² Gowing, *Domestic Dangers*, Table 1, p. 33.

¹³ B. D. Till, “The administrative system of the ecclesiastical courts in the diocese and province of York. Part III: 1660-1883: A study in decline,” (Unpublished typescript at The Borthwick Institute for Archives, University of York, York, 1963), 62.

The statistics for the 1560-1640 period were calculated by this author from an evaluation of the data held within the Cause Paper database of the Borthwick Institute for Archives.

the number of defamation cases that were sued in these courts to drop.¹⁴ Another alternative method of assessing the ‘decline’ of defamation business in the church courts was employed in this thesis when it examined how far these cases would be sued in the courts. The pursuit of defamation causes is an avenue of research that has not been thoroughly analysed by previous historians but it is one that provides valuable new insights. It was found that – similarly to the 1560-1640 period of ‘peak’ business – on average the sexual slander defamation cases were sued in these courts up to the second stage of litigation and no further.¹⁵ The litigiousness of litigants in the period of the ‘decline’ of defamation in the church courts, therefore, were equal to the litigiousness of litigants in the period of ‘peak’ business.

At least in the Consistory courts of London and York, then, this thesis has argued that only *elements* of decline in the sexual slander defamation business can be found. It did decline in terms of the number of suits that were brought – when compared to period of ‘peak’ business at the start of the century – but sexual slander business did not ‘decline’ either in terms of the proportion of overall church court business it represented nor in terms of a decline of the litigiousness of their litigants. There is evidence here that those people who would defend slanders against their reputation in the church courts were still as likely to bring suit, and would fight to the same extent, at the end of the seventeenth century as those at the beginning.

The records of the early modern church courts provide the ‘essential backbone for histories of early modern gender and sex’ as they ‘provide the researcher with a mass of data which could not be found in any other source’.¹⁶ Martin Ingram believes that ‘the role of ecclesiastical justice can be properly understood only through deeper study of court records, closer reference to social context, and a more realistic appreciation

¹⁴ Robert B. Shoemaker, “The Decline of Public Insult in London 1660-1800,” *Past & Present*, no. 169 (2000): 97-131, esp. 108 and 125.

¹⁵ For example: J. A. Sharpe, “‘Such disagreement betwix neighbours’: litigation and human relations in early modern England,” in *Disputes and settlements: law and human relations in the West*, ed. John Bossy (Cambridge: Cambridge University Press, 1983), 173 and Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford: Oxford University Press, 1996), 39 and 136.

¹⁶ Meldrum, “A Women’s Court,” 1 and P. Earle, *A City Full of People: Men and Women of London, 1650 – 1750* (London: Methuen London, 1994), xi and 264.

of what the courts could hope to achieve' – a point on which this thesis agrees.¹⁷ The studies of early modern gender and sex that utilise church court records have demonstrated the litigiousness of our ancestors – especially in the prosecution of defamation – which was so intense that R. A. Marchant has claimed 'the amount of litigation aroused by slander was a phenomenon of the age'.¹⁸ However as rich a source as the church court depositions are they also have their faults, like every historical source. As historians we need to consider 'how far plaintiffs or defendants and their witnesses shaped their stories to give meaning to a pattern of behaviour, and to present a convincing story of damaged honour' and to understand that while 'the depositions to a greater or lesser extent record real events, those events were mediated through the story-telling of witnesses and the apparatus of the court'.¹⁹ Sara Mendelson and Patricia Crawford also offer a significant note of warning that was carefully considered in this thesis; 'while female testimony appears to offer direct access to women's own voices, the historian must be constantly aware that every word spoken by a woman was recorded and edited by male officials'.²⁰ As such, this thesis was conducted in a manner that followed Ingram's example of only judging the courts and their sources 'in terms of what they could achieve in their circumstances'.²¹

The majority of studies of sexual slander and/or defamation in general have concentrated on the period 1560-1640 and fewer studies have been made of the

¹⁷ Ingram, *Church Courts*, 15. See also: Jenny Kermode and Garthine Walker (eds.), *Women, Crime and the Courts*, 2.

¹⁸ R. A. Marchant, *The church under the law: justice, administration and discipline in the diocese of York, 1560-1640* (Cambridge: Cambridge University Press, 1969), 61. See also: Sharpe, "Such disagreement," 168, 172; Peter Coss, *The Moral World of the Law* (Cambridge: Cambridge University Press, 2000), 11; J. A. Sharpe, "The People and the law," in *Popular culture in seventeenth-century England*, ed. Barry Reay (London: Croom Helm, 1985), 246; J. A. Sharpe, "Defamation and sexual slander in early modern England: the church courts at York," *Borthwick Paper*, no. 58 (1980): 27-28; Capp, "Separate Domains?," 131-37; Laura Gowing, "Gender and the Language of Insult in Early Modern London," *History Workshop*, no. 35 (1993): 1-21, esp. 1-3.

¹⁹ Foyster, *Manhood in Early Modern England*, 14 and Meldrum, "A Women's Court," 13.

²⁰ Sara Mendelson and Patricia Crawford, *Women in Early Modern England* (Oxford: Clarendon Press, 1998), 11, 214-215. See also: Sara Heller Mendelson, Sara Heller Mendelson, "'To shift for a cloak', Disorderly Women in the Church Courts," in *Women & History: Voices of Early Modern England*, ed. Valerie Frith (Toronto: Coach House Press, 1995), 3-18; Capp, *When Gossips Meet*, 2, 194; Jane Cox, *Hatred Pursued Beyond the Grave: Tales of our ancestors from the London church courts* (London: HMSO, 1993), 38; Fay Bound, "'An Angry and Malicious Mind'? Narratives of Slander at the Church Courts of York, c.1660 – c.1760," *History Workshop Journal* no. 56 (2003): 60, 63; Andrew Foster, "Churchwardens' accounts of early modern England and Wales: some problems to note, but much to be gained," in *The Parish in English Life, 1400-1600*, ed. Katherine L. French, Gary Gibbs, and Beat A. Kümin, (Manchester: Manchester University Press, 1997), 85.

²¹ Ingram, *Church Courts*, 16.

decades after 1660. Therefore the decision to base this thesis in the last two decades of the seventeenth century was made in an effort to expand historical knowledge into this underdeveloped period of study.²² The comparison of two diocese (York in the Northern province and London in the Southern province), rather than a case-study of one diocese, was also made for this reason. This regional comparison found that, for example, the York court recorded the legal phrase ‘licet falso’ in 88% of its cases and 25% of its cases recorded men and women who were accused of being a combination of ‘lewd’, ‘lascivious’, ‘dishonest’ and ‘wicked’ with their bodies, but neither of these phrases were ever recorded in the London court. These regional differences – and the new information these differences provide about sexual slander defamation – would not have been found in a case-study of a single diocese.

This thesis also utilised information held in an infrequently used source: that of the Allegations, Libels and Sentence Books of the London Consistory court. These books were used alongside the Depositions Books of the court so that the documentation that provided the source-base from London matched that of the Cause Papers in the York court so the libel, depositions and sentence information recorded in both could be compared and assessed. The use of the Allegations, Libels and Sentence Books alongside the Depositions Books also permitted an analysis of the extent to which sexual slander litigation would be pursued in the courts. To expand this analysis an examination of the extent to which cases were pursued and appealed in higher courts could be made – in the diocese of this study that would require an evaluation of the appeals business of the Chancery court in York and the Court of Arches in London – and is an avenue of further research that could be conducted on the foundations of this study.

This thesis has endeavoured to provide a measured and coherent interpretation of gender, reputation and sexual slander through an analysis of 311 cases of sexual slander defamation recorded in the Consistory courts of London and York in the years 1680-1700. Overall it aimed to facilitate a re-examination of the ways in which these

²² Examples of studies that have explored the courts in the post-1660 period include: Meldrum, “A Women’s Court,” 1-20 and Sharpe, “Defamation and sexual slander,” 1-36.

topics have been researched in previous years and in doing so also provided alternative methods of evaluation and new avenues of research to be explored. The conclusions drawn here have provided information that has aided the advancement of our knowledge of sexual slander in the 1680s and 1690s.

Appendix

Note: all percentages in these tables were rounded to the nearest whole number.

Tables for the Bishop of London's Consistory Court and the Archbishop's Consistory Court for York data

Table 1 – The words used in female sexual slanders, (London and York).¹

Insult	No.	Insult	No.	Allegation	No.
Whore	156	“Pocky whore”	7	“Bastard” used when describing the child had	13
Common whore	29	Bastard-bearing whore	6	Was with / has had child (insinuating bastard)	8
Brazen faced whore	18	Strumpet	6	Having the pox/clapt	10
Impudent whore	18	Jade	5	Insinuation of infanticide	2
Named person's whore	16	Old whore	5	Keeping a bawdy house	7
Bitch	12	Black-mouthed whore	2		
“Dam'd whore”	8	Young/little whore	2		

Table 2 – The words used in male sexual slanders, (London and York).

Insult/Allegation	No.
Rogue	18
Cuckold	10
Insinuation male plaintiff fathered a bastard	5

¹ The numbers in this and the following tables of the words used in sexual slanders represent the number of cases the words were recorded in, *not* the total number of times the words were recorded.

Tables for the Bishop of London's Consistory Court data

Table 3 – Sexual slander cases with a libel, deposition(s) or sentence in 1680, 1685, 1690 and 1695.

	1680	1685	1690	1695	Total
Libel	N/A	37	32	23	92
Deposition(s)	55	47	15	18	135
Sentence	N/A	13	3	1	17

Table 4 – Classification of sexual slander defamation cases in the court *prior to* tracking cases throughout the court process.²

	Content(s) of case					Total
	Libel only	Deposition(s) only	Libel and deposition(s) only	Libel and sentence only	Libel, deposition(s) and sentence	
1680	N/A	[55]	N/A	N/A	N/A	[55]
% of total cases	N/A	[30%]	N/A	N/A	N/A	[30%]
1685	6	16	18	0	13	53
% of total cases	3%	9%	10%	/	7%	29%
1690	24	7	5	0	3	39
% of total cases	13%	4%	3%	/	2%	22%
1695	15	11	7	1	0	31
% of total cases	8%	6%	4%	1%	/	19%
Total	45	[89]	30	1	16	181
% of total cases	24%	[49%]	17%	1%	9%	100%

² Note: the information in square brackets here and in Table 4a reflects the inclusion of the available data from 1680.

Table 4a – Classification of sexual slander defamation cases in the court *after* tracking cases throughout the court process.^{3 4}

	Content(s) of case					Total
	Libel only	Deposition(s) only	Libel and deposition(s) only	Libel and sentence only	Libel, deposition(s) and sentence	
1680	N/A	[55]	N/A	N/A	N/A	[55]
% of total cases	N/A	[30%]	N/A	N/A	N/A	[30%]
1685	1	15	24	0	13	53
% of total cases	1%	8%	13%	/	7%	29%
1690	9	3	24	0	3	39
% of total cases	5%	2%	13%	/	2%	22%
1695	9	7	17	1	0	34
% of total cases	5%	4%	9%	1%	/	19%
Total	19	[80]	65	1	16	181
% of total cases	10%	[44%]	36%	1%	9%	100%

³ Note: throughout this thesis Table 4a is the table upon which the statistical data from the London court is based.

Please consult Table 4 when using Table 4a. This table (Table 4a) reflects the new classification of cases from Table 4 after their documentation was tracked through the Allegations, Libels and Sentence Books and the Depositions Books. For example, a case that recorded a libel in 1685 but did not have its depositions recorded in 1685 has been recorded in the 1685 “Libel only” column in Table 4. If, after tracking the case through the relevant Depositions Books, its depositions were found to have been recorded in 1686 (and no sentence was found at all for the case) then it will be recorded in the 1685 “Libel and deposition(s) only” column in Table 4a.

⁴ Note: 1680, 1685, 1690 and 1695 represent the years the cases were first recorded in the court.

Table 5 – Overall gender of litigants.

	Female Plaintiffs	Male Plaintiffs	Female Defendants	Male Defendants
	173	8	125	56
Total	181		181	

Table 6 – Gender of litigants by case type.

	1680	1685	1690	1695	Total
Female c. Female	31	36	27	24	118
Female c. Male	17	17	10	9	53
Male c. Male	2	1	0	0	3
Male c. Female	5	0	1	1	7
Total	55	54	38	34	181

Table 7 – The words used in female sexual slanders.

Insult	No.	Insult	No.	Insult	No.
Whore	73	Strumpet	3	Short arse whore	1
Impudent whore	14	Beggarly whore	2	“Ticket buying whore”	1
Brazen faced whore	12	Rotten / pocky whore	2	Young/little whore	1
Common whore	7	White livered whore	2		
Named person’s whore	7	"A drunken Pisse- pott whore"	1	Allegation	No.
Bitch	6	Adulterous whore	1	“Bastard” used when describing the child had	8
Bawd	5	“A Jews whore”	1	Having the pox/clapt	6
Dam’d whore	4	Black-mouthed whore	1	Keeping a bawdy house	5
“My husband’s whore”	4	Common Brimstone whore	1	Keeping whores	4
Old bawd	4	Confident whore	1	Drunk	3
Old whore	4	Drunken whore	1	“Lain with” man/men	3
Bastard-bearing whore	3	Fat arse whore	1	“Kept other women’s husbands company”	2
Common Hackney whore	3	Overridden whore	1	Insinuation infanticide	1
Impudent, brazen faced whore	3	Pitiful whore	1	Was with / has had child (insinuating bastard)	1
Jade	3	“Sawcy whore”	1		

Table 8 – The words used in male sexual slanders.

Insult/Allegation	No.	Insult/Allegation	No.
Cuckold	7	"Jealous pated foole and asse"	1
Rogue	4	Son of a whore	1
Cuckoldly rogue	2	Whiteliverd cuckold your husband	1
Insinuation male plaintiff fathered a bastard	2	Whitelivered rogue	1
Pitiful rogue	2		

Table 9 – Gender of witnesses.

	1680	1685	1690	1695	Total
Female witnesses	74	66	23	41	204
Male witnesses	60	49	15	7	131
Total	134	115	38	48	335

Table 10 – Gender of witnesses by case type.⁵

	Number of cases			Total
	Majority female witnesses	Majority male witnesses	Equal numbers	
Female c. Female	56	13	16	85
Female c. Male	12	20	9	41
Male c. Male	NR	3	NR	3
Male c. Female	3	2	1	6
Total	71	38	26	135

⁵ NR – No cases recorded.

Table 11 – Age of witnesses.

	Male				Male Total	Female				Female Total	Overall Total
	1680	1685	1690	1695		1680	1685	1690	1695		
No age	10	4	0	0	14	10	4	1	1	16	30
16-9	4	4	1	1	10	6	9	8	6	29	39
20-4	8	4	2	2	16	11	10	5	8	34	50
25-9	9	3	4	2	18	11	11	0	7	29	47
30-4	10	14	1	0	25	15	13	2	5	35	60
35-9	2	7	1	1	11	8	5	1	5	19	30
40-4	7	7	4	1	19	4	8	3	3	18	37
45-9	2	2	2	0	6	3	4	1	3	11	17
50-4	6	2	0	0	8	1	1	1	2	5	13
55-9	0	2	0	0	2	1	1	1	1	4	6
60+	2	0	0	0	2	4	0	0	0	4	6
Total	60	49	15	7	131	74	66	23	41	204	335

Table 12 – Marital status of witnesses.⁶

	Male				Male Total	Female				Female Total	Overall Total
	1680	1685	1690	1695		1680	1685	1690	1695		
Unmarried	0	0	0	0	0	0	0	0	0	0	0
Married	3	7	0	1	11	34	43	5	28	110	121
Widowed	0	0	0	0	0	4	2	4	1	11	11
Unknown	57	42	15	6	120	36	21	14	12	83	203
Total	60	49	15	7	131	74	66	23	41	204	335

⁶ Note: the data on married men was gathered from the information provided in the depositions of their wives, the men themselves were identified by their employment or trade and not by their marital status.

Tables for the Archbishop's Consistory Court for York data

Table 13 – The overall business of the court, 1680-1700.

	Number of cases	Percentage of overall court business
Appeals	89	16%
Benefice cases	6	1%
Breach of faith	2	0%
Defamation	140	26%
Immorality	1	0%
Matrimonial	12	2%
Testamentary	58	11%
Tithe	203	37%
Violation of church rights	26	5%
Undefined	10	2%
Total	547	100%

Table 14 – Defamation sub-categories, 1680-1700.

	Number of cases	Percentage of defamation business
Character	6	4%
Character / Sexual Slander	6	4%
Defamation	6	4%
Dog / Sexual Slander	1	1%
Sexual Slander	101	72%
Sexual Slander / Character	3	2%
Sexual Slander / Dog	1	1%
Sexual Slander / Parentage	1	1%
Sexual Slander / Theft	3	2%
Sexual Slander / Witchcraft	4	3%
Theft	2	1%
Theft / Character	2	1%
Theft / Sexual Slander	2	1%
(Arbitration in defamation case)	1	1%
(Citation only)	1	1%
Total	140	99%

Table 15 – Classification of defamation cases.⁷

Content(s) of case		1680-84	% of total cases	1685-89	% of total cases	1690-94	% of total cases	1695-1700	% of total cases	Total	% of total cases
	Libel only	10	8%	8	6%	15	12%	4	3%	37	28%
	Deposition(s) only	0	/	0	/	0	/	0	/	0	/
	Sentence only	4	3%	1	1%	0	/	0	/	5	4%
	Libel and deposition(s) only	10	8%	12	9%	14	11%	27	21%	63	48%
	Libel and sentence only	1	1%	1	1%	0	/	0	/	2	2%
	Deposition(s) and sentence only	1	1%	0	/	0	/	0	/	1	1%
	Libel, deposition(s) and sentence	9	7%	11	8%	2	2%	0	/	22	17%
	Total	35	27%	33	25%	31	24%	31	24%	130	100%

⁷ Note: while the Cause Papers in York do offer additional surviving evidence (personal responses, exhibits, exceptions and the like), their information is not recorded in this table because the corresponding type of evidence was not consulted in London.

For ease of analysis the cases have been organised by the date of the first article (for example, a case dated 1/7/1684 – 10/5/1685 will be categorised into the 1680 – 1684 column).

Table 16 – Overall gender of litigants.⁸

	Female Plaintiffs	Male Plaintiffs	Female Defendants	Male Defendants
	100	31	59	79
Total	131		138	

Table 17 – Gender of litigants by case type.⁹

	1680 - 1684	1685 - 1689	1690 - 1694	1695 - 1700	Total
Female c. Female	10	10	9	10	39
Female c. Male	17	16	14	11	58
Male c. Male	4	3	4	4	15
Male c. Female	3	3	2	5	13
Other	1	1	2	1	5
Total	35	33	31	31	130

⁸ The 131 plaintiffs and the 138 defendants are explained in the description of these “other” type of case (see footnote 10 below).

⁹ The “other” cases are:

One instance of female and male c. female; Elizabeth Righton and William Righton c. Elizabeth Balgey (1684), CP.H.3598.

Two instances of female c. female and male; Francis Whateley c. Alice Constable and Everingham Constable (1688), CP.H.3714, and Mary Graveson c. Theophilous Young and Jane Tocketts (1696), CP.H.4456.

One instance of male c. female and male; Joshua Kay c. William Beaver and Martha Beaver (1691), CP.H.4264.

One instance of male c. two males and three females; Joshua Kay c. Mary Beaver and Joseph Beaver and Sarah Beaver and Martha Beaver and William Beaver (1691), CP.H.4251.

Table 18 – The words used in female sexual slanders.

Insult	No.	Insult	No.	Insult	No.
Whore	83	Queen	2	Plague whore	1
Common whore	22	Abominable whore	1	Scottish bitch	1
Arrand[t] whore	11	“A branded whore”	1	Ugly whore	1
Named person’s whore	9	Billingsgate whore	1	Young/little whore	1
Bitch	6	Black-mouthed whore	1	Allegation	No.
Brazen faced whore	6	Chipping whore	1	Was with / has had child (insinuating bastard)	7
Pocky whore	5	Common tailed whore	1	Playing the whore	6
Burnt arsed whore	4	Dog and bitch whore	1	“Bastard” used when describing the child had	5
Dam’d whore	4	Drable tailed whore	1	Having the pox/clapt	4
Impudent whore	4	Hot tailed whore	1	Naught with someone / was naught / played the naught	4
Bastard-bearing whore	3	London whore	1	Insinuating someone was a whore	3
Strumpet	3	“Muthering whore”	1	Devil / devil’s mark	2
Base whore	2	Named <i>people’s</i> whore	1	Keeping a bawdy house	2
Jade	2	Newgate whore	1	Insinuation infanticide	1
Painted chade	2	Old whore	1	“Made a whore of”	1
Painted whore	2	“Pist arst” whore	1		

Table 19 – The words used in male sexual slanders.

Insult	No.	Insult	No.	Allegation	No.
Whoremaster	17	Debauched man	2	Accused of getting named person with child	6
Rogue	14	Old rogue	1	Having the carnal knowledge of a woman	6
Whoremasterly rogue	8	Tallow faced rogue	1	“Bastard” used when describing the child	4
Rascall	6	Welsh bastard	1	Fucked the wife of someone else	3
Cuckold	3	Witch	1	Insinuation male plaintiff fathered a bastard	3
Knave	3			Kissed the wife of another man	2
Bastard getter	2			Slept with another woman	2
Bastard-getting rogue	2			"Would have ravished"	1
Beggarly rogue	2				

Table 20 – Gender of witnesses.

	1680 - 1684	1685 - 1689	1690 - 1694	1695 - 1700	Total
Female witnesses	34	25	31	48	138
Male witnesses	37	61	42	45	185
Total	71	86	73	93	323

Table 21 – Gender of witnesses by case type.¹⁰

	Number of cases				Total
	Majority female witnesses	Majority male witnesses	Equal numbers	No witnesses recorded	
Female c. Female	15	7	6	11	39
Female c. Male	9	22	6	21	58
Male c. Male	2	8	1	4	15
Male c. Female	4	5	1	3	13
Other	NR	2	2	1	5
Total	30	44	16	40	130

¹⁰ NR – No cases recorded.

The “other” cases are:

One instance of female and male c. female; Elizabeth Righton and William Righton c. Elizabeth Balgey (1684), CP.H.3598.

Two instances of female c. female and male; Francis Whateley c. Alice Constable and Everingham Constable (1688), CP.H.3714, and Mary Graveson c. Theophilous Young and Jane Tocketts (1696), CP.H.4456.

One instance of male c. female and male; Joshua Kay c. William Beaver and Martha Beaver (1691), CP.H.4264.

One instance of male c. two males and three females; Joshua Kay c. Mary Beaver and Joseph Beaver and Sarah Beaver and Martha Beaver and William Beaver (1691), CP.H.4251.

Table 22 – Age of witnesses.

	Male				Male Total	Female				Female Total	Total
	1680-84	1685-89	1690-94	1695-1700		1680-84	1685-89	1690-94	1695-1700		
No age	1	3	9	8	21	1	3	7	2	13	34
16-9	2	1	0	0	3	2	3	3	7	15	18
20-4	5	16	5	4	30	4	5	9	10	28	58
25-9	7	8	6	4	25	4	3	1	4	12	37
30-4	4	6	4	6	20	11	2	1	7	21	41
35-9	5	9	3	6	23	4	0	2	2	8	31
40-4	2	8	5	4	19	1	3	3	6	13	32
45-9	3	3	4	3	13	1	0	1	4	6	19
50-4	5	5	3	3	16	4	2	1	4	11	27
55-9	2	1	0	2	5	1	3	0	1	5	10
60+	1	1	3	5	10	1	1	3	1	6	16
Total	37	61	42	45	185	34	25	31	48	138	323

Table 23 – Marital status of witnesses.¹¹

	Male				Male Total	Female				Female Total	Overall Total
	1680-84	1685-89	1690-94	1695-1700		1680-84	1685-89	1690-94	1695-1700		
Unmarried	0	0	0	0	0	10	7	7	20	44	44
Married	1	2	3	5	11	22	14	15	15	66	77
Widowed	0	0	0	0	0	2	2	4	11	19	19
Unknown	36	59	39	40	174	0	2	5	2	9	183
Total	37	61	42	45	185	34	25	31	48	138	323

¹¹ Note: the data on married men was gathered from the information provided in the depositions of their wives, the men themselves were identified by their employment or trade and not by their marital status.

Abbreviations and Conventions

c.	contra.
CP	Cause Papers
DL	Diocese of London

In quoting primary sources the original spelling and punctuation has been retained and abbreviations by clerks have been expanded. Monetary amounts are represented as £ (pound), s. (shilling) and d. (pence).

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9. *Memorandums relating to points of Ecclesiastical Law. (Incomplete). Short notes on statutes.*
10. *Forms, general: many from Courts.*
11. *Commentary rather than formulary. General, no order.*
12. *Forms, mainly Court procedure.*
13. *With later additions. 'Liber Thomae Jubb' – but (?) only the later part his. General forms of proceedings in courts.*
14. *Forms of documents in Courts. Mainly blank.*

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- DL/C/144, May 1685 – February 1687/8 (Microfilm X019/196).
- DL/C/146, February 1690/1 – October 1693 (Microfilm X079/079).
- DL/C/147, January 1693/4 – December 1697 (Microfilm X019/198).

Consistory Court Depositions Books

- DL/C/238, May 1676 – June 1680 (Microfilm X079/058).
- DL/C/239, June 1679 – June 1681 (Microfilm X079/059).
- DL/C/240, May 1679 – April 1686 (Microfilm X079/060).
- DL/C/241, March 1683 – March 1686/7 (Microfilm X079/061).

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