MANITOBA LITIGANTS AND THEIR LAWSUITS, 1909 - 1939; QUANTITATIVE PATTERNS AND RESULTS

BY

DALE BRAWN

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MANITOBA LITIGANTS AND THEIR LAWSUITS, 1909 - 1939;

QUANTITATIVE PATTERNS AND RESULTS

BY

DALE BRAWN

A Thesis submitted to the Faculty of Graduate Studies of the University of Manitoba in partial fulfillment of the requirements of the degree of

MASTER OF LAWS

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This study analyzes patterns of change in litigation before Winnipeg's Court of Queen's Bench in the years spanning 1909 and 1939. It examines the court process itself from the perspective of participants, be they judges, lawyers or litigants. Claims filed and defended are analyzed according to causes of action, occupations, gender and the differing stages at which law suits ended. Who used law is compared with those used by it. Results obtained by litigants with money and experience are contrasted with outcomes for those possessing little of either.

In describing and analyzing this research data, existing hypotheses will also be tested, particularly those of Lawrence Friedman, J.Willard Hurst and Marc Galanter. This study therefore includes discussion of a number of theoretical constructs, but its goal is not to look for causal connections. Yet, this is still very much an explanatory work. Where other researchers, for example, have discussed the use of courts as vehicles for debt collection by making passing reference to filing law suits as a strategy to bring opponents to the bargaining table, this study seeks to explain that and other uses in greater depth. Claims informally settled or discontinued are examined according to whether disputants were individuals or corporations, according to their gender and occupation, the experiences of the law firms involved and causes of action litigated. The roles for the court in dispute resolution are examined through an analysis of trial judgments, appeals and patterns of judicial decision making.

Mere factual description is not generally accepted, by itself, as a sound analytical technique. But I make no apology for first grounding my study in factual reconstruction from the Court of Queen's Bench's original individual case records. This thesis goes beyond this, to break new analytical ground. It examines patterns of litigation within an explanatory context and produces a qualitative view of the court process through its quantitative case analysis. Within the limits of time and space imposed by the LL.M. requirements, this research does not offer a statistical explanation of litigation rates. Like the laboratory scientist who dissects an animal, I simply take the Court's data as is, leaving the asking of "why" to another time and place. This produces no models and

makes no basis for verifiable predictions. But it still seeks to provide answers to significant questions. Was the Winnipeg Court used as a coercive instrument, confirming or instilling in some a sense of helplessness and dependency? If the suggestion that the function of law is to justify existing power relations in society, and if court records evidence a change in the way the law treated women and members of identifiable groups, did it necessarily follow that law validated for each a new role in civil society? This study will show, for example, that not only did females and members of the working class use courts often, successfully and in a wide variety of ways, but that the law accommodated their use of the legal system by not impeding their success as litigants.

By examining all extant Statements of Claim filed in 1909, 1919, 1929 and 1939 this study looked at litigation undertaken in periods of economic prosperity and depresssion, post-war change and pre-war stability, the end of an industrial boom and the beginning of social dislocation based on expansion and diversification. (1) Any search for contextual "trends" in this work will be based on a description of what happened in 1909 and the changes which occurred by 1939. Little explicit attention will be paid to 1919 and 1929. Christian Wollschlager warned of the impact this approach can have. In a 1990 article on civil litigation and modernization he suggested that:

> an upward trend in litigation rates must be interpreted to mean that there was an imbalance between the causes of litigation and the forces inhibiting litigation, with the causes of litigation having the greater effect. Correspondingly, a break in the trend means that social growth conditions changed. (2)

Wollschlager's discussion of the disequilibrium of expansion and contraction is particularly germane to interpreting data in this sort of study. Litigation patterns for 1919 and 1929 are established and results described, but without any contextual discussion of world war and the start of an depression. These two major events may break any trend, but the aim of this thesis is to paint a picture with broad strokes and basic hues, leaving detail and colour for a future endeavor. Some questions were not asked,

including one of paramount importance to American scholars: are litigation rates increasing? Similarly an examination of the relationship between litigation and economic growth must await another study, but one which must build on the data collated and analyzed here.

David Engel observed that the challenge for those involved in American court research "is to study courts and litigation in terms of their relationship to the changing social context." (3) He went on to confess that he could not pretend to have conducted the kind of research he was advocating. And there lies the rub. While contemporary American studies have attempted to create theoretical constructs for use in litigation analysis, the reality is that in Canada generally, and Manitoba particularly, not enough work has been done to test the reliability of applying to this country findings of what are essentially studies of a foreign judicial system. This study attempts to remedy that failing, and in so doing test a number of these 'foreign' hypotheses. Part of the difficulty in doing so lies in the data retrieved. Lawrence Friedman was not wrong when he said most U.S. court studies are based on an examination of the records of appellate courts. Trial records, he suggested, are seldom used because they "are unknown, lost or buried in courthouse basements." (4)

The following table provides an overview of the number of files examined in the present work, a process that involved reading 3018 Statements of Claim, 1409 Statements of Defence and the examination of thousands of other documents contained in court pockets. Conclusions which resulted from an analysis of these 'other' documents are a cause of concern. The use of partisanly produced court records always involves a very real risk of incorrect causal inferences, but the danger is exacerbated when inferences are drawn from an examination of collateral materials filed in support of claims, defences, notices, motions and orders. This study suggests, for instance, that Notices of Discontinuance are indicators that an out of court settlement had been reached. Orders of Dismissal are usually evidence of a lack of settlement. Both suggestions are based on the assumption that what was alleged in materials contained in file pockets accurately

reflected the circumstances of the time.

These materials, including Statements of Claim and Defence, are contained in expandable manila file 'pockets' approximately four inches by eight inches in size. Other contents include Notices (usually of discontinuance, change of solicitors and motions) and Affidavits. The former is usually filed as a request that an issue be heard and is normally not determinative of a final finding of liability. The latter is regularly filed in support of Notices and contain a statement in support of the Notice (or application) which the solicitor for the applicant hopes might influence a judge's ruling. An example of a statement contained in an affidavit is a Medical Report. Another document found in many pockets is a praecipe. This document is a court form upon which an applicant requests that some court service be provided. An example is a request for a Tax Certificate. A lawyer granted an award of costs is required to file with the court a Bill in which expenses for which compensation is sought are enumerated. This Bill is taxed by a court official to insure that only those items for which payment has been authorized are in fact approved for payment, a payment which is most often made by the losing litigant. When this examination is complete, the tax officer prepares a Tax Certificate. It is issued, however, only after a praecipe is filed.

Other documents commonly found in court pockets include Certificates (of judgment, Accountant's Certificates and Tax Certificates), Orders (of dismissal, of set down for trial and of fieri facias, which attaches the goods of a judgment debtor) and judgments. Judgments are of four kinds: interlocutory, or interim, according to which a litigant is granted an award subject to a final determination of the amount owing; default; consent or trial. File pockets regularly contained two further documents, Master's Reports and Satisfaction Pieces. The former is a report prepared by an officer of the court and it outlines the method by which the determination referred to above was arrived at. Satisfaction Pieces are like Notices of Discontinuance, in that they are formal notice that an action has been brought to an end, but differ in that they also contain a statement that monies owing have been paid or the matter has ended to the 'satisfaction' of all parties.

Not always did these collateral filings tell a story different than that told by official court documents, but often enough for them to form an integral part of this work.

Table 1 SCOPE OF THE STUDY

Files examined	1909	1919	1929	1939	Total
Statements of Claim	1150	1010	549	309	3018
Applications/Petitions	114	201	62	93	470
Total	1264	1211	611	402	3488

The academic community remains far from convinced of the value of court studies. On the one hand scholars like Friedman argue that "longitudinal research ... is of particular value, because it is sensitive to changes in legal culture, and in the functions of the court. (It serves to) provide baseline data, against which to measure and monitor what is happening in our own turbulent time." (5) Academics who disagree with Friedman criticize court research as little more than aimless case counting, but they overlook an essential point. As Richard Lempert suggested in a 1990 article on docket data, those who study litigation "are interested not so much in the numbers themselves as in the numbers as indicators." (6) It is in this context that the present work uses court records to determine whether Manitoba litigants from differing socio-economic backgrounds use the court system differently between 1909 and 1939 and whether results of litigation vary according to the circumstances of parties involved.

There is little question, however, that many longitudinal studies of courts are significantly flawed. By relying entirely on court statistics they are unable to examine how litigation was actually managed. That error was avoided in this study, in part because Manitoba lacks the reporting mechanisms which produce the kind of data used in many American and some Canadian jurisdictions. The weakness intrinsic to most North American examinations of litigation is avoided in large measure because the data used in this research does not result from an analysis of court statistics, but from an examination of

actual case documents. This means that much more can be learned about Winnipeg's court system, those who used it, how it was used, the causes litigated and the role played by women, judges and lawyers than would have been possible had research been grounded upon court statistics alone.

In his study of economic cycles and civil litigation John Stookey, a political scientist, discussed longitudinal studies in terms of time density. (7) Time density, he explained, refers to the temporal frequency with which data is recorded. He separated court research into categories of low and high specificity. Low specificity studies examine every fifth, tenth or fifteenth year, for example, while high time density studies code data for every year. Stookey suggested that a low density approach is appropriate for delineating long term trends while a high density approach is most useful in evaluating short term fluctuations. This study is a combination of both. It has an element of high specificity in that it examines all case files in four given years, but it is also low density in that the examined cases are separated by ten year periods. By combining both approaches one benefits from a synthesis of dynamic and static perspectives.

University of South Carolina law professor Patrick Hubbard discussed some of the problems inherent in studies which examine litigation by year. (8) What time period is relevant, he asked, time of injury, time of filing or time of final disposition? In this study all three are recorded. Ultimately, however, it was time of filing and time of disposition that formed the basis for much of the analysis which follows. The problem of partisan uncertainty associated with using time of alleged injury is my reason for rejecting it as a base for analysis. On many occasions, for instance, the first of a series of breaches resulted in the start of a period of pre-court negotiation conducted over an extended period of time. But when a claim was eventually filed, it often made reference only to the last breach, even though it was clear that the injury, or a series of preceeding disputes, occurred much earlier. The reliability of the data was thus compromised.

Historian John Guy suggests that all analysis requires some enumeration and

classification, thus necessarily depending on the technique of case-counting. He cautions, however, that while case-counting can provide the statistics upon which analysis depends, it can at best provide only a rough impression. (9) There is little doubt this is true. Accumulation of data cannot alone answer significant questions. And data collection itself is neither a neutral nor uncomplicated endeavor. The advantage of theory, therefore, is as an aid in discerning causal connections and discontinuities. More than ever before, the literature surrounding court studies has called for development of a general theoretical framework for analyzing data collection. Stookey suggests that those engaged in longitudinal studies invariably approach their work from one of two theoretical perspectives. (10) One he refers to as the 'consensus tradition.' Those who adopt this perspective believe that litigation serves to achieve some kind of social integration when traditional forms of non-state control weaken. This school of thought argues that law is passive and evolves to fill whatever void is created when informal means of social integration fail. Conflict theorists, on the other hand, believe that in litigation it is possible to find evidence of fundamental changes in the economic and political balance of power in society. To these adherents law is a tool of social control. The aim of this study is to examine litigation from a conflict perspective. But the warning issued by Albert Reiss in his examination of trial court theoretical constructs, that we need to abandon the notion of a general model explaining change in civil litigation, has not been ignored. (11)

This thesis divides into an introduction, conclusion and seven chapters. The first chapter examines four questions. First, was there a pattern in Winnipeg between 1909 and 1939 to the way in which corporations used the court system? Second, if it could be shown that a pattern existed, did it change over time? Third, did corporations use courts in ways different than individuals, and if so, what was the difference? And fourth, did corporations use their greater resources, of litigation experience and money, to dominate those with little of either and to avoid confrontations with those with an equal amount of both?

In Chapter Two the way litigation was managed is examined by tracing what happened to claims from time of filing to date of discontinuance. Five questions are asked. Were

different causes of action managed in different ways? Did the gender of a plaintiff or defendant make a difference in the outcome of litigation? Did the occupation of a litigant make a difference? Did retaining experienced counsel influence the outcome of an action? And finally, did corporations pursue or defend claims in a different way than individuals? Much of the chapter is taken up with an examination of out of court settlements in an effort to determine if some disputes were more likely to be settled than others. In their economic study of trial courts, Robert Cooter and Daniel Rubinfeld argued this was in fact the case. (12) They suggested rational persons contemplating filing a claim asked themselves a series of questions before undertaking litigation. One was whether costs associated with filing a law suit were likely to exceed the hoped for payoff. Costs involved an expenditure of time, effort and legal fees. As a result of this self-analysis, suggest Cooter and Rubinfeld, small probability suits were usually not proceeded with. In part for all of the reasons just referred to, and in part because of concern over the possibility of having to pay the litigation costs of a victorious defendant.

Chapter Three examines the changing nature of litigation, with particular emphasis on the decline of claims involving market transactions and the corresponding increase in negligence actions. This offers the opportunity to test an hypothesis advanced by Marc Galanter. He suggests that differences in the way individuals use courts and in their ability to secure desired outcomes may result not from the characteristics of the parties themselves, but from the cases which different kinds of litigants bring to court. (13) This conclusion is analyzed by dividing Winnipeg claims into fifteen causes of action and then seeking answers to three questions. Were claims involving particular causes of action filed by particular groups? Was the outcome of such litigation dependent upon type of litigant? Did outcome vary according to cause of action?

One aim of Chapter Four is to determine whether members of the 'working class' used courts in a different way than professionals and corporations. To facilitate this examination, groups most active in the litigation process are identified and the nature of their involvement with law determined. Claims involving identifiable working class

litigants are then compared with litigation involving members of classes considered higher up the socio-economic ladder. The propensity of groups to sue or be sued is also examined and three further areas of analysis explored. First, actions involving groups are analyzed according to the stage at which an action was settled or discontinued. Second, the most litigated causes of action are examined according to the group most likely involved. And last, the activity of the most litigious groups is analyzed according to cause of action most often litigated.

Guiding this analysis is a desire to determine whether all members of the same class shared the same interest. According to David Sugarman it is a fundamental methodological error to treat interests of groups as self-evident and homogeneous. Thus warned, claims are analyzed first according to group and then according to those individuals who made up each group.

The role gender played in litigation is examined in Chapter Five. Every action involving a female is categorized in one of four ways - sole plaintiff, co-plaintiff, sole defendant and co-defendant. The relationship females had with co-litigants is analyzed and claims describing women by status (as wives, widows and the like) compared with claims in which women were described by occupation. Law suits involving males, females and corporations as plaintiffs are compared to actions involving them as defendants. Litigation is also analyzed according to the gender of the litigant and how claims were managed. Finally, causes of action involving females are examined according to the number of claims filed and whether women are more or less likely than males to be plaintiffs. In part, the approach adopted was designed to test the hypothesis advanced by Northwestern University political scientist Herbert Jacob. (15) He suggests that the perception women have of the judicial process and the causes of action they litigate differ from that of men only when the occurrence which gave rise to the action is strongly associated with gender. Women, he argues, view litigation from a relational perspective. Preliminary conclusions flowing from a finding that females were by 1939 involved in a much larger number of causes of action than they had been in 1909 are retested in

Chapter Five. Initially data suggested that an increase in rate of litigation might be linked to an increase in involvement in the activity which gave rise to the litigation. Galanter, however, would reject this construct. (16) He suggests that the intuitively plausible notion that there is a positive relationship between the volume of an activity and the number of claims arising out of that activity is false. He argues that rates of litigation rise as the probability of plaintiffs winning increases or fall when plaintiffs lack such things as a well grounded understanding of their grievance or the presence of social support for the cause litigated. Galanter's theory prompts the reformulation referred to above. This thesis ultimately concludes that an increased presence of females in the court process was not necessarily suggestive of their increased involvement in commercial activities.

In Chapter Six the role that law firms played in the litigation process is examined and a determination made of whether some firms were more active as counsel for either plaintiffs or defendants. Areas of legal specialization are analyzed according to cause of action, type of litigant and party represented. The stage at which litigation was discontinued when claims were filed by active law firms was compared to the stage at which similar litigation ended when managed by less active firms. The same procedure was followed for actions defended. Finally, claims were analyzed according to whether a defendant did or did not retain a lawyer. Guiding this approach was the belief echoed by Jacob that "the amount of expertise, effort, and understanding attorney's bring to a case has been shown to alter the impact of the law on the outcome." (17)

The methodological approach used in Chapter Six is also influenced by another belief, that economically stronger litigants have a better opportunity to select counsel perceived to be most likely to win cases. The connection between litigants perceived to possess power and financial resources and the causes they litigated, their likelihood of achieving an out of court settlement and their use of experienced counsel, is analyzed.

In the last chapter of this thesis both judgments and judges are examined. Types of judgments are analyzed according to cause of action. The activity level of trial judges is

then examined to determine whether decisions habitually favoured one or the other of plaintiffs or defendants. And finally appeals, their outcome and the judge appealed from, are analyzed.

In the concluding section of this study findings which result from testing a number of hypotheses are reviewed. The seven most important are:

(1) American studies have shown that in the first part of the 20th century approximately 75% of all litigation involved individuals suing other individuals and 10% involved corporations suing other corporations. Was this the case in Winnipeg between 1909 and 1939? (2) When litigation pits those with money and experience against those with little of either, the former invariably come out ahead of the latter. (3) Both commercial and contract claims declined over the course of the first half of the 20th century and negligence actions increased dramatically. (4) J. Willard Hurst has suggested that those with power use the legal system as a tool to further their own designs. (5) Marc Galanter has suggested that in North America the relationship between lawyer and client has become ad hoc, often confined to a single matter, and that more law firms have become involved in more litigation involving more clients. (6) How aggressively litigation is pursued depends on two variables, cause of action and the experience of the lawyer involved. (7) The filing of a claim does not suggest that a formal hearing is either desired or will result, since a majority of actions are settled, withdrawn or defaulted. But how cases are decided is important to more than just the parties involved because they provide potential litigants with a gage by which to measure chances of success. More particularly, they inform lawyers about the likely fate of similar litigation. Experienced lawyers are those best informed of similar cases, past outcomes, those most prone to specialize in both law and type of client represented and are more often successful than less experienced counsel.

CHAPTER ONE
TYPE OF LITIGANT

In 1974 and 1983 Marc Galanter advanced our understanding of the litigation process by publishing two papers which still remain our most influential longitudinal court studies. (18) In the second of these he discussed the results of research carried out by Arthur Young and Wayne McIntosh. Young studied courts of general jurisdiction in five different American counties in 1976-77 while McIntosh examined the records of the St.Louis Circuit Court from 1940 to 1970. Both studies showed that between 70 and 75% of claims initiated by individuals were filed against other individuals, approximately 11% were filed by individuals against businesses and 10% by businesses against individuals. According to Galanter, litigation tended to be between parties who were strangers or whose relationship was ended by the occurrence which produced the basis for the claim. As a corollary to this, he also found that litigation most often occurred when it was not costly in terms of a disruption of valued relations. To test Galanter's conclusions this study grouped litigants, whether plaintiffs or defendants, as either individuals or corporations. Individuals included both males and females while corporations were defined as businesses with limited liability or which were clearly neither individuals nor unincorporated partnerships. What happened to Statements of Claim, and how successful claimants were in pursuing legal remedies, was analyzed to determine whether the outcome of actions initiated by individuals differed from litigation undertaken by corporations.

'One-Shotter' Theory

In the first of the two studies referred to above, Galanter suggested that "the probability of certain disputes being converted into litigation, and the ultimate outcome of that litigation, are at least partially a function of the relative power and experience of each disputant." (19) From this flowed the now famous theory of 'repeat players' and 'one-shotters.' Repeat players, according to Galanter, have an advantage in the litigation process because of their experience and resources. One-shotters, on the other hand, lack both. When litigation pits one against the other, repeat players (otherwise referred to as 'haves') will invariably come out ahead of one-

shotters (or 'have nots'). This study tested that hypothesis by looking at those who filed claims and those against whom they were filed. In response to a paper published by John Stookey, this analysis was also taken one step further. In his 1986 study of economic cycles and civil litigation (20), Stookey first endorsed then extended Galanter's 'one-shotter' theory. He concluded that not only do one-shotters fare more poorly in court than repeat players, in particular they seldom initiate claims in contract disputes since they invariably entered contractual relationships as inferior partners. This thesis will test that hypothesis. The following table describes the activity level of individuals and corporations according to their status as either plaintiff or defendant. For the purposes of this thesis a corporation includes all incorporated entities described variously as Limited, Ltd., Incorporated or Inc.

Table 2 ACTIVITY LEVEL ACCORDING TO TYPE OF LITIGANT

As % of all litigation	1909	1919	1929	1939
Plaintiffs				
- individual	70 %	74 %	70 %	83 %
- corporation	30 %	26 %	30 %	17 %
Defendant				
- individual	86 %	80 %	80 %	78 %
- corporation	14 %	20 %	20 %	22 %

While this data does not contradict Galanter's argument, it suggests that over the course of this thesis not only did corporations become nearly 50% less likely to undertake litigation, when they did become involved in the court process it was more likely as defendant. If J. Willard Hurst was correct when he said that law was a tool used by various interest groups for their own purposes, corporations were either not an 'interest group' or, in Manitoba for most of the first half of the twentieth century, did not necessarily have an advantage when informal disputes resulted in formal litigation.

To test Galanter's theory further, who corporations sued and who sued them was analyzed. In the following table claims are described according to whether they were filed by individuals against individuals, individuals against corporations, corporations against individuals or

corporations against corporations. Because the number of claims involving individuals and corporations as co-litigants was relatively insignificant, in relation to the total number of claims filed, for the purposes of this analysis they are ignored. Although changes in litigation patterns are not dramatic, they are with one exception consistent and progressive.

Table 3 CORPORATIONS AND INDIVIDUALS AS LITIGANTS

As a % of each category	1909	1919	1929	1939
Individuals as plaintiff				
- individual vs individual	87 %	80 %	77 %	79 %
- individual vs corporation	13 %	20 %	23 %	21 %
Corporations as plaintiff				
- corporation vs individual	90 %	83 %	86 %	81 %
- corporation vs corporation	10 %	17 %	14 %	19 %

The findings described in Table 3 closely parallel statistics cited by Galanter earlier in this chapter. Although the number of suits filed by individuals against individuals in 1909 was between 12 and 17% higher than the rate discovered by American researchers, by 1939 there was only a 4% difference. In 1909 the results for corporations varied by only 1%. Of significance, however, was that the data described in this study indicated by 1939 that individuals and corporations were both suing individuals less and corporations more. When corporations are treated as 'repeat players' and individuals as 'one shotters,' it became clear that those without resources or experience became more, rather than less, inclined to sue those in a superior position. Litigants in a superior position, on the other hand, became less inclined to sue those inferior in status and more inclined to sue those occupying the same rung of the socioeconomic ladder.

While the data generated by this study appears to support Stookey's theory, it largely rejects Galanter's. In 1909 individuals filed contract claims in 40% of the eight hundred and thirty-two actions they initiated. Ten years later contract disputes represented 38% of these claims and ten years after that 26%. In 1939 they represented 19%. The trend was for individuals to undertake contract litigation less often between 1909 and 1939 and corporations more often.

CHAPTER TWO

STAGE AT WHICH LITIGATION ENDED

In his 1984 book on law, the economy and society Gerry Rubin quoted Mr. Justice Willes' warning to potential litigants:

> Whatever you do, never go to law; submit rather to almost any imposition, bear any oppression, rather than exhaust your spirits and your pocket in what is called a court of justice. (21)

Why do people resort to the law in contravention of the advice of Mr. Justice Willes? What happens to litigation once undertaken? John Brigham concluded that resort to courts was had only when issues involved rested on either a depth of feeling or bad faith. (22) Austin Sarat said much the same thing. He suggested people file Statements of Claim principally as a means of letting off steam. (23) And what happens after plaintiffs vented their feelings? Marc Galanter quoted a study carried out by Andrew Young to support his belief that one of two things occurred. Claims were either voluntarily dismissed or they resulted in an uncontested judgment. The data produced by this research suggests in Manitoba in the first half of the 20th century neither of Galanter's findings were accurate. In reaching that conclusion this study also tested Rubin's hypothesis that claims filed generally involve a depth of feeling or bad faith.

Methodology

A methodological approach fundamental to an examination of the hypotheses of both Galanter and Rubin involves tracing what happened to law suits from the time they were undertaken to the date they were discontinued. How claims ended is grouped in one of seven ways: claims filed but which went no further after filing; claims informally discontinued or settled after a Statement of Defence was filed; claims which proceeded to a default judgment; claims adjudicated at trial; suits discontinued by formal notice; claims dismissed by court order; and lastly, actions which ended when the successful litigant took out a writ of attachment to seize the assets of a judgment debtor. The rationale behind this approach is grounded on the fact that the other studies suggest litigation is

pursued more or less aggressively depending upon cause of action and lawyer involved. By analyzing claims according to these seven categories it is possible to determine whether in fact different causes of action were handled in different ways and whether some law firms managed claims more or less aggressively than other firms. And it is also possible to determine whether or not claims proceeded through the court system differently depending upon the gender or occupation of either of the litigating parties or whether a litigant was plaintiff or defendant.

Table 4 HOW LAW SUITS ENDED

Claims ended with:	1909	1919	1929	1939
Filing of statement of claim	21 %	22 %	19 %	13 %
Filing of statement of defence	16 %	20 %	17 %	17 %
Obtaining a default judgment	21 %	22 %	24 %	16 %
Proceeding to trial	10 %	3 %	10 %	5 %
Filing Notice of Discontinuance	16 %	18 %	11 %	25 %
Obtaining Order Dismissing	5 %	6 %	10 %	20 %
Taking out Writ of Attachment	11 %	9 %	9 %	4 %

An obvious problem associated with attempting to reach conclusions using this or any other method of categorization is that many law suits were undoubtedly settled without evidence of that settlement being filed with the court. This is a problem inherent in all court record studies. But the findings described in Table 4 are revealing.

Results Not Flowing from Analysis of Data

First, it must be pointed out that some of the findings discussed in this study do not obviously result from an analysis of data described in Table 4. The four most significant include the fact that when a law firm was retained by a defendant but no Statement of Defence was filed, an action usually ended with the plaintiff filing a Notice of

Defence was filed, an action usually ended with the plaintiff filing a Notice of Discontinuance. Second, the only time a plaintiff obtained a default judgment when a Statement of Defence was filed were occasions when a plaintiff succeeded in moving to have the Defence dismissed and judgment entered. Third, almost always when the court dismissed an action the order was obtained by the defendant, consented to by the plaintiff and the court pocket (the actual surviving case file's collection of original documents) contained no evidence that the matter had been settled. And fourth, in a majority of cases when a Statement of Claim was filed but not proceeded with, the claim was either not settled or the parties did not feel compelled to file evidence of settlement with the court. This also applied to settlements reached after a Statement of Defence was filed. In all of these instances there was a near total lack of documentary evidence that the parties had reached some kind of accommodation. On the other hand, when file pockets did contain evidence of a settlement, a Notice of Discontinuance or Satisfaction Piece had invariably been filed. All four of these conclusions resulted from an analysis of materials filed in support of court documents. It is these documents which were referred to in the introduction to this study.

Actions for which no evidence of settlement exists were those discontinued informally after a claim or defence was filed. Claims ending with some kind of formal adjudication include those terminated by Notice or Court Order, those which went to trial and those which resulted in a default judgment or the taking out of a writ. Of these, filing a Notice or obtaining a default judgment suggested a settlement in favour of the plaintiff, while obtaining a court order suggested a decision favoured a defendant.

Claims Not Proceeded With

More claims were filed and then not proceeded with in 1909 than in 1939. During this same period an almost equal number proceeded no further when a Statement of Defence was filed. This suggests that by 1939 plaintiffs undertaking litigation were much more likely to proceed with it than plaintiffs had been thirty years earlier, a finding confirmed when actions informally discontinued or settled after a claim was filed were added to

those discontinued after the filing of a Statement of Defence. Since file pockets for neither contained any evidence of settlement, they suggest that 37% of all claims filed in 1909 may never have been settled, formally or informally. By 1939 that figure had dropped to 30%. The significance of this finding will become clear when the role lawyers played in the litigation process is examined in Chapter Six.

Default Judgments and Trials

Litigation undertaken in 1939 also less often ended in default judgments (from 21% in 1909 down to 16% in 1939) and less often went to trial (10% to 5%). This meant between 1909 and 1939, although plaintiffs were less likely to discontinue actions early, they were also less likely to either obtain a default judgment or go to trial. The fact that the number of law suits discontinued over the course of this study rose from 16% to 25%, however, seems to indicate defendants were by 1939 more inclined to settle after filing a Statement of Defence than had been the case in 1909. In the first year of this study a plaintiff either obtained a default judgment or settled (as evidenced by the filing of a Notice of Discontinuance) 37% of the time. By 1939 that figure had risen to 41%. Three conclusions flow from these findings. First, between 1909 and 1939 defendants became more likely to retain a lawyer. Second, plaintiffs were more often forced to pursue a settlement further along the litigation trail. And third, law suits were much more likely to end in negotiated settlements rather than trials.

Changes in Management of Litigation

A finding of perhaps greater significance was that lawyers acting for defendants had by 1939 started to manage litigation in a different way than in 1909. In the first year of this study only 5% of Statements of Claim ended by court order. By 1939 that figure was 20%. If a court order dismissing an action was in fact evidence of an outcome favourable to a defendant, it would appear defendants had become four times as successful than they had been thirty years earlier. And indeed, this seems to have been the case. In 1939 plaintiffs were 5% less likely to obtain a default judgment than they were in 1909 and 15% more likely to have actions dismissed by court order. Even though this decreasing

'settlement' rate was offset by a 9% increase in cases which ended by discontinuance (a procedure normally suggestive of a settlement in favour of a plaintiff), defendants had become substantially more likely to have claims against them dismissed. Although none of these findings prove plaintiffs were less likely to obtain some kind of settlement in 1939 than they had been in 1909, they do indicate lawyers had begun to play a more "controlling" role in the court process. In the first year of this study, for example, actions were ended by discontinuance or court order 21% of the time. By 1939 that figure had more than doubled. Filing discontinuances and obtaining court orders were aggressive procedures. Their use suggests lawyers became less prepared to play a passive or conciliatory role in the litigation process. Evidence of the roles that they did play can be found in the type of documents they filed.

Table 5 describes the data which resulted from analyzing causes of action according to the stage at which litigation ended. Of the fifteen causes into which claims were divided, the findings for nine have not been included. Family/estate, creditors rights, debt, fraud, employment, guarantee, libel/slander, and misuse of authority involved too few claims to make a statistical comparison reliable and the findings for trespass actions were unreliable because sixty-eight law suits involved the same defendant and a single group of plaintiffs. Because file pockets seldom contained evidence that an appeal was taken no determination could be made of what causes were most likely to be appealed.

Table 5 HOW LITIGATION ENDED ACCORDING TO CAUSE OF ACTION

	1909	1919	1929	1939	+ / -
Statement of Claim					
- contract	25 %	31 %	24 %	22 %	- 3 %
- goods and services	20 %	15 %	21 %	8 %	- 12%
- mortgage	36 %	29 %	29 %	44 %	+ 8 %
- negligence	9 %	5 %	7 %	0 %	+ 9 %
- neg.instruments	18 %	22 %	28 %	11 %	- 7 %
- partnership	18 %	19 %	5 %	33 %	+ 15%

Statement of Defence					
- contract	12 %	13 %	8 %	9 %	- 3 %
- goods and services	17 %	38 %	30 %	15 %	- 2 %
- mortgage	9 %	1 %	5 %	12 %	+ 3%
- negligence	30 %	42 %	23 %	21 %	- 9 %
- neg.instruments	12 %	13 %	4 %	11 %	- 1 %
- partnership	21 %	33 %	32 %	17 %	- 4 %
Default Judgment					
- contract	31 %	32 %	40 %	26 %	- 5 %
- goods and services	13 %	13 %	27 %	38 %	+ 25%
- mortgage	25 %	32 %	22 %	12 %	- 13%
- negligence	0 %	0 %	5 %	7 %	+ 7 %
- neg.instruments	30 %	27 %	38 %	26 %	- 4 %
- partnership	6 %	11 %	21 %	17 %	+ 11%
Trial					
- contract	9 %	1 %	8 %	5 %	- 4 %
- goods and services	13 %	3 %	0 %	15 %	+ 2 %
- mortgage	9 %	0 %	2 %	0 %	- 9 %
- negligence	19 %	7 %	19 %	6 %	- 13%
- neg.instruments	7 %	3 %	4 %	5 %	- 2 %
- partnership	15 %	7 %	26 %	0 %	- 15%
Discontinued					
- contract	12 %	14 %	11 %	23 %	+ 11%
- goods and services	22 %	14 %	6 %	8 %	- 14%
- mortgage	11 %	13 %	15 %	28 %	+ 17%
- negligence	28 %	25 %	13 %	30 %	+ 2 %
- neg.instruments	6 %	9 %	10 %	26 %	+ 20%
- partnership	18 %	26 %	5 %	17 %	- 1 %
Order					
- contract	5 %	4 %	5 %	11 %	+ 6 %
- goods and services	3 %	9 %	9 %	15 %	+ 12%
- mortgage	0 %	5 %	3 %	4 %	+ 4 %
- negligence	11 %	17 %	30 %	35 %	+ 24%
- neg.instruments	3 %	3 %	3 %	16 %	+ 13%
- partnership	12 %	4 %	11 %	17 %	+ 5 %

Writ					
- contract	5 %	5 %	4 %	5 %	----
- goods and services	12 %	10 %	6 %	0 %	- 12%
- mortgage	11 %	20 %	24 %	0 %	- 11%
- negligence	4 %	3 %	2 %	1 %	- 3 %
- neg.instruments	24 %	23 %	13 %	5 %	- 19%
- partnership	9 %	0 %	0%	0%	- 9%

In the first year of this study 21% of all Statements of Claim went no further after being filed. By 1939 that figure had dropped to 13%, suggesting plaintiffs were becoming more determined to proceed once litigation was undertaken. When this data are examined according to cause of action in both 1909 and 1939, claims involving mortgage disputes were 15 to 21% more likely to be dropped than other claims. Negligence actions were the least likely to be discontinued informally in both the first and last years of this study. The data would therefore seem to support Brigham's contention that courts were generally resorted to when claims involved a depth of feeling. While Brigham was referring to undertaking rather than discontinuing litigation, the underlying rationale is the same. It is not unlikely mortgage disputes involved little if any 'depth of feeling' or that they would be taken as personally as physical injury claims . Of one hundred and eleven claims filed in 1939, not once was a negligence action discontinued before a defendant filed a formal response. Such was not the case for mortgage litigation. Just under one-half of such actions were discontinued before a Statement of Defence was filed. Perhaps mortgage claims were designed to serve as a kind of wake-up call for delinquent mortgagees. Once overdue monies were paid actions were simply dropped, allowing plaintiffs to avoid the costs associated with filing a Notice of Discontinuance or Satisfaction Piece.

The use of courts by commercial litigants as a vehicle for debt collection or as a means of forcing opposing parties to the bargaining table is evidenced by the fact that in the last year of this study 22% of contract claims, 33% of partnership disputes and 44% of mortgage actions were discontinued before a Statement of Defence was filed.

Application of Results to Statements of Defence

If this line of reasoning is sound, should it not also apply to Statements of Defence? The

answer is both yes and no. In 1909 and 1939 claims involving negligence actions were more often dropped when a defendant filed a defence, than were claims grounded in any other cause of action. This is consistent with the suggestion that disputes involving strong feelings were undertaken more often than those involving a lack of such feelings. In 1919, for example, 42% of negligence claims were discontinued after a Statement of Defense was filed. The average for all other causes of action was 20%. This data suggests two possibilities. It is possible that claims filed during a time of great emotion were discontinued when that emotion could no longer be sustained. Or it may have been that negligence suits were settled more quickly, without formal adjudication, than other claims because the wrong for which the plaintiff sought redress was more obvious and the claim more morally 'just.'

Commercial Litigation

A similar line of reasoning could be applied to mortgage and contract claims, the two types of action least likely to be dropped after a defence was filed. The data in Table 5 suggest that claims involving commercial disputes were less likely to be informally discontinued than claims involving personal relationships or injury. Because commercial litigation was often involved and complicated, it is likely there were fewer occasions when the 'rightness' or 'wrongness' of a cause was obvious to all. It is suggested that once filed, commercial actions were proceeded with until a defendant paid, an inability to do so became obvious or one or both parties realized the expence of pursuing an action became uneconomic. All three decisions were grounded on the criteria discussed by Brigham in his 1993 review article.

An examination of claims likely to end with the plaintiff obtaining a default judgment supports this hypothesis. Twenty-one per cent of all actions ended in a default judgment in 1909. Thirty years later the figure was 16%. In 1939, however, 30% of commercial suits ended in default judgment (commercial litigation includes contract, goods and service and negotiable instrument actions). At the opposite end of the scale, plaintiffs undertaking negligence actions were the least likely to obtain a default judgment. None of

forty-seven negligence suits filed in 1909 and only 7% of one hundred and eleven suits filed in 1939 ended with a default judgment.

Between 1909 and 1939 litigation least likely to go to trial or be formally discontinued or dismissed were commercial actions. Claims most likely to be tried, formally discontinued or dismissed were negligence actions. The only exception was in 1909, when goods and service suits were twice as likely to go to trial as negligence claims. These findings support the suggestion that some causes of action were much more likely to end formally than were others. This study also examined how litigation ended according to whether plaintiffs and defendants were individuals or corporations. The following two tables describe the data which resulted from that examination. Underlying this analysis was the desire to determine whether claims involving corporations were managed differently than claims involving individuals.

Table 6 HOW LAW SUITS ENDED ACCORDING TO TYPE OF PLAINTIFF

	1909	1919	1929	1939
End with Statement of Claim				
- plaintiffs	21 %	20 %	17 %	11 %
- corporations	22 %	25 %	23 %	25 %
End with Statement of Defence				
- plaintiffs	18 %	23 %	21 %	20 %
- corporations	9 %	13 %	10 %	13 %
Default Judgment				
- individuals	21 %	20 %	20 %	11 %
- corporations	23 %	27 %	31 %	27 %
Proceed to trial				
- individuals	12 %	3 %	13 %	6 %
- corporations	8 %	3 %	4 %	3 %
Discontinued by Notice				
- individuals	15 %	20 %	12 %	27 %
- corporations	16 %	13 %	11 %	13 %

Dismissed by Court Order				
- individuals	6 %	6 %	11 %	22 %
- corporations	3 %	4 %	6 %	4 %
End with Writ of Attachment				
- individuals	7 %	7 %	6 %	3 %
- corporations	19 %	15 %	15 %	15 %

Corporations as Plaintiffs

According to this data, in 1909 corporations and individuals were equally likely to discontinue after filing a Statement of Claim. By 1939 corporations were 3% more likely to do drop an action and individuals nearly twice as likely to do so. After a Statement of Defence was filed, however, individuals were 8% more likely to discontinue than corporations. But corporations were more than twice as likely to obtain a default judgment, despite the fact in 1909 individuals had been just as likely to do so. The data also suggest that individuals were twice as likely to go to trial and to formally discontinue than were corporations and nearly six times as likely to have claims dismissed by court order. On the other hand, once a judgment was obtained a corporate plaintiff was five times as likely to take out a writ of attachment than an individual plaintiff.

When actions ending in default judgments were combined with those in which a plaintiff took out a writ, it became evident that even ignoring trial awards, corporations obtained a judgment 42% of the time. Individuals were successful 28% less often. The data is just as dramatic when claims discontinued by notice or dismissed by court order were compared for individuals and corporations. Forty-nine per cent of litigation undertaken by individual plaintiffs was discontinued or dismissed, compared to 17% for corporations. Based upon the assumptions referred to earlier, as plaintiffs corporations were successful more than three times as often as individuals. These findings suggest Galanter was correct when he suggested 'have's' (corporations) were more often successful than were 'have not's' (individuals).

Corporations as Defendants

But if corporations were big winners as plaintiffs, did they avoid being big losers as defendants? Table 7 provides no clear answer. There was little difference between what happened to claims filed against individuals and those filed against corporations. Using the same criteria as applied to an examination of litigation undertaken, individual defendants lost 22% of the time and corporations lost 20%. Actions involving individual defendants were discontinued or dismissed 4% less often than for corporate defendants (41 40 45%). But there was support for the argument that corporate defendants fared better in court than individuals. They allowed 5% fewer plaintiffs to obtain judgment by default and actions filed against them were discontinued by notice 12% more often. This last statistic, however, does not suggest that corporations were 'winners' more often than individuals. It indicates instead that they were more successful at negotiating out of court settlements.

Table 7 HOW LAW SUITS ENDED ACCORDING TO TYPE OF DEFENDANT

	1909	1919	1929	1939
End with Statement of Claim				
- individuals	22 %	25 %	21 %	15 %
- corporations	20 %	13 %	14 %	13 %
End with Statement of Defence				
- individuals	14 %	19 %	16 %	16 %
- corporations	22 %	20 %	19 %	20 %
Default Judgment				
- individuals	22 %	26 %	26 %	18 %
- corporations	9 %	13 %	9 %	13 %
Proceed to Trial				
- individuals	11 %	3 %	8 %	5 %
- corporations	15 %	3 %	16 %	3 %
Discontinued by Notice				
- individuals	17 %	13 %	11 %	23 %
- corporations	19 %	35 %	12 %	35 %

Dismissed by Court Order				
- individuals	4 %	5 %	8 %	18 %
- corporations	7 %	10 %	21 %	10 %
End with Writ of Attachment				
- individuals	11 %	10 %	8 %	4 %
- corporations	7 %	7 %	9 %	7 %

Litigation Management and Type of Defendant

Litigation management patterns for individuals and corporations were analyzed in one final way - by using only the data for 1939 and comparing how each managed claims made by and against them. Four assumptions are made. First, that the data for claims discontinued informally (dropped after a Statement of Claim or Defence was filed) suggest neither settlement nor a lack of settlement and therefore could not be used in this analysis. Second, default judgments obtained indicate an action was terminated successfully in favour of a plaintiff and default judgments given up indicate an action was terminated in a way adverse to the interests of a defendant. Third, the data for actions discontinued by notice indicat that an out of court settlement had been reached. And fourth, orders of dismissal indicat that an out of court settlement had not been reached and that a plaintiff had therefore 'lost' an action. Positive data for litigation ending in default judgments and by notice or order was subtracted from negative data. The more positives, the more success attributed to a litigant.

Individual plaintiffs obtained default judgments 11% of the time and individual defendants gave up default judgments 18% of the time. Default judgments 'for' were subtracted from default judgments 'against', producing a -7 result. Corporations obtained default judgments 27% of the time and gave them up 13%, producing a + 14 result. Notices of Discontinuance were filed by individual plaintiffs 27% of the time and against them 23%. Since the filing of a notice was always indicative a settlement had been reached, the two statistics were combined for a + 50 finding. Corporate plaintiffs filed notices 13% of the time and corporate defendants had notices filed against them 35%, producing a + 48 result. According to this analysis, individuals had a + 2 more favourable

result than corporations. Twenty-two per cent of actions filed by individual plaintiffs were dismissed by court order and individual defendants succeeded in having 18% of actions filed against them dismissed, producing a - 4 finding. Four per cent of claims filed by and 10% of claims filed against corporations were dismissed, producing a finding of + 6. In the end individuals were - 9 (- 7, + 2 and -4) and corporations + 18 (+ 14, - 2 and + 6). Even if corporations were not three times more successful in managing litigation than individuals, there is little doubt that they fared better in the litigation process.

CHAPTER THREE
CAUSES OF ACTION

In 1983 Marc Galanter noted that twentieth century American courts have witnessed a shift away from litigation involving market transactions towards those involving family and tort actions. He cited a study by Andrew Young to support his conclusion that in some American jurisdictions, although tort claims represented as little as 1 to 2% of claims filed in 1903, by 1976 they had increased to 12%. Commercial cases showed a corresponding decline of 39%. This suggested to Galanter that "regular civil courts in America are being called on to deal with a very different mix of matters than they formerly did." (24)

Changing Nature of Litigation

Galanter was neither the first nor the last to notice that the nature of litigation has changed over the past 75 years. In their 1977 study of state supreme courts Robert Kagan, Bliss Cartwright, Lawrence Friedman and Stanton Wheeler reached many of the same conclusions. Kagan and co-authors examined the records of sixteen state supreme courts over a one hundred year period. They found that up to the beginning of the 20th century 25% of the claims analyzed involved debt collection and in one-third of these a court was asked to adjudicate the status of a debtor's property. What soon became obvious, according to Kagan, was that "as striking as the massive role of collection cases between 1870 and 1940 is the decline of such cases in the last 40 years." (25)

In 1990 Lawrence Friedman analyzed longitudinal court research and the changing nature of causes of action litigated. Although Friedman's study was grounded in an examination of American courts in the period 1950 to 1980, he too noticed economic disputes made up a declining portion of court caseloads. He found that in the main they had been replaced by cases involving more intrinsically personal matters, like divorce. A similar conclusion was reached by Lawrence Baum, Sheldon Goldman and Austin Sarat. One of the findings of their study on the evolution of litigation in federal courts of appeal was that contract cases, as a per cent of total caseloads, declined in the period 1895 to 1975. A third conclusion, again reached in the Kagan

study, was that between 1905 and 1935 one out of three actions involved first railways and street cars and then motor vehicles. (26)

Methodology

For purposes of analyzing court records according to causes of action, the suggestion made by Charles Epp in his study of employment rights litigation was adopted. Epp contended that "disaggregating litigation levels into meaningful types enhances our ability to interpret and understand variations in litigation." (27) He suggested that in the long run, an examination of particular types of litigation would be more instructive than traditional research examining litigation in the aggregate. For this reason Statements of Claim are deemed to be grounded in one of fifteen causes of action. The first of the fifteen, family and estate, refer to domestic and estate related actions and include both alienation of affection and breach of promises suits. Creditor rights refers to actions to enforce existing judgments. Misuse of authority refers to allegations that an individual or corporation wrongfully had a plaintiff charged with a criminal offence or had seized assets without just cause. The following table contains the results for all four years of the study.

Table 8 CAUSES OF ACTION

As a % of all cases filed	1909	1919	1929	1939
family / estate	1 %	3 %	3 %	4 %
contract	31 %	37 %	28 %	20 %
creditor rights	6 %	3 %	2 %	3 %
debt	4 %	4 %	2 %	4 %
employment	2 %	2 %	3 %	4 %
fraud	2 %	2 %	2 %	----
goods and services	19 %	8 %	6 %	4 %
guarantee / lien notes	1 %	1 %	3 %	1 %
libel / slander	1 %	2 %	2 %	1 %
misuse of authority	1 %	2 %	3 %	2 %
mortgage	5 %	8 %	11 %	8 %
negligence	4 %	6 %	15 %	36 %
negotiable instruments	17 %	11 %	13 %	6 %
partnerships	3 %	2 %	3 %	2 %
trespass	2 %	7 %	3 %	5 %

In the context of this study family and estate actions do not include divorce petitions or applications for either probate or administration. File pockets relating to these matters have been emptied of their contents prior to being transferred to the Provincial Archives of Manitoba by the Court of Queens Bench. Because family and estate actions refer to litigation involving issues other than divorce, the findings of this study cannot be used to test Friedman's conclusion that by the 1980s family disputes had replaced economic disputes as a principal cause of action. But what was tested were hypotheses advanced respectively by Galanter, Kagan, Friedman and Baum: that tort actions increased significantly from the start of the twentieth century as a percentage of all suits filed; that although litigation involving debt collection represented nearly one out of four cases filed in the early part of this century, before its half-way point they had declined dramatically; that law suits involving commercial actions have declined over the past seventy-five years; and that contract claims have shown an equally significant decrease.

Tort and Negligence Claims

In Winnipeg's highest trial court no cause of action showed as dramatic a change over the course of this study as tort and negligence claims. In 1909 only 4% of one thousand one hundred and seventy-seven suits dealt with an allegation of negligence. Ten years later that figure had increased to 6% and by 1929 had more than doubled (15%). Between 1929 and 1939 the number of such claims doubled again. And just as the percentage of negligence claims changed between 1909 and 1939 (increasing by 900%), so too had the type of injury giving rise to them. Litigation patterns discovered in this study were similar to those found by Galanter and Young. In the first part of the twentieth century a majority of tort suits in Winnipeg were filed as a result of accidents involving railways and street cars. Not a single action was initiated because of an incident involving a motor vehicle. By 1939 the exact opposite was true. Virtually all negligence claims involved motor vehicle accidents and none involved either railways or streetcars. Although these findings were similar to those reached by Young and Galanter, the 10 to 11% increase in tort claims they noticed was dwarfed by the 32% increase in Manitoba. Perhaps an explanation lies in the fact that in the major American population centers studied by Young and Galanter railways, streetcars and motor vehicles all arrived earlier and in

greater numbers than in Winnipeg. By the period covered for this thesis more law suits involving a wider range of causes of action were being filed, lessening the statistical significance of negligence suits. In Winnipeg in 1939, for example, while the percentage of litigation involving an allegation of negligence represented 36% of all claims filed, there were only three hundred and thirty-six claims filed. Thirty years earlier such actions represented only 4% of litigation undertaken, but there were eight hundred and forty-one more claims filed.

Debt Claims

For purposes of comparing data involving debt collection to Kagan's findings, causes of action categorized as debt, negotiable instruments and guarantees were aggregated into a single group. Debt actions were those in which repayment of monies owing was demanded but what gave rise to the debt was unknown. Claims involving negotiable instruments and guarantees were all based on promises to repay which had been reduced to writing. When treated as a single cause, the three represented 22% of claims filed in 1909, 16% in 1919, 18% in 1929 and 11% in 1939. These findings echo the conclusions reached by Kagan. He found that in the early years of the twentieth century debt actions represented 25% of litigation undertaken but by 1970 had declined to less than 5%. In the present study the decline was from 22% to 11%. Why such a drop? Kagan attributed it to a 'firming up' of the instruments and instrumentalities of credit. (28) The findings of this study suggest that he was likely correct. A decrease in debt actions was paralleled by a decrease in claims filed by money lenders and loan companies and an increase in disputes involving mortgage companies.

Decline in Commercial and Contract Claims

The Winnipeg data thus support the findings of American court research that tort litigation increased and debt litigation decreased over the course of the twentieth century. But what of Friedman's and Baum's suggestion that commercial and contract cases also declined during this period? The data generated by this study not only bears out those suggestions, they also support the conclusions advanced by Galanter. Galanter used Young's work to substantiate his claim that from 1903 to 1976 commercial cases declined by more than 50%. Galanter defined commercial litigation as actions arising out of a claim for payment for the supplying of goods

and services. In Winnipeg in 1909 such suits represented 19% of nearly twelve hundred claims filed. By 1919 that per cent had been halved and by 1939 halved again. The total decline, from 19% to 4%, represented a decrease of 79%. In the Young study cited by Galanter the decline represented a drop of 55%. The decrease in contract claims was no less significant. Baum studied litigation filed in three American Courts of Appeal districts over the first half of the twentieth century. He and fellow researchers determined that contract disputes declined by between 4 and 11%. Although Baum was reluctant to offer any explanations for this decline, he did suggest his findings "might be attributed generally to the increased capacity of businesses to utilize nonjudicial mechanisms to resolve contract disputes." (29) Such may have been the case in Winnipeg between 1909 and 1939. During this period contract claims, which at 31% had been the single largest cause of action in 1909, fell to 20%. Although this 11% decrease mirrored Baum's findings, it might be explained in a different way. In Winnipeg during the early years of this study virtually all contract claims involved disputes over land. This was not surprising, considering the amount of land speculation going on at the time. An examination of Statements of Claim, however, reveals that by 1939 not only had suits involving land speculation declined, the basis of contract actions had broadened. While land disputes still represented a significant per cent of contract claims, their significance had decreased considerably. This may be an example where changes occurring outside courtrooms was reflected in what was going on within them.

Cause of Action and Type of Litigant

To date few if any court researchers have taken an examination of litigation according to cause of action a step further by analyzing claims filed according to whether they were filed by individuals or corporations. By doing so this study attempts to determine whether changes in litigation patterns can be attributed to changes in the way individual and corporate litigants managed litigation and, if such changes can be found, whether they occurred for all actions. In the following table the nine most litigated causes of action were examined according to whether the party involved was a corporation or an individual. Both men and women were regarded as individuals while corporations included all incorporated entities, irrespective of size. The changes described in Table 9 were often dramatic, but particularly so for actions involving

corporations. Central to this analysis is the desire to determine if evidence can be found that the greater amounts of financial resources and experience possessed by corporations allowed them to pursue different causes of action than were pursued by individuals and whether the manner in which they managed litigation differed. If Hurst was correct, both types of litigation and management methods should be different.

Table 9 CAUSE OF ACTION BY TYPE OF PLAINTIFF

As % of actions involving each type	1909	1919	1929	1939
contract				
- individual	40 %	38 %	26 %	19 %
- corporation	12 %	35 %	29 %	24 %
creditor rights				
- individual	6 %	2%	3 %	2 %
- corporation	6 %	7 %	1 %	6 %
debt				
- individual	4 %	4 %	4 %	4 %
- corporation	4 %	5 %	1 %	3 %
employment				
- individual	3 %	2 %	4 %	4 %
- corporation	1 %	2 %	1 %	2 %
goods and services				
- individual	12 %	7 %	5 %	2 %
- corporation	32 %	9 %	8 %	10 %
guarantee				
- individual	1 %	1 %	1 %	----
- corporation	3 %	1 %	8 %	3 %
mortgage				
- individual	5 %	7 %	6 %	3 %
- corporation	6 %	11 %	20 %	27 %
negligence				
- individual	6 %	8 %	20 %	49 %
- corporation	1 %	1 %	2 %	------
negotiable instruments				
- individual	10 %	8 %	8 %	3 %
- corporation	33 %	21 %	22 %	17 %

Five causes of action were not included in the above table. Two of those, family and libel actions, did not involve corporations as plaintiffs. The data for the remaining three (fraud, misuse of authority and trespass) were too sparse to allow any meaningful analysis. When the above results are analyzed first in the context of what happened with causes of action over the entire period, without regard to type of plaintiff, and then according to type of litigant, an interesting pattern emerges. In the case of contract litigation, for example, the number of claims filed dropped from 31% in 1909 to 20% in 1939. A similar though more dramatic decrease was seen in contract suits brought by individuals. In 1909 these actions represented 40% of suits filed but by 1939 represented only 19%. Over the same period actions involving corporate plaintiffs increased from 12% to 24%. Were these opposing trends unusual? Both Kagan and Friedman seemed to have anticipated them and would probably argue that they were not. In a 1990 LAW & SOCIETY REVIEW article Friedman noted that although "the first wave of longitudinal studies, trial and appellate alike (found evidence of) the decline of commercial litigation," more contemporary work has suggested a "rebirth of contract litigation and an upsurge in law suits between businesses." (30) The increase in corporate contract claims bears out Friedman's first contention and the finding of this study that the number of suits filed by corporate plaintiffs against corporate defendants doubled between 1909 and 1939 seems to bear out the latter.

Change in Use of Courts and Economic Status

Kagan reached much the same conclusion as Friedman, but from a radically different perspective. He argued that as people on the lower end of the social and economic scales became increasingly more inclined to use the court system throughout the twentieth century their entrance into litigation was accompanied by a corresponding shift in the focus of law suits away from commercial cases like those involving contractual disputes. (31) Kagan's implication was clear. Commercial litigation became increasingly likely to involve those at the top of the economic ladder - corporations. But if this were true, would not the same kind of transition be taking place for claims involving all commercial interests, including mortgages? The answer is yes. From 1909 to 1939 mortgage suits filed by individuals decreased from 5% to 3%. In the same period claims filed by corporations increased from 6% to 27%. Two other causes of

action, goods and services and negotiable instruments, decreased for both individuals and corporations but even at the reduced level corporate plaintiffs were far more statistically significant than individual plaintiffs. In the case of goods and services, claims filed by individuals declined from 12 to 2% while those for corporations declined from 32% to 10%. For negotiable instruments the decrease for individuals was from 10 to 3% and for corporations 33% to 17%.

This data suggest that in terms of absolute numbers, tort actions did increase over the course of the first half of this century and debt, commercial and contract claims decreased, just as a number of studies found to be the case in the United States. But what was not previously proven was that despite this change, in terms of litigation undertaken by corporations, not only did both debt and commercial actions remain at a relatively high level, suits involving contracts actually increased by 100%. And while the authors of the studies referred to earlier have formulated a variety of theories about what was happening, based upon actions brought by plaintiffs, they have been silent about the changing role of those who were being sued and why they were being sued. The following two tables describe the results of an examination of causes of action according to type of plaintiff and type of defendant.

Individuals and Corporations as Litigants

Claims filed by individuals and corporations are compared to those filed against individuals and corporations. Five of fifteen causes of action are used to make this comparison. The remaining ten are rejected as being unique to one or the other of the two types of litigants or because statistics are too scant to allow a meaningful comparison. The first of the next two tables describes claims filed by or against individuals. For purposes of this analysis the type of party opposing them has been ignored. In the case of claims filed against individuals the same approach is adopted.

The aim of the analysis is to determine whether litigation patterns for the five causes of action examined are different for individual plaintiffs and defendants and if patterns of change affect corporate litigants in the same way. The five causes examined include contract, goods and

services, mortgage, negligence and negotiable instruments. All except negligence involve commercial disputes. The conclusions reached earlier suggest individuals should be less involved than corporations in the four commercial actions but more so in negligence suits.

Table 10 CLAIMS FILED BY OR AGAINST INDIVIDUALS

Cause of action	1909	1919	1929	1939
contract				
- as plaintiff	40 %	38 %	26 %	19 %
- as defendant	31 %	42 %	33 %	22 %
goods and services				
- as plaintiff	12 %	7 %	5 %	2 %
- as defendant	19 %	7 %	6 %	5 %
mortgages				
- as plaintiff	5 %	7 %	6 %	3 %
- as defendant	5 %	8 %	13 %	9 %
negligence				
- as plaintiff	6 %	8 %	20 %	49 %
- as defendant	1 %	3 %	11 %	32 %
negotiable instruments				
- as plaintiff	10 %	8 %	8 %	3 %
- as defendant	17 %	12 %	12 %	7 %

According to Table 10 changes in litigation patterns involving individuals affected plaintiffs and defendants in very nearly the same way. And some of these changes were quite dramatic. Although the involvement of individuals in contract claims fell, the decrease in actions undertaken was 21% while for those defended it was only 9%. For litigation involving goods and services, mortgages and negotiable instruments the changes for both plaintiffs and defendants were reasonably similar. The change in pattern for negligence actions, however, was significant. Not only did individuals file 43% more claims, they were named as defendants 31% more often. In 1909 negligence suits represented just 6% of claims filed by individuals and contract actions 40%. By 1939 contract litigation had decreased to 19% and negligence had grown to a very

significant 49%. Almost as dramatic were changes affecting individual defendants. In 1909 individuals were defendants in negligence suits only 1% of the time. Thirty years later one of three claims involving individual defendants was grounded in an allegation of negligence.

The following table describes litigation filed by and against corporations. As was the case for individuals, changes in litigation patterns were usually similar for plaintiffs and defendants. The degree of change, however, was often quite different. The only exceptions to this generalization were contract and negligence actions. In both these instances litigation rates moved in opposite directions.

Table 11 CLAIMS FILED BY OR AGAINST CORPORATIONS

Causes of action	1909	1919	1929	1939
contract				
- as plaintiff	12 %	35 %	29 %	24 %
- as defendant	20 %	26 %	13 %	15 %
goods and services				
- as plaintiff	32 %	9 %	8 %	10 %
- as defendant	24 %	10 %	5 %	1 %
mortgage				
- as plaintiff	6 %	11 %	20 %	27 %
- as defendant	3 %	5 %	3 %	6 %
negligence				
- as plaintiff	1 %	1 %	2 %	------
- as defendant	19 %	16 %	29 %	54 %
negotiable instruments				
- as plaintiff	33 %	21 %	22 %	17 %
- as defendant	8 %	7 %	11 %	5 %

Although in America contract litigation was in a trend downward over the first one-third of the twentieth century, this study indicates that for corporations the movement was in the opposite direction. By 1939 corporate plaintiffs were twice as likely to undertake contract litigation than

they had been in 1909 but 5% less likely to defend such actions. Claims involving goods and services and negotiable instruments declined for both plaintiffs and defendants, with the decline in goods and services being the more significant (a decrease of 22% as plaintiff and 23% as defendant). Mortgage actions moved in a different direction and the change was dramatic. Although claims involving corporate defendants doubled, from 3% in 1909 to 6% in 1939, litigation filed increased by more than 400%. Less dramatic but perhaps no less significant were changes in the number of negligence claims defended. In 1909 such actions, at 19%, were the third highest involving corporate defendants. By 1939 more than one-half of claims filed against corporations were based upon an allegation of negligence.

Comparison of Changes in Patterns

The changing pattern of litigation involving individuals and corporations as both plaintiffs and defendants is even more clear when changes affecting each are compared. Contract litigation in 1909 represented just under one-half of claims filed by individuals. In 1939 the rate of such litigation had declined by 53%. This change is consistent with the findings of Galanter and Young referred to earlier. For corporations change in such litigation involved an increase of 50%. This change is also consistent with the fact that in America, by mid-century, contract claims were being increasingly undertaken by businesses. Goods and services and negotiable instrument actions, however, declined for both individuals and corporations. Another dramatic shift in pattern involved mortgage actions. In 1909 mortgage companies as such had little role to play in the court process. Only 6% per cent of claims filed by corporations in that year involved mortgage disputes. For individual plaintiffs the figure was 5%. By 1939 mortgage litigation undertaken by individuals had declined by 2% but claims involving corporate plaintiffs increased by 450%. These changes suggest that individual money lenders had been replaced by corporate financial institutions.

By analyzing causes of action more likely to be litigated by corporations than individuals it was possible to test two hypotheses: that of Hurst that the law was a tool used by some to promote their own self-interests and that of Galanter, that claims pitting those with experience and wealth (corporations) against those with little of either invariably were decided in favour of the

former. Neither Hurst nor Galanter, however, suggested that using the court system effectively could be determined from analyzing the amount of litigation undertaken. This study suggests it was how courts were used rather than how often that was significant. The following data describes the results produced when the Hurst and Galanter hypotheses were tested by examining changes in patterns of litigation according to the six most litigated causes of action, type of litigant (either individual or corporation) and whether the litigant was plaintiff or defendant.

Table 12 CAUSE OF ACTION ACCORDING TO TYPE OF PLAINTIFF

As % for each cause	1909	1919	1929	1939
Contract				
- individual	89 %	76 %	68 %	79 %
- corporation	11 %	24 %	32 %	21 %
Debt				
- individual	70 %	70 %	92 %	87 %
- corporation	30 %	30 %	8 %	13 %
Goods and services				
- individual	47 %	69 %	59 %	54 %
- corporation	53 %	31 %	41 %	46 %
Mortgage				
- individual	66 %	65 %	41 %	37 %
- corporation	34 %	35 %	59 %	63 %
Negligence				
- individual	90 %	96 %	96 %	100 %
- corporation	10 %	4 %	4 %	0 %
Negotiable instruments				
- individual	68 %	53 %	45 %	45 %
- corporation	32 %	47 %	65 %	54 %

Four out of the six causes described in Table 12 fit patterns described earlier in this chapter.

Between 1909 and 1939 individuals had become less involved in undertaking litigation involving contracts, mortgages and negotiable instruments and more involved as plaintiffs in negligence suits. Two anomalies were claims involving debt and goods and services. On balance then, this data are consistent with two of the conclusions reached in American studies. First, over the course of the first half of the twentieth century negligence actions made up the bulk of litigation undertaken by individuals. And second, during the same period commercial claims involved corporations more often and individuals less often.

The last table in this chapter describes findings which resulted from comparing litigation patterns according to cause of action and type of defendant.

Table 13 CAUSE OF ACTION ACCORDING TO TYPE OF DEFENDANT

	1909	1919	1929	1939
Contract				
- individual	90 %	87 %	91 %	84 %
- corporation	10 %	13 %	9 %	16 %
Debt				
- individual	83 %	94 %	100 %	79 %
- corporation	17 %	6 %	0 %	21 %
Goods and services				
- individual	82 %	75 %	81 %	94 %
- corporation	18 %	25 %	19 %	6 %
Mortgage				
- individual	91 %	88 %	94 %	85 %
- corporation	9 %	12 %	6 %	15 %
Negligence				
- individual	22 %	40 %	60 %	68 %
- corporation	78 %	60 %	40 %	32 %
Negotiable instruments				
- individual	93 %	88 %	81 %	84 %
- corporation	7 %	12 %	19 %	16 %

Patterns for both individuals and corporations were consistent for five of six causes. The number of claims involving corporations as both plaintiff and defendant increased between 1909 and 1939 for contract, negotiable instrument and mortgage actions and decreased for goods and services and negligence suits. In the case of debt, litigation filed by corporate plaintiffs decreased by 17% while that involving them as defendants increased by 4%. For individuals the patterns were the same but trends were in the opposite direction. For example, individuals filed 10% fewer contract claims in 1939 than they had thirty years earlier, and corporations 10% more. Similarly, individuals were 6% less likely to be named as defendants in contract disputes and corporations 6% more.

Ultimately, this data offer further confirmation that by 1939 corporations undertook substantially more commercial litigation than individuals. The only area in which corporate litigants were significantly active as defendants were in negligence disputes.

CHAPTER FOUR
OCCUPATION OF LITIGANTS

In his 1986 study of commercial litigation in West Virginia, Frank Munger suggested that "the social characteristics of litigants may account for the various patterns of litigation among different types of litigants." (32) Munger referred to Galanter's 'one-shotter' and 'repeat player' theory before noting that, despite the orthodox suggestion that the status of a plaintiff or defendant has a significant effect on the outcome of litigation, it has stimulated little empirical research. This thesis attempts to fill that void by seeking answers to a number of questions. Did the 'working classes' of 1919, for instance, use the court system in a different way than professionals or corporations? Did courts treat them differently? What do the answers to these questions say about the litigation process? Despite the fact that no effort is made to extrapolate the findings of this thesis to society at large, in some ways the conclusions implicitly reveal much about how society in Winnipeg worked between 1909 and 1939. Although the actual number of claims filed by labourers, farmers and members of other occupations traditionally thought of as being part of the 'working classes' cannot be said to represent all the claims that existed in a given period of time, the attitude people held towards the litigation process undoubtedly reflected their belief in how they would be treated by courts.

Guiding much of the analysis in this chapter is the desire to test one now generally accepted hypothesis that the decision by an individual whether to litigate or not is influenced in large measure by constraints of time and money (33) and another that individuals with more time and/or money make more effective use of the legal system than those with little of either. This study will suggest that although this may have been the case in some American jurisdictions, in Winnipeg it was not.

Methodology

To facilitate the analysis of litigation according to the 'status' of litigants, court records are first grouped according to occupation of plaintiff and defendant. Then a determination

is made of the most active litigants for each year of the study. Although litigants are divided into more than two hundred and fifty occupational 'groups', to make the data more manageable, only litigation patterns affecting the ten most active are examined in depth. Once a determination is made of who these active litigants were, claims involving each were sub-divided according to plaintiffs and defendants and further sub-divided according to whether they were individuals or corporations. Ultimately, every Statement of Claim filed in 1909, 1919, 1929 and 1939 has been grouped according to occupation and type, and the results then analyzed for patterns of change.

Table 14 MOST ACTIVE LITIGANTS AS PLAINTIFFS

As % of all claims filed	1909	1919	1929	1939
merchants	13 %	7 %	6 %	4 %
farmers	7 %	13 %	7 %	7 %
married women	6 %	7 %	8 %	11 %
lawyers	5 %	4 %	4 %	3 %
real estate agent/brokers	8 %	5 %	1 %	----
contractors	5 %	4 %	5 %	2 %
labourers	4 %	2 %	3 %	6 %
banks	6 %	3 %	3 %	3 %
widows	2 %	3 %	5 %	5 %
mortgage companies	----	5 %	6 %	4 %

In 1909 the five most active litigants according to occupation were merchants, real estate agents/brokers, farmers, married women and banks. Thirty years later merchants had gone from number one to five, real estate agents/brokers dropped off the scale with less than 1% of claims filed, farmers moved up from number three to become the second most active litigants, married women went from number four to number one and banks from three to a tie for seventh. This data suggest change was both consistent and progressive, with three exceptions. An example of how consistent patterns of change were was evidenced in an analysis of actions begun by merchants. In 1909 this group filed 13% of all litigation undertaken. In 1919 they filed 7%, ten years later 6% and ten

years after that 4%. The pattern for married women was similar, but progression was in the opposite direction, from 6% to 7% to 8% and finally to 11%. The three exceptions were farmers, contractors and mortgage companies. For each a change in trend was more a hiccup than a substantive shift in focus.

Results of Analysis

The data say three things about the nature of changing social realities. First, as a group, those occupations which formed a 'middle class' (merchants, lawyers, contractors and real estate agents and brokers) filed increasingly fewer law suits while those occupations comprising a 'working class' (farmers and labourers) filed the same or more. Second, as Winnipeg became more settled over the first half of the 20th century, that group which had been most active in real estate speculation (real estate agents and brokers) became substantially less litigious. And third, the role females played in the court process both expanded and increased, so much so that by 1939 they had become the single most litigious group.

While it was not possible to determine the social or economic status of litigants from reviewing court records, it was not unlikely merchants, lawyers and real estate agents and brokers were members of Winnipeg's middle class. The status of contractors, however, was less clear, but probably lay somewhere between that of labourer and manager, depending upon the scale of business engaged in. Litigation undertaken by these three groups in 1909 involved nearly one out of four claims filed (23%). Yet three decades latter it represented only 9%. Court records do not tell us why this was the case, but the answer may lie in changes to the banking system and the way debts were secured. As unsecured promissory notes and bills of exchange gave way to real property and chattel mortgages, transactions involving those who advanced goods or services became more secure, lessening the need for members of the middle class to face the expense and risks associated with using the courts.

The nature of the change in litigation pattern affecting real estate agents and brokers was

different. In a majority of claims litigated in 1909 and 1919 they sued as owners of real property. They more than any other group were front and centre in real estate speculation in Winnipeg. Court records indicate that the litigation which had been a part of doing business in the first years of the twentieth century had by 1929 become a rarity and by 1939 virtually non-existent. It may be that the way real estate agents and brokers did business between between 1909 and 1939 was directly reflected in the litigation with which they became, or failed to become, involved.

Members of three occupational groups filed more litigation in 1939 than in 1909. Of these, two involved females. Between the first and last years of this study the amount of litigation undertaken by married women increased by 83% and actions involving widows by 150%. Claims involving the third group, labourers, increased from 4% to 6%. The role played by females in the court system became even more apparent when claims filed by both married women and widows are treated as litigation undertaken by a single group. In 1909 law suits filed by this group represented 8% of claims filed. By 1939 that number doubled.

When the findings in Table 15 are compared with the data described in the preceding table, the most litigious groups were just as likely to sue as be sued.

Table 15 MOST ACTIVE LITIGANTS AS DEFENDANTS

as % of all claims filed	1909	1919	1929	1939
farmers	13 %	14 %	12 %	11 %
merchants	12 %	9 %	7 %	9 %
contractors	10 %	7 %	6 %	4 %
married women	9 %	8 %	11 %	9 %
real estate agents/brokers	4 %	7 %	2 %	----
agents	4 %	2 %	2 %	----
street railways	1 %	1 %	2 %	2 %
municipalities	1 %	1 %	3 %	3 %

The only groups described in Table 14 not amongst the most active defendants were banks, widows and labourers. The litigious activity of labourers is especially interesting. In 1909 they were the eighth most litigious group and by 1939 had become the third. Notwithstanding their propensity to sue, however, over the period of this study they were relatively seldom sued, a fact which contradicts Galanter's 'one'shot' theory.

The data described in Table 15 suggests farmers and merchants, the two most active defendants in 1909, were also the two most active defendants in 1939, although the number of actions involving them had declined slightly. Married women were defendants in 9% of claims filed in both the first and last year of this study while those involving contractors decreased by 6%. The status of real estate agents and brokers has already been discussed and conclusions advanced earlier are confirmed. In 1909 this group was the fifth most active defendant. By 1939 they were defendants in less than one-half of one percent of claims filed. The only groups sued more often in 1939 than in 1909 were street railways and municipalities. For each the increase was 1%, largely attributable to the rise in negligence litigation.

Patterns of change described in Table 15 are very similar for each group. With few exceptions, change was again slight but progressive.

The following table suggests that if the litigation level of a group declined when members were involved in the court process as plaintiff, it also declined when they were involved as defendant. And almost always the rates of change, regardless of whether they involved an increase or decrease, were slight but progressive.

The findings described in the following table are produced by examining litigation involving eight occupational groups in their capacity as both plaintiff and defendant. The eight chosen (merchants, real estate agents/brokers, farmers, married women, contractors, labourers, lawyers and widows) were all active litigants and with the exception of real estate agents/brokers and lawyers, their activity level extended over all

or most of the thirty year period of this study.

Table 16 COMPARISON OF ACTIVITY LEVELS OF ACTIVE LITIGANTS

as % of all claims	1909	1919	1929	1939
merchants				
- plaintiff	13 %	7 %	6 %	4 %
- defendant	12 %	9 %	7 %	9 %
real estate agent/brokers				
- plaintiff	8 %	5 %	1 %	-----
- defendant	4 %	7 %	2 %	-----
farmers				
- plaintiff	7 %	13 %	7 %	7 %
- defendant	13 %	14 %	12 %	11 %
married women				
- plaintiff	6 %	7 %	8 %	11 %
- defendant	9 %	8 %	11 %	9 %
contractors				
- plaintiff	5 %	4 %	5 %	2 %
- defendant	10 %	7 %	6 %	4 %
labourer				
- plaintiff	4 %	2 %	3 %	6 %
- defendant	2 %	1 %	2 %	3 %
lawyer				
- plaintiff	5 %	4 %	4 %	3 %
- defendant	2 %	2 %	1 %	-----
widows				
- plaintiff	2 %	3 %	5 %	5 %
- defendant	1 %	1 %	1 %	2 %

Earlier it was suggested that this study indicates three things: first, as members of the

'middle class' filed fewer and fewer law suits members of the 'working class' filed more; second, over time real estate agents and brokers became less litigious; and third, by 1939 women had become the most active group involved in the litigation process. The above data support all three conclusions.

Class Analysis

Members of what has been referred to as the middle class (merchants, lawyers, real estate agents/brokers and contractors) were plaintiffs in 23% of claims filed in 1909 and defendants in 24%. By 1939 they were plaintiffs in 9% and defendants in 13%. It is clear, then, that members of this group were all less involved in litigation at the end of this study than they had been at the beginning. Farmers and labourers, on the other hand, had become slightly more involved as plaintiffs (11% to 13%) and slightly less as defendants (15% to 14%). Although these results support the suggestion that members of the working class became more actively involved in the court process as the involvement of members of the middle class decreased, more significantly, the data would seem to offer a reason why this was the case. The involvement of merchants, lawyers and contractors in litigation declined between 1909 and 1939. This may be attributed to the fact that as banking and credit arrangements became more sophisticated and secure the need for those providing goods and services to engage in time consuming and expensive court battles lessened. Farmers and labourers, on the other hand, had never been significantly involved in litigation over the provision of either goods or services, and since they were seldom defendants in such actions, changes in banking and credit had little effect on them.

It can also be argued that real estate agents and brokers became less involved in filing Statements of Claim as the grounds for filing them, land speculation, slowly disappeared. This can be seen in the data described in Table 15. Virtually all contract actions involved land. Claims naming agents and brokers as defendants invariably contained allegations that the two had failed to follow through on a commitment to either buy or sell property in their personal rather than professional capacity. Court documents make it clear that they

were usually sued as speculators, not as realtors. When real estate speculation as an economic enterprise became less significant, disputes over the buying and selling of land less often ended in courtrooms and actions involving agents and brokers became almost non-existent. By 1939 the few claims filed by or against them involved arguments over commissions.

Merchants and Married Women

When the activity level of various groups was compared over the entire period of this study, two statistics stand out - the dramatic decrease in litigation involving merchants as plaintiffs and the almost equally dramatic increase in claims filed by married women and widows. When these last two groups are treated as one, by 1939 they become by far the most active group user of the court system. They would have filed 16% of all claims and been named as defendants in 11%. Problems associated with making generalizations from this kind of analysis will be discussed in Chapter Five, and the methodological approach to litigation involving females reformulated, but some findings are worth discussing even at this stage. As early as 1929, for instance, 26% of law suits involved women as either plaintiff or defendant. This meant that ten years before the outbreak of World War II females, described in court documents as either married women or widows, were already named litigants in one out of every four Statements of Claim.

While such data do not suggest how courts treated females, the fact that their involvement in the court process increased steadily over a thirty year period, while that of almost every other group decreased suggests that women had begun to perceive litigation as a means by which they could achieve a desired end, whatever that end might be. Had courts been thought of as unwilling to treat females in the way females expected to be treated, it is not likely that their use of the system would have shown such a steady increase. Having said that, such data have little relevance unless it is considered in the context of the marital status of female litigants. In the next chapter the the issue of women and litigation is examined in depth, but at the risk of being repetitive the following data has been used to provide an overview of actions involving females in one of their

four capacities. In almost all cases, reference to co-litigants is reference to a spouse.

Table 17 FEMALE LITIGANTS

As % of claims involving females	1909	1919	1929	1939
Sole plaintiff	77 %	82 %	74 %	50 %
Co-plaintiff	23 %	18 %	26 %	50 %
Sole defendant	40 %	34 %	28 %	41 %
Co-defendant	60 %	66 %	72 %	59 %

In 1909 three-quarters of all law suits initiated by females involved them as sole plaintiffs. Thirty years later they were sole plaintiffs only one-half of the time. The number of claims involving females as sole defendants was virtually identical in both 1909 and 1939. An explanation for the 27% change in the status of females as plaintiffs is offered in the next chapter, but it should be noted that the increased litigiousness of females was as co-litigant rather than as litigants in their own right. This fact suggests that married women may well have become increasingly involved in litigation as a consequence of becoming more intimately involved in the activities of their husbands, since claims filed by the latter usually involved the former.

Merchants filed 13% of all claims in 1909 and only 4% in 1939, but what does this say about the changing nature of litigation involving merchants? To answer this kind of question, claims involving each occupational group are sub-divided according to their involvement in the court process as either plaintiff or defendant. Regardless of whether the number of claims involving a particular group increased or decreased, by examining patterns of change it is possible to determine whether groups were using the court system or being used by it. The following table describes the results of this analysis.

Claims involving only the ten groups most active in litigation were examined. By type this included two corporations (banks and mortgage companies) and eight individuals

(merchants, farmers, married women, lawyers, real estate agents/brokers, contractors, labourers, and widows.

Table 18 TYPE OF LITIGANT BY OCCUPATIONAL GROUP

	1909	1919	1929	1939
merchant				
- plaintiff	45 %	38 %	41 %	30 %
- defendant	55 %	62 %	59 %	70 %
farmer				
- plaintiff	30 %	42 %	32 %	35 %
- defendant	70 %	58 %	68 %	65 %
married women				
- plaintiff	33 %	41 %	39 %	52 %
- defendant	67 %	59 %	61 %	48 %
lawyer				
- plaintiff	66 %	62 %	70 %	100 %
- defendant	34 %	38 %	30 %	------
real estate agent/broker				
- plaintiff	42 %	40 %	35 %	-----
- defendant	58 %	60 %	65 %	-----
contractor				
- plaintiff	28 %	32 %	40 %	33 %
- defendant	72 %	68 %	60 %	67 %
labourer				
- plaintiff	57 %	53 %	54 %	62 %
- defendant	43 %	47 %	46 %	38 %
bank				
- plaintiff	88 %	71 %	100 %	100 %
- defendant	12 %	39 %	0 %	0 %
widow				
- plaintiff	63 %	64 %	82 %	73 %
- defendant	37 %	36 %	18 %	27 %

mortgage companies				
- plaintiff	-----	85 %	100 %	100 %
- defendant	-----	15 %	0 %	0 %

According to this data lawyers, labourers, banks, widows and mortgage companies more often used the court system as plaintiff while merchants, farmers, married women, real estate agents/brokers and contractors were usually involved as defendant. With three exceptions the involvement each group had with the court system as either plaintiff or defendant was consistent over the entire thirty year period of the study. Labourers, banks, widows and mortgage companies were usually plaintiffs and the number of claims with which each was involved was relatively constant. Farmers, real estate agents/brokers and contractors were usually defendants and their involvement with the court system was also relatively constant. The three exceptions were lawyers, merchants and married women.

The finding that lawyers were more often plaintiffs than defendants was less significant than the fact that their involvement as such increased by 34% between 1909 to 1939, a time when litigation levels of most other groups remained relatively constant. Merchants were another group with a significant shift in activity level, except their involvement was usually as defendant and the increase in activity was from 55% to 70%. The third exception was married women. The data indicate as married women undertook litigation, they usually did so as plaintiffs. In 1909 married women were plaintiffs 33% of the time. By 1939 that figure had risen to 52%. But as will be shown in Chapter Five, the involvement of married women, whether as plaintiffs or defendants, was primarily as the spouse of a co-litigant.

Labourers and Farmers

But perhaps the most striking result of this analysis involved the contrasting roles played by labourers and farmers. Between 1909 and 1939 both became five per cent more likely to sue rather than be sued. And while there is little if any evidence in court records to suggest labourers and farmers had not acquired significant amounts of either or both

money or experience with courts, to legal historians like Galanter and Friedman neither group would be considered as 'likely' to have done so as groups higher up the socio-economic ladder. As 'have not's' they would seem a natural fit for Galanter's 'one'shotter' theory. But if farmers fit the mold, labourers did not.

For Galanter's hypothesis to be correct, both groups should have defended claims more often than having initiate them. Yet this was not the case. From the beginning to the end of this study labourers were more likely to be plaintiffs than defendants, and by 1939 quite dramatically so. Although court records did not indicate whether labourers were members of Winnipeg's industrial working class, they did make it clear that they were at least residents of the city. If the abuses of the legal system which arguably took place following the Winnipeg General Strike were as significant as has been suggested by some social historians, it would not have been surprising if labourers had become less inclined to use courts. In fact this did not happen. Between 1919, the year in which the strike took place, and 1939 the number of cases involving labourers increased by 3% but the chances that a law suit would involve a labourer as plaintiff increased by 9%. This would suggest that Galanter's theory had no consistent application to the Winnipeg of the 1920s and 1930s. Labourers were one member of the working class who were not hesitant to use courts to advance or defend perceived rights.

Before analyzing the contrasting ways various groups managed litigation, claims involving corporations are examined. The following table describes the relative activity level of the most active ten.

Table 19 MOST ACTIVE CORPORATE PLAINTIFFS

plaintiffs	1909	1919	1929	1939
banks	37 %	12 %	10 %	18 %
municipalities	2 %	5 %	3 %	7 %
railways	8 %	1 %	-----	-----
merchants	16 %	4 %	-----	-----
land	6 %	4 %	5 %	-----

insurance	2 %	1 %	9 %	9 %
trust companies	2 %	2 %	12 %	11 %
mortgage	----	24 %	21 %	22 %
finance	6 %	1 %	4 %	2 %
building supply	5 %	2 %	3 %	4 %
actual claims	163	218	146	55

The weakness of this data is that so little litigation was undertaken by corporations that sub-dividing the few claims filed into occupational groups means that one or two claims could change the status of a corporate plaintiff from an insignificant participant in the litigation process to a major player. To overcome this problem, claims involving the most active corporate plaintiffs were compared with those involving the same litigants as defendants. This examination makes more complete the statistical picture described in Table 19. In Table 20 law suits have been divided according to whether they were filed by or against a corporation. The numbers in brackets represent the total number of claims filed per year.

Table 20 TYPE OF LITIGANT ACCORDING TO CORPORATE GROUPING

claims involving each group	1909	1919	1929	1939
banks				
- plaintiff	91 %	73 %	94 %	91 %
- defendant	9 %	27 %	6 %	9 %
	(67)	(37)	(16)	(11)
municipalities				
- plaintiff	21 %	39 %	16 %	25 %
- defendant	79 %	61 %	84 %	75 %
	(19)	(28)	(25)	(16)
railways and street railways				
- plaintiff	30 %	4 %	0 %	0 %
- defendant	70 %	96 %	100 %	100 %
	(44)	(23)	(14)	(10)
merchants				
- plaintiff	84 %	75 %	------	0 %
- defendant	16 %	25 %	-----	100 %
	(31)	(12)	(0)	(2)

land companies				
- plaintiff	63 %	82 %	88 %	-----
- defendant	37 %	18 %	12 %	-----
	(16)	(11)	(8)	(0)
insurance				
- plaintiff	27 %	33 %	68 %	42 %
- defendant	73 %	67 %	32 %	38 %
	(11)	(6)	(19)	(12)
trust				
- plaintiff	50 %	67 %	81 %	100 %
- defendant	50 %	33 %	19 %	0 %
	(6)	(6)	(21)	(6)
mortgage				
- plaintiff	----	87 %	100 %	92 %
- defendant	----	13 %	0 %	8 %
	(0%)	(60)	(31)	(13)
finance				
- plaintiff	64 %	100 %	46 %	100 %
- defendant	36 %	0 %	54 %	0 %
	(14)	(1)	(13)	(1)
building supply				
- plaintiff	100 %	67 %	57 %	100 %
- defendant	0 %	33 %	43 %	0 %
	(8)	(6)	(7)	(2)

This data suggest that corporations involved in selling or lending were invariably plaintiffs more often than defendants. Included in this category were banks, merchants, land companies, mortgage companies, suppliers of building materials and finance and trust companies. There were only two exceptions to this generalization. In 1929 finance companies were plaintiffs in only six of the thirteen suits with which they were involved and in 1939 merchants were defendants in both claims involving them. Municipalities and railways were the two groups most likely to be a defendant and a third, insurance companies, were more likely to be defendants in two of the four years studied. Almost without exception, actions against municipalities and railways involved allegations of negligence and those against insurance companies a breach of contract. This data suggest seven of the ten most active corporate litigants used courts as either a collection

agency or as a 'debt registry' where an action was filed to give record in anticipation of activating the suit when and it a default later occurs. The remaining three entered the judicial arena as a result of an alleged breach of duty owed the general public.

Stages at Which Law Suits Ended

In Chapter Two law suits were analyzed according to the stage at which they were discontinued. In the first year for this study 21% of all claims discontinued before a Defence was filed, 16% went no further after and 21% ended with default judgments. The same approach is used in analyzing litigants according to occupation. Statements of Claim filed by each of the eight most active litigants, regardless of whether they were individuals or corporations, are examined according to the stage at which an action ended. The results are then compared for each year of the study. In brackets is the average for all plaintiffs, without regard to their level of activity. This analysis is engaged in for claims which went no further after a Statement of Claim was filed, for those dropped or settled informally after a Statement of Defence was filed, for those which resulted in a default judgment, for those which proceeded all the way to trial, for those which were discontinued by a formal Notice of Discontinuance, for those which were dismissed by court order and finally, for those which ended with the taking out of a Writ of Attachment.

Table 21 LAW SUITS DISCONTINUED AFTER CLAIM FILED

	1909	1919	1929	1939
Average	(21%)	(22%)	(19%)	(13%)
merchants	20 %	27 %	10 %	25 %
married women	28 %	17 %	19 %	9 %
farmers	20 %	16 %	17 %	12 %
labourers	8 %	6 %	20 %	0 %
contractors	22 %	35 %	33 %	-------
lawyers	16 %	48 %	29 %	36 %
widows	32 %	25 %	11 %	6 %
banks	15 %	33 %	7 %	11 %

The data suggests labourers were the least and lawyers the most likely to discontinue an action after filing a Statement of Claim. In 1909 at the first stage of the litigation process labourers dropped or settled claims informally only 8% of the time. Widows, on the other hand, were four times as likely to discontinue. Ten years later labourers discontinued 6% of claims filed while lawyers filed then discontinued just about 50% of the time. In the last year of this study not a single action was filed by a labourer and then informally settled or discontinued. Whether this means lawyers were better at negotiating out of court settlements than labourers is not clear, but there is no question that claims filed by labourers were informally settled or discontinued less often than claims involving all other occupational groups.

Table 22 LAW SUITS DISCONTINUED AFTER DEFENCE FILED

	1909	1919	1929	1939
Average	(16%)	(20%)	(17%)	(17%)
merchants	16 %	24 %	31 %	6 %
married women	17 %	27 %	12 %	18 %
farmers	27 %	31 %	11 %	33 %
labourers	26 %	35 %	40 %	12 %
contractors	12 %	24 %	25 %	-----
lawyers	12 %	15 %	19 %	18 %
widows	0 %	8 %	18 %	18 %
banks	10 %	11 %	27 %	11 %

The group most likely to discontinue an action after a Statement of Defence was filed were labourers. The least likely to do so, widows. According to this data, labourers went from being the least likely to drop a law suit after filing a claim to the most likely to do so when a defense was filed. For widows the opposite occurred. In 1909, although they discontinued actions 32% of the time at the first stage of the litigation process, when a Statement of Defence was filed they almost always went at least one step further. But the data are perhaps most suggestive in terms of labourers. In every year except one this group was amongst the most likely to discontinue informally an action when a defence

was filed and in 1929 did so 40% of the time. Ten years later, however, they were amongst the groups least likely to discontinue. When this finding was compared to the 1939 data described in Table 21, it appeared labourers had become the most committed of active litigants, not once dropping a claim before a Statement of Defence was filed and only 12% of the time thereafter. For lawyers the figures were 36% and 18%. When a defence was filed, lawyers dropped 54% of their claims.

Table 23 LAW SUITS ENDING IN DEFAULT JUDGMENT

	1909	1919	1929	1939
Average	(21%)	(22%)	(24%)	(16%)
merchant	23 %	18 %	24 %	6 %
married women	15 %	25 %	17 %	7 %
farmers	11 %	15 %	20 %	13 %
labourers	26 %	12 %	20 %	6 %
contractors	12 %	24 %	13 %	------
lawyers	24 %	24 %	19 %	9 %
widows	37 %	28 %	29 %	18 %
banks	28 %	30 %	27 %	11 %

These data suggest three things. First, widows were the most likely to obtain a default judgment in every year of the study except 1919. Second, the data for farmers looks like a bell curve. Default judgments went from 11% in 1909, 15% in 1919 and 20% in 1939 before declining again to 13% in 1939. And third, between 1909 and 1939 default judgments increased for only one group. As judgments obtained by labourers declined by 20% and those granted widows, merchants, banks and lawyers between 15 and 19%, default judgments awarded farmers actually increased.

This study suggests that while some groups were inclined to discontinue actions quickly and informally others were likely to obtain default judgments. Does it necessarily follow that certain groups were more inclined to go to trial than others? Some American studies referred to earlier suggest banks and lawyers, for example, were more likely to use the

court system to their advantage than groups lower down the economic ladder, but does this mean that there was a greater likelihood actions involving them would go to trial? The following data suggest in Winnipeg that this was not the case. Both groups consistently avoided contested hearings, a finding which would appear to contradict Galanter's assertion that those with money and experience made the most effective use of the judicial process. Trials would seem an accurate barometer of the litigation management skills of both those with power and those without.

Table 24 LAW SUITS ENDING AT TRIAL

	1909	1919	1929	1939
Average	(10%)	(3%)	(10%)	(5%)
merchants	13 %	3 %	14 %	0 %
married women	7 %	3 %	15 %	11 %
farmers	13 %	3 %	17 %	17 %
labourers	8 %	0 %	0 %	0 %
contractors	16 %	3 %	8 %	-----
lawyers	6 %	0 %	10 %	0 %
widows	11 %	8 %	21 %	0 %
banks	10 %	0 %	7 %	0 %

This data describes the disparity between the way farmers and labourers, arguably members of the same 'working class', managed litigation. Farmers were amongst the most litigious of plaintiffs in every year of this study, and particularly so in 1939. In that year actions involving six out of eight groups proceeded to trial less than one-half of one per cent of the time. Seventeen per cent of claims involving farmers were eventually heard by a judge. Labourers were on average the least likely to go to trial. Between 1909 and 1939 there was only a 2% chance that a law suit filed by a labourer would end in a contested hearing. Lawyers and banks were right behind at 4 and 4 1/4% respectively. What does this suggest? For one thing, it suggests that there was no evidence that Galanter's 'have's' were using the court system to gain an advantage over 'have not's'. In fact, the opposite appeared to be the case. And it also suggested by 1939 only married

women and farmers were still actively pursuing actions all the way to trial. Over the period of this study both of these groups increased by 4% the number of times they went to trial.

Although court records often did not indicate whether actions discontinued informally were settled or merely dropped, materials contained in file pockets help to explain. As noted earlier, Notices of Discontinuance often indicated some kind of settlement reached, while court orders dismissing an action suggested that a settlement was not reached. Whether either of these conclusions is accurate is certainly open for debate, but for the purposes of the analysis carried out in this chapter formal discontinuances point toward negotiated settlements.

Table 25 LAW SUITS DISCONTINUED BY NOTICE

	1909	1919	1929	1939
Average	(16%)	(18%)	(11%)	(25%)
merchants	17 %	12 %	10 %	44 %
married women	24 %	17 %	17 %	25 %
farmers	10 %	14 %	17 %	8 %
labourers	26 %	24 %	7 %	41 %
contractors	33 %	11 %	17 %	----
lawyers	16 %	9 %	10 %	18 %
widows	11 %	16 %	7 %	24 %
banks	8 %	7 %	13 %	22 %

In 1909 banks were the least likely to file a Notice of Discontinuance and did so half as often as the average plaintiff. By 1939, however, farmers had not only become the least likely to file a discontinuance, they were three times less likely to do so than average. In 1939 labourers and merchants were the most likely to discontinue by notice, doing so 41 and 44% of the time. These findings produced somewhat of a mixed picture. Over the entire period of the study the two litigants with the most money and experience, presumably best able to force or entice a defendant into settling, were the second and

third least likely to file a Notice of Discontinuance (remember - a discontinuance was usually suggestive of an out of court settlement). Banks filed formal notices 12 1/2% of the time and lawyers 13 1/4. And six out of seven groups formally discontinued more often in 1939 than they had in 1909. The only exception was farmers, who filed 20% fewer discontinuances in the last year of this study than in the first. If filing a Notice of Discontinuance was an accurate indication that some sort of settlement had been obtained, and if obtaining a settlement was better than not obtaining one, the biggest winners were merchants and labourers and the biggest losers banks, lawyers and farmers. It is only after court ordered dismissals are analyzed, however, that a more accurate picture of winners and losers emerges.

Table 26 LAW SUITS ENDING IN DISMISSALS

	1909	1919	1929	1939
Average	(5%)	(6%)	(10%)	(20%)
merchants	2 %	9 %	10 %	19 %
married women	9 %	8 %	12 %	25 %
farmers	13 %	9 %	17 %	13 %
labourers	3 %	12 %	0 %	35 %
contractors	2 %	3 %	0 %	-----
lawyers	10 %	3 %	10 %	18 %
widows	0 %	4 %	11 %	35 %
banks	5 %	7 %	0 %	33 %

Again, the data described in this table is not consistent with the theory that those with money and power use the court system more successfully than those with a limited amount of either. Because having an action dismissed by court order usually suggested that a plaintiff's law suit was brought to an end without any settlement having been reached, groups with the highest percentage of actions dismissed were likely the biggest losers. If the theory that those with the most money and experience were usually winners was valid, one would have expected banks, lawyers and perhaps merchants to have

fewer actions dismissed by court order than farmers and labourers. In fact, the findings were decidedly mixed. While merchants were indeed the least likely to have an action dismissed in 1909, labourers were a close second. And while farmers were most likely to have their claims thrown out by the court, lawyers were right behind in second place. By 1939 the results were the opposite, but the inconsistency remained. Farmers had become the least likely to have an action dismissed and lawyers again a close second. The most likely to suffer a dismissal were labourers and widows at 35% and banks at 33%. This meant in 1939 one of three claims filed by these last three groups was dismissed by court order. The only group which did not experience more dismissals in the last year of this study than in the first were farmers. In 1909 law suits filed by farmers were almost three times more likely to be dismissed than claims filed by the average plaintiff. Thirty years later such actions were about half as likely to be dismissed.

But if obtaining a judgment was important, it was nowhere near as important as collecting on that judgment. The following table describes those most likely to go that extra step and actually attempt to realize on their judgment by taking out a Writ of Attachment.

Table 27 LAW SUITS ENDING WITH A WRIT

	1909	1919	1929	1939
Average	(11%)	(9%)	(9%)	(4%)
merchants	9 %	6 %	0 %	0 %
married women	0 %	2 %	7 %	5 %
farmers	7 %	13 %	0 %	4 %
labourers	3 %	12 %	13 %	6 %
contractors	2 %	0 %	4 %	0 %
lawyers	18 %	0 %	1 %	0 %
widows	11 %	12 %	4 %	0 %
banks	23 %	11 %	20 %	11 %

Since taking out a writ was both an expensive and relatively sophisticated procedure, it was not surprising that in 1909 the group most frequently using it was the litigant

presumed to have the greatest ability to finance litigation. Banks on average used writs substantially more often than any other plaintiff. But what about lawyers? Was there a reason after that 1909 they were the group least likely to take out a writ of attachment? The answer may be yes. Because they were both a user of and participant in the judicial system, lawyers more than any other group were aware of the ratio of risk-to-reward. If fewer judgment debtors had assets worth seizing, or of sufficient value to offset both a judgment and the additional costs of realizing upon that judgment, they would know and likely be the first to refuse to throw good money after bad. Yet having said that, it is not inconsistent that lawyers in their professional capacity would be prepared to pursue on behalf of paying clients a procedure they would never pursue as plaintiffs on their own behalf.

A finding which revealed much about the way litigants used the court system results from an analysis of the type of litigation with which groups became involved. To facilitate this analysis Statements of Claim filed by or against a group are categorized according to one of fifteen causes of action. For ease of description, the eight groups most active in litigation are then identified and the causes involving each examined. The resulting data are presented in two ways. First, the fifteen causes of action are reduced to the three most often litigated by each of the eight active litigants and those results described. Second, all fifteen causes of action are analyzed according to the three occupational groups most involved in litigating each and the results sub-divided according to whether zthe litigant was plaintiff or defendant.

Table 28 CAUSES OF ACTION MOST OFTEN LITIGATED

	1909	1919	1929	1939
merchants				
- goods and services	28 %	14 %	10 %	11 %
- negotiable instruments	25 %	10 %	20 %	10 %
- contracts	19 %	31 %	20 %	19 %

married women				
- contracts	38 %	51 %	37 %	26 %
- goods and services	14 %	6 %	3 %	2 %
- negligence	14 %	6 %	18 %	34 %
farmers				
- contracts	36 %	44 %	34 %	33 %
- negotiable instruments	15 %	10 %	15 %	5 %
- mortgages	11 %	5 %	20 %	5 %
labourers				
- contracts	45 %	30 %	28 %	3 %
- negligence	12 %	24 %	16 %	57 %
- family / estates	5 %	6 %	11 %	8 %
contractors				
- good and services	41 %	10 %	14 %	8 %
- contracts	23 %	53 %	36 %	37 %
- negligence	4 %	2 %	7 %	26 %
lawyers				
- contracts	41 %	41 %	50 %	40 %
- creditor rights	13 %	2 %	17 %	0 %
- mortgages	12 %	8 %	6 %	14 %
widows / spinsters				
- contracts	46 %	40 %	37 %	20 %
- goods and services	11 %	7 %	3 %	0 %
- negligence	5 %	7 %	18 %	35 %
banks				
- negotiable instruments	68 %	62 %	50 %	45 %
- mortgages	6 %	0 %	0 %	27 %
- creditor rights	4 %	6 %	13 %	9 %

With few exceptions, increases and decreases in litigation are consistent for all groups. For example, goods and services was one of the three most often litigated causes for merchants, married women, contractors and widows and for all four the number of such claims declined dramatically between 1909 and 1939. Negotiable instruments was a

significant cause for merchants, farmers and banks and again for all three the number of cases decreased substantially. Another consistent trend, although going in the opposite direction, involved negligence claims. Four groups were active in litigating these actions and for each the number of claims filed increased dramatically between 1909 and 1939. In the case of married women the increase was from 14 to 34%, for labourers from 12 to 57%, for contractors from 4 to 26% and for widows / spinsters from 5 to 35%.

The American studies discussed earlier suggested contract actions declined steadily over the first half of the twentieth century. With two exceptions, the data in Table 28 supports that conclusion. Contract claims were one of three most litigated causes of action for seven of eight litigants. For five of these seven, a group which included married women, farmers, labourers, lawyers and widows, the number of suits filed fell between 3 and 42%, for merchants remained constant at 19% and for contractors increased by 14%. Two causes displaying less consistent results were creditors rights, which decreased by 13% for lawyers while increasing 5% for banks, and mortgage actions, which declined 6% for farmers and increased 21 and 2% respectively for banks and lawyers.

Finance and Consumer Claims

More consistent results are produced when causes of action are analyzed according to whether they involved finance or consumer claims. Finance claims have been defined as actions on negotiable instruments, mortgages and creditor rights. One might expect that litigation of this type would make up a majority of the claims filed by groups involved in loaning or collecting monies. And that did in fact prove to be the case. All three finance actions were causes most litigated by banks, while negotiable instrument claims were most litigated by merchants and farmers, the former as plaintiff and the latter as defendant. By 1939, when changes in the banking system arguably made granting credit less risky, the amount of litigation involving negotiable instruments dropped for all three groups. In 1909 lawyers were even more active than banks in pursuing actions involving creditors rights and mortgages, although by 1939 banks were the dominant litigant for

both. But the most unexpected finding resulting from this analysis involved the role played by farmers. Unfortunately, at least for farmers, that role was usually as defendant. In 1909 15% of negotiable instrument actions involved farmers, 12% as defendants. Eleven per cent of mortgage suits also involved farmers and in all but 2% they were defendants. By 1939 things had not changed much. Farmers were still defendants four times as often as plaintiffs. The data suggest that those with money and power (banks and lawyers) were dominant litigants when it came to claims involving money, particularly when such claims involved members of the working class as defendants.

Might one expect that a similar finding would result from an analysis of consumer claims, with the provider of goods and services more often the plaintiff and the consumer more often the defendant? For purposes of analysis this type of claim involved actions for both goods and services and contracts. Contracts were included on the basis that virtually all such claims involved the purchase or sale of land in a speculative marketplace where land was just another retail commodity. Of the four groups most active in litigating goods and services, three were consumers and each a defendant more often than a plaintiff. These three included married women, widows / spinsters and contractors. Initially the finding that the fourth, merchants, were defendants nearly as often as plaintiffs came as a surprise, since members of the middle class were considered more likely to pursue than to defend actions. After examining claims filed against them, however, it became clear most litigation pitted wholesale merchant plaintiffs against retail merchant defendants.

Re-Testing the 'One-shotter' Theory

But if it did not seem unrealistic to expect in a consumer oriented society that it would be consumers rather than suppliers who were more often sued. And since contracts for land were bought and sold like other consumer goods, should it not have followed that the consumer of this type of product would more often be defendant and the supplier plaintiff? In Galanter's terms, plaintiff's should have been the 'have's' and defendants the 'have not's'. This did not turn out to be the case. Of the five groups active in contract litigation, four likely had less money and experience than the fifth, lawyers. It came as no

surprise then that lawyers were usually plaintiffs. In 1909 they filed 27% of contract suits and defended 14% and by 1939 were 26% more likely to be plaintiffs than defendants (33% to 7%). Although these findings were not unexpected, another was. No single group more fit Galanter's description of 'have not's' than labourers, yet they too were more active in contract litigation as plaintiffs. The results were similar for widows and spinsters, although they arguably were less likely to fit the definition of 'one-shotter.'

Table 29 CAUSES OF ACTION ACCORDING TO MOST ACTIVE LITIGANTS

	1909	1919	1929	1939
contract				
- real estate agents/brokers	21 %	14 %	4 %	2 %
- farmers	19 %	29 %	21 %	28 %
- married women	11 %	14 %	23 %	26 %
- merchants	11 %	12 %	8 %	11 %
goods and services				
- merchants	31 %	29 %	27 %	38 %
- contractors	29 %	11 %	31 %	13 %
- real estate agents/brokers	15 %	18 %	12 %	6 %
- married women	9 %	8 %	12 %	13 %
negotiable instruments				
- merchants	31 %	15 %	23 %	25 %
- banks	21 %	17 %	13 %	25 %
- farmers	17 %	26 %	26 %	20 %
creditors rights				
- merchants	19 %	45 %	6 %	31 %
- married women	18 %	5 %	3 %	39 %
- farmers	14 %	13 %	6 %	15 %
- contractors	14 %	13 %	6 %	0 %
mortgages				
- farmers	38 %	20 %	39 %	15 %
- married women	14 %	9 %	18 %	19 %
- lawyers	12 %	6 %	4 %	8 %
- merchants	10 %	18 %	9 %	12 %

negligence				
- married women	23 %	18 %	27 %	24 %
- labourers	23 %	21 %	11 %	17 %
- contractors	23 %	5 %	4 %	5 %
- farmers	16 %	5 %	21 %	15 %
debt				
- merchants	44 %	20 %	23 %	19 %
- farmers	15 %	31 %	8 %	6 %
- married women	7 %	10 %	15 %	25 %
- labourers	0 %	2 %	15 %	25 %

The seven most litigated causes of action are described in Table 29. Of the ten groups most involved in litigation in Winnipeg between 1909 and 1939, seven were amongst the most active litigants for at least one of those causes. Farmers, merchants and married women were active in six of the seven most litigated causes of action, contractors in three, real estate agents/brokers in two and banks and lawyers in one. These findings support a conclusion reached earlier - merchants, farmers and married women played a very significant role in the court process. Reasons for this have already been suggested, and in the case of merchants and farmers the data merely confirms that merchants were involved in their capacity as suppliers of goods and services and farmers as consumers. And as the findings in Table 29 illustrate, both were involved in similar kinds of causes. Even the single area in which neither dominated seems to bear out the symbiotic nature of their relationship. Merchants seldom sued or were sued on the grounds of negligence and farmers rarely became involved in actions for goods and services, other than as defendants. The role played by married women is more complicated, since they were involved in the process as both sole and co-litigants. As such they were just as likely to be plaintiff as defendant.

CHAPTER FIVE
LITIGATION AND GENDER

The role females played in Winnipeg's court system is difficult to determine from an examination of court records alone for a number of reasons, not least of which is the wide variety of ways with which they were described. To analyze litigation and how women fared in a male dominated system it is necessary to examine claims filed by or against females from a number of different perspectives. The results are striking.

To set the stage for the analysis which follows, Statements of Claim and Statements of Defense involving all litigants are described, followed by a description of only those claims involving females.

Table 30 LITIGATION INVOLVING ALL LITIGANTS

	1909	1919	1929	1939
Plaintiffs				
- males	63 %	63 %	53 %	57 %
- females	7 %	11 %	17 %	26 %
- corporations	30 %	26 %	30 %	17 %
Defenants				
- males	72 %	69 %	66 %	65 %
- females	14 %	12 %	14 %	14 %
- corporations	14 %	19 %	20 %	21 %

FEMALE LITIGANTS

as % of all claims involving females	1909	1919	1929	1939
Sole plaintiffs	24 %	39 %	40 %	29 %
Co-plaintiffs	7 %	9 %	14 %	28 %
Sole defendants	27 %	18 %	13 %	18 %
Co-defendants	41 %	34 %	32 %	25 %
Actual claims	266	267	189	118

According to this data, in 1909 females were plaintiffs in 31% of all claims in which they were named. In 1919 they were plaintiffs 48% of the time and ten years later 54%. By 1939 females were plaintiffs in 57% of the actions with which they were involved but only 4% more likely to be sole plaintiff. The fact that they were four times as likely to be co-plaintiffs than had been the case in 1909 suggests that the increase in litigation undertaken can be largely attributed to their role as co-litigants rather than as plaintiffs in their own right. The data for female defendants, however, showed no similar pattern. Claims involving females as both sole and co-defendants both declined. For female sole defendants the decrease was 9%, from 27 to 18%, and for co-defendants 16%, from 41 to 25%. When combined, the findings indicate females were defendants in 68% of actions involving them in 1909 and 43% in 1939, a drop of 25%.

Claims involving women are analyzed according to their role as either sole or co-litigant. The data suggests that in the first year of this study females were sole litigants 51% and thirty years later that figure remained relatively unchanged at 47%. Thus in Manitoba for much of the first half of this century females sued or were sued in their own capacity approximately 50% of the time.

Table 31describes the relationship between females and their co-litigants. The term 'related' has been used rather than 'spouse' because not all co-litigants were husbands. Daughters of female litigants were their co-litigants on a single occasion in 1909 and 1919, in three actions in 1929 and seven times in 1939. And in one claim defended in 1909, a co-litigant was the sister of a female defendant.

Table 31 RELATIONSHIP TO CO-LITIGANT

	1909	1919	1929	1939
Co-plaintiff				
- related	63 %	48 %	81 %	88 %
- not related	37 %	52 %	19 %	12 %
Co-defendant				
- related	50 %	47 %	77 %	73 %
- not related	50 %	53 %	23 %	27 %

The increasing part played by females in the court process, noted earlier, could be attributed more to their role as co-litigant than to anything done by females in their own right. The danger in this kind of generalization is that it suggests female co-litigants were less significant than fellow plaintiffs or defendants. But data described in Table 29 seem to bear this out. In 1909, for example, females were related to co-plaintiffs 63% of the time and by 1939 approximately 88%. The significance of not being related to a co-plaintiff is that it suggested females were more likely to be suing in their own right, rather than as agent for a spousal principal. Undertaking litigation as sole-plaintiff did not mean women were free of a husband's influence, but there was a greater chance that such was not the case. Since the percentage of cases involving females and not-related co-plaintiffs decreased from 37% in 1909 to 12% in 1939, the data suggest that women were over that period filing fewer claims in their own right and more often being added to actions commenced by a spouse. While the data is only suggestive, an examination of individual Statements of Claim bears it out. When claims involved males and females as co-litigants, in only two causes of action did court documents treat females as principal litigants. Those exceptions were creditor and debt suits. In both female co-defendants were described as principals largely because it was alleged they fraudulently assisted a co-litigant in his effort to defeat the claims of creditors. In the following tables status refers to claims in which females were described as married women, widows, females, wives, spinsters, sisters or daughters. Occupation refers to claims in which they were described according to their employment.

Table 32 OCCUPATION AND STATUS OF FEMALE PLAINTIFFS

	1909	1919	1929	1939
When sole plaintiffs:				
- described by status	95 %	94 %	77 %	82 %
- described by occupation	5 %	6 %	23 %	18 %
Actual claims	(64)	(104)	(75)	(34)
When co-plaintiffs:				
- described by status	100 %	91 %	96 %	100 %
- described by occupation	0 %	9 %	4 %	0 %
Actual claims	(19)	(23)	(26)	(33)

The data in Table 32 suggest that although female sole plaintiffs were described on court documents according to their status (as married women, widows, etc.) substantially more often than by occupation, between 1909 and 1939 claims describing women by occupation had more than tripled. The description of female co-plaintiffs, however, remained almost unchanged. In none of the nineteen claims filed in 1909 or the thirty-three cases filed in 1939 were females described by anything other than status.

Table 33 OCCUPATION AND STATUS OF FEMALE DEFENDANTS

	1909	1919	1929	1939
When sole defendant:				
- described by status	83 %	85 %	87 %	71 %
- described by occupation	17 %	15 %	13 %	29 %
Actual claims	(73)	(48)	(24)	(21)
When co-defendant:				
- described by status	99 %	95 %	93 %	97 %
- described by occupation	1 %	5 %	7 %	3 %
Actual claims	(110)	(92)	(61)	(30)

Such data are consistent with findings described in Table 32. As was the case with female sole plaintiffs, between 1909 and 1939 women involved in litigation as sole defendants were increasingly described on court documents by occupation rather than status. When co-defendant, however, they continued to be described by status.

The following two tables describe the occupation of females according to their involvement as sole plaintiff, co-plaintiff, sole defendant or co-defendant. Within each of these four categories claims in which females were described by status were listed first, according to the description of their status, and then according to the description of their occupation. Female litigants described according to status have been separated from those described by occupation. In brackets is the number of claims involving each group as a percentage of all litigation undertaken by females.

Table 34 OCCUPATION OF FEMALE PLAINTIFFS

	1909	1919	1929	1939
Sole plaintiffs				
- married women	26 (41%)	46 (44%)	16 (21%)	12 (35%)
- widow	12 (22%)	26 (25%)	26 (35%)	8 (24%)
- female	11 (17%)	7 (7%)	4 (5%)	0 (0%)
- wife of defendant	7 (11%)	6 (6%)	4 (5%)	3 (9%)
- spinster	3 (5%)	11 (11%)	8 (11%)	5 (15%)
- daughter	0 (0%)	1 (1%)	2 (3%)	0 (0%)
- waitress	1 (2%)	0 (0%)	0 (0%)	0 (0%)
- nurse	1 (2%)	1 (1%)	0 (0%)	0 (0%)
- teacher	1 (2%)	0 (0%)	2 (3%)	0 (0%)
- student	0 (0%)	1 (1%)	0 (0%)	0 (0%)
- merchant	0 (0%)	1 (1%)	1 (1%)	0 (0%)
- secretary	0 (0%)	1 (1%)	6 (8%)	0 (0%)
- accountant	0 (0%)	2 (2%)	0 (0%)	2 (6%)
- grocer	0 (0%)	1 (1%)	0 (0%)	0 (0%)
- laundry worker	0 (0%)	0 (0%)	1 (1%)	0 (0%)
- housekeeper	0 (0%)	0 (0%)	3 (4%)	0 (0%)
- seamstress	0 (0%)	0 (0%)	2 (3%)	2 (6%)
- usher	0 (0%)	0 (0%)	0 (0%)	1 (3%)
- clerk	0 (0%)	0 (0%)	0 (0%)	1 (3%)
Co-plaintiffs				
- married women	3 (16%)	7 (30%)	2 (8%)	2 (6%)
- widow	3 (16%)	1 (4%)	2 (8%)	2 (6%)
- female	1 (5%)	1 (4%)	0 (0%)	0 (0%)
- wife of co-plaintiff	11 (58%)	10 (43%)	18 (69%)	22 (67%)
- spinster	0 (0%)	1 (0%)	0 (0%)	0 (0%)
- teacher	0 (0%)	1 (4%)	0 (0%)	0 (0%)
- real estate broker	0 (0%)	1 (0%)	0 (0%)	0 (0%)
- miller	0 (0%)	0 (0%)	1 (4%)	0 (0%)

The following table completes this analysis by describing the data for female defendants. Again, litigants have been described according to status and occupation.

Table 35 OCCUPATION OF FEMALE DEFENDANTS

	1909	1919	1929	1939
Sole defendants				
- married women	32 (44%)	31 (65%)	10 (42%)	6 (29%)
- widow	8 (11%)	7 (15%)	3 (13%)	3 (14%)
- female	14 (19%)	2 (4%)	3 (13%)	2 (10%)
- wife of plaintiff	2 (3%)	1 (2%)	3 (13%)	3 (14%)
- spinster	1 (1%)	6 (13%)	2 (8%)	1 (5%)
- housekeeper	2 (3%)	0 (0%)	0 (0%)	1 (5%)
- farmer	4 (5%)	0 (0%)	0 (0%)	0 (0%)
- money lender	1 (1%)	0 (0%)	0 (0%)	0 (0%)
- boarding housekeeper	1 (1%)	0 (0%)	0 (0%)	0 (0%)
- contractor	1 (1%)	0 (0%)	0 (0%)	0 (0%)
- merchant	1 (1%)	0 (0%)	2 (8%)	0 (0%)
- grocer	1 (1%)	1 (2%)	0 (0%)	0 (0%)
- restaurant keeper	1 (1%)	0 (0%)	0 (0%)	0 (0%)
- real estate agent	1 (1%)	0 (0%)	0 (0%)	0 (0%)
- agent	1 (1%)	0 (0%)	0 (0%)	0 (0%)
- photographer	1 (1%)	0 (0%)	0 (0%)	0 (0%)
- hotel keeper	1 (1%)	0 (0%)	0 (0%)	0 (0%)
- private school owner	0 (0%)	0 (0%)	1 (4%)	0 (0%)
- hairdresser	0 (0%)	0 (0%)	0 (0%)	1 (5%)
- secretary	0 (0%)	0 (0%)	0 (0%)	4 (19%)
Co-defendants				
- married women	33 (30%)	20 (22%)	6 (10%)	4 (13%)
- widow	3 (3%)	7 (8%)	2 (3%)	3 (10%)
- female	13 (12%)	11 (12%)	2 (3%)	0 (0%)
- wife of co-defendant	54 (49%)	43 (47%)	47 (77%)	22 (73%)
- spinster	2 (2%)	4 (4%)	0 (0%)	0 (0%)
- wife of plaintiff	1 (1%)	2 (2%)	0 (0%)	0 (0%)
- sister of defendant	1 (1%)	0 (0%)	0 (0%)	0 (0%)
- secretary	2 (2%)	0 (0%)	0 (0%)	0 (0%)
- farmer	0 (0%)	2 (2%)	0 (0%)	0 (0%)
- hotel keeper	1 (1%)	0 (0%)	0 (0%)	0 (0%)
- merchant	0 (0%)	2 (2%)	0 (0%)	0 (0%)
- seamstress / operator	0 (0%)	1 (1%)	1 (2%)	0 (3%)
- beekeeper	0 (0%)	0 (0%)	1 (2%)	0 (0%)
- investor / clerk	0 (0%)	0 (0%)	1 (2%)	1 (3%)
- supervisor	0 (0%)	0 (0%)	1 (2%)	0 (0%)

Although data described in Tables 34 and 35 are descriptive rather than explanatory, they do illustrate how few females employed between 1909 and 1939 were involved in litigation (assuming a majority of married women and other 'females' were described by status because they were not employed). These findings suggest women were involved in more law suits involving more occupations in 1909 than in 1939. Three female plaintiffs and fourteen defendants were involved in twenty-two actions in the first year of this study, compared to four plaintiffs and four defendants in only thirteen in the last year.

To complete this analysis, female litigants have been described according to the occupation of their husbands and cause of action.

Table 36 OCCUPATION OF HUSBANDS OF FEMALE CO-PLAINTIFFS

	1909	1919	1929	1939
farmer	2	2	3	4
labourer	1	1	2	4
merchant	1	0	3	3
contractor	0	1	0	0
real estate agent	0	0	0	1
daughter	0	1	3	8
other occupations	7	3	8	10
Total	11	8	19	30

OCCUPATION OF HUSBANDS OF FEMALE CO-DEFENDANTS

farmer	9	7	12	5
labourer	1	1	1	1
merchant	2	2	5	3
contractor	0	2	3	1
real estate agent	3	3	0	0
lawyer	0	2	2	0
hotel keeper	3	2	1	0
other occupations	14	18	18	11
Total	32	37	42	21
		(81)		

The data described in Table 36 confirm conclusions advanced in Chapter 4. Members of the working class (farmers and labourers) were two of the three most active groups of litigants and one member of the middle class, merchants, was the third. The causes most litigated by co-litigants also confirm these findings.

Table 37 CAUSES OF ACTION MOST LITIGATED BY CO-PLAINTIFFS

	1909	1919	1929	1939
contract	3	3	1	4
debt	1	0	0	1
fraud	0	0	2	0
goods and services	1	0	0	0
libel	0	1	0	0
mortgage	2	0	0	0
negligence	3	4	14	24
partnership	1	0	1	0
trespass	0	0	1	1
Total	11	8	19	30

CAUSES OF ACTION MOST LITIGATED BY CO-DEFENDANTS

contract	4	12	20	8
creditor rights	7	5	5	2
debt	0	2	0	0
fraud	3	0	0	0
goods and services	5	3	1	1
guarantee	0	1	3	0
libel	0	0	1	1
misuse of authority	0	0	1	0
mortgage	4	5	7	3
negligence	0	1	2	1
negotiable instruments	8	5	1	0
partnership	1	2	1	0
trespass	0	1	0	5
Total	32	37	42	21

The following table describes the results of analyzing litigation according to type of plaintiff and defendant. This data is less reliable than that described earlier for two reasons. Claims involving female sole litigants are not distinguished from those involving females as co-litigants and no allowance is made for the relationship between females and co-litigants. As a result, the data treats all claims involving women in the same way, even though it has already been suggested that they likely played a more important role in the court process when litigating in their own right than as a spouse. Findings are based on the total number of claims filed each year.

Table 38 GENDER OF PLAINTIFFS AND DEFENDANTS

Suits involving:	1909	1919	1929	1939
males as plaintiffs	29 %	30 %	25 %	27 %
females as plaintiffs	3 %	5 %	8 %	12 %
corporations as plaintiffs	14 %	10 %	14 %	8 %
males as defendants	38 %	36 %	35 %	34 %
females as defendants	7 %	6 %	7 %	7 %
corporations as defendants	8 %	23 %	11 %	11 %
Total number of litigants	2553	2346	1210	782

When each of the three 'gender' categories is divided into plaintiffs and defendants, an interesting pattern emerges. Claims for four of the six groups remain nearly constant over the period of the study while those involving one, females as plaintiffs, increased by 400%. Those involving the fourth, corporations as plaintiffs, decreased by almost 50%. Data described earlier suggest an increase in litigation involving females could be attributed to an enlarged role as plaintiff rather than defendant. These findings bear that out. To obtain an even clearer picture of how patterns of litigation involving females changed over time, law suits are divided according to the gender of litigants. Once again, no allowance is made for claims involving multiple litigants or the nature of the relationship between co-litigants. Even with these qualifications, results support conclusions already advanced. Litigation patterns for males remained steady while that for females and corporations changed.

Table 39 LITIGATION ACCORDING TO GENDER

Category	1909	1919	1929	1939
males as plaintiffs	43 %	45 %	42 %	45 %
males as defendants	57 %	55 %	58 %	55 %
females as plaintiffs	31 %	47 %	53 %	64 %
females as defendants	69 %	53 %	47 %	36 %
corporations as plaintiffs	65 %	54 %	57 %	42 %
corporations as defendants	35 %	46 %	43 %	58 %

The actual number of male, female and corporate litigants is not described in any of the previous tables but is important to round out the data outlined in Table 39. In 1909 eight hundred and thirty-four Statements of Claim were filed by individuals. Seven hundred and fifty, or 90%, involved males as plaintiffs and eighty-four females. One thousand one hundred and sixty-one individuals were named as defendants, 84% of whom were males. This meant that one hundred and eighty-six women were involved in the 31% of claims in which females were plaintiffs. This average of 2.2 females per claim compares with 1.3 for males.

By 1919 a change was taking place in the pattern of litigation in Winnipeg. Women were plaintiffs in 15% of claims filed and defendants in 14%. In terms of litigation involving only females, women filed claims 47% of the time, an increase of 16% from 1909. In 1929 women were plaintiffs in 25% of all claims involving individuals and defendants in 17%, increases of 9 and 3% from 1919. By 1939 they were plaintiffs in 32% and defendants in 17%.

The influence of one war ending and another beginning may explain the expanded role played by women in the court process, but it does not explain why in 1909 although they were defendants twice as often as plaintiffs, in 1939 they were twice as likely to be plaintiffs. In 1929, for example, women were plaintiffs in 53% of actions involving females. Ten years later that figure had risen to 64%. The per cent of claims involving males as plaintiffs, on the other hand,

remained virtually unchanged at 43%, 45%, 42% and 45%. Even as litigation involving male plaintiffs remained constant while that of females shifted dramatically, the role played by corporations also underwent a change. In 1909 corporations were plaintiffs in 65% of claims involving them. By 1939 that number had decreased by 23%.

The changing role of women in litigation was also made evident from an analysis of who plaintiffs sued. In 1909, for example, males sued other males 44% of the time. By 1939 that figure had decreased to 37% while claims against corporations increased from 10% to 14% and those against females declined from 9 to 6%. Although these findings are not particularly suggestive, a fact of note is that despite the increasing involvement of women in litigation, claims filed against them by corporations in 1909 and 1939 remained unchanged at 4%.

The following table describes claims filed by males, females and corporations according to type of defendant. The data clearly indicate most patterns remained relatively constant. Females, for example, sued the same type of defendant in 1939 as often as they did in 1909. Claims filed against males remained constant at 68 to 70%, those filed against other females stayed at roughly 10% and claims filed against corporations at 20 to 22%.

Table 40 PARTIES TO LITIGATION ACCORDING TO GENDER OF PLAINTIFF

	1909	1919	1929	1939
male plaintiff vs male	70 %	68 %	62 %	65 %
male plaintiff vs female	14 %	10 %	16 %	11 %
male plaintiff vs corporation	16 %	22 %	22 %	24 %
female plaintiff vs male	70 %	66 %	61 %	68 %
female plaintiff vs female	10 %	17 %	13 %	9 %
female plaintiff vs corporation	20 %	17 %	26 %	22 %
corporation vs male	75 %	71 %	75 %	62 %
corporation vs female	13 %	12 %	10 %	21 %
corporation vs corporation	12 %	17 %	15 %	16 %

The way males and females managed litigation was very nearly identical. Between 1909 and 1939 both became less inclined to drop an action before a defence was filed but slightly more likely to so after. And by 1939 both were less likely to obtain a default judgment or go to trial but more likely to discontinue or be dismissed. Differences became apparent, however, in the way males and females handled claims as defendant. Table 41 describes these differences.

Table 41 HOW LITIGATION ENDED ACCORDING TO GENDER OF DEFENDANT

	1909	1919	1929	1939
Ended when Defence filed				
- males	14 %	20 %	16 %	17 %
- females	13 %	19 %	19 %	10 %
Ended with Default Judgment				
- males	21 %	25 %	28 %	18 %
- females	17 %	30 %	17 %	21 %
Proceeded to trial				
- males	10 %	3 %	8 %	4 %
- females	13 %	2 %	9 %	8 %
Discontinued by Notice				
- males	15 %	13 %	11 %	24 %
- females	23 %	12 %	14 %	19 %
Dismissed by Court Order				
- males	4 %	5 %	8 %	18 %
- females	6 %	4 %	9 %	23 %
Ended with Writ				
- males	11 %	10 %	9 %	3 %
- females	7 %	9 %	6 %	6 %

This data shows that in 1909 after a Statement of Defence was filed claims involving female defendants were discontinued or settled informally 13% of the time. By 1939 claims were 3% less like to end informally at this stage. Over the same period actions involving male defendants

which were discontinued or settled informally increased from 13 to 17%. This pattern was repeated for actions ending in both default judgments and Notices of Discontinuance. By 1939 female defendants were 4% more likely to have claims end in a default judgment while males were 3% less likely. Females also discontinued by notice 4% less often. Again, the reverse held true for males. They were 6% more likely to formally discontinue. Some findings, however, were less consistent. For example, despite a tendency by female defendants to defend actions more aggressively than males in the early stages of litigation, they allowed a plaintiff to obtain judgment by default more often. Yet they also became less inclined to discontinue by notice. Male defendants, on the other hand, granted default judgments less often but discontinued more often.

Conclusions

At least four conclusions flow from this analysis. First, plaintiffs were much less inclined to settle informally or discontinue an action when it involved a female rather than a male defendant. Second, plaintiffs were less prepared to formally discontinue actions against females. Third, females were substantially more successful at having claims dismissed by court order than males. And fourth, plaintiffs took out writs of attachment against females twice as often as against males. When all of these findings are balanced, the data suggest female defendants fared slightly better than males. They were less likely to settle informally or discontinue after they filed a defence, although this is not particularly significant since discontinuing early may or may not have indicated that an out of court settlement had been reached. The data are inconclusive. Female defendants gave up 3% more default judgments than males but since the difference between judgments given up by males and females was so slight it also did not indicate any general trend. Actions against males were discontinued 5% more often than against female defendants, which suggests that male defendants reached an out of court settlement slightly more often. A finding significantly favourable to females, however, was that they were able to have actions dismissed by court order 5% more often than male defendants.

The role females played in the litigation process, as both plaintiffs and defendants, was further

clarified when their involvement was examined according to cause of action. For this analysis the status of female plaintiffs and defendants is regarded as an occupation and claims involving married women, housewives, spinsters and widows are treated as claims involving a single group. The following table compares the litigiousness of this group with groups described by the occupation of their mostly male members. In brackets beside each ranking is the percentage of claims involving a female. The weakness of this analysis lies in the fact that claims involving female and male co-litigants were regarded as claims of two groups, thereby exaggerating the data for certain causes of action. Similarly, the part women played in the litigation process has likely been exaggerated. As co-litigants they often played a much less significant role than their spouse, and even after all available court records were examined, it was still not possible to determine who the principal litigant was as between male and female co-litigants.

Table 42 CAUSES OF ACTION INVOLVING FEMALE LITIGANTS

Cause of action	1909	1919	1929	1939
family / estate action	1. (47%)	2. (33%)	1. (53%)	1. (47%)
contracts	3. (15%)	2. (19%)	1. (32%)	1. (34%)
creditor rights	1. (19%)	2. (13%)	1. (14%)	1. (39%)
debt	5. (7%)	3. (14%)	2. (15%)	1. (31%)
employment	1. (19%)	7. (4%)	6. (0%)	2. (28%)
fraud	3. (19%)	2. (16%)	1. (55%)	1. (33%)
goods and services	4. (11%)	4. (12%)	3. (16%)	2. (13%)
guarantee	1. (38%)	1. (20%)	2. (28%)	2. (25%)
libel / slander	4. (11%)	2. (24%)	1. (33%)	1. (50%)
misuse of authority	6. (0%)	4. (0%)	1. (26%)	2. (25%)
mortgage	2. (17%)	1. (23%)	2. (18%)	1. (34%)
negligence	1. (33%)	1. (28%)	1. (44%)	1. (34%)
negotiable instruments	5. (7%)	8. (5%)	5. (8%)	4. (15%)
partnership	1. (27%)	5. (14%)	3. (18%)	2. (20%)
trespass	2. (26%)	2. (17%)	1. (41%)	1. (40%)

The data described in Table 42 suggests both the extent and nature of involvement females had as litigants in Winnipeg's legal system. And it also proves that over the first half of the

twentieth century that involvement increased in every cause of action except those involving guarantees and partnerships. Their participation in family and negligence actions comes as no surprise, since the former usually involved both male and female litigants and the latter frequent users of streetcars and sidewalks. What is more revealing was the finding that not only were women regularly involved in commercial transactions like contract and creditor actions, between 1909 and 1939 their involvement increased. Women also became more involved in mortgage and employment disputes, causes of action one would have expected to be the preserve of males. The weakness of the data is again the fact that much of the litigation involving females involved them as co-litigants. Despite this failing, by 1939 when females were involved in litigation, it is clear it was more often than not as plaintiff rather than defendant.

Table 43 CHANGES IN THE ROLE PLAYED BY FEMALE PLAINTIFFS

Cause of action	1909	1939
family	100 %	57 %
employment	80 %	50 %
fraud	17 %	0 %
mortgage	54 %	22 %
negligence	100 %	93 %
libel / slander	0 %	50 %
misuse of authority	------	50 %
contract	42 %	50 %
creditor rights	11 %	20 %
negotiable instruments	13 %	33 %
partnerships	35 %	100 %
trespass	20 %	50 %
debt	80 %	80 %
goods and services	47 %	50 %

While more and more studies are examining the part women play in litigation, few have examined the type of law suits filed by females. Perhaps the leading study to do so was in the mid-1980s by Michele Hoyman and Lamont Stallworth. It involved sex discrimination cases filed by female employees. The authors concluded that women have historically not fared well in the legal system. The findings of this study seem to revise that suggestion.

CHAPTER SIX
LAW FIRMS AND LEGAL SPECIALIZATION

Although the role lawyers play in the judicial system has been much discussed, it has seldom been analyzed according to how they manage litigation and who they manage it for. Charles Epp, for example, looked at lawyers and causes that they litigated, concluding that their willingness to become involved in different kinds of cases influenced what issues were brought before courts. (34) But was this the situation in Winnipeg in the first half of the twentieth century? Can an analysis of court records provide us with an understanding of types of cases lawyers most often litigated? Can it tell us whether particular law firms specialized in particular types of litigation, or were retained by particular 'types' of litigants? If Epp was correct, such an examination should yield evidence that over a long period of time law firms did in fact litigate some causes of action more often than others, and that litigation patterns changed as law firm specialization changed. Macaulay and Friedman also examined the role of lawyers in the court process, but from a different perspective. Macaulay suggested that prior to the 1970s businesses and the lawyers who represented them were much more inclined to avoid the judicial process than is the case today. Friedman concurred. He argued that until relatively recently those who most often used the courts were inclined to work things out on their own. (35) This thesis seeks to determine whether evidence can be found that indeed some law firms did specialize and some were more inclined to 'work things out' than others.

Galanter and Rogers suggested in the 1970s and 80s that America witnessed an increase in commercial litigation. They noted as corporate law firms grew, merged, broke apart and continually changed structure, traditionally stable relationships between firms and the businesses they represented ended. To use Galanter's expression, law firms were becoming 'one-timers'. The relationship between lawyer and client became more ad hoc and often confined to a single matter. The end result was that fewer firms were retained by one or two large clients and more were involved in more litigation involving

more clients. This study tested that hypothesis by examining who law firms represented, causes of action litigated and whether either or both changed over time. Table 44 provides an overview of the number of claims filed over a thirty year period and the law firms which filed them. The table also describes the firms most active in litigation. Many of the conclusions referred to above were tested by analyzing the way claims were handled by these 'active' firms.

Table 44 LITIGATION ACTIVITY INVOLVING PLAINTIFFS

	1909	1919	1929	1939
Claims filed	1150	1010	549	309
Number firms filing claims	102	148	131	97
Claim - to - law firm ratio	11:1	7:1	4:1	3:1
Number of active firms	8	8	10	7
Claims filed by active firms	29 %	29 %	26 %	28 %

LITIGATION ACTIVITY INVOLVING DEFENDANTS

	1909	1919	1929	1939
Statements of Defense filed	466	491	247	205
Number firms filing a defense	90	112	85	63
Defense - to - lawyer ratio	5:1	4:1	3:1	3:1
Number active firms	8	8	6	5
Defenses filed by active firms	24 %	23 %	32 %	43 %

This data suggest that between 1909 and 1939 the ratio of claims-to-law firms dropped from 11:1 to 3:1, indicating by 1939 fewer claims, not more, were filed by fewer law firms.

In 1909 the number of firms filing at least one Statement of Claim was virtually the same as in 1939, yet eight hundred and forty-one more claims were filed. Despite the decrease in both ratio and claims, the number of law firms doing approximately twenty-five per cent of all litigation remained relatively constant. None of these findings support the conclusions reached by Galanter and Rogers. In fact, the opposite appears to be the case. In terms of law firms acting for a defendant, by 1939 five firms defended 43% of claims filed. Another thing which became clear by 1939 was that lawyers were playing a much larger role in the court process than had been the case in 1909. During the first year of this study a Statement of Defence was filed 40% of the time. That fell to 5% in 1919 and 6% in 1929. By 1939, however, 61% of actions were defended.

To further test the Galanter - Rogers hypothesis, the legal activity of firms filing at least one Statement of Claim or Defense was analyzed according to type of client represented and results compared with the type represented by the few firms most active in litigation. The term 'active' law firms refers to the five to ten firms described in Table 44 who filed the most claims or Statements of Defence.

Table 45 LAW FIRMS ACCORDING TO TYPE OF CLIENT

	1909	1919	1929	1939
individual plaintiff				
- average less active firms	72 %	77 %	73 %	84 %
- average most active firms	64 %	69 %	63 %	79 %
corporate plaintiff				
- average less active firms	28 %	23 %	27 %	16 %
- average most active firms	36 %	31 %	37 %	21 %
individual defendant				
- average less active firms	75 %	69 %	73 %	78 %
- average most active firms	88 %	71 %	66 %	63 %
corporate defendant				
- average less active firms	25 %	31 %	27 %	22 %
- average most active firms	12 %	29 %	34 %	37 %

The data described in Table 45 suggest active law firms were much more likely to represent corporate plaintiffs than were average firms. This inclination remained constant over the course of the study. When acting for a defendant, however, the pattern took longer to develop. In 1909 active firms represented individual defendants 88% of the time, compared to 75% for less active firms. This 13% difference shrunk to just 2% in 1919 when 71% of the business of active firms involved individual defendants. Ten years later the pattern had changed again and active firms were 7% more likely to act for a corporation than were less active firms. By 1939 the figure had risen to 15%. The conclusion - when corporations were plaintiffs they were between 5 and 10% more likely to retain experienced counsel than inexperienced counsel. The margin was much greater, however, when corporations were defendants. Between the first and last year of this study they became increasingly more inclined to retain experienced counsel until by 1939 they were substantially more likely to do so. The results are conclusive. By 1939 active Winnipeg law firms had very much come to specialize in the type of client for whom they acted. Table 46 identifies these active firms. The numbers opposite firm names refers to how active each was in undertaking litigation. A ranking of 1 indicates a firm was involved in more litigation in a given year than any other law firm. A ranking of 10, on the other hand, indicates nine firms were more active.

Table 46

LAW FIRM RANKINGS
IN TERMS OF LITIGATION ACTIVITY

	1909	1919	1929	1939
Hudson, Howell	1	1	1	10
Aikins, Loftus	2	---	2	1
Machray, Sharpe	10	5	4	---
Richards, Sweatman	7	3	5	8
Andrews, Andrews	6	10	7	---
Campbell, Pitblado	3	1	12	---
Guy, Chappel	---	---	1	3
McMurray, Davidson	---	---	4	2
Elliott, Macneil	5	4	---	---

Causes of action litigated by each of these law firms, on behalf of both plaintiffs and defendants, are examined for each year in which they were amongst the firms most active in litigation. The nature of their involvement with each cause is then traced over the thirty year period of the study. The results are again conclusive. Every active law firm specialized in one or two areas of law and with one exception, the area of specialization changed over time. And except for one firm, all active litigators specialized in the same areas of law - goods and services, contracts and negligence. The single exception was the Machray firm, which did much of its work in mortgage litigation. The data in Table 47 describe the various areas of preferred practice for each firm. In brackets is the year for which the data was applicable.

Table 47 AREA OF SPECIALIZATION ACCORDING TO CAUSE OF ACTION

	Year	%	Year	%
Goods and services				
- Hudson, Howell	(1909)	22 %	(1939)	0 %
- Aikins, Loftus	(1909)	17 %	(1939)	0 %
- Andrews, Andrews	(1909)	22 %	(1929)	0 %
Contracts				
- Richards, Sweatman	(1909)	48 %	(1939)	0 %
- Campbell, Pitblado	(1909)	31 %	(1929)	17 %
Negligence				
- Aikins, Loftus	(1909)	2 %	(1939)	68 %
- Richards, Sweatman	(1909)	0 %	(1939)	90 %
- Andrews, Andrews	(1909)	5 %	(1929)	20 %
- Guy, Chappel	(1929)	83 %	(1939)	90 %
- McMurray, Davidson	(1929)	25 %	(1939)	68 %
Mortgage				
- Machray, Sharpe	(1909)	0 %	(1929)	36 %

The only exception to the trend described in this table involved the Elliott, Macneil firm. During a period when contract law was declining as an area of specialization for all other

active firms, for Elliott, Macneil it actually increased by 20%. Similarly, as the number of negligence actions for other firms was rising dramatically, for the Elliott firm it fell by 6%. An issue every bit as significant as specialization which has yet to be examined by legal historians is whether active firms managed litigation in a different way than non-specialist firms.

Table 48 HOW LITIGATION ENDS ACCORDING TO THE EXPERIENCE OF THE LAWYER ACTING FOR THE PLAINTIFF

	1909	1919	1929	1939
Ends filing Statement of Claim				
- average for less active firms	21 %	22 %	18 %	14 %
- average for most active firms	22 %	21 %	23 %	10 %
Ends when Defence filed				
- average for less active firms	15 %	22 %	19 %	15 %
- average for most active firms	16 %	15 %	13 %	24 %
Ends with a Default Judgment				
- average for less active firms	21 %	23 %	25 %	17 %
- average for most active firms	23 %	22 %	20 %	12 %
Proceeds to trial				
- average for less active firms	10 %	3 %	11 %	6 %
- average for most active firms	12 %	3 %	7 %	5 %
Discontinued by Notice				
- average for less active firms	17 %	15 %	10 %	26 %
- average for most active firms	11 %	26 %	15 %	22 %
Dismissed by Court Order				
- average for less active firms	5 %	6 %	10 %	19 %
- average for most active firms	4 %	5 %	10 %	23 %
Ends with taking out Writ				
- average for less active firms	10 %	10 %	7 %	4 %
- average for most active firms	12 %	8 %	12 %	3 %

To obtain this data court records are grouped into two categories: claims filed by the

firms most active in litigation and those filed by all other lawyers, described as 'less active firms.' Each claim is then analyzed according to the last document filed with the court. Actions not pursued after a Statement of Claim or Statement of Defence was filed are regarded as ending informally, since court records were not suggestive of why they were discontinued or whether a settlement had been reached. Claims regarded as ending formally were those which went to trial or were discontinued by notice or court order. With few exceptions, the data suggest regardless of the experience of the law firm managing litigation, the stage at which an action ended was likely to be the same. Although litigation managed on behalf of plaintiffs did not vary according to experience of counsel, such was not the case when an active law firm was retained by a defendant.

Table 49 HOW LITIGATION ENDS ACCORDING TO THE EXPERIENCE OF THE LAWYER ACTING FOR THE DEFENDANT

	1909	1919	1929	1939
Ends with filing Defence				
- average for less active firms	41 %	48 %	40 %	35 %
- average for most active firms	31 %	43 %	38 %	19 %
Ends with a Default Judgment				
- average for less active firms	1 %	1 %	5 %	9 %
- average for most active firms	1 %	0 %	5 %	2 %
Proceeds to trial				
- average for less active firms	23 %	5 %	23 %	10 %
- average for most active firms	31 %	11 %	16 %	8 %
Discontinued by Notice				
- average for less active firms	15 %	29 %	8 %	17 %
- average for most active firms	15 %	13 %	11 %	34 %
Dismissed by Court Order				
- average for less active firms	8 %	9 %	16 %	26 %
- average for most active firms	12 %	21 %	25 %	36 %
Ends with taking out Writ				
- average for less active firms	9 %	8 %	7 %	2 %
- average for most active firms	9 %	11 %	5 %	0 %

Differences in Styles of Litigation Management

During the period covered by this study firms active in the representation of defendants were substantially less likely than average firms to allow a claimant's action to end informally. Regardless of how an action ended, experienced lawyers wanted evidence of that ending filed with a court. They were not content to allow a plaintiff to simply do nothing. In all four years of the study active firms were more able to entice or intimidate a plaintiff into discontinuing an action than average firms. By 1939 litigation managed by experienced counsel was twice as likely to be formally discontinued as claims handled by less experienced firms. Since court records suggest the filing of a discontinuance usually indicated some sort of settlement had been reached, experienced counsel were better negotiators than less experienced lawyers.

But the most significant difference between the way active and less active firms managed litigation was evident in the number of claims dismissed by court order. This procedure was an aggressive tactic often used before a defence was even filed. Usually it indicated no settlement had been reached. The data described in Table 49 supports the notion that applying for a dismissal was a procedure used regularly by experienced counsel. In 1909 active firms had actions against their clients dismissed 12% of the time, 4% more often than average firms. By 1939 the gap between the two had widened and 36% of claims managed by active firms were dismissed by court order, compared to 26% for other firms. In the same year claims defended by average firms were informally discontinued 44% of the time. For experienced counsel the figure was 21%. These findings suggest experienced counsel had claims discontinued formally, by notice or order, 70% of the time, average firms 29% less often. Since persuading an opponent to discontinue or a court to dismiss implied success, either at negotiating a settlement or persuading a judge that an action had no merit, the results suggest a defendant gained nearly a one-in-three advantage when a lawyer retained was a member of a firm active in the litigation process.

Table 50 describes the results produced by attempting to determine what benefit, if any, accrued to a defendant when a lawyer was retained. For purposes of this analysis the

experience of counsel was ignored. Claims were divided according to whether a defendant did or did not retain a lawyer and what happened to them after they were filed. Litigation was clearly managed in a different way when a lawyer was involved.

Table 50 HOW LITIGATION ENDS WHEN A LAWYER ACTS FOR A DEFENDANT

	1909	1919	1929	1939
Claims went no further when a defence was filed				
- when no lawyers involved	4 %	1 %	0 %	0 %
- when lawyers involved	39 %	47 %	39 %	29 %
Ended with Default Judgment				
- when no lawyers involved	34 %	38 %	39 %	30 %
- when lawyers involved	1 %	0 %	5 %	6 %
Proceeded to trial				
- when no lawyers involved	1 %	0 %	1 %	0 %
- when lawyers involved	25 %	6 %	21 %	9 %
Discontinued by Notice				
- when no lawyers involved	16 %	13 %	13 %	25 %
- when lawyers involved	15 %	25 %	9 %	24 %
Dismissed by Court Order				
- when n o lawyers involved	2 %	2 %	2 %	5 %
- when lawyers involved	9 %	12 %	19 %	30 %
Ended with a Writ taken out				
- when no lawyers involved	12 %	10 %	11 %	7 %
- when lawyers involved	9 %	9 %	6 %	1 %

The data in Table 50 suggest that when a defendant failed to retain a lawyer very few law suits ended informally. Once a defense was filed, however, between 29 and 47% of claims were either settled out of court or dropped. Similarly, when a lawyer was involved,

fewer cases ended in default judgment and more went to trial or were dismissed by court order. What may surprise is that regardless of whether or not a lawyer was retained by a defendant, approximately 25% of claims were discontinued by notice. Since actions which ended in this way were usually settled, the data suggest that one out of every four plaintiffs was so willing to settle that they did so regardless of whether defendants negotiated through a lawyer or on their own behalf.

CHAPTER SEVEN
JUDGES AND JUDGMENTS

Most court studies which examine judgments or judges analyze decisions of an appeal court, usually because statistics generated by these bodies are more readily available than for trial courts. This thesis attempts to remedy this failing in four ways. First, by analyzing judgments awarded by Winnipeg's highest trial court according to type. Second, by examining judgments according to area of law litigated. Third, by analyzing the activity level of trial judges and comparing early judgments with decisions made by the same individuals between ten and twenty years later. And fourth, by examining appeal rates and the notion of judicial specialization. Because there has been so little analysis of these issues, no effort is made to test hypotheses or construct theory. Instead, findings are simply described. For purposes of Table 51, formal judgments are grouped according to whether they were obtained by default, with the consent of the defendant or at trial.

Table 51 TYPES OF JUDGMENTS

As a % of all judgments	1909	1919	1929	1939
Default judgments	86 %	79 %	59 %	36 %
Consent judgments	1 %	2 %	16 %	41 %
Trial	13 %	19 %	25 %	23 %

The data described in Table 51 result from an analysis of all judgments granted. In terms of raw numbers, between 1909 and 1939 litigation which ended in a default judgment declined from 21 to 16% of claims filed, trial judgments decreased from 10 to 5% and court ordered dismissals rose from 5 to 20%. When examined in the context of the data described above, these statistics suggest over the period covered by this study that defendants became less inclined to allow plaintiffs to either obtain a judgment by default or to informally discontinue. Chapter 6 suggests that this change was the result of an

increasing involvement by lawyers in the litigation process. Their involvement was reflected in the fact that trial judgments rose 77% between 1909 and 1939 (from 13 to 23%).

Table 52 describes the data which resulted from an analysis of types of judgment according to the three most litigated causes of action.

Table 52 TYPE OF JUDGMENT ACCORDING TO CAUSE OF ACTION

	% of all claims	default	consent	trial	claims
1909 (average)		(91 %)	(0 %)	(8 %)	
(a) contracts	36 %	88 %	0 %	12 %	170
(b) neg.instr	25 %	92 %	2 %	6 %	117
(c) goods/ser.	14 %	93 %	0 %	7 %	67
1919 (average)		(82 %)	(0 %)	(17 %)	
(a) contract	40 %	85 %	1 %	14 %	172
(b) neg.instr	16 %	97 %	0 %	3 %	68
(c) goods/ser.	7 %	65 %	0 %	35 %	31
1929 (average)		(57 %)	(18 %)	(25 %)	
(a) contract	31 %	76 %	10 %	14 %	88
(b) neg.instr	15 %	90 %	5 %	5 %	41
(c) negligence	15 %	4 %	39 %	56 %	41
1939 (average)		(47 %)	(36 %)	(17 %)	
(a) negligence	42 %	10 %	64 %	25 %	67
(b) contracts	19 %	61 %	23 %	16 %	31
(c) neg.instr	6 %	70 %	20 %	10 %	10

Although default judgments declined by 44% over the course of this study, Table 52 indicates for contracts and negotiable instruments the decline was only 27 and 22%. The

data for negligence claims was less reliable, since these actions seldom went undefended and rarely ended in default judgments. A different pattern emerged for consent and trial judgments. Less than 1% of awards were consented to in 1909 and 1919, but by 1939 judgments were consented to 36% of the time (largely because 64% of negligence awards were by consent). For trial judgments the pattern was similar, although contested negligence hearings decreased from 56% in 1929 to 25% in 1939. This data suggest two things. First, between 1909 and 1939 commercial claims went undefended between 65 and 90% of the time and to trial 13%. Second, although negligence claims were almost always defended (between 90 and 96% of the time), by 1939 judgments were usually consented to. Why? An explanation likely lies in the nature of commercial litigation. Such claims were arguably more complicated and less personal than negligence actions and probably handled in a more dispassionate and pragmatic manner. When a commercial litigant did not obtain a default judgment, the filing of a defence, and the risks associated with a potentially expensive and complicated proceeding, likely persuaded many to drop their action. Negligence claims, on the other hand, almost always involved a greater depth of feeling, were usually defended, were seldom discontinued informally and settlements took longer to negotiate. By 1939 these actions ended with a negotiated settlement or at trial 89% of the time, compared with an average of 33% for commercial actions.

While an examination of court records tells us something about judgments, what does it tell us about judges? The following table identifies trial judges who sat in 1909, 1919, 1929 and 1939, the number of trials each presided over, judicial activity levels (based on the total number of trials for which a record could be found) and describes whether judgments were awarded to a plaintiff or a defendant. The analysis which produced the data in Table 53 remains problematic, however, for a couple of reasons. The trials for which records were found represented only a portion of trials actually held and in some cases jury decisions probably removed a judge's discretion to award a decision to one or other of the litigants. Despite these failings the data were sufficient to answer two questions - Did the success rate of litigants change over time and were some judges

more inclined to rule in favour of either a plaintiff or a defendant than others? This study suggests that the answer to the first question is an unqualified yes. Between 1909 and 1939 trial judgments in favour of plaintiffs decreased from 87 to 53%.

Table 53 ACTIVITY LEVEL OF TRIAL JUDGES

	number of trials	% of total	For Plaintiff	For Defendant
1909				
Cameron	10	17 %	80 %	20 %
Macdonald	14	24 %	71 %	29 %
Mathers	18	31 %	78 %	22 %
Metcalfe	11	19 %	82 %	18 %
Howell	4	7 %	100 %	0 %
Perdue	2	3 %	100 %	0 %
Average			(87 %)	(13 %)
1919				
Macdonald	9	12 %	44 %	56 %
Mathers	22	29 %	68 %	32 %
Metcalfe	2	3 %	50 %	50 %
Galt	17	22 %	71 %	29 %
Prendergast	12	15 %	58 %	42 %
Curran	12	15 %	58 %	42 %
McDonald	2	3 %	50 %	50 %
Fulton	1	1 %	100 %	0 %
Average			(62 %)	(38 %)
1929				
Macdonald	1	2 %	0 %	100 %
Trueman	1	2 %	100 %	0 %
Donovan	8	12 %	63 %	37 %
Adamson	15	23 %	67 %	33 %
Kilgour	6	9 %	67 %	33 %
Dysart	14	22 %	50 %	50 %
Galt	17	26 %	65 %	35 %
McPherson	2	3 %	50 %	50 %
Average			(61 %)	(39 %)
1939				
Donovan	5	15 %	40 %	60 %
Adamson	14	41 %	50 %	50 %
Dysart	6	18 %	83 %	17 %
McPherson	8	24 %	50 %	50 %
Taylor	1	3 %	0 %	100 %
Average			(53 %)	(47 %)

To determine whether trial judges consistently decided cases in favour of either a plaintiff or defendant, decisions of the five most active judges aree analyzed. Because each heard cases in two of the four years studied (over a period of at least ten years), an examination of these decisions makes it possible to analyze award patterns for different judges and to compare early patterns with those which emerged a decade later.

Table 54 DECISIONS OF MOST ACTIVE JUDGES

Judge	Cases Tried	% of Decisions Favouring Plaintiffs 1909	1919	1929	1939
Adamson	29	-------	-------	67 %	50 %
Dysart	20	-------	-------	50 %	83 %
Galt	34	-------	71 %	65 %	-------
Macdonald	24	71 %	44 %	-------	-------
Mathers	30	78 %	68 %	-------	-------

The data suggest with the exception of Mr. Justice Dysart's 1939 record, every active Queen's Bench trial judge sitting in Winnipeg between 1909 and 1939 became more inclined to decide cases in favour of defendants the longer they sat on the bench. Two explanations are offered. First, from the beginning to the end of this study the number of commercial cases showed a steady decline. A majority of these cases were decided in favour of plaintiffs. Replacing them as the most litigated cause of action were negligence suits, actions in which decisions usually favoured defendants. Trial judges had little control over the type of actions litigated in their courts, but there was a direct correlation between changes in what was litigated and the party benefiting from that litigation.

A second factor which might explain the growing inclination of judges to award judgments to defendants could be connected to changes in the way lawyers managed litigation. As discussed earlier, although the number of claims proceeding to trial fell by 50% between 1909 and 1939, the number of cases requiring a judge to make a decision actually increased by 67%. Cases were brought before a Queen's Bench judge in one of two ways - by a plaintiff or defendant setting a matter down for trial, or by a defendant

petitioning the court to have an action dismissed. Both procedures were proactive. Their increased use by 1939 suggests that lawyers were managing litigation both aggressively and creatively. The effect of specialization and the increasingly sophisticated use of judicial procedure may have combined to influence judges to look more kindly upon arguments of defence counsel.

Did the growing inclination of trial judges to award judgments to defendants have any effect on the number of cases appealed or on appeals allowed?

Table 55 APPEAL RATE

	1909	1919	1929	1939
% of trial decisions appealed	29 %	13 %	20 %	18 %
% of appeals allowed	29 %	30 %	69 %	17 %

These statistics suggest that even though the number of judgments in favour of defendants was increasing between 1909 and 1939, appeals from trial decisions declined by 11%. Defendants were no longer automatically losers.

Table 56 describes the few trial results which could be located in the records examined. The data is flawed for two reasons - not only were there probably many more appeals than the few described, even for those few some results were missing. Still, the findings were suggestive. Of the ten cases tried by Mr. Justice Cameron, for example, seven were appealed and the appeal allowed in most. In eighteen trials presided over by Chief Justice Mathers an appeal was lodged just three times and dismissed on each occasion. Ten years later Mathers' record was just about the same. Only two of twenty-two decisions were appealed and just one allowed. As this data indicates, both the appeal record and number of trials presided over varied considerably from judge to judge. As a rule, however, judges active in one year were active in others.

Table 56

	trials	APPEALS appeals	%	allowed
1909				
Cameron	10	7	70 %	57 %
Macdonald	14	4	29 %	25 %
Mathers	18	3	17 %	0 %
Metcalfe	11	2	18 %	50 %
Howell	4	1	25 %	0 %
1919				
Macdonald	9	2	22 %	unknown
Mathers	22	2	9 %	50 %
Galt	17	2	12 %	50 %
Prendergast	12	1	8 %	100 %
Curran	12	2	17 %	0 %
McDonald	2	1	50 %	100 %
1929				
Donovan	8	2	25 %	50 %
Adamson	15	2	13 %	100 %
Kilgour	6	3	50 %	100 %
Dysart	14	1	7 %	0 %
Galt	17	5	29 %	60 %
1939				
Donovan	5	3	60 %	0 %
Adamson	14	3	21 %	33 %

To determine whether or not certain judges 'specialized' in trials involving specific causes of action the records of each trial judge have been analyzed. The data did not support the notion of judicial specialization. No judge heard a significant percentage of cases involving litigation in any single cause of action. And when the data were analyzed according to lawyers who appeared before these same judges, no clusters could be perceived. Between 1909 and 1939 there was no indication that judges in Winnipeg's Court of Queen's Bench specialized in the cases they heard or with the law firms appearing in their courts.

CONCLUSION

In Chapter One the Galanter hypothesis was made central to much of the new analysis which followed. The 'one-shotter' and 'repeat player' theory suggested the likelihood that some disputes would be converted into litigation, and that the results obtained were at least partly related to the relative power and experience of the disputants. To examine this conclusion types of litigants were analyzed according to whether they were more likely to be plaintiffs or defendants. The results indicated that although corporations, defined as those with the most power and money, were twice as likely to sue as be sued in 1909, by 1939 they were involved in less litigation but more often as defendant. This finding suggested that this 'power' group was less often using the law than defending itself against claims filed by individuals.

Parties to Litigation

The first of the major hypotheses discussed in the Introduction was tested in Chapter One. American studies have shown that in the first part of the twentieth century approximately 75% of litigation involved individuals suing other individuals and only 10% corporations suing other corporations. This study found similar results for individuals but substantially dissimilar results for corporations. The conclusion suggested was that corporations may be far less prominent in Winnipeg then than in the United States and that corporations in examined in this study were less inclined to use their resources against those lower down the economic ladder, but were instead twice as likely to sue each other than were businesses in America.

The various stages at which litigation ended was analyzed in Chapter Two. The data suggested that by 1939 litigants were more likely to proceed formally with claims than had been the case thirty years earlier, were more likely to retain a lawyer, law suits took longer to settle and were more likely to end in negotiated settlements rather than trials. This also suggested that over the first one-third of the twentieth century the way in which lawyers managed litigation changed. They began using judicial procedures like

lawyers managed litigation changed. They began using judicial procedures like discontinuances and court orders more often and became substantially less likely to permit plaintiffs to discontinue informally. And John Brigham's suggestion that most disputes resulting in litigation involved a depth of feeling or bad faith was substantiated.

'One-shotter' Theory

The second major hypothesis referred to in the Introduction was tested in Chapter Two. Galanter argued that when litigation pits those with money and experience against those with limited amounts of either, the former invariably come out ahead of the latter. This in fact turned out to be the case. As plaintiffs, corporations were successful three times as often as individuals. When statistics involving the two groups as defendants were compared, the results were inconclusive.

Decline of Commercial and Contract Claims

In Chapter Three claims were grouped according to cause of action. The results were used to test hypothesis three, that both commercial and contract claims declined over the course of the first half of this century while negligence actions increased dramatically. These conclusions were validated. Between 1909 and 1939 contract claims fell by a third and negligence actions increased by 900%. Hypothesis four was also tested in Chapter Three. J.Willard Hurst suggested litigants with power use the legal system as a tool to further their own interests. The way those Hurst suggested possessed power, corporations, used the court process was examined by analyzing how they managed litigation. The results were then compared to the way individuals pursued or defended claims. For purposes of this analysis it was assumed for corporations 'furthering their own interests' involved the pursuit of commercial actions. The results of this study substantiated Hurst's thesis. Although in terms of absolute numbers debt, commercial actions and contract claims declined over the course of this study, for corporations those causes continued to be actively litigated. In the case of contract claims, the amount of litigation undertaken increased by 100%.

Occupation of Litigants

Chapter Four was devoted to analyzing litigation according to the occupation of litigants. Central to this analysis was a further testing of the theory that the decision by an individual whether to litigate is influenced in large measure by constraints of time and money and that individuals with a substantial amount of both make more effective use of the legal system than those with little of either. The chapter concluded such was not the case, at least for Manitoba. The study also suggested members of the 'middle class' filed fewer law suits between 1909 and 1939, members of the 'working class' filed more and that the amount of litigation involving real estate agents and brokers decreased as the number of contract disputes declined. A third finding, that as a group females were the most active participants in the litigation process, was examined by analyzing actions involving them as sole plaintiffs, co-plaintiffs, sole defendants and co-defendants. The study concluded that an increase in the litigiousness of females was directly linked to an increase in law suits in which they were named as co-litigant with a spouse.

Litigants as Plaintiffs or Defendants

Causes of action involving occupational groups was also examined according to the involvement of litigants as either plaintiff or defendant. Lawyers, banks, labourers, widows and mortgage companies more often used the courts as plaintiffs while merchants, farmers, married women, real estate agents/brokers and contractors were defendants. Further, the status of almost all groups remained the same over the entire thirty year period covered by this study. Litigation patterns for farmers and labourers were compared and it was found farmers were usually involved in litigation as defendants and labourers as plaintiffs, despite the fact that both were arguably members of the same 'class.' An analysis of causes involving corporations resulted in the conclusion businesses involved in buying and selling were invariably plaintiffs more often than defendants.

Chapter Four also examined the stage at which litigation was discontinued according to the occupation of litigants. It was found that groups higher up the socio-economic ladder

did not manage litigation more successfully than groups occupying a lower rung. Causes of action litigated by the groups most active in filing claims were analyzed and merchants, married women and farmers undertook the widest variety of actions, followed by contractors, real estate agents/brokers, banks and lawyers.

Gender

The role females played in the court process was examined in Chapter Five. The study found that in 1909 females were plaintiffs in 31% of actions involving women and defendants in 69%, but by 1939 they were plaintiffs 57% of the time. It was determined, however, that the increase could be attributed largely to an enlarged role as co-plaintiff. Eighty-eight per cent of the time the co-litigant of a female was a spouse. And the number of law suits involving females described by occupation rather than status actually declined over the course of the study. But regardless of how they were described, by 1939 women were twice as likely to be plaintiffs as defendants. When the outcome of litigation involving males and females was compared, it was found females fared marginally better. The study refuted the suggestion of Hoyman and Stallworth that women were treated poorly by the legal system.

Role of Law Firms in Litigation Process

Chapter Six examined the role lawyers played in the judicial system. The thesis advanced by Galanter that the relationship between lawyer and client had become ad hoc, often confined to a single matter, and that more law firms have become involved in more litigation involving more clients, was tested and rejected. It was found, for example, that by 1939 five law firms were involved in 43% of the Statements of Defence filed that year. Over the entire thirty year period of the study between seven and ten firms managed approximately 30% of litigation undertaken.

The last two hypotheses discussed in the introduction to this study were tested in Chapter Six. Little support for the first, that how litigation was pursued was dependent upon the cause of action and experience of the lawyer involved, was found. An analysis

of litigants according to type resulted in finding that firms active in litigation were more likely than average to represent corporate clients and that this specialization was paralleled by a specialization in causes litigated. When litigation management patterns were examined, however, it was discovered claims handled for plaintiffs by active and less active law firms were similar.

Advantage of Experienced Lawyers to Defendants

Support for the last hypothesis was overwhelming. That theory suggests the filing of a claim does not mean that a formal hearing is either desired or will result, since a majority of actions are settled, withdrawn or defaulted. And further, the outcome of litigation provides lawyers with a gage by which to measure the likelihood of future success. Since experienced lawyers are those best informed of outcomes, if follows that those most prone to specialize in law and type of client represented are more often successful as litigators than less specialized counsel. This study found defendants who retained an experienced lawyer did better than those defended by a member of an average firm, gaining a near one-in-three advantage. An examination of how litigation ended when no lawyers were involved on behalf of a defendant, however, did suggest 25% of claims were settled, regardless whether a law firm was retained.

Patterns of Judgments and Appeals

In the last chapter of this study judgments, appeals and decision-making patterns were analyzed. The study found the number of judgments obtained by default declined by 50% between 1909 and 1939 while consent judgments increased from 1 to 41% and trial judgments rose from 13 to 23%. These dramatic changes were attributed to a more active and creative role played by lawyers and to a rise in negligence claims. Commercial claims formed the bulk of claims litigated over much of this study and went undefended between 65 and 90% of the time. By 1939 the single largest cause of action involved allegations of negligence and these actions were nearly always defended.

One of the most dramatic results produced by this study involved judicial decision

making patterns. Between 1909 and 1939 the chances a plaintiff would be awarded a judgment at trial fell from 87% to 53%. And the longer a judge sat on the bench, the greater the likelihood a decision would favour a defendant. Two explanations were offered for these two findings. First, the number of commercial claims litigated declined and negligence suits increased. The results of commercial litigation usually favoured a plaintiff while those for negligence actions usually favoured a defendant. Second, the more proactive style of litigating adopted by lawyers meant more actions were being defended. The study also found rates of appeal varied considerably and that there was a direct correlation between judicial activity and appeals lodged - the more cases heard, the fewer decisions appealed. Support for the suggestion that judges specialized, either in the causes heard or the lawyers who appeared before them, was not found.

This thesis has suggested that there is no evidence that between 1909 and 1939 groups possessing the largest combination of power and money used the judicial process to advance their own interests in a way dramatically different from those lacking these same resources. It has also concluded that while causes of action litigated in Winnipeg closely paralleled causes pursued elsewhere in North America, those involved formed a much more diverse group than has been found in most American studies. But perhaps more significantly, this study found no evidence that females and groups occupying the lowest rungs of the socio-economic ladder were either used by more powerful litigants or faced discrimination in their use of the court system.

Decline in Filings - One Explanation

An issue which requires more investigation is determining why there was a 73 % decline in claims filed in Winnipeg's Court of Queen's Bench between 1909 and 1939. From a superficial examination of the records of the County Court of Winnipeg it would appear one explanation could be that at least some of the claims which had previously been filed in Queen's Bench were by 1939 being filed in County Court. In 1909, for example, the ratio of claims filed in Queen's Bench compared to claims filed in County Court was 1-to-5 (1150 to 5964). By 1939 that ratio had increased to 1-to-8 (309 to 2422). Incomplete

County Court records for 1919 and 1929 make it impossible to determine if the ratio increased consistently, but they are complete enough to show that even at the County Court level filings had declined over 59 % between the first and last year of this study.

FOOTNOTES

1. Morton, W.L., Manitoba: A History, (University of Toronto Press: Toronto), 1957;

2. Wollschlager, Christian, "Civil Litigation and Modernization: The Work of the Municipal Courts of Bremen, Germany, in Five Centuries, 1549-1984" in LAW & SOCIETY REVIEW, Vol. 24, Number 2, (1990), p. 275;

3. Engel, David M., "Litigation Across Space and Time: Courts, Conflict, and Social Change" in LAW & SOCIETY REVIEW, Vol. 24, Number 2, (1990), p.336;

4. Friedman, Lawrence, "Civil Wrongs: Personal Injury Law in the Late 19th Century" in AMERICAN BAR FOUNDATION RESEARCH JOURNAL, (1987) p. 354;

5. Friedman, Lawrence, "Opening the Time Capsule: A Progress Report on Studies of Courts Over Time" in LAW & SOCIETY REVIEW, Vol. 24, Number 2, (1990), p. 236, 240;

6. Lempert, Richard, "Docket Data and "Local Knowledge": Studying the Court and Society Link Over Time" in LAW & SOCIETY REVIEW, Vol. 24, Number 2, (1990), p. 321;

7. Stookey, John A., "Economic Cycles and Civil Litigation" in THE JUSTICE SYSTEM JOURNAL, Vol. 11, (1986), p.282-302;

8. Hubbard, F. Patrick, " "Patterns" in Civil Jury Verdicts in the State Circuit Courts of South Carolina: 1976-1985" in SOUTHERN CAROLINA LAW REVIEW, Vol. 38, (1987), p. 699-753;

9. Guy, John, THE COURT OF STAR CHAMBER AND ITS RECORDS TO THE REIGN OF ELIZABETH I, p. 51;

10. Stookey, John A., "Trials and Tribulations: Crises, Litigation, and Legal Change" in LAW & SOCIETY REVIEW, Vol. 24, Number 2, (1990), p. 498;

11. Reiss, Albert J. Jr., "Longtitudinal Study of Trial Courts: A Plea for Development of Explanatory Models" in LAW & SOCIETY REVIEW, Vol. 24, Number 2, (1990), p. 352;

12. Cooter, Robert D. and Rubinfeld, Daniel L., "Trial Courts: An Economic Perspective" in LAW & SOCIETY REVIEW, Vol. 24, Number 2, (1990),p.533-546;

13. Sarat, Austin, "Alternatives in Dispute Processing: Litigation in A Small Claims Court" in LAW & SOCIETY REVIEW, Vol. X, (1975-76), p. 370;

14. Rubin, G.R. and Sugarman, David, eds. LAW, ECONOMY & SOCIETY, ESSAYS IN THE HISTORY OF ENGLISH LAW, 1750-1914, (1984), p. 65;

15. Jacob, Herbert, "The Elusive Shadow of the Law" in LAW & SOCIETY REVIEW, Vol. 26, Number 3, (1992), p. 569;

16. Galanter, Marc, "Case Congregations and Their Careers" in LAW & SOCIETY REVIEW, Vol. 24, Number 2, (1990), p. 373;

17. Jacob, p. 570;

18. Galanter, Marc, "Reading the Landscape of Disputes: What We Know and Don't Know (And Think We Known) About Our Allegedly Contentious and Litigious Society" in UCLA LAW REVIEW, No. 1, Vol. 31, (1983), p.4-71;

19. Stookey, Economic Cycles, p. 288;

20. ibid, p. 282-302;

21. Rubin, p. 325;

22. Brigham, John, Review Article, LAW & SOCIETY REVIEW, Vol. 27, Number 3, (1993), p. 613;

23. Sarat, p. 339-375;

24. Galanter, Reading the Landscape, p. 42;

25. Kagan, Robert; Cartwright, Bliss; Friedman, Lawrence and Wheeler, Stanton, "The Business of State Supreme Courts, 1870-1970" in STANFORD LAW REVIEW, Vol. 30, (1977), p. 138;

26. ibid, p. 126-156;

27. Epp, Charles R., "Connecting Litigation Levels and Legal Mobilization: Explaining Interstate Variation in Employment Civil Rights Litigation" in LAW & SOCIETY REVIEW, Vol. 24, Number 1, (1990), p.149;

28. Kagan, The Business of State Supreme Courts, p. 138;

29. Baum, Lawrence; Goldman, Sheldon and Sarat, Austin, "The Evolution of Litigation in the Federal Courts of Appeals, 1895-1975" in LAW & SOCIETY REVIEW, Vol. XVI, (1981-82), p. 299;

30. Friedman, Opening The Time Capsule, p. 235;

31. Kagan, The Business of State Supreme Courts, p. 156;

32. Munger, Frank W., "Commercial Litigation in West Virginia State and Federal Courts 1870-1940" in AMERICAN JOURNAL OF LEGAL HISTORY, Vol. 30, (1986), p. 325;

33. Epp, Connecting Litigation Levels, p. 149;

34. ibid, p. 150;

35. Friedman, Opening The Time Capsule, p. 236;

BIBLIOGRAPHY

Primary Sources

Court of Queen's Bench Appearance Books (Winnipeg District)

- PAM reference GR 541, Vol. 926, Book 32, Number 1402/08 - 999/09, 1908-09;
- PAM reference GR 541, Vol. 927, Book 33, Number 1000/09 - 899/10, 1909-10;
- PAM reference GR 541, Vol. 638, Book 45, Number 764/ 18 - 910/19, 1919-19;
- PAM reference GR 541, Vol. 78, Book 46, Number 911/ 19 - 899/20, 1919-20;
- PAM reference GR 541, Vol. 925, Book 54, Number 468/ 28 - 458/30, 1928-30;
- PAM reference GR 541, Vol. 77, Book 59, Number 388/38 - 102/42, 1938-42;

Court of Queen's Bench Civil Files (Winnipeg District)

- PAM reference GR 274, Boxes 409 - 422, files 1530/1908 - 0057/1910, 1908-1910;
- PAM reference GR 275, Boxes 561 - 571, files 0972/1918 - 0092/1920, 1918-1920;
- PAM reference GR 276, Boxes 650 - 656, files 0577/1928 - 0074/1930, 1928-1930;
- PAM reference GR 276, Boxes 711 - 715, files 0340/1938 - 0022/1940, 1938-1940;

Court of Appeal Record Books (Manitoba)

- PAM reference GR 727, Box 115, Volume 1, 1906-1916;
- PAM reference GR 727, Box 115, Volume 2, 1916-1929;
- PAM reference GR 727, Box 115, Volume 3, 1929-1940;
- PAM reference GR 727, Box 114, Volume 1, 1940-1959;

Court of Queen's Bench Judgment and Order Book (Winnipeg District)

- PAM reference G 2296 - 2305, Books 4 - 13, 1909 - 11;
- PAM reference G 2326 - 2328, Books 36 - 42, 1918 - 22;
- PAM reference G 2342 - 2346, Books 52 - 56, 1927 - 33;

Court of Queen's Bench Judgment Rolls (Winnipeg District)

- PAM reference GR 763, Boxes 34 - 39, 1909 - 1912;
- PAM reference GR 763, Boxes 49 - 52, 1919 - 1922;
- PAM reference GR 763, Box 55, 1929 - 1932;
- PAM reference GR 763, Boxes 57 - 58, 1939 - 1944;

County Court of Winnipeg Civil Files

- PAM reference G 1859, 1860, 1861, 1862, 1881, 1882

Secondary Sources

Adams, Eleanor, "Application of Selected Techniques of Time-Series Analysis to Court Caseload Data" in THE JUSTICE SYSTEM JOURNAL, Vol.9, No.3, (1984), p.351-363;

Baum, Lawrence; Goldman, Sheldon and Sarat, Austin, "The Evolution of Litigation in the Federal Courts of Appeals, 1895-1975" in LAW AND SOCIETY REVIEW, Vol.XVI, (1981-82), p.291-309;

Binnie, Susan, "Some Reflections on the "New" Legal History in Relation to Weber's Sociology of Law" in CANADIAN PERSPECTIVES ON LAW AND SOCIETY, eds. W.Wesley Pue and Barry Wright (Carleton University Pres: Ottawa), 1988;

Boyum, Keith and Mather, Lynn, eds. EMPERICAL THEORIES ABOUT COURTS, (Longman: New York), 1983;

Brigham, John, Book review in LAW & SOCIETY REVIEW, Vol. 27, Number 3, 1993;

Clark, David, "Adjudication to Administration: A Statistical Analysis of Federal District Courts in the Twentieth Century" in SOUTHERN CALIFORNIA LAW REVIEW, Vol.55, (1981-82), p.65;

Connolly, David, PACE OF LITIGATION, SELECTED TOPICS IN CIVIL LITIGATION, (Law Society of Upper Canada: Toronto);

Cooter, Robert D. and Rubinfeld, Daniel L., "Trial Courts: An Economic Perspective" in LAW & SOCIETY REVIEW, Vol. 24, Number 2, (1990), p. 533-546;

Daniels, Stephen, "Ladders and Bushes: The Problem of Caseloads and Studying Court Activities Over Time" in AMERICAN BAR FOUNDATION RESEARCH JOURNAL, (1984), p.751-795;

..... "We're Not A Litigious Society" in THE JUDGES JOURNAL,p.18-21,47-50;

..... " "You Can't Interview the Dead" : McIntosh's The Appeal of the Civil Law and the Debate over Longtitudinal Studies of Courts" in LAW AND SOCIETY INQUIRY, Vol. 15, (1990), 291-311;

..... "Caseload Dynamics and the Nature of Change: The Civil Business of Trial Courts in Four Illinois Counties" in LAW & SOCIETY REVIEW, Vol. 24, Number 2, (1990), p. 299-320;

Eisenberg, Theodore, "Testing the Selection Effect: A New Theoretical Framework With Emperical Tests" in THE JOURNAL OF LEGAL STUDIES, Vol. XIX ,(1990), p.337-358;

Emond, D.Paul, ed. COMMERCIAL DISPUTE RESOLUTION, ALTERNATIVES TO LITIGATION, (Canada Law Book,Inc.:Aurora), 1989;

Engel, David M., "Litigation Across Space and Time: Courts, Conflict, and Social Change" in LAW & SOCIETY REVIEW, Vol.24, Number 2, (1990), p.333-344;

Epp, Charles R., "Connecting Litigation Levels and Legal Mobilization: Explaining Interstate Variation in Employment Civil Rights Litigation" in LAW & SOCIETY REVIEW, Vol. 24, Number 1, (1990), p. 145-163;

Flaherty, David H., ed., ESSAYS IN THE HISTORY OF CANADIAN LAW, VOL. 11, (The Osgoode Society: Toronto), 1983;

Friedman, Lawrence, "The Six Million Dollar Man: Litigation and Rights Consciousness in Modern America" in MARYLAND LAW REVIEW, Vol. 39, (1980), p.661-677;

..... "Civil Wrongs: Personal Injury Law in the Late 19th Century" in AMERICAN BAR FOUNDATION RESEARCH JOURNAL, (1987), p.351-378;

..... "Opening The Time Capsule: A Progress Report on Studies of Courts Over Time" in LAW & SOCIETY REVIEW, Vol. 24, Number 2, (1990), p.229-240;

Freidman, Lawrence and Percival, Robert, "A Tale of Two Courts: Litigation in Alameda and San Benito Counties" in LAW AND SOCIETY REVIEW, Vol. X, (1975-76), p.267-301;

Galanter, Marc, "Reading the Landscape of Disputes: What We Know and Don't Know (And Think We Know) About Our Allegedly Contentious and Litigious Society" in UCLA LAW REVIEW, No.1, Vol.31, (1983), p.4-71;

..... "Case Congregations and Their Careers" in LAW & SOCIETY REVIEW, Vol. 24, Number 2, (1990), 371-395;

Gibson, Dale and Baldwin, Janet K., eds. LAW IN A CYNICAL SOCIETY? OPINION AND LAW IN THE 1980s, (Carswell Legal Publications: Calgary), 1985;

Grossman, Joel and Scott, Austin, "Litigation in the Federal Courts: A Comparative Perspective" in LAW AND SOCIETY REVIEW, Vol. IX (1974-75), p.321-346;

Guth, DeLloyd, "Enforcing Late-Medieval Law: Patterns in Litigation during Henry VII's Reign" in LEGAL RECORDS AND THE HISTORIAN, (Royal Historical Society: London), 1978, p.80-96;

Guy, J.A., THE COURT OF STAR CHAMBER AND ITS RECORDS TO THE REIGN OF ELIZABETH 1, (Her Majesty's Stationery Office: London), 1985;

Harding, Alan, "Plaints and Bills in the History of English Law, mainly in the Period 1250-1350" in LEGAL HISTORY STUDIES, 1972, eds. Dafydd Jenkins, (University of Wales Press: Cardiff), 1975, p. 65-86;

Hartog, Hendrik, "The End(s) of Critical Empiricism" in LAW AND SOCIAL INQUIRY, Vol. 14, (1989), p.53-59;

Helms, Lelia, "Patterns of Litigation in Postsecondary Education: A Case Study" in JOURNAL OF COLLEGE AND UNIVERSITY LAW, Vol.14, No.1, (1987), p.99;

Holman, Barbara, "Pace and Patterns of Civil Litigation Prior to Placemen on the Trial List: An Emperical Study of the Niagara North County Court and Discussion of Ontario's Reformed Rules of Civil Procedure" in THE WINDSOR YEARBOOK OF ACCESS TO JUSTICE, Vol.6, (1986), p.194-235;

Hoyman, Michele and Stallworth, Lamont, "Suit Filing by Women: An Emperical Analysis" in NOTRE DAME LAW REVIEW, Vol.62, (1986-87), p.65-82;

Hubbard, F.Patrick, " "Patterns" in Civil Jury Verdicts in the State Circuit Courts of South Carolina: 1976-1985" in SOUTHERN CAROLINA LAW REVIEW, Vol.38, (1987), p.699-753;

Kagan, Robert; Cartwright, Bliss; Friedman, Lawrence and Wheeler, Stanton, "The Business of State Supreme Courts, 1870-1970" in STANFORD LAW REVIEW, Vol.30, (1977), 121;

Kritzer, Herbert M., THE JUSTICE BROKER: LAWYERS AND ORDINARY LITIGATION, (Oxford University Press: New York), 1990;

Jacob, Herbert, "The Elusive Shadow of the Law" in LAW & SOCIETY REVIEW, Vol. 26, Number 3, (1992), p. 569-590;

Johnston, Jason Scott, "Law, Economics, and Post-Realist Explanation" in LAW & SOCIETY REVIEW, Vol. 24, Number 5, (1990), p. 1217-1249;

Lempert, Richard, "Docket Data and "Local Knowledge": Studying the Court and Society Link Over Time" in LAW & SOCIETY REVIEW, Vol. 24, Number 2, (1990), p. 321-332;

Leonard, James, "Ideology and Judicial Behavior: A Statistical Study of the Ohio Supreme Court: 1970, 1975, 1980 and 1985 Terms" in CINCINATTI LAW REVIEW, Vol.57, (1988-89), p.847;

Mather, Lynn, "Dispute Processing and a Longtitudinal Approach to Trial Courts" in LAW & SOCIETY REVIEW, Vol. 24, Number 2, (1990), 357-370;

Marquis, Greg, "Doing Justice to "British Justice": Law, Ideology and Canadian Historiography" in CANADIAN PERSPECTIVES ON LAW AND SOCIETY, eds. W.Wesley Pue and Barry Wright, (Carleton University Press: Ottawa), 1988;

Marvell, Thomas, "Civil Caseloads: the impact of the economy and trial judgeship increases" in JUDICATURE, Vol.69, (1985-86), p.153-156;

..... "Caseload Growth - post and future trends" in JUDICATURE, Vol.71, (1987-88), p.155-161;

McCormick, Peter, "Caseload and Output of the Manitoban Court of Appeal: An Analysis of Twelve Months of Reported Cases" in Manitoba Law Journal, Vol.19, (1990), p. 31-51;

McCormick, Peter and Green, Ian, INSIDE THE CANADIAN JUDICIAL SYSTEM: JUDGES AND JUDGING, (James Lorimer & Co.: Toronto), 1990;

McKie, C. and Reed, P., JUSTICE IN CANANDA: PART 1: A STATISTICAL STUDY; PART 11: RESEARCH METHODOLOGY (Research Study # 8, Justice Statistics Division of Statistics Canada: Ottawa), 1979;

McLaughlin, William, FEDERAL COURT CASELOADS,(Praeger Publishers: New York), 1984;

Millar, Perry S. and Baar, Carl, JUDICIAL ADMINISTRATION IN CANADA, (McGill-Queen's University Press: Montreal), 1981;

Munger, Frank, "Commercial Litigation in West Virginia State and Federal Courts 1870-1940" in AMERICAN JOURNAL OF LEGAL HISTORY, Vol. 30, (1986), p.322-349;

Munger, Frank W., "Commercial Litigation in West Virginia State and Federal Courts 1870-1940" in AMERICAN JOURNAL OF LEGAL HISTORY, Vol. 30, (1986), p. 322-349;

..... "Trial Courts and Social Change: The Evolution of a Field of Study" in LAW & SOCIETY REVIEW, Vol. 24, Number 2, (1990), p.217-226;

..... "PushingTrial Court Docket Data to the Limits - and Beyond: Introduction" in LAW & SOCIETY REVIEW, Vol. 24, Number 2, (1990),p.257-259;

..... " New Theory For Longtitudinal Trial Court Research: Introduction" in LAW & SOCIETY REVIEW, Vol. 24, Number 2, (1990), 353-356;

..... "Afterword: Studying Litigation and Social Change: Conclusion" in LAW & SOCIETY REVIEW, Vol. 24, Number 2, (1990), p.395-615;

Pue, W.Wesley, "Theory and Method in the History of Law" in CANADIAN PERSPECTIVES OF LAW AND SOCIETY, eds. W.Wesley Pue and Barry Wright, (Carleton University Press: Ottawa), 1988;

Reiss, Albert J. Jr., "Longtitudinal Study of Trial Courts: A Plea for Development of Explanatory Models" in LAW & SOCIETY REVIEW, Vol. 24, Number 2, (1990), p.345-352;

Roper, Robert, "The Propensity to Litigate in State Trial Courts, 1981-84, 1984-85" in THE JUSTICE SYSTEM JOURNAL, Vol.11, (1986), p.262-281;

Rubin, G.R. and Sugarman, David, eds. LAW, ECONOMY & SOCIETY, ESSAYS IN THE HISTORY OF ENGLISH LAW, 1750-1914, (Professional Books Limited: Worcester), 1984;

Sanders, Joseph, "The Meaning of the Law Explosion: On Friedman's Total Justice" in AMERICAN BAR FOUNDATION RESEARCH JOURNAL, (1987), p.601-615;

Sarat, Austin, "Alternatives in Dispute Processing: Litigation in A Small Claims Court" in LAW AND SOCIETY REVIEW, Vol. X, (1975-76), p.339-375;

Shetreet, Simon, "On Assessing the Role of Courts in Society" in MANITOBA LAW JOURNAL, Vol.10, (1979-80), p.357-414;

Stookey, John, "Economic Cycles and Civil Litigation" in THE JUSTICE SYSTEM JOURNAL, Vol.11, (1986), p.282-302;

Stookey, John A., "Trials and Tribulations: Crises, Litigation, and Legal Change" in LAW & SOCIETY REVIEW, Vol. 24, Number 2, (1990), p. 497-519;

Trubek, David and Esser, John, " "Critical Empericism" in American Legal Studies: Paradox, Program, or Pandora's Box?" in LAW AND SOCIAL INQUIRY, Vol. 14, (1989), 3-47;

Van Loon, F. and Langerwerf, E., "Socioeconomic Development and the Evolution of Litigation Rates of Civil Courts in Belgium, 1835-1980" in LAW & SOCIETY REVIEW, Vol. 24, Number 2, (1990), p.283-297;

Vincent-Jones, Peter, "The Litigation Explosion" in NEW LAW JOURNAL, Nov.16, 1990, p. 1602-1604;

Watson, Garry; Bogart, W.A.; Hutchinson, Allan; Mosher, Janet and Roach, Kent, eds. DISPUTE RESOLUTION AND THE CIVIL LITIGATION PROCESS, (Emond Montgomery Publications Limited: Toronto), 1991;

Whitford, William, "Critical Empericism" in LAW AND SOCIAL INQUIRY, Vol. 14, (1989), p.61-67,

Wollschlager, Christian, "Civil Litigation and Modernization: The Work of the Municipal Courts of Bremen, Germany, in Five Centuries, 1549-1984" in LAW & SOCIETY REVIEW, Vol. 24, Number 2, (1990), p.261-281;

Wright, Barry, "An Introduction to Canadian Law in History" in CANADIAN PERSPECTIVES ON LAW AND SOCIETY, eds. W.Wesley Pue and Barry Wright, (Carleton University Press: Ottawa), 1988;

Youmans, Alice, "Research Guide to the Litigation Explosion" in LAW LIBRARY JOURNAL, Vol.79, (1987), p.707-719;