

WHO WAS ELIZABETH DODDERIDGE THORP POWELL
AND WHY IS THE FACT SHE TOOK HER FORMER
FATHER-IN-LAW TO COURT IN 1693 IMPORTANT?¹

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This story starts with a small (approximately 8 inches by 5 inches) document that I received as a present. It was a 1693 writ ordering Thomas Thorp Sr. to appear in court, or be fined £100 (then a substantial sum).² I set out to identify those mentioned in the document.³ In the process I stumbled upon what Preston W. Edsall, a Princeton University doctoral student described in his 1937 dissertation as “the most documented case” in seventeenth-century New Jersey.⁴ Edsall’s work appears to have been ignored or downplayed by subsequent scholars, and the case along with it. But as he noted, this case and the others he transcribed helped prove two things—first that a chancery court existed in New Jersey before 1702, and second, that its judges sought to provide equitable justice. Intrigued by what I learned, I looked at more and more records trying to find out about the people involved. I looked at genealogical sources, the early minutes of Woodbridge,⁵ and the early Middlesex County court records,⁶ as well as secondary sources on women⁷ and on the law in colonial America. Hendrick Hartog’s 2012 book, *Someday This Will All Be Yours: A History of Inheritance and Old Age*, helped me realize that this was also an early example of someone (in this case Thomas Thorp Sr.) trying to use their property to protect themselves in their old age, a pre-1930s version of “social security.”⁸ Instead of starting in the mid-eighteenth century, this case indicates that Hartog could well have begun with examples from the late seventeenth century.

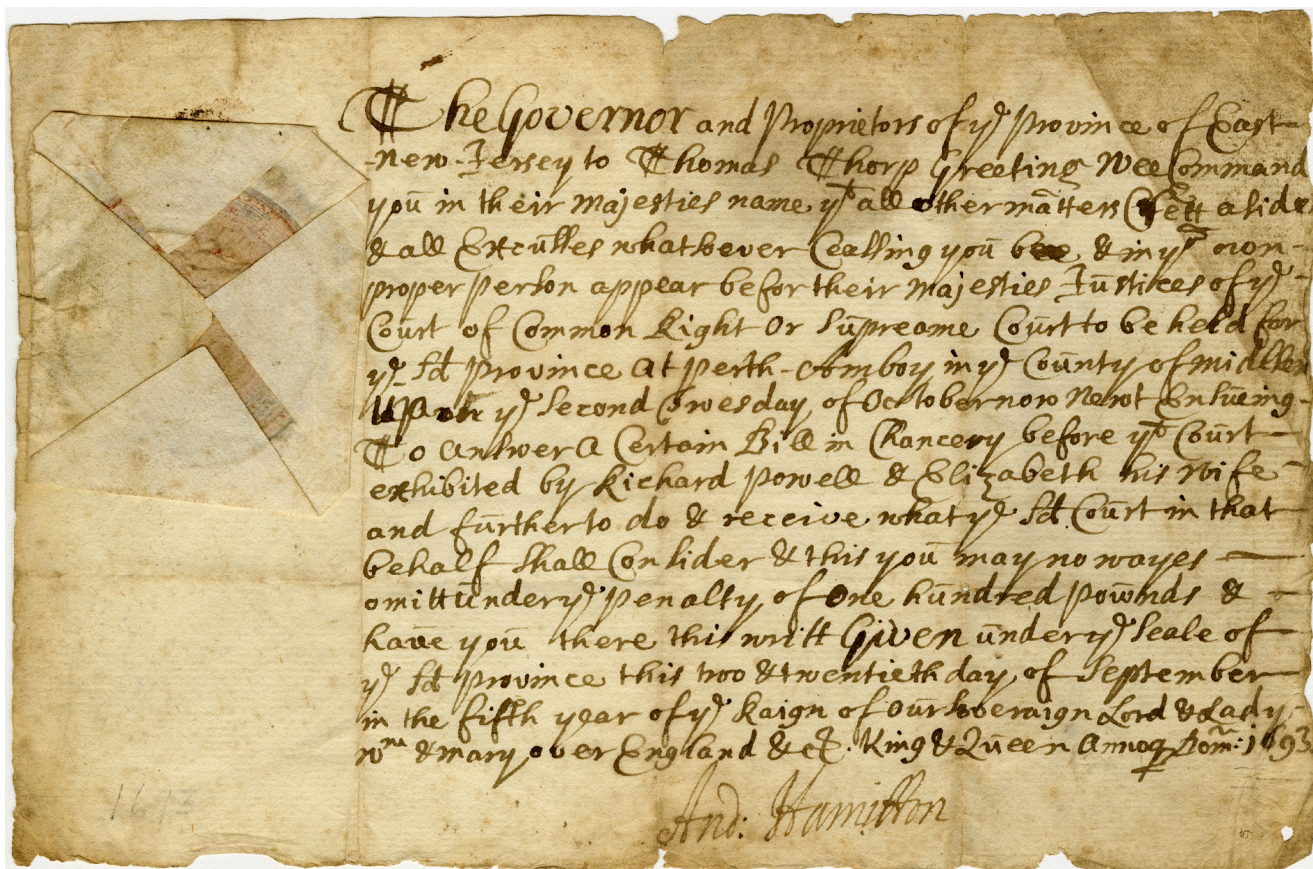
My initial interest in this case was centered on Elizabeth Dodderidge Thorp Powell and her “orphaned” children.⁹ The fact that a woman appeared in court (or when unable to attend

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Summons of Thomas Thorp in Richard and Elizabeth Powell v. Thomas Thorp, 1693. Chancery Court. Summons, 1693. Accession No. 2012.066. Credit: New Jersey State Archives, Department of State

was interviewed by the judges at home) in the 1690s seemed remarkable. The judges' concern with protecting the property of orphans also interested me, as did the name of her son—Philip Dodderidge, for that is the name of a dissenting minister in England who helped the Presbyterian ministers in New Jersey, including the minister in Woodbridge, establish the College of New Jersey (now Princeton University).¹⁰ These ideas, about women in court being unusual, and a possible connection to the founding of the college, turned out to be incorrect. Women did appear in colonial courts, more so in the seventeenth century than later. They did so to protect their property rights and those of their children when they acted as executrix of an estate, but also to testify in an assortment of cases.¹¹ Seventeenth- and eighteenth-century courts were protective of the rights of orphans, both in England and the colonies, which aided the children and at times their mothers. Judges thus kept both off the poor rates, with their care then provided at the expense of the local town.¹² The judges make clear that this is an important aspect of this particular case, but the larger significance is their repeated effort to look at the issues and provide justice.

Finally, alas the Philip Dodderidge famous as an educator and dissenting minister in England was born in 1702 and clearly not Elizabeth's son who was by then married and living somewhere on the other side of the Atlantic (probably Woodbridge or Elizabethtown).¹³ Most important instead is proof concerning the existence of the chancery court and the judges' decision in the case, as well as what this tells us about inheritance and property. At the same time, what I was able to learn about the lives of *some* of those involved in this legal case provides insight into early New Jersey history.

First, the court that heard this case was part of the judicial system established in East Jersey by the colonists in 1675, and recreated in 1682.¹⁴ It came out of the colonists' conflict with Governor Philip Carteret, the representative of the two Englishmen aristocrats, Sir George Carteret and John Lord Berkeley, granted the New Jersey proprietorship by the Duke of York in 1664. According to the New Jersey Concessions of 1665 the governor and members of the legislature were authorized to create the courts in the colony, but Carteret usurped this authority for himself.¹⁵ It was one of several points of contention between the governor and the settlers. In 1675, by which time New Jersey had been divided into two proprietary colonies, the East Jersey assembly created the

first counties in that colony, with courts, as part of an effort to gain control over judicial matters.¹⁶ But subsequently, Carteret was able to establish prerogative courts that he controlled until 1681. In 1682 with Carteret gone and East Jersey now under new proprietors, the "Twenty-four," the East Jersey legislature adopted laws naming the counties and creating a new court system. Included was a court of common right that handled both law and equity cases, which morphed (according to Edsall) into a court of common right and a separate court of chancery.¹⁷

The English Court of Chancery originated in the fourteenth century when appeals to the monarch for justice were turned over to his secretary, or chancellor, for resolution. The court that developed dealt with cases where strict enforcement of the law would result in harsh "justice" for one side in a case. Instead chancery courts were to make "equitable" decisions, assuring fairness. *Black's Law Dictionary* defines equitable as "just, conformable to the principles of justice and right. Existing in equity; available or sustainable in equity, or upon the rules and principles of equity."¹⁸

In East Jersey the distinction between the court of common right and the chancery court is clear in the minutes kept after the end of the Dominion of New England, when both East and West Jersey were returned to their proprietors.¹⁹ The chancery court, sometimes called the high court of chancery, met after a five year hiatus and it is then that this case was tried. It should be emphasized that this court was established by the colonists, many of whom in East Jersey were Puritans. Historians have usually seen the Puritans as hostile to chancery courts, because they were viewed as prerogative courts under the jurisdiction of the monarch, but some have also noted that Puritans did not object when *they* created and then controlled chancery courts.²⁰ This was the case in East Jersey before it became part of the royal colony of New Jersey in 1702 (at least until the land disputes of 1698–1699 when judges were seen as enforcing the proprietors' land titles).²¹

Second, the case itself—the plaintiffs (Elizabeth Dodderidge Thorp Powell and her third husband, Richard Powell) and the defendant (Thomas Thorp Sr.) appeared or were represented by attorneys or lawyers in court six times over the course of nine months.²² Lawyers are usually seen by historians as nonexistent, or rare, this early in the colonial period.²³ They were clearly present in this case and included Williams Nicols and James Emmott. At most sessions Andrew Hamilton, the then governor of East Jersey,

presided.²⁴ He was assisted by between three and six “masters of chancery.” There was no jury. Both the plaintiff and defendant had important status in this community, as did those who represented them or stood up as witnesses. It is also clear from the early Middlesex County Court records that neither Powell nor the Thorp family were novices in court—their names appear repeatedly in the records—suing, being sued, serving as jurymen, and even being accused of disturbing the peace.²⁵

The Powells took Thorp to court on charges that he was attempting to defraud Elizabeth and her children from her first marriage (a son Philip and a daughter also named Elizabeth) out of money belonging to them as “orphans,” their patrimony, which had been used to improve both a house and land on a forty-acre farm along the Rahway River in Woodbridge. When Elizabeth in 1686 married Thomas Thorp Jr.,²⁶ her second husband, the father-in-law promised to deed the property to him. But Thorp Sr. never fulfilled his promise, rather he first “delayed making the deed” then “refused entirely.”²⁷ Thorp Jr. died, and Elizabeth married recently widowed Richard Powell (probably a neighbor) in 1689.²⁸ At some point after that the Powells were “removed” from the farm.

The court sessions were held in Perth Amboy, the new capital of East Jersey then barely ten years old. Exactly where this first courthouse was located is not clear, and no image of it has survived.²⁹ In early America courts met “in a variety of public places, including meeting houses, taverns, and, in urban centers, a multifunctional civic buildings known as town houses. Not until the late eighteenth century, when lawyers gained coherence, acceptance, and power as a profession...” were courts held in “purpose-built structures devoted exclusively to judicial proceedings.”³⁰ That said, by the end of the seventeenth century, whether in stone, brick, or wood buildings, even if they were in multipurpose ones, participants in the trial were separated from the judges by a bar.³¹ We can at least imagine everyone together in a room, while those designated as “attorneys” took turns speaking for each side, witnesses testified, and then the judge and his assistants rendered their verdict.

When the court first met on October 17, 1693, Thorp’s representative asked that the case be dismissed with costs for his client, because the “Complainants may have their remedie at Common Law.” This argument was rejected.³² The court met again four days later and this time Thorp’s side essentially argued that

the law of entail applied. He admitted that he had made a promise but it was only valid during his son's lifetime and for "the heirs of his body lawfully begotten," but since Thomas Thorp Jr. had died without issue the land went instead to the next son Samuel Thorp. Under entail an estate was passed along intact to the next male heir, keeping the property (and hence power) in the family. The Powells replied that there was no such restriction mentioned in the original promise (no entail), and called witnesses from Elizabethtown and Woodbridge, who testified under oath to that effect. The witnesses also testified that Thorp Jr. stated on his deathbed that since his father had not fulfilled the obligation he should be sued "for payment of the Childrens money." Interestingly, East Jersey had no law of entail, but it generally used English common law in the absence of specific local enactments, and entails when specified were enforced.³³ (More about this later).

Ten days later the court met yet again. Now Thorp first argued that the statute of limitations had passed, which was rejected by the court on the grounds that there was no limitation for cases involving orphans, and anyway judges had discretion to waive limitations.³⁴ The defense's next objection was that Elizabeth as Elizabeth Dodderidge Thorp had had no right to use the orphans' money because she was *feme covert*, a married woman (and therefore had no direct power over property). Her answer was that this had been done before she married his son, when she was *feme sole* and legally able to act.³⁵ She asked to have until December 1, 1693, to obtain the evidence from Long Island to prove this.

The court next met on December 8, 1693, when she produced a deed of gift from her to the children dated August 10, 1686, showing the money was the orphans' and a marriage certificate to prove the money had been allocated or used before she actually married Thorp Jr. on September 5, 1686—several weeks later. The defendant's representative then claimed these documents might be "fictitious," which the court rejected on the grounds that they had been endorsed by one of "his majesties" magistrates on Long Island. One witness mentioned that Thorp Jr. had invested some of the orphans' money in rum and molasses, another chimed in that he had once made an account of their property, raising questions about how much had been used on what. The judges decided they needed more information and resolved to go visit those unable to travel to Perth Amboy, including apparently on this occasion Elizabeth. When the court resumed on May 10, 1694, Thorp Sr.

admitted the "facts" of the charges against him, and acknowledged that the orphans' money had been used. But then Thorp Sr. added that he did not have to pay anything because nothing had ever been put in writing, so he was "not obleidged by bond obligation will or any writing." It was true that under English law at the time wills and land transactions had to be in writing to be valid, rules meant to prevent fraud.³⁶ The Powells' lawyer replied that Thorp Sr. was obligated "in Equity and Conscience" to repay the orphans. The court waited until the next session to decide, apparently mulling all the issues and evidence over in the meantime.

Finally on June 18, 1694, the court rendered its decision very carefully measuring out justice. It decided that the orphans were indeed entitled to their money and the Powells were to pay £18 10s. from the "personal Estate" of Thorp Jr., which they possessed.³⁷ Thorp Sr. was to pay the remaining £11 10s., plus all court costs—and if he could not come up with the cash he was to give them the forty acres. Every argument he had devised in the course of the trial had been rejected. Elizabeth did not get all she asked for, but because her former father-in-law was assessed court costs and more she does seem to have won. And the court costs must have been substantial as the East Jersey statute stipulated that they were to be 150% of the costs for lower court trials, and costs included payment for writs, for the time of all court officials, for witnesses to attend, and for travel expenses involved in a case.³⁸

The first conclusion is that the case shows the chancery court in operation and the judges working their way to a fair decision. It seems reasonable to then also look at who these people were, why they fought over £30, and what the consequences were for those involved.

For Thomas Thorp Sr. this case was important, as his twisting and turning to find a way to keep the land in his family and not to pay anything demonstrates. The property was in effect his "social security," protection for his old age, and inheritance for *his* sons. But also this was a land rich and cash poor society, in which £30 was a significant amount of money. Thorp Sr. followed a common trajectory in arriving in Woodbridge in the late seventeenth century, in that he had first been in Massachusetts, later lived in Brookhaven, Long Island, and finally settled in Woodbridge.³⁹ He was not, however, among the first settlers, rather he resided in Woodbridge because he inherited a substantial amount of land from one of the town founders. Nine men were originally involved

in the Woodbridge grant, who along with the original settlers of Piscataway, purchased part of the Elizabethtown grant.⁴⁰ Daniel Pierce, one of the nine, moved from Newbury, Massachusetts, to Woodbridge, but then returned to Ipswich, Massachusetts where he died around 1674. Pierce's will, copied into the Woodbridge records in 1677, left part of his lands in New Jersey to Thomas Thorp of Brookhaven the "son-in-law of his wife" on condition that Thorp promise to never ask the family for more property—"provided he will be Content and never troble Nor molest My Son after my Disease [death]...but if he Shall troble or Molest my Executor for any More he Shall forfeit the Said gift."⁴¹ It is not clear if Pierce expected Thorp to be litigious based on prior experience or if Thorp's wife, Rebecca Milward, was entitled to some part of the property through her mother.⁴² It is worth noting that the first time Thorp's name appears in the Woodbridge records he had taken two residents to court for taking wood from the town commons, which exasperated town officials since the persons had been authorized to do this, and it cost the town to defend them.⁴³ Any bad feelings appear to have been overcome by 1693 because Thorp was selected as one of the representatives of the town in the East Jersey assembly, and reelected in 1694.

It was probably some of this Woodbridge land inherited from Pierce that Thorp had promised his eldest son, but he never delivered on the promise. Some of what he had in mind in doing this comes out in his will and two deeds for land he gave younger sons, all in 1693–1694 around the time of the trial.⁴⁴ In the first deed he specifically gave his son Daniel half of the farm inherited from Pierce (124 acres), along with half of the house and other buildings. Perhaps he was residing in the other half? Had part of it already been given to Samuel (that taken from the Powells)? Or since Daniel later became his executor, as specified in the will written a day after this deed, was this in return for being taken care of? In the second deed, to Joseph, he gave half of a farm purchased from Joseph Little (or Littell), which included upland, meadow, a house, orchard, and fences, and in return his son was to pay Thorpe Sr. "dureing my Natural Life if demanded by mee twenty four shillings in money pr ana"—income for his old age.⁴⁵ Both deeds, and his will, specified that all lands were "entailed on the heirs male forever." He had learned in the course of the trial to put at least some things in writing. At Thorp's death the value of his personal estate was listed as £29.17.6, less than what he was originally asked

to pay the orphans.⁴⁶ After Thorp's death his sons and then their families long remained in Woodbridge, and were among the largest land holders there.⁴⁷

Why did the Powells go to court? Obviously, to get the children's money back, because they were entitled to it, and because, as their guardian, Elizabeth was accountable for "every shilling."⁴⁸ But perhaps also from anger; Hartog often notes this as a reason for lawsuits over estates. And, as Peter Charles Hoffer has observed "the heart of a lawsuit is a sense of wronged dignity, of damaged personal self-worth. One stops disputing and starts suing when one believes that one's opponent denigrates one's credibility and diminishes one's status in the community."⁴⁹ Thorp had the Powells "removed" from the farm, their home, perhaps with force. And then he seemed defiantly determined to cheat them.

While he also was not one of the earliest settlers, Richard Powell appears in the Woodbridge town records before Thorp, supposedly coming from Elizabethtown after he bought land from Philip Carteret. He was a property holder who was sued and also sued for debts. Apparently his economic problems were serious enough that he and his first wife, Katherine Hughes, sold at least part of their land to settle debts. However, shortly after this the town specifically acknowledged him as a "freeholder," so he obviously still owned property there.⁵⁰ He obtained a license to run a tavern, which at one point was questioned due to disorderly behavior, but then his license was continued.⁵¹ Town meetings were often held at his house (also the tavern).⁵² The town in a grant unlike any other seen in the records, allowed him land for his lifetime with subsequent use by his heirs for six years, but later made it a permanent grant to him and hence them.⁵³ The timing, November 1693, suggests this may have been because he and Elizabeth were kicked off the farm by Thorp. At this point there were others in Woodbridge experiencing economic difficulties—the town agreed to "warn out" those who were not townsmen, started to collect poor rates, and provided help to the town's needy.⁵⁴ When Powell died around 1704, Elizabeth had apparently predeceased him. In his will he left some of his property to Mary Wallis, "the woman I am now living with,"—so much for Puritan values!⁵⁵ The rest was divided between Philip Dodderidge (Elizabeth's son), Philip's son John (Elizabeth's grandson), and Daniel Brittain (Elizabeth's son-in-law).⁵⁶ Powell seems to have had no surviving children of his own.

The women in this story mostly disappear into the mists of history. Not found is Elizabeth's maiden name, when she married Philip Dodderidge Sr., or when they came (presumably) from England. The Dodderidge family origins have been traced by a family genealogist back to 700 CE, but even this industrious researcher concluded that it was not clear how family with that name in England were connected to those later living in America.⁵⁷ Nor is there any real indication of what happened to her daughter, other than that she survived and first married Daniel Brittain, and after his death John Mootry. Elizabeth's son Philip did receive and put to use some of the "orphans" money to which he was entitled. Shortly after the court case ended, his apprenticeship to John Gibbin of Piscataway, a "mariner," was paid off—£6.6 in silver.⁵⁸ This probably was cash from the settlement with Thorp. Perhaps it freed him to follow a different career. In 1696 he married Francis Moore, one of the Woodbridge-born twins of Samuel Moore and his wife. Her mother died shortly after the birth and the twins were adopted by Simon and Alice Rouse of Elizabethtown. Samuel Moore remarried and started another family. Francis and Philip Dodderidge were married in New York City by a "military chaplain" but apparently later lived in Woodbridge or Elizabethtown. The marriage produced at least four children—John, Elizabeth, Hannah, and Philip. Francis later inherited property from both her birth father and adopted parents.⁵⁹ That said in the long run the Dodderidges left fewer records in Woodbridge than the Thorps.

What did the case change for those involved in it? It led Thorp to more specifically mark his property as his "social security," and in entailing lands ensured sufficient land for his male descendants to remain prominent into the eighteenth century. Philip Dodderidge regained some of his inheritance, the "orphans money," keeping him off the poor rates and probably opening a new career opportunity. Powell continued to care for those he considered family—at the end of his life he used his property to help Elizabeth's relatives.

Conclusion

Starting with the writ from 1693, and then teasing information from the court case, and from the early town and court records, the following conclusions can be made. First, a chancery court operated in East Jersey before Lord Cornbury and the laws that followed royalization of the colony in 1702. Second,

"attorneys," several of them trained lawyers, were present in this case, again earlier than is usually thought. The case involved equity issues, a clash of laws (entail vs protection of orphans, and also the right to leave property to whomever one wants). In this case the judge and his assistants were, as Edsall noted, careful to be fair; stating that "The men of East Jersey tried to make their courts instruments of justice and in a large measure they succeeded."⁶⁰ The case also shows how individuals tried to use their property to protect themselves in their old age, even in the seventeenth century. And finally this whole research exercise shows that there are limits to what we can find out as historians—I never did find out much about Elizabeth Dodderidge Thorp Powell. Not her maiden name, not when or where she originally came from, nor where she was buried.⁶¹

Appendix I. The Document

"The Governor and proprietors of ye Province of East-New-Jersey, to Thomas Thorp, Greetings. Wee command you in their Majesties name, yt all other matters left aside & all excusses whatsoever Calling you [?] & in ye non-proper person appear before their Majesties justices of ye Court of Common Right or Supreme Court to be held for ye sd province at Perth-Amboy in ye county of Middlesex upon ye second Tuesday of October [?] next [?] to answer a certain Bill in Chancery before yt court exhibited by Richard Powell & Elizabeth his wife,⁶² and further to do & receive what ye sd Court in that Behalf shall Consider & this you may no ways omit, under penalty of one hundred Pounds & have you there this writt Given under ye seale of sd Province this [?] twentieth day of September in the fifth year of ye reign of our sovereign Lord & Lady Wm & Mary over England & etc., King & Queen, Anno Dom: 1693. [sgnd] And: Hamilton

Appendix II. Modernized Version

"The Governor and proprietors of the Province of East-New-Jersey, to Thomas Thorp, Greetings. We command you in their Majesties name, that all other matters left aside & all excuses whatsoever Calling you [? unreadable] & in the non-proper person appear before their Majesties justices of the Court of Common Right or Supreme Court to be held for the said province at Perth-Amboy in the county of Middlesex upon the second Tuesday of October [? unreadable] next [? unreadable] to answer a certain Bill in Chancery

before that court exhibited by Richard Powell & Elizabeth his wife, and further to do & receive what the said Court in that Behalf shall Consider & this you may no ways omit, under penalty of one hundred Pounds & have you there this writ Given under the seal of said Province this [? unreadable] twentieth day of September in the fifth year of the reign of our sovereign Lord & Lady William & Mary over England & etc., King & Queen, Anno Dom: 1693.

[signed] Andrew Hamilton

Appendix III. Cast of Characters

Thomas Thorp (or Thorpe) Sr.: — landowner in Woodbridge 1686 if not earlier

Thomas Thorp Jr.: — deceased 1689, second husband of Elizabeth Dodderidge Thorp Powell

Samuel Thorp: — son who inherits instead

Joseph Thorp: — son deeded half a farm

Daniel Thorp: — son deeded half Pierce estate, and executor of father's will

Elizabeth (maiden name?) Dodderidge Thorp Powell: — wife and complainant

Richard Powell: — tavern keeper, her third husband and complainant

Philip Dodderidge Sr.: — deceased first husband

Philip Dodderidge Jr.: — son

Elizabeth Dodderidge (#2): — daughter

Andrew Hamilton: — governor and presided over court sessions

Andrew Browne: — Master of Chancery

John Inians: — Master of Chancery

David Mudie: — Master of Chancery, and also mentioned as Commissioner sent to examine witnesses⁶³

John Bishop: — Woodbridge, Master of Chancery⁶⁴

John Royle: — Master of Chancery

James Dundas: — Master of Chancery, and also mentioned as Commissioner sent to examine witnesses⁶⁵

Isaac Kingsland: — Master of Chancery

John Pike: — "attorney" for Thorp (John Pike Sr. d. 1688/9 so this apparently son, and member of legislature).

Thomas Carhart: — "attorney" for Thorp

Samuel Dennes: — "attorney" for Powells⁶⁶

George Pack (Peck?): — Elizabethtown, witness for Powells

Noah Bishop: — Woodbridge, witness for Powells

Samuel Hale: — justice of the peace from Long Island who married Elizabeth and Thomas Thorp Jr.

Sarah Conger: — witness for Powells, Woodbridge?

John Bishop: — witness

William Nicholls: — for Thorp (New York lawyer)

James Emmott: — for Powells (Perth Amboy lawyer, former secretary for the East Jersey Board of Proprietors)

Thomas Gordon: — registrar of the court

Notes

(Endnotes)

1. Acknowledgments—Seton Hall University History Department for the gift of the writ that sparked this research. Those who helped, or tried to: Rutgers University Special Collections and University Archives staff including Ronald Becker, Bonita Craft Grant, Dave Kuzma, Tim Corlis, David Fowler, and more; New Jersey State Archives, Joseph Klett, Joanne Nestor, and Ellen Callahan; New York Public Library Local History Room; Woodbridge Library Local History Room; Woodbridge ministers, Richard Veit, Susan Schrepfer, and Jonathan Lurie.
This paper was the basis of a talk given at the New Jersey Historical Commission's 2012 Forum at Georgian Court University, Lakewood, New Jersey, November 17, 2012.
2. The writ is now in the collection of the New Jersey State Archives, catalogued as Summons of Thomas Thorp in Richard and Elizabeth Powell v. Thomas Thorp, 1693, Ac. No. 2012.066, Location V-MC-01-01.
3. The names are spelled in multiple ways in the documents and other records. Dodderidge is also Dodderigge, Doderige, Dodderage, Duderidge, and multiple other early versions of the name; see Earl Phineas Huff and Wingfield Huff Winyard, *The Dodderidge Family in England and America* (1961). Carbon copy of typed manuscript deposited in the Local History Collection of the New York Public Library. Thorp is also Thorpe and Tharp; see Thomas R. Tharp Sr., *Line of Descent for Thomas R. Tharp Jr.*, typed family genealogy, 1a, 11–13, courtesy of Wendi Rottweiler, Local History Librarian, Woodbridge Public Library; and F. Edward Wright, *Colonial Families of New Jersey, v.1 Middlesex and Somerset Counties* (Lewes, Del.: Colonial Roots, 2004), 199–200. Finally Powell also appeared as Powle.
4. Preston W. Edsall, ed., *Journal of the Courts of Common Right and Chancery of East New Jersey, 1683–1702* (Philadelphia: American Legal History Society, 1937). First a Princeton University dissertation

this was then published; the text and paging appear to be identical. Discussion of the case appears in the introduction, 152; record of the case 251–254, 260–261. After Edsall found the document, and while he was still working on his transcription and interpretation, it was published by George J. Miller, the registrar of the East Jersey proprietors as *Courts of Chancery in New Jersey, 1684–1696* (Perth Amboy: H. E. Pickersgill, 1934). All quotes here are from Edsall's more scholarly work. When Edsall used the records they were bound together with deeds in the Archivist's Office, New Jersey Secretary of State; later transferred to the New Jersey State Archives. Recently located they have been catalogued as RG East New Jersey Courts of Common Right and Chancery Journal, 1683–1702, SEC00001.

5. Rutgers University Special Collections and University Archives has the early Woodbridge Township Minutes on microfilm, the original bound copies, and a 1775 bound transcription (made because the originals were in disarray). The originals are faded, still in disarray, pages are without numbers or numbered but not in order. I found some of the clerks' handwriting undecipherable. The 1775 copy, made by Nathaniel Fitzrandolph, is in a clear hand and numbered (except for birth, marriage, and death records listed at the end), but he re-ordered the records. Both the originals and 1775 were examined, but the citations here are to the 1775 copy; ac.2378 Liber A Transcript BL.

Early histories of Woodbridge include: Rev. Joseph W. Dally, *Woodbridge and Vicinity* (1873; reprint Hunterdon, NJ: Madison House, 1967); Dorothy F. D. Ludewig, *Timely Told Takes of Woodbridge Township 1669–1969* (Plainfield, NJ: Bosie Printing Co., 1970); Ruth Wolk, *History of Woodbridge* (Woodbridge, NJ: Woodbridge Publishing Co., 1957; 1970 reprint); Donald J. Mrozek, "The Distribution of Land in Seventeenth-Century Woodbridge, New Jersey," *Journal of Rutgers University Library* 35, no. 1 (1971): 1–14.

6. Rutgers University Special Collections and University Archives has the Middlesex County Court Records, ac. 2172 ms. vol.12, June 1683–September 1720, but some of the pages have been damaged by age and water, making them difficult to read.
7. There are few works on women and the law in colonial New Jersey: Carmela Ascolese Karnoutsos, *New Jersey Women: A History of Their Status, Roles, and Images* (Trenton: New Jersey Historical Commission, 1997), 14–17; Claribel Young, "Women and Landownership in Proprietary East Jersey: The Case of Sarah Reape, Quaker," *New Jersey History* (hereafter *NJH*) 117 (1999):47–63; Firth Haring Fabend, *A Dutch Family in the Middle Colonies, 1660–1800* (New Brunswick, NJ: Rutgers University Press, 1991), see 109; Joanne Ruth Walroth, "Negotiations for a Share of Propriety: The Isabella Davis- James

- Alexander Correspondence, 1723" *NJH* 109 (1991):57–77; Joanne Ruth Walroth, "Beyond Legal Remedy: Divorce in Seventeenth-Century Woodbridge," *NJH* 105 (1987):1–35; Joan Burstyn, ed., *Past and Promise: Lives of New Jersey Women* (Syracuse, NY: Syracuse University Press, 1997), 1–44.
8. Hendrick Hartog, *Someday This Will All Be Yours: A History of Inheritance and Old Age* (Cambridge, MA: Harvard University Press, 2012).
 9. Children without a father were called orphans, probably because this usually left the family without a bread winner.
 10. On the Rev. Philip Dodderidge (1702–1751) see: Rev. James R. Boyd, *Memoir of the Character, and Writings of Philip Dodderidge, D.D.* (New York: American Tract Society, 1860); Michael R. Watts, *The Dissenters* (Oxford, UK: Clarendon Press, 1978). On this Philip Dodderidge and Princeton, including letters between him and the Presbyterian minister in Woodbridge, see: Francis L. Broderick, "Pulpit, Physics, and Politics: The Curriculum of the College of New Jersey, 1746–1794," *William & Mary Quarterly* (hereafter *W&MQ*) 3s. 6 (1949): 42–60; Alison Olson, "The Founding of Princeton University," *NJH* 87 (1969): 137, 145–146; Bryan F. LeBeau, *Jonathan Dickinson and the Formation Years of American Presbyterianism* (Lexington, KY.: University Press of Kentucky, 1997), 184.
 11. Women have been portrayed as more active in colonial courts in the seventeenth than the eighteenth century; they often were executors of their husband's estates. See: Lois Greene Carr and Lorena S. Walsh, "The Planter's Wife: The Experience of White Women in 17th Century Maryland," *W&MQ* 34 (1977) 556; Joan R. Gundersen and Gwen Victor Gampel, "Married Women's Legal Status in 18th century New York and Virginia," *W&MQ* 39 (1982): 114–134; Cornelia Hughes Dayton, *Women before the Bar: Gender, Law and Society in Connecticut, 1635–1789* (Chapel Hill, University North Carolina Press, 1995); Vivian Bruce Conger, *The Widow's Might: Widowhood and Might in Early British America* (New York: NYU Press, 2009), 51, 80, 154, 156. Thomas Thorp Jr. died without a will; Elizabeth was appointed his executor; Abstracts East Jersey Records, 21 *New Jersey Archives* (hereafter *NJA*), 169; Abstract of Wills, 23 *NJA*, 461–462.
 12. For the law protecting orphans see: Aaron Leaming and Jacob Spicer, *The Grants, Concessions and Original Constitutions of the Province of New Jersey* (1752; reprint, Union, NJ: Lawbook Exchange, 2002), 235. For a discussion of how New Jersey dealt later with the poor see: Martin W. Stanton, *History of Public Poor Relief in New Jersey, 1609–1934* (Fordham University Phd dissertation, 1934), 16; Marc Mappen, "The Paupers of Somerset County," *Journal of Rutgers University Library*

- 33, no. 2 (June 1970): 33–45; John A. Grigg, "'Ye relief of ye poor of sd towne': Poverty and Localism in Eighteenth-Century New Jersey," *NJH* 125 (2010): 23–35.
13. On Elizabeth's son and his marriage see: Patty Barthell Myers, *Ancestors and Descendants of Lewis Ross Freeman with Related Families. Based Partially on the Work of Freeman Worth Gardner and Willis Freeman* (Camden, ME: Penobscot Press, 1996), 662–664 [relevant pages courtesy of Wendi Rottweiler, Local History Librarian, Woodbridge Public Library]. Also deeds of 1698 and 1699 show Philip, and his wife, owning property in Elizabethtown: Abstract East Jersey Records, 21 *NJA*, 291, 311.
 14. Leaming and Spicer, *The Grants*, for the laws on courts of 1675, 1682, 1694, see: 97, 232–233, 270, 272, 347–348.
 15. Julian P. Boyd ed., "The Concessions of 1665," in *The Fundamental Laws and Constitutions of New Jersey* (Princeton, NJ: Princeton University Press, 1964), 56.
 16. Maxine N. Lurie, "The Case of the Founding of Monmouth County," *NJH* 126 (2011): 84–95.
 17. Miller, *Courts Chancery*, claims this was the first equity court "on this continent," 22, 53. Peter Charles Hoffer, *The Law's Conscience: Equitable Constitutionalism in America* (Chapel Hill, University of North Carolina Press, 1990), 51, 236n.16, mentions East and West Jersey had equity courts from the beginning, but does not go into details, which is also true of Carla V. Bello and Arthur T. Vanderbilt II (eds.), "Prologue" *Jersey Justice: 300 Years of New Jersey Judiciary* (Newark, NJ: Institute for Continuing Legal Education, 1978), 5–9. Richard S. Field, *The Provincial Courts of New Jersey with Sketches of the Bench and Bar* (New York: Published for New Jersey Historical Society, 1849), 12–14, argued the chancery court was brought by the new Scottish proprietors in 1682; but Edsall, 5, 141–147, instead that these were provided for in laws written by the colonists. A number of authors date the chancery courts from 1705: Edward Quinton Keasbey, *Courts and Lawyers of New Jersey, 1661–1912* (New York: 1912; 2002 reprint) v. 1 105, v. 2 488, 500; Jacob L. Newman, "The Bench and Bar," in William Starr Meyers ed., *The Story of New Jersey* v. 1 (New York, 1945); Stanley N. Katz, "The Politics of Law in Colonial America: Controversies over Chancery Courts and Equity Law in the 18th century," *Perspectives in American History* 5 (1971), 262. While two authors focus on the period after 1704: Stephen B. Presser, "Introduction to the Legal History of Colonial New Jersey," *Rutgers–Camden Law Journal* 7, no. 2 (Winter 1976): 262–344; Thomas Slaughter, "Court Reform in Colonial New Jersey: The Origins of the Supreme Court, 1704–5," *NJH* (Spring/Summer 1989) 1–21. Presser

discusses Lewis Morris and Richard Stockton's views on chancery courts; neither apparently was aware of the court's existence in New Jersey before 1700.

18. Henry Campbell Black, *Black's Law Dictionary*, (St. Paul Minnesota, West Publishing Company, 1979), 5th edition, 482. For a brief summary of the development of chancery courts in England and America see: Hoffer, *The Law's Conscience*, Part I.
19. The Dominion of New England was created by James II in an effort to centralize North American colonies and first included Massachusetts, Connecticut, Rhode Island, and then also New York, East and West Jersey, and Pennsylvania. It was overthrown in the Glorious Revolution of 1689, but clear lines of authority were not re-established until about 1692. Separate East Jersey courts apparently did not meet from 1688 to 1693, and this may explain what seems to be a delay in the bringing of this case.
20. On the Puritans as hostile to chancery courts see: Marylynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill: North Carolina University Press, 1986), 11–12, 120–121; Katz, 257–258. In contrast see: David Thomas Konig, "Community, Custom and the Common Law: Social Change and the Development of Land Law in 17th Century Massachusetts," *American Journal of Legal History* (1974): 171.
21. Chancery judges could provide "justice," or, because they did have discretion in their decisions, they were at times seen as arbitrary instead. See especially works of Katz and Hoffer previously cited.
22. For the records of the case see: Edsall, *Journal of the Courts*, 252–254, 260–261; Miller, *Chancery Court*, 75–83.
23. For the argument that there are few lawyers in seventeenth-century America, including New Jersey, see: Keasbey, *Courts and Lawyers*, v. 1 227, 236; Newman, "The Bench and Bar," 378; Field, *The Provincial Courts*, 22–23; Stephen Botein, "The Legal Profession in Colonial North America," in Wilfred Prest, ed., *Lawyers in Early Modern Europe and America* (New York: Holmes and Meier Publishers, 1981), 130–133; Peter Charles Hoffer, *Law and People in Colonial America* (Baltimore: Johns Hopkins University Press, 1992), 41, 63, 64. That they were present in this case, and/or that James Emmott was a lawyer see: Edsall, *Journal of the Courts*, 22; Francis Bazley Lee "The Emergence of New Jersey's Legal Profession 1664–1704," (1902) in Bello and Vanderbilt, *Jersey Justice*, 61–67.
24. Andrew Hamilton, born in Edinburgh (b.?, d. 1703), invested in the New Jersey proprietorship. In 1686 he moved to the colony, where he first served as deputy governor of East Jersey and then in the

- 1690s of both Jerseys. As governor he also served as the chief justice of the Chancery Court. John E. Pomfret, *The Province of East New Jersey, 1609–1702: The Rebellious Proprietary* (Princeton, NJ: Princeton University Press, 1962), 253.
25. Middlesex County Courts Records (only read from 1685 to 1696), 31, 37, 41, 42, 45, 47, 51, 55, 59, 158–159, 165, 167. See also: George J. Miller, *Ye Olde Middlesex Courts: The Establishment of an Early Court System in One of the Original Counties of New Jersey* (Perth Amboy: H. E. Pickersgill, 1932. 1986 reprint), 26, 27, 46, 47, 64, 65.
 26. Born circa 1657.
 27. Summary of the case: Edsall, *Journal of the Courts*, 152; Miller, *Courts Chancery*, 50–51.
 28. The record of death of Powell's wife Katherine and then notice of his marriage to Elizabeth, are in the Woodbridge Township Minutes. There was seven months between the two. Remarriage, especially when there were children, was common at this time and 1689 was an uncertain period, at the start of King William's War.
 29. William A. Whitehead, *Contributions to the Early History of Perth Amboy* (New York: D. Appleton & Co., 1856), 250. In 1685 the East Jersey proprietors "ordered that the Town House [which usually included court space] be built," in Perth Amboy; Whitehead says it is "uncertain where this lot was situated," but that the building was standing in 1696. However, he also notes an order in 1695 to repurpose a house owned by the proprietors "as a court house." W. Woodford Clayton, ed., *History of Union and Middlesex Counties in New Jersey with Biographical Sketches* (Philadelphia, PA: Everts and Peck, 1882), 447, states the first court house was built in 1714.
 30. Martha J. McNamara, *From Tavern to Courthouse: Architecture and Ritual in American Law, 1658–1860* (Baltimore, MD: Johns Hopkins University Press, 2004), 2.
 31. Carl R. Lounsbury, *The Courthouses of Early Virginia: An Architectural History* (Charlottesville: University of Virginia Press, 2005) especially 49–83.
 32. Fraud cases frequently were tried in chancery courts; Hartog, 7–8, 174.
 33. The only law found in colonial New Jersey dealing with entail was an eighteenth century one breaking the entail on an estate. See: Bernard Bush comp., *Laws of the Royal Colony of New Jersey, 1703–1776* (Trenton: Bureau Archives and History, 1982) v. 4, 445–448.
 34. Thomas Carhert, Thorp's "attorney," cited the English Statute of Limitations 21: Ja:16, Edsall, *Journal of the Courts*, 253. An East Jersey

law of 1682 specifically required judges to protect widows and the "fatherless," Leaming and Spicer, *The Grants*, 235.

35. Gundersen and Gampel, "Married Women's Legal Status," 116 provide a concise explanation: "A feme sole, the legal term for a widow or spinster, could convey property, make a valid contract, sue or be sued, execute a deed, and make a will. Technically, a feme covert could do none of these things without her husband's consent or participation."
36. On statutes requiring that wills and land deeds to be in writing see: Hartog, *Some Day*, 5, 176–177.
37. The estate of Thomas Thorp Jr. was evaluated at £58.1.0 in November 1689. See: Abstract of Wills, 23 *NJA*, 461–462; F. Edward Wright, 200.
38. Court costs were specified by law. See: Leaming and Spicer, *The Grants*, 300. For comparison see Dayton, 49, on Connecticut fees.
39. Joshua Coffin, *Sketch of the History of Newbury, Newburyport and West Newbury from 1635 to 1845* (Boston: Samuel G. Drake, 1845), 70, 314 notes that several Newbury townsmen went to Woodbridge and suggests that they were invited to do so by Governor Philip Carteret. Thorp's presence in Brookhaven is mentioned in the deed from Pierce, and in Howell, *Early History of Southhampton, Long Island*. A similar trajectory was followed by John Ogden, see: Jack Harpster, *John Ogden, The Pilgrim (1609–1682): A Man of More than Ordinary Mark* (Madison, N.J.: Fairleigh Dickinson University Press, 2006).
40. The Elizabethtown grant was from Richard Nicolls, the Duke of York's governor, before he knew about the New Jersey proprietorship of Berkeley and Carteret. About 1686, possibly to protect his title to lands inherited from Pierce, Thorp petitioned the East Jersey proprietors for land he claimed in Woodbridge—they wanted quit rents back to 1670; see: George Miller, *Minutes of the Board of Proprietors of the Eastern Division of New Jersey* (Perth Amboy, 1949) v. 1, 138.
41. Pierce will in Woodbridge Town Minutes, 1775 copy, 45–46. There is also a copy of a 1680 deed for land in Woodbridge from Daniel Pierce [Jr.] of Newbury, Massachusetts to Thomas Thorp of Brookhaven, Long Island for "discharge" of all debts and legacies, recorded in Woodbridge in 1682, *Ibid.*, 48. There clearly was a prenuptial agreement between Daniel Pierce and Mrs. Milward. They apparently had no children together, and in such cases "The property descended automatically to the heirs of the wife," which in this case would have included Thorp Sr.'s wife; see: Salmon, *Women and the Law*, 144–145.

42. Thorp and Milward were married March 27, 1656, in Boston, Massachusetts. Clarence Alman Torry, comp., *New England Marriages Prior to 1700* (Baltimore, MD: Genealogical Pub. Co, 1985), 740.
43. Woodbridge Town Minutes, 1775 copy, 200–201; Clayton, *History of Union*, 245; Dally, *Woodbridge and Vicinity*, 107–108. The two men apparently mistakenly removed Thorp's "dressed trees," and town officials wanted to discuss this with him.
44. Deed to Daniel Thorp, Abstract East Jersey Records, 21 *NJA*, 218; Deed to Joseph Thorp, Woodbridge Town Minutes, 1775 copy, 135; Thorp Sr., Will, Abstract East Jersey Records, 21 *NJA*, 217, and Abstract of Wills, 23 *NJA*, 462; F. Edward Wright, 200. There are additional deeds in the town records involving Thorp property.
45. In an earlier (1674) Woodbridge deed a father gave his sons land and daughter cows and household goods because he was "disabled" and in return he expected them to care for himself and his wife with "meat and drink, washing, lodging and apparel" for the rest of their lives; Clayton, *History of Union*, 555–556.
46. This of course does not include the value of his remaining land or what by 1694 he had divided up among his surviving sons.
47. A quit rent list, 1696–1705, shows Thomas Thorp's sons (not named) holding 364 acres, the second largest amount in Middlesex County. See "Some Early New Jersey Patentees Paying Quit-Rents," *Proceedings of the New Jersey Historical Society* 15 (1930), 379. Thorp Sr. had seven sons—Thomas (who predeceased him), Daniel, William, Zebulon (who ended up in Massachusetts), George, Joseph, Benjamin; Tharp genealogy.
48. Young, "Women and Land Ownership," 56; Holly Brewer, *By Law or Consent: Children, Law, & the Anglo-American Revolution in Authority* (Chapel Hill: University North Carolina Press, 2005), 234–235.
49. Hoffer, *Law and People*, 54.
50. Meyers, Freeman Genealogy; Abraham Van Doren Honeyman, *History of Union County, New Jersey 1664-1923* (New York: Lewis History Publishing Co., 1923), 58. He was in Woodbridge by 1680. Woodbridge Town Minutes, 1775 copy, 55, 58, 211; Middlesex Court Records, 31, 37, 42, 45, 51, 58–59.
51. License in Middlesex Court Records, 133; Miller, *Ye Olde*, 46–47. Those running taverns were usually "men of prominence," see: Wheaton Lane, *From Indian Trail to Iron Horse* (Princeton, NJ: Princeton University Press, 1939), 106–111; Walter Van Hoesen, *Early Taverns and Stagecoach Days in New Jersey* (Rutherford, NJ: Fairleigh Dickinson University Press, 1976).

52. Powell's house/tavern was used for meetings at various times in the 1690s (shown in the Woodbridge Town Minutes), and even in 1704 for an anti-proprietary protest meeting. For the later see: Daniel Weeks, *Not for Filthy Lucre's Sake: Richard Salter and the Antiproprietary Movement in East New Jersey, 1665–1707* (Bethlehem, PA: Lehigh University Press, 2001), 164.
53. Woodbridge Town Minutes, 1775 copy, 236.
54. *Ibid.*, 238.
55. David H. Flaharty, "Law and the Enforcement of Morals in Early America," *Perspectives in American History* 5 (1971): 229, 245–246, concludes that by the late seventeenth century the Puritan moral code was not strictly enforced in the colonies.
56. Abstract of Wills, 23 *NJA*, 374, and Myer, *Ancestors and Descendants*, 663. As in the case of Daniel Pierce this could have been Powell passing Elizabeth's property on to her heirs, but nothing indicates that.
57. Huff and Winyard, *The Dodderidge Family*, 2 notes: "It is regretted that there is some obscurity in the transition of the American Dodderidge family from our English ancestors..." and 88. The authors reject the idea that John, Elizabeth's grandson, was the origin of the family, preferring to try to make a connection to the more famous Dodderidges in England, see 195n.3. Clearly interesting here though is the statement that the most common names used in the family included Elizabeth, Philip, and John, 93. In England the two most prominent Dodderidges were apparently Sir John Dodderidge, a lawyer, judge, and Solicitor General under James I, and the Rev. Philip Dodderidge previously mentioned. See also: Sidney R. Dodderidge and H. G. Hastings Shaddick, *The Dodderidges of Devon* (Exeter: William Pollard & Co., 1909); Elizabeth Darracott Wheeler, *Sir John Dodderidge: Celebrated Barrister of Britain, 1555–1628* (Lewiston: Mellen Research University Press, 1992).
58. The apprenticeship was signed March, 1693 and paid off September 8, 1694. Abstracts East Jersey Records, 21 *NJA*, 215.
59. There are extensive notes on the Moore family in Myers, *Freeman Genealogy*, 662–664. This includes some information on Elizabeth's daughter—who she married, but no dates. Francis Moore's birth and marriage to Philip Dodderidge Jr. are also in the Woodbridge Town Minutes; see also: Honeyman, *History of Union* v.1, 58, 399.
60. Edsall, *Journal of the Courts*, v.
61. The birth, marriage, and death records in the Woodbridge Town records are incomplete. At one point noting this, the town clerk decided to stop trying to collect the information, since not everyone

complied. Reversing this decision the town tried again, but clearly not all information was kept. Records of the First Presbyterian Church of Woodbridge date from 1707, those of the Episcopal Church of Woodbridge before 1850 have been missing since 1875; correspondence with the Presbyterian Historical Society in Philadelphia, and with Rev. Robert Counselman.

62. Under the terms of the act establishing the court, the plaintiff needed to send the defendant a copy of the writ at least fourteen days prior to the meeting of the court.
63. Walroth, "Divorce," 19–20.
64. *Ibid.*, 22–24.
65. *Ibid.*, 20–21.
66. *Ibid.*, 24–25.