

# Women, Marriage and Property in Upper Canada The Case of Elizabeth Sanders

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## Résumé de l'article

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# Women, Marriage and Property in Upper Canada

## The Case of Elizabeth Sanders

By Guylaine Pétrin

### Abstract

*This article explores how one illiterate woman in Upper Canada, Elizabeth Sanders, used the few legal tools that were at her disposal to deal with a bad marriage and to protect her property for her daughters. Her social standing, her property and, even more importantly, the support of her family, allowed her to have access to and use the very deficient Upper Canadian justice system to deal successfully with a bad marriage. This study shows that even illiterate women could and did use the law to their advantage.*

**Résumé:** Nous voyons dans cet article comment Elizabeth Sanders, une femme analphabète du Haut-Canada, s'est servi des quelques moyens légaux dont elle disposait pour faire face à un mauvais mariage et pour protéger sa propriété et ses filles. Son statut social, sa propriété, et surtout l'appui de sa famille, lui ont permis d'avoir accès au système judiciaire haut-canadien et, malgré les défauts de ce système, de s'en servir pour terminer avantageusement un mauvais mariage. Cette étude nous permet de voir que même une femme analphabète pouvait se servir de la loi dans ses propres intérêts.

Compared to their sisters in Lower Canada and mostly everywhere else in North America, married women had very few property rights in Upper Canada.<sup>1</sup> There were no legal mechanisms such as a court of equity to protect their property in case of marriage breakdown. The Court of Chancery of Upper Canada was not created until 1837, and it was used mainly for the protection of abused and abandoned wives.<sup>2</sup> Not until 1859, and the *Married Women's Property Act*, could women keep some limited

<sup>1</sup> For a discussion of women's property rights in Lower Canada and other areas of North America, see the following books about life of contemporaries of Elizabeth: Suzanne Lebsock, *The Free women of Petersburg: status and culture in a Southern Town, 1784-1860* (New York: Norton, 1984); Marylynn Salmon, *Women and the law of property in early America* (Chapel Hill: University of North Carolina Press, 1986); and Bettina Bradbury, *Wife to Widow: Lives, Laws, and Politics in Nineteenth-Century Montreal* (Vancouver: UBC Press, 2011), which explains the variety of ways married women's property could be and was protected in nineteenth-century Montreal. For a contrast to Upper Canada before 1837 as described by Lori Chambers see note 2.

<sup>2</sup> Lori Chambers. *Married Women and Prop-*

control of their property after marriage. Despite a lack of legal protection, however, bad marriages certainly existed. This article explores how one woman, Elizabeth Sanders, used the few legal tools that were at her disposal to deal with a bad marriage and to protect her property for her daughters. Her social standing, her property and, even more importantly, the support of her family, allowed her to have access to and use the very deficient Upper Canadian justice system to deal successfully with a bad marriage.

Court records are rich sources of information on women who are often otherwise silent.<sup>3</sup> They contain very intimate information about love, marriage and family life, which is not found anywhere else. But when they are used in isolation, they can give a skewed perspective as they generally show someone at their most vulnerable. By focusing on the whole of Elizabeth's life, and not just her marital woes, it is possible to gain a better understanding of what kind of women were able to access the legal system and how successful

they could be in their quest for justice.

This article uses a variety of sources to tell Elizabeth's story—diaries, land petitions, genealogical records and legal proceedings—but all such sources demand caution.<sup>4</sup> Elizabeth Sanders was illiterate and the diaries of others can distort the lives of illiterate women, since they are seen through prisms of bias and prejudice.<sup>5</sup> Despite these shortcomings, contemporary diaries are important sources of information about the lives and social status of colonial women. In this case, the diaries of Isaac Fidler and Mary O'Brien were useful in understanding the world in which Elizabeth lived on Yonge Street in the 1820s. While diaries represent how Elizabeth was perceived by her neighbours, petitions, land records and other court records allow the reader to see how Elizabeth's family acted and perceived themselves. Petitions to the government for free land followed a very formulaic pattern as explored in the work of Janice Potter-MacKinnon.<sup>6</sup> Despite their stilted language, however, land petitions are a

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*erty Law in Victorian Ontario* (Toronto: Published for the Osgoode Society for Canadian Legal History by University of Toronto Press, 1997). The first chapter of this book describes the lack of protection for married woman's property in Upper Canada. While England had Chancery court, and many jurisdictions in North American had equity courts that allowed separate estates, this protection did not exist in Upper Canada until 1859. Even the creation of the chancery court in 1837 was more for the protection of abused and abandoned wives, but it might not have been helpful in a case like Elizabeth's.

<sup>3</sup> Constance Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada*. (Toronto: Published for The Osgoode Society by Women's Press, 1991). This book has wonderful examples of women confronted by the gendered legal system, but it does tend to present the women as either criminals or victims due to its examination of criminal records. Civil court cases contain more examples of women's agency and how they used the law to conduct regular business. Unfortunately, civil court cases are much harder to find in this period.

<sup>4</sup> Elizabeth Jane Errington, *Wives and Mothers, Schoolmistresses and Scullery Maids: Working Women in Upper Canada, 1790-1840* (Montreal, PQ and Kingston, ON: McGill-Queen's University Press, 1995), xiv-xv.

<sup>5</sup> *Ibid.*, 17.

<sup>6</sup> Janice Potter-MacKinnon, *While the Women Only Wept: Loyalist Refugee Women* (Montreal:

uniquely useful source of information for the life of early Loyalists. Since petitions were the only way for settlers to communicate with the government, they provide a rich source of personal history. The Dennises, Sanders and McLaneys petitioned the government for land or for other reasons, and enough of their petitions have survived to give us an indication of how they perceived themselves in society. They were skilled tradesmen, from solid middle-class backgrounds. They had been dispossessed by the American Revolution and they felt they were entitled to recompense from the Crown, based on their past suffering and their current usefulness as shipwrights and carpenters. Elizabeth shared this sense of entitlement.

The most important set of sources for understanding Elizabeth's life, however, are the legal records created by the various court cases she initiated. Because the law is deeply gendered, legal records provide a unique way to look at women's history.<sup>7</sup> Civil court records can be used to show women such as Elizabeth using the

law to their advantage, whereas criminal court records tend to cast them in the role of either victims, or villains.<sup>8</sup> This article evaluates the sources available about Elizabeth's life. Then the various factors such as gender, social status and religion that impacted Elizabeth and her family are examined via the use of secondary sources. And finally, Elizabeth's life is presented in a chronological order to put her legal proceedings in the context of her life as a whole. Much attention is given to the description of the status and personality of the men in her life, for the simple reason that they left more records.

In her wonderful work on the slave woman Marie-Joseph Angelique,<sup>9</sup> Afua Cooper has shown how court records, trial transcripts and even wills can be used to give a voice to the silenced. Cooper argues that the court transcriber acted as Angelique's amanuensis, and that the court trial transcript constitutes a slave narrative. In the same way, court records produced by Elizabeth when she sought to have her marriage declared null

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McGill-Queen's University Press, 1993). This book discusses the language used in the petitions filed by Loyalist women in Eastern Ontario, but most of the examples are before Lord Dorchester's 1789 Proclamation. The later petitions by sons and daughters of Loyalists tend to be more formulaic and show a sense of entitlement.

<sup>7</sup> Carolyn Strange. "A Case for Legal Records in Women's and Gender History." *Journal of Women's History* 22:2 (Summer 2010, 2010): 144-48. Dr. Strange argues that one needs not be a lawyer to integrate court records into women's history.

<sup>8</sup> Bernadine Dodge. "Let the Record show: Women and Law in the United Counties of Durham and Northumberland, 1845-1895," *Ontario History* 92:2 (2000), 127-45. Generally criminal court records are much more accessible than civil court records, unless they are reported. Unfortunately, criminal records tend to show women either as victims of assault, rape, or as criminals. Katherine M.J. McKenna. "Women's Agency in Upper Canada: Prescott's Board of Police Record, 1834-1850," *Histoire Sociale: Social History* 36:72 (2003), 347-70. Lower courts tend to have a higher representation of women's daily life.

<sup>9</sup> Afua Cooper, *The Hanging of Angelique: The Untold Story of Canadian Slavery and the Burning of Old Montreal* (Toronto: Harper Perennial, 2006). See also her short article about Julia Turner: "Putting Flesh on the Bones: Writing the History of Julia Turner," in *Ontario since Confederation: A Reader*, edited by Edgar-Andre Montigny and Lori Chambers. (Toronto: University of Toronto Press, 2000).

and void are a very important source of information about her life. Even though she acted through the agency of her step-father and lawyers, she was clearly driving the court proceedings. She used her step-father's respectability and standing to achieve her own ends. Elizabeth's last will and testament is the one document in which her own voice can be heard. In spite of the legalese and formulaic language dictated by the medium, it is clearly Elizabeth's mind and heart speaking. In order to understand her ability to use the legal system, we have to understand the position of her family in the Upper Canadian community. Genealogical records such as family histories, charts, marriage and burial records, and wills were used to gather basic information about her family.<sup>10</sup> Other sources such as Quaker records, Masonic records,<sup>11</sup> newspapers, and various government records provided a much richer understanding of how Elizabeth's family fitted into the pioneer society on Yonge Street and how they were able to help and support her in her legal proceedings.

Like many of the early Loyalists,

Elizabeth had a complicated family. Her father was Dr. Andrew McLaney and her mother Martha Brown of Pennsylvania.<sup>12</sup> She had one older brother, John McLaney. After her father's early death during the American Revolution, her mother remarried John Dennis, and they had three more children: Joseph Dennis, Hannah, wife of Thomas Johnson, and Rebecca, wife of the future bishop, James Richardson. Elizabeth herself was born in British-occupied New York City during the Revolution, and died, probably of cholera, in 1834 in Thornhill, Upper Canada.<sup>13</sup> She married twice. Her first husband, Matthias Sanders, died during the War of 1812, and her second husband, Doctor John Toledo Elrod, turned out to be a scoundrel. Elizabeth had six children with her first husband and two daughters with her second husband. All of her children lived to adulthood, married and had children of their own.<sup>14</sup> Elizabeth's birth family played a crucial role in her story. Without their status and support, she probably would not have been able to get rid of an unsatisfactory husband and rebuild her life. Elizabeth was known by many names

<sup>10</sup> I was very lucky to have the help of Holly Adams, Joni Sanders and Lynda Rocha who are descendants of Elizabeth Sanders. They provided much valuable genealogical information on the Sanders and Dennis families. Holly Adams transcribed many wills of the Dennis and McLaney families.

<sup>11</sup> I also wish to thank Jane Zavitz of the Quaker Archives in Newmarket who helped me understand how the Quaker faith would have influenced Elizabeth's family. For Masonic records, I thank the Grand Lodge of Mississippi and Ohio who searched their records for information on John T. Elrod.

<sup>12</sup> Library and Archives Canada (LAC), Ward Chipman Papers. MG 23 D1, Series 1, volume 24, page 170. Roll of Loyalists settled at BelleVue in Beaver Harbour, 10 July 1784. Elizabeth appears as a child on this list, Martha Dennis is from Pennsylvania.

<sup>13</sup> Her monument in Thornhill Community Cemetery gives her age as 53 years old at the time of her death, so she was probably born in 1780 or 1781.

<sup>14</sup> For a complete family tree of the Dennis-McLaney family, I refer the interested reader to the documents created by Holly Adams for the United Empire Loyalist (UELAC) directory. <http://www.uelac.org/Loyalist-Info/extras/Dennis-John/Dennis-John-Children-Grandchildren.pdf>

during her lifetime: McLaney, Dennis, Sanders, Elrod and Saunders.<sup>15</sup> She appears mostly in records about the men in her life, having left no diaries or letters of her own, but through the legal records of her life she was an active participant in her destiny, and not simply a victim of fate.

Elizabeth Sanders' house still stands in Thornhill, with an historical plaque. Unfortunately, the information on the plaque comes mostly from Isaac Fidler's diary. This information is widely available and was reproduced in other books about Thornhill and Yonge Street.<sup>16</sup> When Anglican clergyman and would-be scholar Isaac Fidler returned to England after a short stay in Thornhill, Upper Canada, in 1832, he published a small book containing a series of sketches about his visit to America. Even though an American reviewer described the book as "being the most absurd book of travels that was ever written,"<sup>17</sup> it provides an interesting contemporary account of life in Thornhill in 1832. In one of his sketches, he recounts the matrimonial woes of his un-

named landlady:

Our lady was a widow, and had originally come from New York. She was one of the United States Loyalists, and the second or third person who settled at Thornhill. [...] The former husband of our landlady had left her with a family of sons and daughters, with a highly improved farm, with flocks of sheep and herds of cattle, and with five hundred pounds in money. American republicans have been frequently found prowling up and down Canada, in search of something which they might be able to convert into their own profit, regardless of the character or welfare of their dupes. Our landlady, a handsome widow with a handsome fortune, was not likely to continue undiscovered. One of them, a physician by profession, learned her history, was introduced, gained her heart, and married her. He obtained possession also of her cattle and her money; but not of her land, for this was a grant from government originally conveyed to herself, and she would never part with it. This American, after living with her for some time, and obtaining all she possessed but her farm, found his way back into the States, where he had another wife. The cattle and money obtained by our landlady had previously disappeared.<sup>18</sup>

<sup>15</sup> Matthias Sanders consistently wrote his name without a U, while John Dennis just as consistently wrote the name Saunders with a U. So Elizabeth is sometimes found as Sanders and sometimes as Saunders. Her children used both version of the name.

<sup>16</sup> Isaac Fidler, *Observations on professions, literature, manners, and emigration in the United States and Canada, made during a residence there in 1832* (New York: Arno Press, 1974), 270-71. Many authors have reproduced excerpts from this diary, and this story in particular is included in a booklet about Thornhill, and even on the historical plaque in front of 'Cricklewood', the new name given to Elizabeth's house in Thornhill. There are stories that a woman haunts the house, but no sources could be found that linked the haunting to Elizabeth. For the plaque at Thornhill see: [http://www.thornhillhistoric.org/plaque\\_16.html](http://www.thornhillhistoric.org/plaque_16.html)

<sup>17</sup> "Review: [Untitled]." *The North American Review* 38:82 (1834), 210-70. "Mr Fidler's work [...] has a fair chance of retaining, through all succeeding age, the distinction of being the most absurd book of travels that was ever written—at least by a clergymen of more than ordinary acquirements." (p.210). The second review came from the numerous letters to the editor against Fidler's book. "Review: Fidler's Observations on the United States." *The North American Review* 37:81 (1833), 273-314. The fairly long review is quite critical of Fidler, it mentions that Fidler repeats a hoax, and he seem to have believed everything he was told. The book was compared quite unfavourably to other travel books published at the same time.

<sup>18</sup> Fidler, *Observations*, 270-71



This story might have seemed amusing to Isaac Fidler and, given that he stayed in Upper Canada such a short time, it must have been public knowledge. His anti-American bias was shared by many of the new British settlers in Upper Canada, and he uses the story to illustrate the untrustworthiness of Americans. He casts his landlady in the role of victim and dupe, but what the story actually reveals is the danger inherent in marriage for a woman of property in Upper Canada.

Under the laws of Upper Canada, John Elrod, the man she had unfortunately married, was simply using his legal right to do as he pleased with his wife's property. At that time, a wife had no legal right to manage her own property, and in fact she did not have any separate legal identity.

A wife's personal property—her furniture, money, farm animals and implements, all other non-land forms of property—was not even accorded the minimal protection evidenced in dower, but was acquired absolutely by the husband. He could dispose of these goods without her consent and could bequeath them, even to the exclusion of her children.<sup>19</sup>

Isaac Fidler makes a few more comments about his landlady. They disagreed on religion and politics, and she did not seem to have much affection for the new British settlers who were moving into the Yonge Street area. In that respect, their differences reflect the cleavage that was

appearing on Yonge Street before the 1837 Rebellion. Historian Robert Stamp writes:

Certainly all was not happy along Yonge Street in the late 1820s and early 1830s. The coming of such families as the Gappers, Smiths, and Boyds created an entirely new class of settler. They were British, they were well-to-do, they were Church of England, and they allied themselves with the colonial elite in York. They felt themselves superior to the original settlers, who were from less privileged backgrounds, who were mostly non-Conformists, who enjoyed little access to the York elite, and who—worst of all, in the eyes of the recent British immigrants—were considered «Americans.»<sup>20</sup>

We know more about the O'Briens and Gappers, and the other British settlers who came to Upper Canada starting in 1820s, than we do about people such as Elizabeth Sanders, partly because they were literate and had more leisure time. Elizabeth Sanders is more representative of the first Loyalist pioneers of Yonge who were her contemporaries: non-conformist, less wealthy and Loyalists from America. When Fidler was visiting Yonge Street, these pioneers were either dying off or moving away in search of cheaper land for their growing families. Half-pay officers and other British settlers who came with money and were able to buy good farms close to the capital were replacing them. The new British settlers brought with them their own

<sup>19</sup> Chambers, *Married Women and Property Law*, 20. I also wish to acknowledge the generous help of Dr. Chambers without whom this article would still be unwritten.

<sup>20</sup> Robert M. Stamp, *Early Days in Richmond Hill: A History of the Community to 1930*, edited by the Richmond Hill Public Library Board. (Richmond Hill, Ont.: Richmond Hill Public Library Board, 1991). Source: <http://edrh.rhpl.richmondhill.on.ca/default.asp?ID=s5.4>

perceptions of social status. For example, Mary Sophia Gapper O'Brien wrote in her journal:

February 15 [1829] Today we had the benefit of attending regular public worship [Church of England] at the school house at Thornhill, but I was sorry to see that the aristocracy and their dependents formed the majority of the congregation.<sup>21</sup>

In her diaries, Mary O'Brien provides an important window into the life of Thornhill and the world Elizabeth inhabited near the end of her life, but she gives little sense of the cultural diversity of Yonge Street. She mentions Mennonites, Quakers, and the Irish, but pays most attention to the British families of her social group.<sup>22</sup> In his diary, Isaac Fidler describes Elizabeth as a "handsome" widow, and although she must have been over fifty when he met her, she is never described as old. Despite the tone of his gossip about his landlady, one gets the feeling that he somewhat admired her. She appears frequently in his narrative. When he describes her riding all over the countryside on her pony, one gets the impression that Elizabeth was an active, healthy and probably quite attractive

woman.

She was also, while certainly not wealthy like the Gappers and other elite British immigrants, comfortably well off. In his book about attitudes toward social mobility in Upper Canada, Peter A. Russell devised a table linking occupation and income to social status in Upper Canada.<sup>23</sup> Although he focused on a later period, when British influences were stronger, his table is still very useful for analyzing the social mobility of Elizabeth Sanders and her family. (See Table 1).

Of all the factors influencing social status and mobility in Upper Canada—character, sex and marriage, religion, education, political patronage, race, and ethnicity—he concludes:

If John Beverley Robinson [...] had been born just plain Beverley Robinson, no combination of intellect or other characteristics could have overcome the fundamental disability of being female.<sup>25</sup>

Gender was the most important factor that influenced the social status of Elizabeth Sanders. Marital status and property came next. The former was important for both men and women, but much more so for women as "once married, a wom-

<sup>21</sup> Mary Sophia Gapper O'Brien, *The Journals of Mary O'Brien, 1828-1838* (Toronto: Macmillan, 1968), 39.

<sup>22</sup> The journals are very useful for research, but since she wrote them for relatives in England, she tends to name the British settlers, while most of her non-British neighbours remain nameless, even her 'girls'. A few exceptions are old Munshaw, the Musselman family, and James Miles and she tends to report their quaint habits.

<sup>23</sup> It is quite probable that Elizabeth and her family were perceived differently by her American-born neighbours than by the Establishment, represented by her British neighbours. Her Quaker neighbours valued hard work and did not engage in conspicuous display of wealth and status. In spite of this bias, the rankings can still be a useful way to describe social mobility. Another aspect, not explored here, is how persons are described in deeds and petition, such as farmer, yeoman, gentleman, and esquire. This is not as useful for women, since in deeds, they are spinster, married women or relict.

<sup>24</sup> *Ibid.*, 160.



Table 1 Occupation, Income and Status		
Level	Occupation	Income Range
Respectable	Manufacturer, merchant, wealthy farmer, clergy, barrister, government department head (three or more servants)	£ 200 - £ 300
Marginal Respectable	Attorney, mechanic, shopkeeper, miller, innkeeper, doctor, grammar school teacher, well-to-do farmer (one or two servants)	£ 100- £ 150
Independent	Tavern keeper, peddler, preacher, small-scale farmer, settled skilled journeyman (probably no servants; perhaps one female)	£ 40- £ 70
Quasi-dependent	Common school teacher, pioneer farmer, labourer, 'broken-down' mechanic (no servants)	£ 25 - £ 35
Dependent	Squatter, servant, pauper	£ 18- £ 22

Table 1 <sup>25</sup>

an's status depended upon that of her husband. When the husband fell from favour or respectability, her position was destroyed as well."<sup>26</sup> This is why we can learn so much about Elizabeth from the status of the men who dominated her life at different times.

Elizabeth was left a widow when her first husband, Matthias Sanders, was killed in the War of 1812, and this generated much official paperwork, through which more of her life can be known. Her marital problems with John Elrod, her second husband, also excited a good

deal of interest and created more paperwork. If Elizabeth had predeceased her first husband, like her sisters, we probably would not know much more about her, except the standard eulogy.<sup>27</sup> But since she lived a part of her life as a widow, we know more about her feelings regarding her children and property. Her will especially is a testament to her bitterness toward marriage. As a daughter of United Empire Loyalists, Elizabeth received property in her own name. She was able to keep this property and to pass it on to her daughters, thereby creating

<sup>25</sup> Peter A. Russell, *Attitudes to Social Structure and Mobility in Upper Canada, 1815-1840: "here we are Laird Ourselves"* (Lewiston, N.Y.: E. Mellen Press, 1990).

<sup>26</sup> *Ibid.*, 162.

<sup>27</sup> Even though Bishop Richardson wrote at length on various topics, there was no information about his wife. Happy families tend to leave fewer legal records.

records we can follow.<sup>28</sup> This property also prevented her second husband from bringing her to complete destitution. Elizabeth entered into deeds and indentures; she sued in court of law; she left a will, and her daughters created their own property records.

Even though she was illiterate, Elizabeth Sanders was far from legally incompetent. Her illiteracy certainly did not prevent her from managing her husband's estate, buying or selling as a widow, suing in various courts or leaving a very complicated will. If we compare Elizabeth to her literate half-sisters, Hannah Johnson and Rebecca Richardson, and her mother, we do not know much more about them than we know about Elizabeth. Rebecca is known more via her husband James Richardson, first Methodist Bishop of Toronto, than anything else. Even though her sisters could write, their land petitions were still done by their husbands on their behalf. As Janice Potter-MacKinnon notes, education was very important for both the sons and daughters of American-born Loyalists.<sup>29</sup> It was very important to Elizabeth and her family as well; her daughters, in addition to being literate, married men of some education.

This is shown by the way descendants describe *Dr. McLaney* and *Dr. Elrod*. There is still a treasured embroidery sampler owned by a descendant of Elizabeth and signed by her daughter Mary Ann Elrod in her 12th year. Even if Elizabeth could not teach her daughters to read, she ensured they had access to education from an early age.

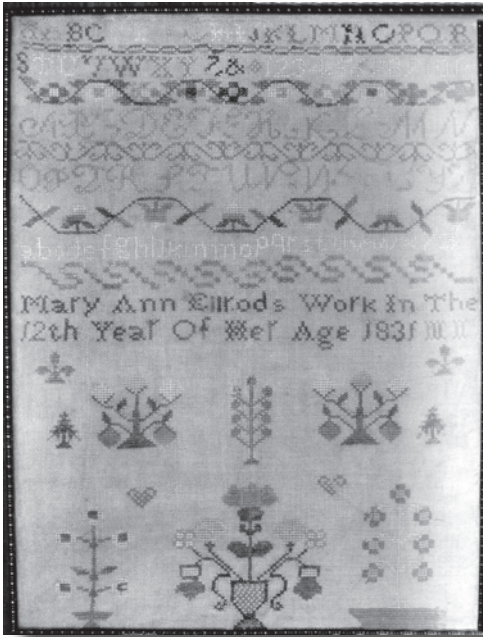
For Elizabeth herself, family and religion would have been the most important influences in her life, but they also helped in some measure to determine her social status. The Quaker influence on her family was also quite important. Elizabeth lived in a very religious society, and one in which women played a more important religious role at the beginning of the nineteenth century than later.<sup>30</sup> "Upper Canadians identified irreligion with immorality."<sup>31</sup> The religious history of Ontario is often reduced to a dichotomy between Methodism, with its American, individualistic, and popular appeal, and Anglicanism, the established Church, associated with the elite and the British settlers. This simplification fails to recognize that early Upper Canada was a haven for many dissenting sects. The only thing all these religions seem to agree on was

<sup>28</sup> Archives of Ontario (AO), RG 61-65, York Region Land Registry. Markham Township Abstract index book, vol. A. Concession 1, lot 31. Microfilm 179631. It is possible to follow the civil life of Elizabeth via the transactions recorded in the land records on her property on Yonge Street. Indentures, wills, and quitclaims were all used to track down her descendants. Because of Elizabeth's will, her daughters had to sign elaborate quitclaims, making it possible to discover their married names and their locations.

<sup>29</sup> Potter-MacKinnon, *While the women*, 111.

<sup>30</sup> Elizabeth Gillan Muir, *Petticoats in the pulpit: the story of early nineteenth-century Methodist women preachers in Upper Canada* (Toronto: United Church Pub. House, 1991). Women preachers were becoming more common at the beginning of the nineteenth century, especially in the more evangelical sects, but were rare after 1850. Quaker women ministers were very common, and many non-Quakers would have come to hear their preaching.

<sup>31</sup> Russell, *Attitudes*, 116.



*Embroidered sampler owned by a descendant of Elizabeth and signed by her daughter Mary Ann Elrod in her 12th year.*

that they despised the Catholic Church. Quaker, Mennonite, Baptist and many other sects dominated the area where Elizabeth first lived—on the Humber River and then on Yonge Street. Indeed, they were more influential there than the established Church of England. Both Mary O'Brien and Isaac Fidler lamented this religious diversity. Elizabeth's older brother, John McLaney, was a lifelong member of the Quaker Meeting in Pelham. It is not known when he became a Quaker, but given that Elizabeth's family first moved to Penfield N.B., a Quaker settlement, after the Revolution, and that the family often lived close to Quaker

settlements, the influence of Quakerism must have continued throughout her life. Although Quakers were not numerous in Upper Canada, they were influential.<sup>32</sup> With their emphasis on education, Quakers generally had a positive impact wherever they lived; many non-Quakers also attended their schools. The effect of Quakerism in the Yonge Street area was felt strongly, as suggested by the numbers of Quakers who were imprisoned during the 1837 rebellion.<sup>33</sup> Quakerism also stressed the spiritual equality of men and women. "Quakerism did not *allow* women to shape their world—it *expected* that they, like men, would do so. As a result, women were at the centre of issues that defined the Society of Friends."<sup>34</sup> Even though Elizabeth does not appear to have ever been a Quaker, she would have grown up under the sect's discipline and influence because of the marriage of her mother to the Quaker, John Dennis, in 1781, when Elizabeth was only one year old. Elizabeth seems to have been a member of the Presbyterian Church on Yonge Street, and a Presbyterian, the Reverend Jenkins of Richmond Hill, married at least two of her sons, but clergymen were so rare in the early period that this might have been more for convenience than

<sup>32</sup> Robynne Rogers Healy, *From Quaker to Upper Canadian: Faith and Community among Yonge Street Friends, 1801-1850* (Montreal: McGill-Queen's University, 2006), 3, writes: "Even at the height of their recorded membership in the 1820s, their numbers did not exceed 2,500. Nonetheless, Quakers in Upper Canada exerted an influence that far surpassed that suggested by their numbers."

<sup>33</sup> *Ibid.* Healy discusses the importance of Quakerism on the Reform movement and the Rebellion both of which changed the nature of Quakerism in Upper Canada.

<sup>34</sup> *Ibid.*, 14-15.

belief. Anglican clergyman Isaac Fidler did not approve of Jenkins and shows his own bias in his description.

Our landlady was one of his [Jenkins'] hearers and informed us that he was a great favourite, because he was a plain man, and had no pride or finery about him, but was just like one of themselves. This standard of judging among the uninformed is as general in one place as in another.<sup>35</sup>

Religion would have played an important part in how Elizabeth perceived herself. It is quite likely that she shared James Richardson's attitudes toward pride: He detested "sham everywhere" and "could not for a moment bear it in religion."<sup>36</sup> This emphasis on truth and distaste for pride probably determined the course of her actions during her life. Even though this article looks at Elizabeth's social status, she herself would probably have not paid heed to it. In addition to the Quaker and Presbyterian influences, Elizabeth had a great admiration for her brother-in-law Lieutenant, and later bishop, James Richardson who converted to Methodism in 1818, after losing an arm in the Battle of Oswego in 1814, and became a missionary in Upper Canada.<sup>37</sup> She would name him executor

of her will and trustee for her daughters.

Before her two marriages, Elizabeth's social status was determined, in large part, by the status of her father and then her stepfather. The little that is known about her father comes from two petitions for land, one by her mother, Martha Dennis, and the other by her brother, John McLaney. In her book about Loyalist women and their petitions, Potter-MacKinnon describes their language as one of abasement, where the female petitioners acknowledge the patriarchal nature of the government, and emphasize their husbands' service:

What is striking about the women's petitions, in light of Loyalist women's contribution to the war, was that the Revolution was portrayed through men's eyes. Rather than discussing themselves, the women cited their husband's ethnic origins, loyalty and service.<sup>38</sup>

In her petition for land, Martha Dennis did not give any information about her own origins; only her husband's service was described. However, unlike the earlier petitions described by Potter-MacKinnon, her language cannot really be described as abasement. If anything, her petition reveals a reasonable person

<sup>35</sup> Fidler, *Observations*, 322.

<sup>36</sup> *Ibid.*

<sup>37</sup> James Richardson. *Dictionary of Canadian Biography*. Vol. X (1871-1880) available online at [www.biographi.ca](http://www.biographi.ca) AO, F 2133. Roaf James Collection 1803-1926. The author of the DCB biography notes that while there is no collection of James Richardson papers, many of his records are included in the Roaf papers at the AO, including the baptisms he performed, and some research into the Dennis family, including a 1875 affidavit he wrote about John Dennis's father's possessions in Philadelphia before the Revolution. There is also a long epitaph for John Dennis. It leaves the impression that Bishop Richardson admired his wife's Dennis relatives. Some of these papers were borrowed and returned by J.R. Robertson when he wrote his *Landmarks of Toronto*. The edited copy by J.R. Robertson is in the Roaf papers, while the original composition by James Richardson is held by a descendant.

<sup>38</sup> Potter-MacKinnon, *While the women*, 149.

who understood what she was entitled to, and who demanded compensation. It is interesting that even though both Martha and John McLaney based their claims on the service of Dr. McLaney, their petitions were granted because of the service of John Dennis.

*The Petition of Martha Dennis*

Humbly sheweth that your petitioner's husband joined His Majesty's Standard in the year 1777. In which year, your petitioner came to him with his children. Soon after which he was lost Surgeon of a Ship of war. Your petitioner therefore prays Your Honor to Grant herself 200 acres and 200 acres for her Eldest Daughter by Doctor McLaney her former husband & your petitioner as in Duty bound Shall Ever pray. Martha Dennis.

Dr. Andrew McLaney, Elizabeth Sanders' father, was a Navy surgeon who was lost at sea during the American Revolution.<sup>39</sup> Very little is known about

him, but he seems to have been a well-respected physician of Sussex County, New Jersey.<sup>40</sup> This area produced quite a few Loyalists during the Revolution, and Dr. McLaney shares many similarities with Dr. John Murray, father of Anne Murray Powell, wife of Chief Justice Powell. They were both examples of eighteenth-century Scotsmen who used their professional skills to advance socially: "a new breed of professional middleclass men."<sup>41</sup> Dr. McLaney acted as a Commissary, a fairly responsible job, for the British Forces in the Town of New Brunswick, New Jersey, during the occupation of Philadelphia, and he evacuated his family to New York City in 1778 along with the British troops.<sup>42</sup> Dr. McLaney was lost at sea around the time of Elizabeth's birth. Martha Brown McLaney, left with John and baby Elizabeth, remarried in 1781 to John Dennis,<sup>43</sup> a Quaker shipwright from

<sup>39</sup> LAC, RG 1 L3. Upper Canada Land Petitions. Volume 154, Bundle D4, Petition 61, microfilm C-1743. Petition of Martha Dennis 1798. Hereinafter listed as LAC, UCLP.

<sup>40</sup> An Andrew McLaney appears as a witness to the will of Robert Howey of Hardwick Township, Sussex County, NJ, in 1773 in Sussex County. It is probably the same man. *Documents relating to the colonial, revolutionary and post-revolutionary history of the State of New Jersey*. Volume 35. (Trenton, NJ: NJHS, 1939), 208. <http://www.archive.org/stream/documentsrelatin35newj#page/208/mode/2up>

<sup>41</sup> Katherine McKenna, *A Life of Propriety: Anne Murray Powell and Her Family, 1755-1849* (Montreal: McGill-Queen's University Press, 1994) 47. <http://site.ebrary.com/lib/oculuyork/Doc?id=10132391&ppg=47>. Even though Anne Murray Powell was older than Elizabeth, Anne Murray's father shares some characteristics with Dr. McLaney. The Edinburgh medical school had an excellent reputation and many Scottish doctors immigrated to the colonies to start their careers or to provide more opportunities for their children. In addition, Anne Murray Powell's life provides a very interesting counter-point to Elizabeth's. They were both concerned about the education of their daughters and tried to protect them and provide for them in time of scandal. In some ways, Elizabeth, with less money, was more successful.

<sup>42</sup> LAC, UCLP of John McLaney 1797. Interestingly, John McLaney received land based on his relationship with John Dennis, and not based on his father's loyalty.

<sup>43</sup> John Dennis. *Dictionary of Canadian Biography*. Volume VI (1821-1835). Also there is much more detailed information about John Dennis's many transactions in the book *Merchant millers of the Humber* by Sidney Fisher. Also refer to UELAC Loyalist Directory online, a major genealogy prepared by Holly Adams that includes numerous descendants as well as transcriptions of primary documents such as wills, petitions, etc.



a formerly prosperous Philadelphia family. Dennis was disowned from the Richland, PA, Quaker Meeting for joining the British army, and it was mentioned that he married Martha against the Quaker Discipline.<sup>44</sup> It is interesting that Elizabeth's father is always described as Dr. McLaney, which might indicate a university degree. As far as Elizabeth's mother is concerned, the only thing that seems to be certain was that Martha Brown McLaney Dennis was NOT a Quaker, and that she was probably literate.<sup>45</sup> If we look at the social status Elizabeth inherited from her parents, it is apparent that her mother's remarriage indicates a slip in social status. An established physician would probably rank as a "Marginal Respectable" on Russell's scale, while a 23-year-old skilled journeyman whose father had lost his estates in Philadelphia is barely an "Independent" on same scale. In fact, before the Revolution, John Dennis's father, Henry Dennis, as a wealthy iron founder, would probably have ranked as a "Respectable."

John Dennis, Elizabeth's stepfather,

played a crucial role in her life. He was born a Quaker in a prosperous family from Philadelphia. He was quite young at the start of the Revolution, but in 1778, at the time he was attained with High Treason by the Supreme Council of Pennsylvania,<sup>46</sup> he was a wheelwright, probably after a long apprenticeship. He worked alongside his father, Henry Dennis, building ships for the British Navy. In addition, John Dennis saw service in the British army in the expedition to St. Lucia in 1777. It is unknown if he knew Martha Brown before the Revolution—the Dennis family had cousins in Sussex County, NJ—but it is more likely that he met the widow McLaney in New York during the Revolution. John and Martha Dennis appeared to have been happily married for over fifty years. His will demonstrates his trust in her judgment as well as his Quaker belief in the equality of men and women: "I give to my Dear Wife During her life all and every thing I die possessed of (the corner house where Mr Bosworth excepted [sic]) to be disposed of as she may think best."<sup>47</sup> Martha

<sup>44</sup> An article in the *Philadelphia Genealogical Magazine* stated that John DENNIS (son of Henry DENNIS and Martha LYNN) was "in 1782 living in New York, having 'married a Woman not of our Society by Assistance of an Hireling Minister,' which he acknowledged in 1786 to the Buckingham Meeting." From a Holly Adams email.

<sup>45</sup> There is some contradictory evidence about Martha Brown McLaney Dennis's literacy. She appeared to have signed her Land Petition in 1797, but did not sign her will in 1837. This could have been because of her age or ailment, or perhaps her husband signed her petition for her. No other papers bearing her signature have been found. Her son John McLaney was literate, but since he was apprenticed as a Wheelwright and a Quaker, he might have learned to read and write during his apprenticeship. Elizabeth was not literate, but the younger Dennises were all literate.

<sup>46</sup> Pennsylvania Supreme Executive Council. *Minutes of the Supreme Executive Council of Pennsylvania: from its Organization to the Termination of the Revolution*. Volume 11 (Harrisburg, PA: Theo. Fenn, 1852), 513-18. Both Henry and John Dennis appeared on early list of "Torys" from Philadelphia.

<sup>47</sup> AO, RG 22-155. York County Probate Court Estate Files, Estate of John Dennis 1832, Film MS 638 reel 45. Transcription by Holly Adams in UELAC directory entry on John Dennis.

Dennis' will mentions her affection for her husband twice: "To my Son Joseph Dennis I give his *dear* Father's bed, bedding and bedstead" and "from the rents of the Estate my *dear* husband John Dennis, left at my disposal and Control, for life."<sup>48</sup>

The Dennises appear to have had a model companionate marriage. Their son-in-law, Bishop James Richardson, had a lot of admiration for his in-laws, and he researched the Dennis family. Some of this information was included in the private papers of his grandson. John Dennis was an extremely enterprising and qualified man. He built ships, but he also did much more. From his various petitions, it appears that he had been recruited by Lieutenant-General Simcoe to come and build ships in Upper Canada. At that time he was promised land at the mouth of the Humber River for a shipyard. By the time John came to Upper Canada in 1796, he had already tried to establish himself in New Brunswick; he was one of the forty-nine Quakers who associated to settle in Beaver Harbour, N.B., during the New York City evacuation. Their agreement was distinguished by the statement: "No slave masters admitted." The family left Beaver Harbour after a devastating fire. John Dennis also tried to settle and restart his shipbuilding in Alexandria, VA, but the Americans were less than welcoming to former Loyalists.

In addition, he stated that he could not live with the institution of slavery, which was pervasive in Virginia.<sup>49</sup> In addition to Pennfield and Alexandria, the growing Dennis family lived in New York City, Pennsylvania, and Nova Scotia. They had a daughter born in Pennsylvania and a son buried in the Quaker cemetery in New York City. Elizabeth's first few years were always on the move and this dislocation might account for her illiteracy. Other factors may have played a part, but education was important to both the McLaney and the Dennis families. In fact, it is striking that Elizabeth was the sibling who was unable to write her name. Her gender and birth order probably played a role in that as well. In many households, the eldest daughter would be a helper with the younger children. When John Dennis wrote his 1796 petition for land, he mentioned that he had come to Upper Canada with a wife and four children.<sup>50</sup> From this, it is evident that he considered Elizabeth as his daughter since at that time John and Martha had only three biological children: Hannah, Joseph and Rebecca. Elizabeth was often mistaken for his daughter and her patent for her land in Thornhill was issued in the name of Elizabeth Dennis. Interestingly, this count excludes John McLaney, Elizabeth's brother, who was already an adult and able to petition for himself at the time.

<sup>48</sup> AO, RG 22-155. York County Probate Court Estate Files, Estate of Martha Dennis 1837, Film MS 638 Reel 45. Transcription by Holly Adams.

<sup>49</sup> This statement was found in the papers of James Richardson, who wrote a lengthy account of the Dennis family. Roaf papers.

<sup>50</sup> LAC, UCLP. John Dennis 1796.

After he established himself in Upper Canada, John Dennis accumulated land in York County, as well as in other parts of the province. He built boats and was engaged in many other businesses. Even though he pleaded poverty in his petitions, he left land worth a lot of money to his descendants, including land located at Bay and King in what is now the heart of the Toronto financial district. John Dennis died of cholera in 1832, and his wife described him as a gentleman in her 1837 will. Even though John Dennis was not a supporter of the Family Compact,<sup>51</sup> and he seems to have made political enemies, he managed to rise and become a substantial land owner. His social standing was quite high at the time of his death.<sup>52</sup>

Another way to track the social mobility of John Dennis in Upper Canada is the marriage of his children. Elizabeth and Hannah married carpenters, but ten years later, Rebecca and Joseph married into a higher social class. Elizabeth married Matthias Sanders, a ship carpenter, in 1797, and her half sister Hannah, married Thomas Johnston, a carpenter, in 1803. Even though both men had acquired quite a bit of property, they would have been described as skilled artisans, and since both worked with their hands, they would only have been "Independent" on the Russell scale. In deeds, both are described as Yeoman, never Esquire

or Gentleman. In 1813, Rebecca Dennis married Lieutenant James Richardson of the Provincial Navy, while Joseph Dennis married Mary Stoughton, whose brother James Stoughton, son of a silversmith, described himself as a Gentleman in his 1817 petition for land.<sup>53</sup> The higher initial social standing of his younger children's spouses demonstrates the rise in status attained by John Dennis in the intervening years. Both Joseph and Rebecca's marriages were announced in the *Kingston Gazette*, 6 January 1816 (p. 3) which was usually preoccupied only with the elite: "Dennis, Joseph. On Thursday evening, the 4<sup>th</sup> January, Mr. Joseph Dennis to Miss Mary Stoughton." Elizabeth was quite close to her family, especially her half-sisters Hannah Johnson and Rebecca Richardson.<sup>54</sup> Even in the later records of her daughters, it can be shown that the children of Hannah and Rebecca were still close to the children of Elizabeth and played an important part in her economic survival and her social rehabilitation. Their good opinion and help would have been more important than society in general, and she seems to have retained that. Her sister, Hannah Johnston, was her witness at her 1816 marriage, while her daughters married relatives of her sister Rebecca's husband.

John Dennis was very important in Elizabeth's life and probably played a role

<sup>51</sup> Edith Firth. *The Town of York*. Vol. 2, 227. John Dennis voted for Baldwin and against Sheriff Jarvis in the 1830 election. He seems to have associated with the Reform party.

<sup>52</sup> DCB "John Dennis", family papers, his petitions, etc.

<sup>53</sup> LAC, UCLP. James Stoughton 1817.

<sup>54</sup> She was probably close to her brother John McLaney as well. In his will, he added a remainder in case all of his children died without issue that his considerable estate was to go to Elizabeth's children.

in her choice of first husband. Matthias Sanders and John Dennis were both ship carpenters, and they share the same type of personality: exuberant and enterprising.

Marriage was the most important decision a woman made in Upper Canada. It determined everything about her life. Her husband determined her social status as well as her standard of living. During her marriage with Matthias, Elizabeth disappeared; she was simply the wife of Matthias Sanders. As far as the records are concerned, she did not have a separate existence. Matthias managed her property. She did not enter into contracts, even though she probably played a major role in the running of the farm and business. The only information we have about her is the birth of six children spaced at about two-year intervals. So who was Matthias Sanders, the ship carpenter who married Elizabeth in 1797?

Matthias Sanders's father joined the Royal Standard in New York before 1777. Unfortunately, Matthias himself did not reveal much more about his father in his petitions, but family genealogists have identified his parents as Frederick Sanders of Baden Baden, Germany, and Susan Tiers of Switzerland. Matthias's parents were probably married in Long Island before the Revolution.<sup>55</sup> Matthias probably met Elizabeth McLaney in New York City before 1796. Even before his mar-

riage to Elizabeth, Matthias asked John Dennis to present a petition on his behalf to the Executive Council of Upper Canada for land in the Town of York.. Matthias and Elizabeth were married in New York City, before his petition of November 1797, in which he mentioned that he had brought a wife to York and that he did not have a lot on which to settle with her. When he came to the town of York in 1797, Matthias's status could be described as "Quasi-dependant" on the Russell scale. He was a skilled artisan, but at that time he owned no land or much of anything. His trade was in great demand, and he used his skill to acquire property. His first lot, located in York Township, would be his first step upward on the social ladder. The lot on Yonge Street that had been granted to Elizabeth in 1798 in response to her mother Martha's petition was a choice lot on the Don River. This is where, starting in 1803, Matthias Sanders would build a house overlooking the Don River, the house in which Elizabeth raised her family and lived out her life. Renamed Cricklewood by later owners and modified somewhat, this house still stands today, a mute tribute to Matthias's skill as a carpenter.

Between 1797 and 1813, Matthias Sanders was very busy building ships for the government and private citizens. Some of the lots he acquired were as payment for his various dealings. He even had

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<sup>55</sup> For information about the parents of Matthias Sanders, I am indebted to Joni Sanders whose husband is a direct descendant of Matthias and Elizabeth via their youngest son Joseph Matthias. "I have to go back through my father-in-law's findings as he has them getting married in 1797 in New York (Bull's Head Inn on Bowery St.). Not sure where he got that information but there are still many boxes to look through." Email from Joni Sanders 10 February 2012.



*The lot on Yonge Street that had been granted to Elizabeth in 1798 was where Matthias Sanders would build a house overlooking the Don River. It still stands today.*

a scheme to drain the Cranberry Marsh in the township of Wainfleet in Niagara District.<sup>56</sup> Matthias was literate and his petitions, albeit a bit long-winded, show flashes of humour. For example, he asked permission to build a boat at the mouth of the Humber in 1809: “Your petitioner having it in contemplation to build a vessel, and having a peculiar attachment to the Humber prays your Excellency to grant him the indulgence of building it at that place.”<sup>57</sup>

Matthias was industrious and managed to accumulate much property and

wealth for his family. Obviously his connection to John Dennis was very important to his success and his father-in-law appears in most of his petitions. During the same period, Elizabeth gave birth to six children. Since her husband was often away in Kingston or the Humber to build ships, it is quite probable that she did or supervised most of the work of the farm on Yonge Street where she resided. She was obviously a very capable woman who could be counted on to keep the home fires burning. In this way, she was probably no different than other pioneer

<sup>56</sup> LAC, UCLP, Matthias Sanders 1800.

<sup>57</sup> LAC, RG 5 A1 Civil Secretary's Correspondence, Upper Canada Sundries, Volume 10, pages 4235-36, microfilm C-3519.



women whose work expanded much beyond the women's sphere described in much later literature.<sup>58</sup>

The preparation for the War of 1812 kept the ship builders very busy in York. Matthias Sanders was responsible for at least two such ships: the *Prince Regent* and the *Sir Isaac Brock*. But he, like all citizens of Upper Canada, was also a private in the militia. In April 1813, the American General Dearborn attacked the Town of York. As the British Commander, General Sheaffe, retreated with his army and some militia, a long fuse was lit to prevent the store of powder and ammunition from falling into American hands. Unfortunately for Matthias, his legs were crushed in the explosion of the powder magazine.<sup>59</sup> Sanders lingered for about a month and during that time wrote his last will and testament. This will reflects some of the inequalities encountered by women in property rights. The law of primogeniture was in force in Upper Canada at that time, and if Matthias had died intestate, his eldest son, John Sanders, would have inherited all of Matthias's property, including his mother's land. In addition, unless they had been left to her in a will, she would not have automatically inherited the household goods or

even her own bed and bedding. More importantly, she did not automatically inherit the property she had received in her own name as a daughter of a Loyalist. However, Matthias' will gave Elizabeth the use of the house and household during her natural life. Perhaps more importantly, he did not include a clause "while she remains my widow,"<sup>60</sup> which was very common in wills of that period. These clauses were not generally designed to punish widows, but to protect the property for the next generation.

First I desire that the place I now reside on Young Street may remain in possession of my loving wife to enable her to support our Children during her natural [life] and after her decease to go to my son John upon his Paying one Fourth of the Value of the farm [...] and as to personal Property I leave it at the disposal of my wife to support and educate my Children [...] and for the execution of my Will I appoint My Wife Elizabeth and Father in law John Dennis and my Brother in law Joseph Dennis<sup>61</sup>

This will proves Matthias' affection and esteem for his wife.<sup>62</sup> But it was a double-edged sword. While it left Elizabeth in control of her life, it also made her an attractive target for an unscrupulous fortune hunter. Matthias also tried to provide equally for his sons and daugh-

<sup>58</sup> Rusty Bitterman, "Women and the Escheat Movement: The Politics of Everyday Life on Prince Edward Island," In *Rethinking Canada: The Promise of Women's History*, edited by Adele Perry and Mona Gleason. 5th ed. (Don Mills, Ont.: Oxford University Press, 2006).

<sup>59</sup> Robert Malcomson, *Capital in Flames: The American Attack on York, 1813* (Montreal: R. Brass Studio, 2008).

<sup>60</sup> Bradbury, *Wife*. This is what Bradbury calls "Patriarchy beyond the grave, and it is very common in nineteenth-century and earlier wills.

<sup>61</sup> AO, RG22-305: York County Surrogate Court Estate Files, Estate of Matthias Sanders 1813, Film MS 638, Reel 99. Transcription by Holly Adams

<sup>62</sup> AO, Estate of Matthias Sanders.

ters, suggesting that he did not favour primogeniture, and instead tried to leave an equal amount to each of his children, male and female. The only thing that made his will a bit difficult was that he owned five lots but had six children.

Matthias and Elizabeth's social status was rising after 1797. He was a prosperous landowner, but since he was still working in a manual trade, his status can best be described as "Quasi-Respectable." Had he lived a few more years, he would probably, like his father-in-law, John Dennis, have been able to retire and be described as a Gentleman. The limitation in his status can be known from the fact that he was a private in the 1st York Militia, rather than a commissioned officer which would have demonstrated his arrival at the higher echelon of society. Elizabeth Sanders rose in social status with her husband in the first decade of the nineteenth century. At his death, however, her status changed. As a widow, she had a civil life, and could and would enter in contracts and make decisions about the farm and the raising of the children; she was their guardian and could administer their estates. She probably already did most of this while Matthias was alive and away, and his will probably recognized her competence to manage the farm and land. In addition, with the help and support of her stepfather, John Dennis, Elizabeth Sanders petitioned the government of Upper Canada as a widow

of a private in the militia. She received a pension for herself and their six children. That petition is quite interesting and it provides us with a list of children with the date of their births.

Elizabeth Saunders, of the Township of Markham in the said District Widow, make Oath and saith that she was the Lawful wife of the late Mathias Saunders of the same place, a Private in the 1st Regiment of York Militia who died on the 25th day of May 1813 of a Wound received (whilst performing his duty) by the explosion of the Powder Magazine at the Garrison of York in the attack of the enemy on the said Garrison on the Twenty seventh day of April 1813 and that the said Mathias left the six following children born in wedlock...<sup>63</sup>

The pensions depended on Elizabeth's ability to prove her lawful marriage to Matthias. In fact, when looking at the few widows who actually received pensions following the war of 1812, it becomes obvious that only well-connected women with perseverance could satisfy the requirements of the pension board. Elizabeth Sanders was such a woman. Other women who lost their husbands during the War of 1812 either could not prove their marriages or obtain the papers from the commanding officers that proved that their husbands' deaths were linked to their militia service. The list of widows who actually received military pensions is quite short.<sup>64</sup> Without pensions, many widows with small children remarried during that period. For most it was an economic ne-

<sup>63</sup> LAC, RG 5 AI Civil Secretary's Correspondence, Upper Canada Sundries, Volume 19, pages 7833-40, microfilm C-4543.

<sup>64</sup> Janice Nickerson. *York's Sacrifice* (Toronto: Dundurn, 2012) for information on all widows and orphans from York who received a pension after the War of 1812.

cessity.<sup>65</sup> But it was not so for Elizabeth. So why did she remarry? Her first marriage with Matthias had been a happy and equal partnership, so she would not have distrusted the institution of marriage, and perhaps she was lonely. Whatever the reasons for her second marriage, it proved to be a mistake.

In June 1815, a young physician from the United States came to Yonge Street to start a medical practice.<sup>66</sup> According to the list of aliens living in Markham, John T. Elrod had served in General Harrison's army, although no record of his service with Harrison, the future president of the United States, can be found. A John Elrod was a sergeant in the Ohio Militia, but he was from Jefferson County, making it impossible to say that the two were one and the same.<sup>67</sup> John Toledo Elrod, Elizabeth's second husband, was probably born in Mason, Kentucky, and his family had moved to Adams County, Ohio. A family

of that name can be found in the records of Mason County. The unusual name Toledo might be related to the city of the same name in Ohio, but so far no explanation has been found. It does not appear that Elrod was licensed by the newly formed medical board created by the March 1815 legislation that regulated physicians and surgeons in Upper Canada, but he seems to have been accepted as such at the time.<sup>68</sup> He was certainly educated and could sign his name, and that was more than many others could do. It did not take long for Elrod to press his suit since Dr. John Strachan, the future Bishop of Toronto, married him and Elizabeth Sanders at St. James on 8 February 1816.<sup>69</sup> All seemed to go well for the couple, at least for the next few years. In 1818, Elrod petitioned the government to be able to take the Oath of Allegiance and become a British citizen. His father in law, John Dennis, supported his petition in glowing terms: "Do

<sup>65</sup> Lebsack. *The Free women of Petersburg*, discusses many aspects of marriage and widowhood such as wills for women in Virginia contemporary with Elizabeth Sanders. One of her observations: the richer the widow, the less likely she was to remarry. Lebsack also discusses the use of separate estates in Virginia to protect a married woman's property from her husband and his creditors.

<sup>66</sup> LAC RG 5 AI Civil Secretary's Correspondence, Upper Canada Sundries, Volume 25, pages 10975-10977, microfilm C-4545. LAC, RG 5 AI Civil Secretary's Correspondence, Upper Canada Sundries, Volume 24, pages 10850-10853, microfilm C-4545. Dr. Elrod appears on two lists of aliens living on Yonge Street, so his date of arrival can be dated quite accurately. He was described on the list in October 1815 as a "Physition & Surgeon" and in November 1815 as a "practitionner in Physics," formerly of Gen. Harrison's Army.

<sup>67</sup> For research on John Elrod in the Ohio Militia, I am indebted to Eric Johnson, past president of the Society of the War of 1812 in the State of Ohio and author of *American Prisoners of War Held At Quebec During the War of 1812* (Heritage Books, 2012).

<sup>68</sup> William Canniff, *The Medical Profession in Upper Canada, 1783-1850*, edited by Hannah Institute for the History of Medicine. reprint ed. ([Toronto]: Clark, Irwin for the Hannah Institute for the History of Medicine, 1980).

<sup>69</sup> Anglican Diocese of Toronto Archives. St. James Cathedral parish register for 1816. This does not imply that either Elrod or Elizabeth were Anglican. At this date, there were very few ministers in Upper Canada who could legally marry people. Methodist ministers could not legally marry couples until 1831. According to some Elrod family genealogies, Dr. John Elrod was the son of the Baptist minister Thomas Elrod, who left Kentucky for Ohio when the Baptist church split over the slavery issue.

believe him to be a man of Good Moral Principles, a man of veracity and who will support his Oath through a principle of godly Fear..."<sup>70</sup> But things did not go well for very long. As early as July 1816, Elrod was charged in the Court of Quarter Session for an assault on a Quaker neighbour: "John Elrod, for an assault and battery on William Hollingshead, sentenced to pay a fine of twenty five shillings with costs. Fine paid to Deputy sherriff."<sup>71</sup> This public loss of temper did not bode well for the marriage itself. A daughter, Catherine Elizabeth Elrod, was born to the couple in 1817, but by 1819 the marriage had deteriorated dramatically. Elrod assaulted his family, and Elizabeth used one of the few tools available to women needing protection in Upper Canada; she asked for a Surety of the Peace in the Court of Quarter Session:

Mrs Elizabeth Elrod appeared in Court and prayed Surety of the Peace. Ordered that John T. Elrod do enter into recognizance to keep the peace toward his wife Elizabeth and his family, and to remain in Custody of the Sherrieff until such surety is given.<sup>72</sup>

A Surety of the Peace was an early form of

restraining order. While it was a common way to settle disputes between neighbours, women who had been assaulted by their husbands also used it. Only a few women availed themselves of this device, at least in the Home District.<sup>73</sup> Rowland Burr and Dr. Hial Wilcox, fellow Masonic Lodge members, acted as sureties for Elrod. His surety bond was set at £100, with £50 each for his two sureties, a fairly large amount for the time period, but commensurate with his net worth. If he failed to keep the peace, he forfeited his bond. In October 1819, Elrod appeared at the Quarter Session and was discharged from his bond and it is probably not a coincidence that Elizabeth's last daughter, Mary Ann Elrod, was born exactly nine months later.<sup>74</sup>

John Elrod does not appear to have owned any land or property beyond that of his wife's, and his name did not appear on any transactions. He was apparently content to simply spend Elizabeth's money. He did appear a few times in the records of the Court of Quarter Sessions, and as a member of the Yonge Street Masonic Lodge.<sup>75</sup> Elrod put a second mort-

<sup>70</sup> LAC, Upper Canada Sundries, Volume 39, pages 18303-18305, microfilm C-4601. Transcription by Holly Adams. One of the interesting things about John Dennis's affidavit in favour of Elrod is that he mentions that he has known Elrod since February 1816, so he probably only met him on Elizabeth's wedding day.

<sup>71</sup> Toronto Public Library. Baldwin room. General Court of Quarter Session for the Home District. Volume 2, October 1816.

<sup>72</sup> Court of Quarter Session. Vol. 3, 476 York, 13 July 1819

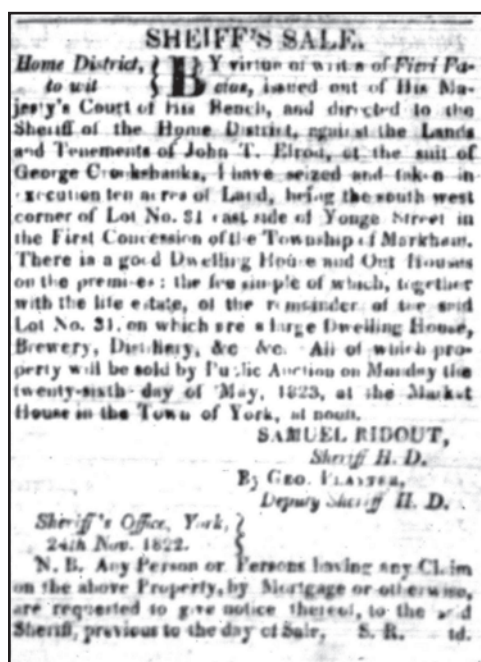
<sup>73</sup> Only a few of these bonds appear in the records of the Court of Quarter Sessions for the Home District. Another wife who availed herself of this device was Rachel Wilmot, wife of Isaiah Wilmot, also from a propertied family. It would be useful to know how often women used these bonds in the various lower courts of the other districts.

<sup>74</sup> According to her recorded age on her tombstone in Brighton, Mary Ann Elrod Marsh was born 29 July 1820.

<sup>75</sup> John T. Elrod was a member of the Freemason Lodge, St. John's No 16, which met on Yonge Street,

gage on the Yonge Street property in 1821 without his wife's signature, which was illegal. Wives could not sell their own property, but they had to bar their dower on real estate transactions done by their husband.<sup>76</sup> This might indicate that John Elrod was running out of chattels to sell.

On 17 April 1823 a notice appeared in the *Upper Canada Gazette*. It was the advertisement of the sale at public auction of Elizabeth's land on Yonge to pay for Elrod's debts.<sup>77</sup> Elizabeth, however, did not accept this meekly. She had probably already tried to get rid of Elrod before this, but this was now a fight for her family's survival. She hired William Warren Baldwin to conduct various lawsuits on her behalf and to delay the seizure of her land. She even sued Assistant Sheriff Playter for unlawful seizure.<sup>78</sup> In addition, she had Elrod charged with bigamy at the Court of Assizes. Her first



suits failed since she did not have proof of Elrod's first marriage, and John Dennis went to Ohio to obtain such proof.

north of Hogg's Hollow. They also sometimes met in Thornhill. Members were yeomen of York Township. James Fitzgibbons was a frequent visitor. John Ross Robertson, *History of freemasonry in Canada* (Toronto: Hunter, Rose, 1899), vol. 2, 796. John Elrod had been initiated in Ohio and was expelled by the Grand Lodge of Mississippi in 1830. Elrod seem to have used his Masonic connections to insinuate himself into new towns, but eventually even that good will was spent. On 29 March 1829, he was expelled by the Freemasons of Vicksburg, Lodge No. 10 Franklin Lodge. He appealed his expulsion, but it was maintained. *Proceedings of the Grand Lodge of Mississippi*, Wednesday, 17 February 1830. For more information about the life of John T. Elrod, see Holly Adams' blog <http://familytreesurgeon.blogspot.ca/2011/11/little-bit-more-about-john-toledo-elrod.html>

<sup>76</sup> The dower was supposed to protect the portion of widows and, in most cases, husbands could not dispose of real property such as land without the wife barring her dower. The dower protection did not help women who were still married. For a fuller discussion of dower, see Chambers, *Married Women and Property Law*.

<sup>77</sup> The first ad appeared in the *Upper Canada Gazette* announcing the Sheriff's sale for part of lot 31 in Markham for a debt of John T. Elrod. The ad describes the house, a large Brewery, a Distillery, etc. George Playter was the assistant sheriff of Home District. AO, *Upper Canada Gazette*, 17 April 1823. Microfilm N031.

<sup>78</sup> Civil suits are very difficult to find, but luckily some of Elizabeth's suits were reported in Taylor's *Reports on Court of King's Bench*. The useful court cases are Elizabeth Saunders v. George Playter, Trinity Term, 4 Geo IV, 1823. As reported in *Reports of cases decided in the Court of King's Bench, in Upper Canada*; Saunders v. Playter Michaelmas, 4 Geo. IV, 1823; and Rex v. Elrod in Court of King's Bench, for bigamy. The King v. Elrod [1824] O.J. No. 12. All three reported cases are available on Lexis/Nexis.



In this context, Elrod fled Upper Canada and did not appear at the assizes to fight the charges. He was convicted *in absentia* based on the documents Dennis brought back. In December 1823 Elizabeth Elrod petitioned the government to have her name changed back to Elizabeth Saunders on the pension list and her stepfather explained in his supporting affidavits:

John DENNIS of the Town of York maketh Oath and saith that he has seen and had in his possession certain Documents procured in the United States of America stating that John ELROD late of Markham in said District was Lawfully married some time about ten Years ago in the State of Ohio in the said United States to one Lydia COLLIER, being several years prior to his Marriage with Elizabeth SAUNDERS of the said Township of Markham, Widow of the late Mathias SAUNDERS, Private late 1st Regiment of York Militia, which took place in the Year 1816 – and that the said Documents are filed in the Court of King’s Bench of this Province so the Deponent has been informed, which also shew that said Lydia COLLIER was living at the time of the marriage of the said John with the said Elizabeth. (signed) Jno DENNIS<sup>79</sup>

Having the marriage declared null and void meant that neither Elrod nor, more importantly, his creditors could have access to Elizabeth’s property. In 1823, there

was no other way for Elizabeth to get rid of Elrod and his debts. Divorce was impossible,<sup>80</sup> and there was no mechanism in Upper Canada for a married woman to get a legal separation from her husband and to protect her property from his depredations.<sup>81</sup> Her husband could legally leave her destitute. Finding out he was bigamous was probably a godsend. It was not good enough that he was gone; the marriage had to be found void otherwise the husband, or his creditors, could return and claim more property.

So even though Isaac Fidler presents Elizabeth as a victim of John Elrod, it seems that she was quite active in getting rid of her second husband. She used the Court of Quarter Sessions, the Court of Assizes and also petitions to the Executive Council to achieve the annulment of her disastrous marriage. Although Elizabeth avoided complete ruination of her estate, she lost some of her respectability in the process. Applying to the court to dissolve her marriage protected her property, but also transgressed the social standards of the time. New social standards of womanhood were becoming the norm and it took a strong independent woman to defy them.<sup>82</sup> Not only was Elizabeth admitting the failure of her marriage but she

<sup>79</sup> LAC, Upper Canada Sundries, Volume 63, 33588-96, microfilm C-4611 Transcription by Holly Adams

<sup>80</sup> Chambers, *Married Women and Property Law*, 17. “In Britain, until 1857, a divorce as we understand it, with rights to remarriage, could only be obtained by a private act of Parliament, an expensive and cumbersome process.” The first Parliamentary divorce in Upper Canada was in 1839, and it caused a huge scandal. There were only five parliamentary divorces granted between 1839 and Confederation. Divorce was available in other jurisdiction, but it still caused a great scandal. In any case, this would not have been useful for Elizabeth, since spending too much money was not grounds for divorce.

<sup>81</sup> Chambers, *Married Women and Property Law*.

<sup>82</sup> Errington, *Wives and Mothers*, 23.

was rendering her two young daughters illegitimate, not a step to be taken lightly. Her social status, already diminished by the depredations of her wastrel husband, was destroyed. All she had left were her property and her family's support. Without property, she would have become completely dependant on the charity of her family, and without the help of her family, she would not have been able to rebuild her life.

Elizabeth continued receiving a government pension until at least 1828. This amount, which might have been paltry in the days of her rich widowhood, was probably much welcomed in her reduced circumstances. Although there were no further legal proceedings through which to trace her life, some sense of her status can be gleaned from contemporary writings. In 1828, Mary Gapper joined her brothers on Yonge Street and her diary is mostly filled with English acquaintances of her class such as Benjamin Thorne and the Parsons who were next-door neighbours of Elizabeth on Yonge Street. She even talks about Squire Miles J.P., whom she describes as "quite beyond the pale." But she never mentions a near neighbour named Elizabeth Sanders. This silence is quite telling, since it demonstrates her lack of status. The only allusion to Elizabeth is in a simple entry in Mary's diary:

April 25 [1829] I must remark on a smart brick house which commands the creek on which the church stands. New as this country is, it already affords instances of the

failure of human schemes and the decay of worldly prosperity. Of the seven windows which were intended to give light to this smart house, six were stopped with wood.<sup>83</sup>

Based on the location and description, Mary Gapper is probably alluding to Elizabeth Sanders and her downward mobility. Later, the Reverend Isaac Fidler, the Anglican missionary of Thornhill, would be a tenant in this house, which he describes as fairly drafty and in need of repair, but there is no mention of boarded up windows, so possibly Elizabeth's circumstances improved between 1829 and 1832. In addition, Fidler mentions that Elizabeth has a pony and cows and sheep, but he makes it clear that she milks her own cows:

Almost every week the landlady mounted her pony, and rode into the forests in quest of her live stock. Sometimes she continued seeking them for two or three days together, before she found them. It occasionally happened, in consequence, that we passed a day without cream to our tea. This wandering of her cows and sheep arose from neglect in travelers or neighbours. These, in passing through her groves, omitted frequently to replace the rails of her fences, and her cattle, &c., found their way through the opening.<sup>84</sup>

From this evidence, it appears that Elizabeth's social standing in the neighborhood was quite low. But she was not considered immoral, otherwise Fidler and his family would not have considered boarding in her house. She might have been down but was not out.

But what about her daughters, Mary

<sup>83</sup> O'Brien, *Journals*, 46.

<sup>84</sup> Fidler, *Observations*, 345. The act of not closing someone's fence in a rural society is more than just carelessness, it is an act of disrespect and even malice.

Ann and Catherine Elizabeth, who were now technically illegitimate? “Illegitimate children had no rights of inheritance [...] they were regarded as ‘without kin’ and their property could devolve upon the state.”<sup>85</sup> Fidler did not write about Elizabeth’s daughters. Recent Dennis and Sanders genealogies make no mention of her two daughters with Elrod. A manuscript genealogy prepared by a great nephew<sup>86</sup> mentions that Elizabeth married a Dr. Elrod, and names the daughters’ husbands, but without too much information. The legal and social position of Elizabeth’s last two daughters was problematic and this is demonstrated in the way they are mentioned both in Elizabeth’s own will and that of her mother, Martha. They are basically nameless. They would not have had any rights to an inheritance from either parent, unless they were named in a will. But leaving them a lot of money or property was also problematic, since there was always the danger that their father could come back and claim their guardianship and possibly any inheritance passed on to them. Both Mary Ann and Catherine Elizabeth married very young, shortly after their mother’s demise. In 1830, Elizabeth Sanders, widow and relict of Matthias Saunders, hired the attorney George Ridout to draw up a formal will, to devise her lot on Yonge Street, which was still in her possession, to her daughters. With the

exception of thirty acres which were still mortgaged thanks to Elrod, and which she left to her eldest son, John Sanders, Elizabeth devised her property to two trustees, The Rev’d James Richardson, husband of her sister Rebecca, and William Poyntz Patrick, a respected layman in the Methodist church. The trust was designed to manage the property for the benefit of her four daughters:

..during the life of my dear daughter Martha, the wife of Patrick Briant...and for such use, interests and purposes as my said daughter Martha by any writing or writings under her hand and seal in the presence of two credible witnesses from time to time (notwithstanding the coverture) shall limit and appoint, and not into her own or her husband’s hands nor to be subject to any control management or disposal by her husband; the same being designed by me to her separate use and benefit and to be at her own disposal notwithstanding coverture and from and after her decease, then in trust – for such persons or persons and for such Estate and Estates as my said daughter Martha any deed or writing under her hand or seal certified by two or more creditable witnesses shall (notwithstanding the coverture) limit or appoint and for want of such limitation or appointment then in trust for such child or children as she shall leave at her death, and their heirs and assignees for ever...<sup>87</sup>

Elizabeth’s will repeats the same trust and formula for her daughters “Mary Ann, commonly called Mary Ann Elrod,” her dear daughter “Elizabeth com-

<sup>85</sup> Lori Chambers, “Illegitimate children and the Children of Unmarried Parent Act,” In *Ontario since Confederation: A Reader*, 235.

<sup>86</sup> AO, F 2133. Roaf James Collection 1803-1926

<sup>87</sup> AO, RG 22-305. York County Surrogate Court Estate Files. Estate of Elizabeth Saunders 1830. MS 638 reel 99.

monly called Elizabeth Elrod,” as well as her “dear daughter Margaret.” The will runs on eight pages and must have been costly, but it was probably worth it to Elizabeth who obviously loved her daughters and wanted to prevent them from being robbed of their inheritance by their husbands. In 1830, there was no other way for her to protect the property of her daughters than by giving it into the keeping of two men of her choosing. Not until the *Married Women’s Property Act* of 1859 would a mechanism exist in Upper Canada/Ontario to protect a married woman’s property. The only way her daughters could keep their property was by giving it away to men and trusting they would act in good faith. Elizabeth was obviously knowledgeable about the law of coverture. The will also demonstrates her real love for her daughters. Very few of these settlements are known to have existed, only twenty-one cases can be found in Chancery records between 1837 and 1905,<sup>88</sup> so it is interesting that Elizabeth, an illiterate and relatively poor widow, used this device to protect her daughters, and not just the illegitimate ones, who otherwise would have no right to inherit from their mother, but also her daughters with Matthias who would have received an inheritance under their father’s will.

Few wills of women exist for this period, but Elizabeth’s is unique by the lengths to which she went to protect her

daughters. By comparison, her widowed mother, Martha Dennis, had a more conventional<sup>89</sup> and unequal view of society. She left land to her son, John McLaney, and to her grandson, money, while her daughters and granddaughters were left spoons and chairs.

To my said [struck through] late daughter Elizabeth Sanders’ children, Elizabeth and Mary Ann, I give the Franklin Street half a dozen of chairs (and all my other personal property not otherwise disposed of by this my will) [all struck through and initialed in margin: A.G.]<sup>90</sup>

The most interesting thing about Martha’s will is that Elizabeth’s daughters, Catherine Elizabeth and Mary Ann, were the only persons named in the will without last names, indicative of their problematic social status. They did not even have names until they married and Elizabeth’s unusual last will and testament was a direct result of her previous legal and marital problems.

Under the terms by which Elizabeth might have judged herself—the survival and success of her children—her life was a success and she skillfully used the law to protect the interests of her children, all eight of whom lived to adulthood, married, and left issue. They all seem to have lived quite productive lives and to have kept close links with their family. Moreover, despite Elizabeth’s reduced fortunes, her daughters married well, an

<sup>88</sup> Chambers, *Married Women and Property Law*, 58.

<sup>89</sup> Marjorie Griffin Cohen, *Women’s Work, Markets, and Economic Development in Nineteenth-Century Ontario* (Toronto: University of Toronto Press, 1988), 56. “The majority of wills either did not mention daughters or specified a legacy which was a small sum of money, some personal property, a portion of the family furniture when the mother died, or a cow, pig, or sheep.”

<sup>90</sup> AO, Estate of Martha Dennis.

indication that Elizabeth was not a complete outcast. Three of her four sons—John probably named in honor of John Dennis, Andrew McLaney (named for her father) and Henry, possibly named for Henry Dennis—were farmers, yeomen and solid citizens. Her youngest son, Joseph Matthias, was the one most similar in character to his father. He was an entrepreneur who acquired lands and invested in schemes. Her four daughters married into families related to Bishop Richardson. Her eldest daughter, Martha, married Patrick Bryant of Brighton, who was also from a military family. Margaret Susan Sanders married James Wheeler Benedict, son of the Reverend Richard Hutson Benedict, in 1830. They moved to Chicago where he died in 1849. Catherine Elizabeth Elrod married Dr. William Lyon, a chemist, son of James Lyon, Jr., a member of the House of Assembly. The couple moved to Cleveland where they and their family died tragically during the 1854 cholera epidemic.<sup>91</sup> Mary Ann Elrod married George Singleton Marsh and settled in Brighton, Northumberland County, where she died in 1864. It is noteworthy that all of Elizabeth's daughters made "good" marriages, or at least marriages of perceived high social standing, but they also chose to live away from Markham and Toronto. In the case of Mary Ann Elrod, a descendant stated that there was some secrecy about

her origin, and she knew there was some family secret about Mary Ann Elrod, but it was not discussed.<sup>92</sup>

By looking at the life of Elizabeth Sanders, it is possible to explore many aspects of women's history in Upper Canada. Her marital and legal problems open many more avenues of research than if she had simply raised her family in peace, like her sisters. This study shows how much gender affected life in Upper Canada. But the disabilities imposed by gender were mitigated, to some degree, by family support and respectability. Elizabeth's case also graphically reveals the importance of marriage in women's lives. The laws of Upper Canada made her subservient to her husband, so her choice of a mate was of paramount importance. Her marriage to Matthias Sanders was happy, and it led to a rise in her social standing and fortune. Even though social standing was probably not something Elizabeth cared about, financial security and respectability for their children were important to both Matthias and Elizabeth. Her marriage to the seemingly superior Dr. Elrod led to a decline in her social standing, making Elizabeth's life an example of the fluid nature of social mobility in Upper Canada.

Finally this study shows that even illiterate women could and did use the law to their advantage. Many ordinary women like Elizabeth can be found dealing with

<sup>91</sup> Holly Adams wrote a moving blog about the life and death of Dr. Lyon and his family in Cleveland, based on our shared research in Elizabeth's descendants: A family tragedy, Cleveland Ohio, summer of 1854. <http://familytreesurgeon.blogspot.com/2011/05/family-tragedy-cleveland-ohio-summer-of.html>

<sup>92</sup> Email dated 3 October 2011 from Lynda Rocha, a descendant of Mary Ann Elrod. Lynda also sent me a photograph of a sampler done by her ancestress Mary Ann Elrod in the twelfth year of her life.



a gendered legal system. What is obvious is that the wider context of their lives, such as familial support and social standing, could either enhance or hinder their access to the legal system. Court records, a wonderful source of information, tend

to distort the lives of women by showing them as either victims or criminals. But when they are properly combined with other records, they can truly enrich our understanding of women's lives giving a voice to the voiceless.

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