

A COMPREHENSIVE PROCEDURAL MECHANISM FOR THE POOR: RECONCEPTUALIZING THE RIGHT TO IN FORMA PAUPERIS IN EARLY MODERN ENGLAND

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ABSTRACT—In early modern England, litigants could petition for in forma pauperis status to seek free legal services, including representation. Scholars have often invoked this history to bolster the claim for a reinforced in forma pauperis right today. This Note explores the origins of the right to in forma pauperis status from a different angle. At the core of this Note is an examination of ninety-two primary-source in forma pauperis petitions and court documents, filed in sixteenth- and seventeenth-century English courts of equity, namely Chancery, the Court of Requests, Star Chamber, and Exchequer. Rather than the mythical, rarely used, and limited right that scholars have portrayed it to be, these documents reveal the accessibility, comprehensiveness, and uniformity of in forma pauperis procedure in English courts of equity. By digging into the minutiae of these petitions, the wide-ranging identities of the litigants and their claims, the extent of free services the court was willing to provide, and the standards judges used to grant and deny these requests come to light in a way that secondhand sources and later cases cannot reveal. This Note argues that understanding legal procedure should begin with a bottom-up approach from the court documents themselves. In doing so, it offers a method of reconceptualizing the origins of the in forma pauperis right and a claim for an improved and consistent procedure today.

AUTHOR—J.D. Candidate, Northwestern Pritzker School of Law, 2020; B.A., Stanford University, 2013. I am profoundly grateful to Professor Emily Kadens, whose guidance shepherded this Note from its inception to research trips at the National Archives in Kew, England, to its final iteration. This Note would not have been possible without her brilliance, her support, and her patience in teaching me to read sixteenth-century legal documents. I am unendingly thankful for the work of the entire *Northwestern University Law Review*, and particularly on this piece to Usama Ibrahim, Joseph Blass, Abigail Bachrach, Shea Flanagan, Laynie Barringer, Greg Devaney, Bill Lawrence, Emily Jones, Amy Le, Emily Ross, Adam Sopko, and Andrew

Borrasso. Thank you to Liza, Howard, Meg, and Angie for their unfailing support and for brainstorming more creative titles for this piece, such as *Down But Not Out in Elizabethan England*. All errors undoubtedly remain my own.

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INTRODUCTION

The 1590s were not kind to Elizabeth Shipper.¹ As a young woman, she had enjoyed a comfortable life in her marriage to a Gloucester Cathedral clergyman.² Following his death, she inherited household goods worth more than £50³ and leases for two properties, one house in London and another in Herefordshire, worth at least £300 collectively.⁴ Shipper adapted well to life

¹ See Petition of Elizabeth Shipper, TNA, REQ 3/32 (exact date unknown, c. 1586–1595). Throughout this Note, citations to the National Archives (London, England) are abbreviated “TNA” for brevity and clarity.

² See TIM STRETTON, *WOMEN WAGING LAW IN ELIZABETHAN ENGLAND* 118 & n.54 (1998) (citing multiple court documents, including the bill of complaint in *Elizabeth Shipper v. Thomas Good & William Taylor*, TNA, REQ 2/39/60 (c. 1595–1601)).

³ As of April 2020, £50 in 1595 would be the equivalent of approximately \$13,472. Eric W. Nye, *Pounds Sterling to Dollars: Historical Conversion of Currency*, <https://www.uwo.edu/numimage/currency.htm> [https://perma.cc/8TX5-PK5C].

⁴ Petition of Elizabeth Shipper, TNA, REQ 3/32 (c. 1586–1595); STRETTON, *supra* note 2, at 118. Three hundred pounds is equivalent to approximately \$80,834 in April 2020. Nye, *supra* note 3.

as a widow, supporting herself and her children by leasing her properties, selling some of her land, borrowing money, and at one point, running an inn.⁵ Despite her relative independence, her husband's brother-in-law, Thomas Good, remained in charge of managing her inherited assets.⁶ According to Shipper, her life was permanently upended one night when Good evicted her from her home, took her belongings, and reassigned the leases to himself.⁷ Destitute, Shipper claimed she was forced to live on the streets and was placed in debtors' prison, where Good refused to come to her aid.⁸ Nor did Shipper's luck improve from there. She suffered a series of unfortunate financial transactions with London artisans, the details of which she deemed too "teadious ever to be resited" to the court.⁹

Without the money needed to file suits against Good and the artisans, Shipper was seemingly left remediless. Her last recourse was to petition Dr. Herbert, then Master of the Court of Requests, to "graunte that she may be Admitted in forma pauperis to sue the said parties in hir Majesties Court of Requestes."¹⁰ Receiving in forma pauperis status would waive all of Shipper's court costs and entitle her to free, court-appointed legal representation.¹¹

With this preliminary petition in hand, Shipper's fortunes reversed. Master Herbert admitted her in forma pauperis and assigned both a counsellor¹² and a well-known attorney to her case.¹³ In the two-year legal battle that followed, Shipper's attorneys examined witnesses and presented

⁵ STRETTON, *supra* note 2, at 118; *see also* Petition of Elizabeth Shipper, TNA, REQ 3/32 (c. 1586–1595) (noting that Elizabeth Shipper had several children).

⁶ *See* Petition of Elizabeth Shipper, TNA, REQ 3/32 (c. 1586–1595); STRETTON, *supra* note 2, at 202, 207. Upon marriage, a woman's property, including her own belongings, became the property of her husband. Widows were able to regain most of their property upon their husband's death with the exception of their personal property. However, they were typically allowed to recover their paraphernalia (clothing, jewelry, and crockery). If a conflict arose, a widow could sue other legatees to recover her personal goods, but only "such paraphernalia deemed reasonable to her station." Lynne A. Greenberg, *Introductory Note*, in 1 LEGAL TREATISES: 1 ESSENTIAL WORKS FOR THE STUDY OF EARLY MODERN WOMEN: PART 1, at xxv, xxx (Betty S. Travitsky & Anne Lake Prescott eds., 2005).

⁷ STRETTON, *supra* note 2, at 207–08, 208 n.115 (citing Bill of Complaint, Elizabeth Shipper v. Thomas Good & William Taylor, TNA, REQ 2/39/60 (c. 1595–1601) (alleging Good's reassignment of the lease and subsequent sale of her home)).

⁸ *Id.*

⁹ Petition of Elizabeth Shipper, TNA, REQ 3/32 (c. 1586–1595). The only details provided on these transactions are that they involved three men, including a ropemaker and a tailor. *Id.*

¹⁰ *Id.*

¹¹ *See infra* note 97 and corresponding text.

¹² For the distinction between counsellors and attorneys, *see infra* Section I.B.

¹³ Petition of Elizabeth Shipper, TNA, REQ 3/32 (c. 1586–1595). Mr. Maddocks was assigned to be her attorney. *See infra* notes 135–136 and corresponding text.

her case in court.¹⁴ Ultimately, the court sided with Shipper. The Master of Requests ordered Good to pay £63 pounds owed to Shipper for all the “goodes and chattells” he had dispossessed from her and enjoined Good’s countersuit.¹⁵ Without the *in forma pauperis* mechanism in place, justice likely would have remained out of reach for Shipper, as well as for countless other poor individuals in early modern England.¹⁶

Scholars have recognized England as the early European leader in providing secular aid to the poor.¹⁷ Indeed, English initiatives to provide relief to the poor bled into legal procedure. The codified right to sue *in forma pauperis*, or “in the character of a pauper,” dates back to a 1495 statute of Henry VII, commonly referred to as 11 Hen. 7 c. 12.¹⁸ This statute provided that poor plaintiffs in common law courts, including the principal common law courts of King’s Bench and Common Pleas,¹⁹ were entitled to free legal

¹⁴ See Order of the Court of Requests, TNA, REQ 1/19 (Dec. 8, 1597); Order of the Court of Requests, TNA, REQ 1/18 (Feb. 11, 1595).

¹⁵ Order of the Court of Requests, TNA, REQ 1/19 (Dec. 8, 1597); Order of the Court of Requests, TNA, REQ 1/19/148 (Feb. 16, 1597).

¹⁶ The Early Modern English period is typically identified as the sixteenth to eighteenth centuries. Terttu Nevalainen, *Early Modern English*, OXFORD RESEARCH ENCYCLOPEDIA, LINGUISTICS (Aug. 2017), <https://oxfordre.com/linguistics/view/10.1093/acrefore/9780199384655.001.0001/acrefore-9780199384655-e-264> [https://perma.cc/5PTM-97S7].

¹⁷ See generally G.R. Elton, *An Early Tudor Poor Law*, 6 ECON. HIST. REV. 55 (1953) (discussing the administrative mechanisms that allowed England to lead in this arena, namely the Poor Laws of 1597 and 1601, which stipulated that the physically capable poor be provided work and that the “impotent poor” be provided charity).

¹⁸ An Act to Admit Such Persons as Are Poor to Sue In Forma Pauperis 1495, 11 Hen. 7 c. 12. In relevant part, the statute reads:

[E]very poor person or persons which have and hereafter shall have cause of action or actions against any person or persons within the realm shall have, by the discretion of the Chancellor of this realm, for the time being writ or writs original and writs of subpoena according to the nature of their causes, therefore nothing paying to your Highness for the seals of the same, nor to any person for the making of the same writ and writs to be hereafter sued. And that the said Chancellor for the same time being shall assign such of the Clerks which shall do and use the making and writing of the same writs to write the same ready to be sealed, and also learned Counsel and attorneys for the same, without any reward taking therefore: And after the said writ or writs be returned, if it be afore the King in his Bench, the Justices there shall assign to the same poor person or persons Council learned by their discretions which shall give their Councils nothing taking for the same, and in likewise the same Justices shall appoint attorney and attorneys for the same poor person and persons and all other officers requisite and necessary to be had for the speed of the said suits to be had and made which shall do their duties without any rewards for their Council’s help

Id. (spelling modernized). This statute only bound common law courts, not courts in equity. Robert S. Catz & Thad M. Guyer, *Federal In Forma Pauperis Litigation: In Search of Judicial Standards*, 31 RUTGERS L. REV. 655, 656 (1978).

¹⁹ J.H. BAKER, AN INTRODUCTION TO ENGLISH LEGAL HISTORY 18 (4th ed. 2002).

services.²⁰ Under the statute, if the head of the court deemed a person poor enough to qualify for legal aid, he was entitled to the services of a clerk to compose the writ—the formal writing that initiated a suit—and attorneys to litigate the suit.²¹ Notably, the statute stipulated that attorneys and clerks would perform these services pro bono—“without any reward” for their aid.²²

Today, the ability to sue in forma pauperis in an American federal court bears, at best, a passing resemblance to its English antecedent.²³ The current iteration of the in forma pauperis right is less comprehensive than the early modern English right: it generally only waives a litigant’s filing fee and sometimes excludes discovery and process costs.²⁴ Only in certain district courts does the right extend to court-appointed counsel.²⁵

Legal scholars have argued that the early modern English right to in forma pauperis supports the need for a more robust contemporary right. By invoking English history to make an originalist argument for in forma pauperis, they assert that the English origins and colonial adoption of the

²⁰ See Catz & Guyer, *supra* note 18, at 656.

²¹ See *supra* statutory text accompanying note 18.

²² *Id.*

²³ American colonists imported the right to sue in forma pauperis to several states, including Maryland and North Carolina, drawing upon the 1495 statute to grant court-appointed counsel to litigants. See Scott F. Llewellyn & Brian Hawkins, *Taking the English Right to Counsel Seriously in American “Civil Gideon” Litigation*, 45 U. MICH. J.L. REFORM 635, 649 (2012). A century later, Congress passed the first in forma pauperis statute in 1892, which it has since amended six times. Wayne A. Kalkwarf, *Petitions to Proceed In Forma Pauperis: The Effect of In Re McDonald and Neitzke v. Williams*, 24 CREIGHTON L. REV. 803, 803 (1991).

²⁴ In forma pauperis procedure is governed by 28 U.S.C. § 1915 and Federal Rule of Civil Procedure 83. Both the statute and federal rule, however, grant generous discretion to judges to determine how poor is poor enough to receive the benefits of the status. 28 U.S.C. § 1915 dictates in forma pauperis procedure for prisoners, enabling a court to waive fees if the prisoner submits an affidavit of all his assets, the cause of action, and his belief that he is entitled to redress. The statute leaves the ability to grant the status at the discretion of the presiding judge, in stating that after filing the affidavit, “the court *may* direct payment by the United States of the expenses.” 28 U.S.C. § 1915(c) (2012) (emphasis added). Federal Rule of Civil Procedure 83(a)(1) grants district courts the ability to “adopt and amend rules governing its practice,” thereby opening the door for a range of in forma pauperis procedures across district courts. FED. R. CIV. P. 83(a)(1).

²⁵ For an in-depth discussion on the deficits of contemporary in forma pauperis procedure, see Andrew Hammond, *Pleading Poverty in Federal Court*, 128 YALE L.J. 1478 (2019). In a survey of each of the ninety-four federal district courts’ processes of filing for in forma pauperis status, Professor Andrew Hammond found that procedure varies widely between district courts, even within the same state. Without stricter guidelines at the national level and a more coherent standard, Professor Hammond argues that in forma pauperis procedure fails to live up to the promise of equal justice for poor litigants. Professor Hammond notes that the Northern District of Illinois and the District of New Jersey have procedures to appoint counsel in civil actions, though there are no federal or local rules mandating such appointments. *Id.* at 1494–95, 1495 n.69.

right strengthen its place in American legal procedure today.²⁶ Professors Scott Llewellyn and Brian Hawkins argue that “historical detail” on in forma pauperis procedure is needed to persuade contemporary courts to adopt, or at least consider applying, early modern English law.²⁷

However, some commentators have described the in forma pauperis right in early modern England as rarely used²⁸ and limited to particular groups of people.²⁹ Others argued that early modern English courts remained inaccessible to certain classes.³⁰ Additionally, explanations of the procedure for the historical in forma pauperis petitions differ widely.³¹ The aforementioned articles rely primarily on treatises and common law cases from the late seventeenth, eighteenth, and early nineteenth centuries to provide this historical detail. Examining primary-source in forma pauperis petitions and court documents from an earlier time period, however, reveals a different story. Namely, these documents indicate that the right to sue in forma pauperis in Elizabethan and Jacobean England was much more accessible, comprehensive, and uniform than scholars have previously understood it to be.

This Note adds to the scholarship on in forma pauperis procedure through an examination of ninety-two court documents with in forma pauperis litigants in Elizabethan and Jacobean courts of equity from 1549 to

²⁶ See, e.g., Llewellyn & Hawkins, *supra* note 23, at 656 (attempting to reorient the right to sue in forma pauperis as “historically established” rather than novel, supporting the argument that it may be incorporated into modern laws of some states); see also Catz & Guyer, *supra* note 18, at 656 (claiming that the right to pro bono counsel in civil cases for indigent plaintiffs began with the Magna Carta and was codified in 11 Hen. 7 c. 12); John MacArthur Maguire, *Poverty and Civil Litigation*, 36 HARV. L. REV. 361, 363 (1923) (arguing that examining this history is a useful exercise simply to learn from early adopters’ successes and failures with in forma pauperis procedure).

²⁷ Llewellyn & Hawkins, *supra* note 23, at 636–37.

²⁸ D.A. Knox, *The Court of Requests in the Reign of Edward VI 1547–1553*, at 321 (Jan. 1974) (unpublished Ph.D. dissertation, Cambridge University) (on file with journal) (“Even in Elizabethan records, these [in forma pauperis] petitions are rare.”).

²⁹ Llewellyn & Hawkins, *supra* note 23, at 646 (claiming that “[n]ot every poor person” could sue in forma pauperis, as married women, executors, and administrators were excluded from the benefits of the right).

³⁰ C.W. BROOKS, *PETTYFOGGERS AND VIPERS OF THE COMMONWEALTH: THE ‘LOWER BRANCH’ OF THE LEGAL PROFESSION IN EARLY MODERN ENGLAND* 107 (1986) (“[F]or a wage labourer who earned a shilling or less for each day’s work, sixteenth- and seventeenth-century royal justice was probably largely out of reach.”).

³¹ Compare Llewellyn & Hawkins, *supra* note 23, at 644–45 (describing in forma pauperis procedure as a process consisting of a petition and an affidavit), with Knox, *supra* note 28, at 320–21 (portraying it as a process that encompassed a petition of the party’s overarching grievance, which sometimes included a supporting affidavit from a neighbor, and an endorsement of the petition by the overseeing judge).

1643.³² These primary-source records reveal how litigants and judges invoked and implemented in forma pauperis procedure on the ground, thus shedding light on its nuances and its failings. In particular, examining the equity courts indicates the flexibility judges had to interpret and apply in forma pauperis procedure to the poor litigants in their courtrooms.³³ On the whole, these petitions illustrate that judges and legal practitioners in early modern England developed a procedural mechanism for poor litigants that was widely accessible, comprehensive in the services provided, and relatively uniform in its procedure and enforcement.

Part I of this Note sets out the legal landscape poor litigants confronted in late sixteenth- and early seventeenth-century England. It provides an introduction to the equity courts that received these petitions, the attorneys who litigated them, the cost and process of filing suit in early modern England, and the relatively straightforward procedure of early in forma pauperis petitions. Part II moves to the court records themselves and draws out common patterns, including the categories of people who received in forma pauperis status, the role of the pauper's community in filing the petitions, and how the courts dealt with fraudulent claims of poverty. Part II then animates these overarching patterns through a case study of a petitioner seeking in forma pauperis status in multiple equity courts in the early seventeenth century. This case offers a remarkable window into judges' early interpretations of the in forma pauperis standard and one litigant's manipulation of it. Finally, Part III explores the key implications of this survey, namely how it both adds to and disrupts scholars' preexisting understanding of the right, and suggests lessons for the modern American form of the right.

³² These petitions are housed at the National Archive in London and, by all apparent accounts, have never been explored outside a historical context.

³³ Notably, equity courts were not obligated to follow 11 Hen. 7 c. 12, unlike common law courts, as legislation did not strictly bind courts of equity. W.H. Bryson, *Introduction to 1 CASES CONCERNING EQUITY AND THE COURTS OF EQUITY 1550–1660*, at xiii, xlix (W.H. Bryson ed., 2001) (explaining that equity judges are informed by statute and precedent but will depart from the common law “where there is inequity afoot”). As a result, the fact that judges in equity courts freely chose to implement in forma pauperis procedure renders it all the more curious and rich for exploration. Additionally, the equity court proceedings offer a deeper study of in forma pauperis procedure because the records of common law courts in this era, the King's Bench and the Court of Common Pleas, were largely destroyed in the nineteenth century. For a discussion of the distinction between common law and equity courts in early modern England, see *infra* Section I.A.

I. THE LEGAL LANDSCAPE OF EARLY MODERN ENGLAND

To understand how in forma pauperis procedure took shape in early modern England, it is necessary to orient it within the legal landscape of its time. This Part introduces the courts of equity that received in forma pauperis petitions, then turns to the actors responsible for pushing these petitions through the courts—the barristers, attorneys, clerks, and solicitors who worked on behalf of poor litigants. Finally, it examines the legal process and associated costs in equity courts and the procedure for litigants proceeding in forma pauperis.

A. *The Courts of Equity*

Common law developed as a conservative and methodical legal system between the twelfth and sixteenth centuries in England.³⁴ Litigation in the common law courts, namely the King's Bench and the Court of Common Pleas, began with the litigant's purchase of a writ—an official document that laid out the litigant's cause of action.³⁵ The creation of new writs or changes to existing causes of actions through the writ system were exceptionally rare.³⁶ Early modern English common law operated by applying a static set of rules to a fact pattern, and by the mid-thirteenth century, litigants who could not find a corresponding cause of action to their facts found themselves without a remedy.³⁷ Writs also involved extensive procedural limitations.³⁸ The writ system was designed to limit access to the common law courts except in extraordinary circumstances.³⁹

As a result, equity courts emerged to meet the rising demand for a more flexible form of justice, beginning with the creation of the Court of

³⁴ See BAKER, *supra* note 19, at 12, 81–82.

³⁵ *Id.* at 53–54. Ironically, litigants purchased writs to pursue cases in common law courts in Chancery, a court of equity. *Id.*

³⁶ See *id.* at 55.

³⁷ *Id.* at 53, 55–56. In that sense, early common law lawyers held a view of the law inverse to the contemporary American model—for every remedy, there was a right. *Id.* Professor Baker asserts that from the thirteenth to nineteenth centuries “procedural formalities dominated common-law thinking. As far as the courts were concerned, rights were only significant, and remedies were only available, to the extent that appropriate procedures existed to give them form.” *Id.* The inverse notion, that courts have a duty to locate a remedy where they identify the existence of a right, is arguably the cornerstone of the American common law tradition, canonized in *Marbury v. Madison*. 5 U.S. (1 Cranch) 137, 163 (1803).

³⁸ See R.C. VAN CAENEGEM, *THE BIRTH OF THE ENGLISH COMMON LAW* 29 (2d ed. 1988). These limitations included a statute of limitations for bringing suit, standards for evidence, and directions for delivering summons as well as for enforcing judgments. *Id.*

³⁹ BAKER, *supra* note 19, at 54.

Chancery.⁴⁰ Equity courts, referred to as “courts of conscience,” implemented innovative procedures and standards of fairness, in contrast to the common law courts’ calcified rules.⁴¹ Though equity courts could not offer awards of damages nor grant jurisdiction over in rem proceedings, they could provide creative remedies in the form of specific performance and injunctions.⁴²

1. *Chancery*

The Court of Chancery developed because individuals unable to find a corresponding writ to their grievance began petitioning the King for justice directly.⁴³ Over the course of the fourteenth century, Chancery’s jurisdiction settled primarily on trusts, contracts, and property.⁴⁴ More so than its jurisdiction, Chancery appealed to litigants for the flexibility of its procedure; unlike common law courts, Chancery offered litigants the ability to conduct discovery, file written pleadings, and conduct a trial without a jury.⁴⁵ Chancery also offered a speedier process for litigants than in the common law.⁴⁶

2. *Requests*

Commonly referred to as the “poor man’s court,” indigent litigants may have favored the Court of Requests because the process for relief was faster.⁴⁷ Under Elizabeth, the court was governed by two “Masters of Requests” responsible for conducting hearings and managing the influx of petitions for relief directed to the monarch.⁴⁸ The Masters were able to broker compromises between parties and suggest “non-legal methods of

⁴⁰ David W. Raack, *A History of Injunctions in England Before 1700*, 61 *IND. L.J.* 539, 552–53 (1985).

⁴¹ Michael David Hole, *Your Majesty’s Poor Subject: The Crown and the Poor in Tudor and Jacobean England, 1485–1625*, at 113–15 (2004) (unpublished Ph.D. dissertation, University of California, Irvine) (on file with journal); *see also* BAKER, *supra* note 19, at 106 (noting that the “[C]hancellor’s justice was seen as something superior to the less flexible justice of the two benches,” referring to King’s Bench and the Court of Common Pleas).

⁴² STRETTON, *supra* note 2, at 82; *see also* Raack, *supra* note 40, at 555. Several of these courts grew out of the King’s Council, which was initially a group of advisors to the King. For a detailed explanation on the judicial functions of the King’s Council, *see* R. Malcolm Hogg, *King’s Council and Court Coram Rege, 1261–1263*, 58 *TJDSCHRIFT VOOR RECHTSGESCHIEDENIS* 389, 389 (1990).

⁴³ *See* BAKER, *supra* note 19, at 98–99.

⁴⁴ *Id.* at 104–05.

⁴⁵ *See* JOHN H. LANGBEIN ET AL., *HISTORY OF THE COMMON LAW: THE DEVELOPMENT OF ANGLO-AMERICAN LEGAL INSTITUTIONS* 268–69 (2009).

⁴⁶ BAKER, *supra* note 19, at 103–04.

⁴⁷ Knox, *supra* note 28, at 331, 339.

⁴⁸ STRETTON, *supra* note 2, at 71.

settlement,” rather than merely dole out final judgments.⁴⁹ Requests became somewhat of a stronghold for impoverished plaintiffs seeking justice in equity, with approximately 10% of its cases filed in *forma pauperis*.⁵⁰

3. *Star Chamber*

Like the Court of Requests, the Star Chamber originated from the King’s Privy Council and at its outset possessed a jurisdictional menu virtually identical to that of Chancery, with a slight focus on criminal misdemeanors.⁵¹ However, by the Elizabethan era, the Star Chamber dealt with criminal matters more in theory than in practice, as most disputes before the Star Chamber involved property,⁵² and many civil disputes were between members of the upper social strata.⁵³ But litigants still sought in *forma pauperis* status in this court, particularly when their cause involved a criminal matter.⁵⁴

4. *Exchequer*

The Court of Exchequer originated as a forum to prosecute litigants who owed debts to the monarch.⁵⁵ Until the middle of the seventeenth century, technically only debtors to the Crown could access the equity side of Exchequer, though lawyers often fictionalized claims of royal debt to obtain jurisdiction in an equity court.⁵⁶

⁴⁹ *Id.* at 90.

⁵⁰ See Hole, *supra* note 41, at 10. Professor Hole based his estimate on a sample size of 570 Court of Requests case files. *Id.* at 10 n.6. Not all litigants appearing before the Court of Requests were poor. More than half of the litigants in Requests were artisans, working in positions such as grocers, mercers, merchants, and tailors. See STRETTON, *supra* note 2, at 95. An additional 20% of litigants belonged to the gentry. *Id.* at 93. Thus, despite its nickname, Requests was not necessarily a court only for the destitute.

⁵¹ See BAKER, *supra* note 19, at 118. Litigants came to both Chancery and Star Chamber when they were looking to pursue an equitable, rather than a common law, remedy. The jurist Edward Coke defined the jurisdiction of equity courts as “frauds and deceits for which there was no remedy at common law, breaches of trust or confidence, and accidents.” STRETTON, *supra* note 2, at 75.

⁵² Thomas G. Barnes, *Star Chamber Litigants and Their Counsel, 1596–1641*, in LEGAL RECORDS AND THE HISTORIAN: PAPERS PRESENTED TO THE CAMBRIDGE LEGAL HISTORY CONFERENCE 7, 11 (J.H. Baker ed., 1978). By Professor Barnes’s estimation, approximately 80% of Star Chamber suits involved property. *Id.*

⁵³ Michael Stuckey, *A Consideration of the Emergence and Exercise of Judicial Authority in the Star Chamber*, 19 MONASH U. L. REV. 117, 124 (1993).

⁵⁴ This is evidenced in the survey of court records, as four bills of complaint and one set of affidavits indicate that a litigant filed for and was admitted in *forma pauperis* in Star Chamber. See *infra* Appendix entries 22, 23, 81, 82, and 92.

⁵⁵ W.H. BRYSON, THE EQUITY SIDE OF THE EXCHEQUER: ITS JURISDICTION, ADMINISTRATION, PROCEDURES AND RECORDS 4, 9 (D.E.C. Yale ed., 1975).

⁵⁶ Henry Horwitz, *Chancery’s ‘Younger Sister’: The Court of Exchequer and Its Equity Jurisdiction, 1649–1841*, 72 HIST. RES. 160, 161 (1999).

With the emergence of these four courts of equity, litigants could survey their options for where to bring suit. The flexible nature of these courts enabled the development of innovative remedies and procedures, in place of the common law's predetermined standards.

B. The Legal Players: Barristers, Attorneys, Solicitors, and Clerks

Lawyers in early modern England worked within a highly atomized and hierarchal structure, both in the larger legal field and within individual courts. As a result, poor litigants interacted with a variety of legal practitioners in pursuing their causes of action.

To launch the legal process in Chancery, a plaintiff would first need to make contact with a barrister, also referred to as a counsellor, who would draw up the bill of complaint.⁵⁷ Barristers were at the top of the legal hierarchy and were typically only called to appear in equity courts when points of law were in contention.⁵⁸ Unlike other legal actors, barristers were not able to sue for fees nor solicit causes of action among clients.⁵⁹

Below barristers fell attorneys, who were tasked with handling the procedural aspects of a suit, including preparing written pleadings and appearing in court to argue on behalf of a litigant.⁶⁰ Attorneys worked in one of two capacities, with some attached to a particular court and others serving as independent counsel.⁶¹ The Court of Requests and the Star Chamber, for example, each had three primary staff attorneys⁶² who handled procedure and certified that claims met the court's requirements, effectively acting as jurisdictional gatekeepers.⁶³ Independent counsel, usually common law lawyers, represented litigants, prepared pleadings, and made oral arguments.⁶⁴

As the popularity of the equity courts grew under Elizabeth's reign, litigants outside London found it increasingly challenging to secure attorneys

⁵⁷ BROOKS, *supra* note 30, at 103.

⁵⁸ *Id.* at 19, 103; David L. Shapiro, *The Enigma of the Lawyer's Duty to Serve*, 55 N.Y.U. L. REV. 735, 746 (1980).

⁵⁹ *See* BAKER, *supra* note 19, at 164.

⁶⁰ Tim Stretton, *Introduction to MARITAL LITIGATION IN THE COURT OF REQUESTS: 1542–1642*, at 13 (Tim Stretton ed., 2008) [hereinafter *MARITAL LITIGATION*]. If needed, these attorneys could seek the assistance of counsel in composing pleadings for their clients. BROOKS, *supra* note 30, at 19.

⁶¹ *See* Stretton, *Introduction to MARITAL LITIGATION*, *supra* note 60, at 13.

⁶² BROOKS, *supra* note 30, at 25.

⁶³ Stretton, *Introduction to MARITAL LITIGATION*, *supra* note 60, at 13.

⁶⁴ *Id.*

in these courts to pursue their claims.⁶⁵ To meet this need, a new legal position developed: the solicitor. Solicitors bridged the gap between the London courts and the rural grievants, serving as “brokers between the pettyfoggers of the law [the attorneys] and the common people.”⁶⁶ Traveling to the countryside to meet with potential plaintiffs, solicitors opened up the insular world of the London equity courts to a more geographically and economically diverse populace.⁶⁷

But it was those at the bottom of the legal hierarchy, the clerks and under-clerks, who were likely the most pivotal figures for poor litigants, given that they performed the bulk of legal administrative work. The clerks in equity courts composed the writs, wrote out pleadings, interrogatories, and other legal documents, and charged a set fee for each document produced or service provided.⁶⁸ Additionally, the clerks’ work often coincided and overlapped with that of the attorneys. In Chancery, the six clerks and their under-clerks essentially served as attorneys for plaintiffs and defendants.⁶⁹ They took on both the procedural aspects of the work and presented on behalf of the parties in court.⁷⁰ Exchequer similarly employed clerks who took on the work of attorneys.⁷¹ A litigant looking to pursue his or her cause in Chancery or Exchequer therefore employed a different route than in the other equity courts. Instead of contacting a solicitor or attorney, he approached an under-clerk who would advise him before working the case up to a hearing.⁷² In these two courts, it is likely that clerks were tasked with composing in forma pauperis petitions for poor litigants.

⁶⁵ BROOKS, *supra* note 30, at 25–26.

⁶⁶ *Id.* at 26 & n.64 (alteration in original) (quoting W. Harrison, *The Description of England, in* 1 HOLINSHED’S CHRONICLES OF ENGLAND, SCOTLAND, AND IRELAND 304–05 (1807)). Pettifoggers were originally defined as those who oversaw small-time questionable businesses. *Pettifogger*, MERRIAM-WEBSTER ONLINE, <https://www.merriam-webster.com/dictionary/pettifogger#note-1> [<https://perma.cc/3LA7-KMU8>]. In early modern England, the term applied to attorneys responsible for arguing lower stakes cases. *Id.*

⁶⁷ *See* BROOKS, *supra* note 30, at 26.

⁶⁸ *Id.* at 13–17.

⁶⁹ *Id.* at 24. Clerks effectively replaced the attorneys in Chancery to keep the lawsuits, and the corresponding costs they brought in, distributed only among themselves. *See id.*

⁷⁰ *Id.*

⁷¹ *Id.* at 288 n.56.

⁷² *Id.* at 24.

C. The Process and Costs of Filing Suit in Equity and the In Forma Pauperis Procedure

Given the segmented nature of the legal field in early modern England and the fact that litigants had to enlist and pay several legal professionals to participate in the legal system, filing a lawsuit remained costly. Moreover, litigation in equity courts was more expensive than in the common law courts as trials proceeded via written pleadings, rather than solely through oral argument.⁷³ The in forma pauperis procedure provided an alternative to these costs for those who managed to draw its benefit.

Lawsuits followed a series of procedural steps in courts of equity, with pleadings going back and forth between the parties.⁷⁴ Each step imposed an additional cost on the litigant. In Chancery, for example, the total base cost of pursuing a case was £4 (or approximately \$1401 today),⁷⁵ the sum of a plethora of fees for pleadings, copying documents, summons, joinder, discovery, collection of evidence, and the involvement of the various actors discussed above.⁷⁶

⁷³ *Id.* at 102–04.

⁷⁴ See W.B.J. Allsebrook, *The Court of Requests in the Reign of Elizabeth 85* (1936) (unpublished M.A. thesis, University College London) (on file with journal). These pleadings included the plaintiff's bill of complaint, the defendant's answer, the plaintiff's replication, and the defendant's rejoinder. *Id.*

⁷⁵ Nye, *supra* note 3. Though this sum may not seem prohibitively expensive today, in 1590 the purchasing power of £4 was worth the equivalent of two cows or eighty days of skilled labor. *Currency Converter: 1270–2017*, NAT'L ARCHIVES, <http://www.nationalarchives.gov.uk/currency-converter/#currency-result> [https://perma.cc/MX8H-V8JP] [hereinafter *Currency Converter*].

⁷⁶ In Chancery, plaintiffs began the process by paying a barrister ten shillings to compose the bill of complaint that laid out the charges against the defendant. BROOKS, *supra* note 30, at 103. Today, ten shillings would be the equivalent of £73. See *Currency Converter*, *supra* note 75; Ian Webster, *2017 Pounds in 2020—UK Inflation Calculator*, ALIOTH FIN. (Apr. 11, 2020), <https://in2013dollars.com/uk/inflation/2017> [https://perma.cc/ZQ6T-59H9]. The bill would then need to be copied, for an additional ten shillings, and delivered to the defendant to summon him to court. BROOKS, *supra* note 30, at 103. An additional cost of eighteen shillings and two pence would be imposed if the defendant resisted summons because the court would need to appoint a commission to ensure his appearance, by force if necessary. *Id.* Once in court, if the case was not immediately dismissed, the Chancellor would appoint commissioners to collect witness depositions and evidence in the litigant's town or neighborhood for a sum of seven shillings, ten pence. *Id.* at 103–04. On top of the administrative costs, a plaintiff might have needed to secure and pay for a solicitor to act as his go-between, particularly if he lived outside London. *Id.* at 26, 104. If a legal point came into contention, which was not uncommon in Chancery, the litigant would seek out a barrister to draw up additional pleadings or represent him in court for a minimum fee of ten shillings. *Id.* at 104.

Procedure in the other equity courts resembled that of Chancery, beginning with the written pleadings and moving to the hearing, where the judge could order evidence to be collected and depositions taken. STRETTON, *supra* note 2, at 79–81. Despite few account books from other equity courts remaining, the surviving accounts of a Court of Requests lawyer, found in the National Archives, provide some insight into the typical costs of a suit in this court. Typically, an attorney would keep a running tab of all the

Despite the incomplete evidence that remains on legal costs in early modern England, the surviving accounts reveal that normal litigation was a relatively expensive undertaking. As a result, only gentry, merchants, and artisans could afford to pursue lawsuits on a whim.⁷⁷ For others, access to the courts would have remained prohibitively expensive without a procedural mechanism in place to cut costs.

Whereas the standard process for filing suit in an equity court in early modern England involved multiple actors, the procedure for filing an *in forma pauperis* petition was relatively less burdensome.⁷⁸ In the Court of Requests, where *in forma pauperis* status was often invoked, a litigant could apply for the status through an oral motion in the court, a request in the bill of complaint, or a separate petition to the Master of Requests.⁷⁹ In the petition, the litigant presented a brief summary of the cause of action alongside a statement of his or her poverty.⁸⁰ The initial petition was usually written in plain language with an emphasis on the litigant's troubled circumstances.⁸¹ For example, a typical petition by a plaintiff in Requests included a narrative of his descent into poverty—the result of a “longe

services he had provided for each litigant and collect the fees owed to him at the end of a court term, each of which lasted about three months. BROOKS, *supra* note 30, at 106; Louis A. Knafla, *The Magistrate—and Humorous Magistrates—in Early Seventeenth-Century England*, 14 EARLY THEATRE 177, 188 (2011). For example, a defendant in a Requests case was charged for the costs of copying a bill, appearing in court, drawing up an answer to the bill, making a copy of the reply, and a general attorney's fee. Bill of Charge for Benet Stout, defendant, TNA, REQ 3/44 (c. 1582–1583). All in all, those services for a single term of work cost one pound, sixteen shillings, four pence or roughly £393.51 today. *Currency Converter*, *supra* note 75; Webster, *supra*. Though this sum may not seem like much, in the late sixteenth century, it was equivalent to thirty-six days of wages for a skilled tradesman. *Currency Converter*, *supra* note 75. Recall also that this sum constituted an attorney's services for a single term, but lawsuits in Requests could extend for years. The resulting fee would be more than a year of wages for a skilled tradesman. *Id.*

⁷⁷ One Lord's records indicate that he spent roughly £100 per year pursuing various lawsuits. BROOKS, *supra* note 30, at 106–07.

⁷⁸ Though 11 Hen. 7 c. 12 only bound common law courts to provide *in forma pauperis* benefits to indigent litigants, equity courts still occasionally referred to the statute in admitting litigants *in forma pauperis*. See *infra* note 175 and corresponding text.

⁷⁹ Hole, *supra* note 41, at 10, 133–34. Because many of the petitions to file *in forma pauperis* have been separated from their corresponding cases, it is challenging to piece together the exact steps in *in forma pauperis* procedure followed. *But see* Llewellyn & Hawkins, *supra* note 23, at 644–45 (claiming that plaintiffs in equity filed a two-step initial application with a case summary and an attorney's statement that the plaintiff is presenting a nonfrivolous cause of action). Moreover, though the procedure for obtaining *in forma pauperis* is documented for the Court of Requests and Chancery, it is substantially more difficult to locate any secondary source documentation on Star Chamber and Exchequer procedure.

⁸⁰ Allsebrook, *supra* note 74, at 125–26.

⁸¹ *Id.*

Imprysonment, great charge of Children and longe tyme of Sycknes.”⁸² From there, the plaintiff requested the right to proceed *in forma pauperis*, due to his inability to afford the costs of a lawsuit.⁸³ These initial filings were significant, as an early seventeenth-century treatise on Star Chamber procedure stressed: “[N]o man [can] be admitted to sue *in forma pauperis* unless he bring[s] a testimony of credit that he hath just cause to complain; otherwise the court will be filled with clamours and vexatious suits of poor people living in remote parts.”⁸⁴ The initial petition thus served a dual purpose, presenting both a claim to poverty and a potentially compelling overview of the litigant’s cause of action.⁸⁵

After filing the petition or making the request in court, litigants sometimes strengthened their claims of poverty through the provision of a certificate from one or multiple well-respected members of their communities, such as a parish priest, a neighbor, or a gentleman who could confirm their financial situation.⁸⁶ For widow Margaret Saunders, such a letter came from Member of Parliament Thomas Fleming, who described her as a “poore woman [who] hath spent her estate” and therefore could not fund her lawsuit.⁸⁷

⁸² Petition of Thomas Brendly, TNA, REQ 2/157/66 (1587).

⁸³ *Id.*

⁸⁴ William Hudson, *A Treatise on the Court of Star-Chamber*, in 2 COLLECTANEA JURIDICA: CONSISTING OF TRACTS RELATIVE TO THE LAW AND CONSTITUTION OF ENGLAND 1, 129–30 (London, E. & R. Brooke 1792) (originally written in the mid-1620s, see Cyndia Susan Clegg, *Censorship and the Courts of Star Chamber and High Commission in England to 1640*, 3 J. MODERN EUR. HIST. 50, 63 (2005)).

⁸⁵ Puzzlingly, litigants must have consulted counsel to prepare these petitions. The clearest indication that this was the case is an *in forma pauperis* petition requesting Mr. Edward Smith to represent the plaintiff, coinciding with a letter from the same Mr. Smith to the Master of Requests, testifying as to the plaintiff’s poverty. Mr. Smith was appointed as counsel, indicated in the petition’s procedural note. The counsel’s affidavit suggests that he had established contact with the plaintiff and likely composed the petition before the court appointed him as the plaintiff’s representation. See *Jolles v. Birchmore*, TNA, REQ 2/413/66 (Nov. 9, 1611). It remains unclear how potential litigants identified attorneys to compose petitions. Perhaps litigants paid a small fee for the attorneys or clerks of the selected court to write the petition on their behalf. It is also possible that attorneys or clerks were ordered by the head of the court to compose petitions free of charge.

⁸⁶ See Allsebrook, *supra* note 74, at 126; Knox, *supra* note 28, at 320.

⁸⁷ Petition of Thomas Flemynge to the Masters of the Requests, *Saunders v. Grubber*, TNA, REQ 2/410/119 (Apr. 20, 1611). Fleming was a Member of Parliament from 1601–1624. *FLEMING, Thomas II (c. 1572-1624), of Haseley, I.o.W. and North Stoneham, Hants.*, HIST. PARLIAMENT, <http://www.histparl.ac.uk/volume/1558-1603/member/fleming-thomas-ii-1572-1624> [<https://perma.cc/3QPC-AUVA>].

The last step was to swear an oath that the litigant was not worth more than £5,⁸⁸ excluding his or her clothing, nor owned land that produced a profit of more than forty shillings per year.⁸⁹ These thresholds included the debts the litigant owed, thus providing more opportunity for him or her to receive the benefit of *in forma pauperis*, given that much of English society operated on credit at the time.⁹⁰ If the litigant was indeed admitted to sue in *in forma pauperis*, the head of the court would endorse the petition with a note to that effect and assign the petitioner both a barrister and an attorney for his or her case.⁹¹ When the motion to proceed in *in forma pauperis* was made orally, judges made the decision to admit a litigant in open court and indicated admission by noting “*in forma pauperis*” on the back of the bill of complaint.⁹²

The procedure for obtaining *in forma pauperis* status in Chancery was identical in the submission of the petition but differed in the oath of poverty. In 1588, Sir Christopher Hatton, then Chancellor, sought to stem the rising tide of *in forma pauperis* petitions in Chancery, suspecting that many of the petitions presented were misrepresenting their economic status to obtain free counsel.⁹³ As a result, he issued an order that litigants seeking in *in forma*

⁸⁸ Five pounds in 1600 would be the equivalent of approximately \$1511 in April 2020. Nye, *supra* note 3.

⁸⁹ Llewellyn & Hawkins, *supra* note 23, at 645; Hole, *supra* note 41, at 133. It is not clear why £5 and forty shillings per year were set as the benchmarks for an impoverished litigant. *See id.* The forty-shilling threshold, however, was consistent with other legal standards in Tudor society as it served as the upper limit for relief under the Poor Laws and the lower limit for the right to vote. STRETTON, *supra* note 2, at 84 & n.59; Hole, *supra* note 41, at 133 & n.49.

Though it is impossible to provide precise numbers on the poor population in Elizabethan and Jacobean England, historians estimate that between 5% and 50% of the population could qualify as poor during this period. *See* Tom Arkell, *The Incidence of Poverty in England in the Later Seventeenth Century*, 12 SOC. HIST. 23, 23 (1987) (citing historian Professor A.L. Beier, who puts the poverty rate at one-third to half of the population in the 1520s, A.L. BEIER, THE PROBLEM OF THE POOR IN TUDOR AND EARLY STUART ENGLAND 5, 13 (1983)); Hole, *supra* note 41, at 44 (estimating that 5% to 20% of the population could be described as poor during this era). If 5% of England’s population in 1600 lived in poverty, roughly 223,000 individuals would qualify for *in forma pauperis* status; if half, roughly 2.2 million individuals would have qualified for *in forma pauperis* status. *See Estimated Population of England and Wales: 1570–1750*, VISION BRIT. THROUGH TIME, http://www.visionofbritain.org.uk/census/GB1841ABS_1/6 [https://perma.cc/WLP5-DVEP].

⁹⁰ STRETTON, *supra* note 2, at 84 n.60.

⁹¹ Allsebrook, *supra* note 74, at 125–26; Knox, *supra* note 28, at 320–21. Counsel in this case refers to a barrister who would assist with any questions on points of law.

⁹² *See* Hole, *supra* note 41, at 134.

⁹³ *See id.* at 126–27. The influx of suits is on display in an *in forma pauperis* petition from the Court of Requests, in which the Master of Requests writes that jurisdiction in his court is proper because “[t]he Court of Chancerie is allreadie overcharged with [a] multitude of sutes.” Wood v. Baxter, TNA, REQ 2/155/25 (Nov. 17, 1590).

pauperis status must provide a certificate from their local justice of the peace, testifying to their poverty, their honesty, the merits of their case, and that they had exhausted all other local avenues of relief.⁹⁴ Hatton therefore displaced the oath with a more searching review of a litigant's poverty, effectively attempting to channel the cases of impoverished litigants into Requests.⁹⁵ Poor litigants who overcame these hurdles could seek relief by filing for in forma pauperis status in Chancery.⁹⁶ In both Chancery and Requests, once the court admitted the litigant in forma pauperis, the litigant proceeded through the normal course of litigation without bearing the costs of the attorney or the court services.⁹⁷ The petitions themselves do not offer insight into what happened if a plaintiff in forma pauperis lost the case.⁹⁸

The question remains as to whether attorneys were compensated for representing litigants in forma pauperis. According to Professor Tim Stretton, neither the court nor the monarch paid lawyers to represent these litigants.⁹⁹ Consequently, these lawyers were typically wealthier, experienced practitioners who could afford to take on cases pro bono.¹⁰⁰ However, a primary-source certificate does not support the contention that lawyers worked on these cases without compensation. Robert Holland, a solicitor, certified that he had paid an under-clerk in Chancery twelve shillings and six pence for getting a party admitted in forma pauperis.¹⁰¹

⁹⁴ Hole, *supra* note 41, at 126–27.

⁹⁵ *Id.* at 127.

⁹⁶ According to W.B.J. Allsebrook, poor litigants persisted in filing their suits in Chancery because of its prestige, whereas they viewed the Court of Requests as a court of last resort. A joke between Court of Requests lawyers acknowledges this reputation: “[N]owe thou canst be heard in noe other Court thou appealest to Cesar [Master of the Court of Requests].” Allsebrook, *supra* note 74, at 149 (quoting JOHN MANNINGHAM, DIARY, 1602–1603, at 129 (J. Bruce ed., 1868)). Julius Caesar served as a Master of Requests from 1591 to 1606. Peter Stein, Book Review, 35 CAMBRIDGE L.J. 173, 173 (1976) (reviewing L.M. HILL, THE ANCIENT STATE AUTHORITIE AND PROCEEDINGS OF THE COURT OF REQUESTS BY SIR JULIUS CAESAR (L. Hill ed., 1975)).

⁹⁷ See Stretton, *Introduction to MARITAL LITIGATION*, *supra* note 60, at 13; Hole, *supra* note 41, at 126–27.

⁹⁸ Scholars have contended that in forma pauperis plaintiffs who lost their cases, at least in common law courts, could be made to reimburse the opposing party's court costs and offered a choice of punishment for subjecting the defendant to needless litigation: being whipped or placed in the pillory. Hudson, *supra* note 84, at 225 (“Whipping hath been used as a punishment in great deceits and unnatural offences . . . but never constantly observed in any case but where a clamorous person *in forma pauperis* prosecuteth another falsely, and is not able to pay him his costs . . .”); Lewellyn & Hawkins, *supra* note 23, at 646. *But see* Maguire, *supra* note 26, at 375 (suggesting there is no support for these litigants ever actually being whipped or placed in the pillory as punishment).

⁹⁹ Stretton, *Introduction to MARITAL LITIGATION*, *supra* note 60, at 13–14.

¹⁰⁰ *Id.*

¹⁰¹ Certificate by Robert Holland, Solicitor, TNA, E 215/614 (May 25, 1631).

Because solicitors collected fees for their work,¹⁰² this certificate suggests that legal actors received compensation for their work on behalf of indigent litigants.

Indeed, other scholars have posited that attorneys worked on a fee-shifting model for indigent litigants and recovered costs from the defendant if they won the case.¹⁰³ A complex Chancery case, filed by feltmaker William Harvey against the lawyer who represented him in forma pauperis, supports this theory. Following a complaint that his lawyer, Morgan Jones, had defrauded him of hundreds of pounds through a series of loans, Jones explained that he had taken Harvey's case after Harvey had promised to "pay unto this defendant all his ordinary fees [and to his] clarkes for their paynes . . . in the prosecution of the saide suits."¹⁰⁴ Though litigants may not have been bound to a formal fee-shifting statute, Jones's answer indicates that attorneys may have agreed to represent indigent litigants when promised payment upon recovery.

On the whole, litigants seeking in forma pauperis status confronted a relatively straightforward procedure in the courts of equity. In the Court of Requests, this status could be achieved through a statement of the case, an optional third-party certificate in support, and an oath of poverty.¹⁰⁵ Star Chamber and Exchequer appear to have adopted the same process as Requests.¹⁰⁶ Chancery presented a slightly higher hoop for litigants to jump through with the requirement of a certificate from the local justice of the peace.¹⁰⁷ The petitions discussed below bring this procedure to life and demonstrate how it worked in practice for petitioners and legal professionals alike.

II. ANALYZING THE IN FORMA PAUPERIS COURT RECORDS

This Part provides an overview of ninety-two petitions, bills of complaint, affidavits, and court orders involving in forma pauperis litigants. These court records are taken from the archives of the four courts

¹⁰² See J.H. Baker, *Solicitors and the Law of Maintenance 1590–1640*, 32 CAMBRIDGE L.J. 56, 68–69 (1973).

¹⁰³ See Shapiro, *supra* note 58, at 745–49.

¹⁰⁴ *Harvey v. Jones*, TNA, C 2/JasI/H13/37 (Jan. 1, 1603).

¹⁰⁵ See *supra* Section I.C.

¹⁰⁶ Although there is scholarly disagreement as to whether the Star Chamber and Exchequer procedures are known at all, there is some evidence that the process was the same as in Requests. See *infra* note 108.

¹⁰⁷ See *supra* notes 92–95 and accompanying text.

discussed—Requests, Chancery, Star Chamber, and Exchequer.¹⁰⁸ Each document was examined for the plaintiff’s claim of poverty, the statement of the case, and the procedural notes provided by the head of the court.

This Part begins with a survey of the court records, with an eye towards what they add to a contemporary understanding of historical *in forma pauperis* procedure, particularly by drawing out their key thematic implications. It examines the individuals who filed for *in forma pauperis* status, the community’s role in this process, and the courts’ responses to fraudulent paupers. It then turns to an in-depth study of one petitioner, John Daniell, and his years-long struggle to obtain *in forma pauperis* status in several of the equity courts.

A. Survey of the Court Records

The petitions confirm the procedure for filing *in forma pauperis* set forth above, beginning with a litigant’s petition, an optional affidavit from a well-respected third party, an oath of poverty, and a procedural note from the head of the court granting, denying, or asking for more information before admitting the litigant. The oath that a litigant was not worth £5 is emphasized in several petitions, indicating that admittance did indeed hinge on it.¹⁰⁹

The petitions also reveal that the benefits offered to poor litigants who were able to receive *in forma pauperis* status went beyond court-appointed representation and free court services, such as the elimination of the filing

¹⁰⁸ Of the documents collected, thirty-five are uniquely petitions, nine are petitions attached to a bill of complaint, seventeen are bills of complaint with an *in forma pauperis* party, one is a bill of complaint and a letter of commissioners, one is a set of interrogatories, three are letters to the court or affidavits, two are bills of complaint with affidavits, one is a bill with a petition and affidavit, four are petitions with affidavits, seventeen are court orders, and two are financial records. Roughly 52% of the documents originate from the Court of Requests, 14% from Chancery, 26% from Exchequer, and 8% from Star Chamber. In the responses to the petitions, twenty-nine granted the litigant’s request to proceed *in forma pauperis*; two denied the request; two granted the request contingent on the litigant meeting certain conditions; and nineteen do not indicate the outcome. *See infra* Appendix. These petitions likely represent a fraction of the total *in forma pauperis* petitions filed in this period. As the archives from these equity courts remain largely uncatalogued, this research depended on the limited catalogues available as well as methodical searching through particular sections of the archive.

¹⁰⁹ *See* Petition of Henry Forrett to Proceed *In Forma Pauperis*, TNA, E 185/16 (June 3, 1627) (Baron Walton of Exchequer wrote that now that “[t]he petitioner hath taken his oath before me [that] he is not worth five pounds . . . I have therefore admitted him *in forma pauperis*”); *see also* Petition from Jane Daniell to the Lord Treasurer, TNA, SP 46/55/fol. 117 (Dec. 22, 1601) (granting a petitioner’s request to be admitted *in forma pauperis* in Star Chamber based on the fact that if the oath was true, “it seemeth his [e]state remayneth of no valem”); Order, *Poole v. Nicholson*, TNA, REQ 2/166/143 (Nov. 23, 1598) (Master of Requests Julius Caesar noted that now that the “suppliantes are upon oath of one of them made of bothe their poverties admitted to sue *in forma pauperis*,” indicating that one plaintiff’s oath of poverty could extend to his co-plaintiff).

fee. Indeed, a judge could instruct the plaintiff to send a copy of the bill to an in forma pauperis defendant at his own charge¹¹⁰ or to pay the cost of serving process to a defendant to appear in court.¹¹¹

1. *Who Filed for In Forma Pauperis Status*

These petitions reveal the diverse range of litigants who sought in forma pauperis status in equity courts, suggesting that it was a widely known and relatively accessible mechanism. The litigants represented a large swath of society, including prisoners,¹¹² widows,¹¹³ former soldiers,¹¹⁴ immigrants,¹¹⁵ and laborers.¹¹⁶ Prisoners were able to take advantage of the in forma pauperis right to press their case to the courts with the help of an intermediary. Richard Oxenbridge was brought to trial in Star Chamber for stealing corn, where he was subsequently fined £320 and sent to the White Lion prison following his inability to pay.¹¹⁷ Baron Walton admitted Oxenbridge to sue in forma pauperis to challenge his imprisonment on a writ of habeas corpus. Walton allowed the prison chaplain to take the oath on Oxenbridge's behalf, likely because Oxenbridge could not appear in court himself and the chaplain would have been familiar with Oxenbridge, who

¹¹⁰ Order, *Goodwin v. Slater*, TNA, REQ 1/18/692v (Nov. 17, 1595).

¹¹¹ Order, *Bulbrooke v. Coleman*, TNA, E 126/2/40r (May 26, 1614).

¹¹² Three of the petitions were on behalf of prisoners. Petition of Richard Oxenbridge, Prisoner, TNA, E 185/16 (May 12, 1629); Petition of William Edmond to Sir Lawrence Tanfield, TNA, SP 46/70/fol. 3 (Jan. 30, 1611); Petition, *Poole v. Nicholson*, TNA, REQ 2/166/143 (Nov. 23, 1598).

¹¹³ One petition was on behalf of a widow, while two bills of complaint were initiated by widows suing in forma pauperis. Petition of Elizabeth Shipper, TNA, REQ 3/32 (c. 1586–1595); Bill of Complaint, *Waterhouse v. Cotton*, TNA, STAC 5/W3/28 (c. 1579–1580); Bill of Complaint of Agnes Apreston & Adam Whelpdale, TNA, REQ 2/163/3 (July 25, 1562).

¹¹⁴ Two of the petitions were on behalf of former soldiers. Petition of William Edmond to Sir Lawrence Tanfield, TNA, SP 46/70/fol. 3 (Jan. 30, 1611); Petition, *Adlane v. Ledger*, TNA, REQ 2/137/23 (Feb. 2, 1593).

¹¹⁵ Only one petition examined was on behalf of an immigrant, but it nonetheless demonstrates that the right to sue in forma pauperis appears to have extended to non-English-born petitioners. Petition of Henry Forrett, TNA, E 185/16 (June 3, 1627). Forrett, an Irish merchant, claimed that he had travelled to England with £89 worth of gold, hoping to trade for salt. *Id.* Instead, upon his arrival, Forrett alleged that port agents confiscated his gold and left him impoverished. *Id.* A baron of the Exchequer, John Walton, approved Forrett's petition. Order Admitting Henry Forrett to Proceed In Forma Pauperis, TNA, E 185/16 (June 3, 1627).

¹¹⁶ Three of the petitions and one bill of complaint were on behalf of laborers, and one affidavit testified that the plaintiff, a laborer, was a "very poore man." Affidavit, *Adams v. Jeffery*, REQ 2/416/3 (July 7, 1620); Bill of Complaint, *Prior v. Denton*, TNA, REQ 2/252/60 (1600); Petition, *Curtys v. Sebright*, TNA, REQ 2/159/35 (c. 1592); Bill of Complaint and Petition, *Evans v. Anger*, TNA, REQ 2/147/10 (Nov. 28, 1590); Petition of William Johnson, TNA, E 185/16 (date unknown).

¹¹⁷ Petition of Richard Oxenbridge, Prisoner, TNA, E 185/16 (May 12, 1629).

claimed to be one of his regular parishioners.¹¹⁸ Oxenbridge's petition thus indicates that prisoners were eligible to receive in forma pauperis status. It also suggests that despite the emphasis placed on the oath of poverty, judges were willing to accommodate a prisoner's circumstances to satisfy that oath, such as using the testimony of a trusted figure in place of the petitioner's own.¹¹⁹

The survey also reveals that women filing for in forma pauperis status were typically widows, like Elizabeth Shipper, who reclaimed their legal identities upon their husband's death.¹²⁰ For other women in early modern England, simply filing suit, let alone gaining in forma pauperis status, presented a unique set of challenges. Under the doctrine of coverture, married women did not possess legal personhood; instead, they were considered legal entities of their husbands.¹²¹ Men were responsible for paying any debts their wives accumulated and for serving as the defendant in any suits brought against them, excepting treason and murder.¹²²

Exceptionally, in 1595, Joan Spragin filed a Bill of Complaint in the Court of Requests, presenting a case against the husband she had legally separated from due to an abusive relationship.¹²³ Spragin received "maintenance," a form of alimony, following the separation and recounted in the bill her former husband's schemes to recollect the maintenance and "altogether to gett from her all that she hath."¹²⁴ The scheme included filing two suits against her in the common law courts for slander and assault and battery. The Master of Requests, Julius Caesar, admitted Joan in forma pauperis to pursue the suit against her former husband, as indicated in a procedural note at the end of the bill.¹²⁵ Joan's bill demonstrates that it was

¹¹⁸ *Id.*

¹¹⁹ In another petition of two men in debtors' prison, Master of Requests Julius Caesar allowed one individual's oath "made [on behalf of] bothe their poverties" to serve as the oaths for both men. *Poole v. Nicholson*, TNA, REQ 2/166/143 (Nov. 23, 1598).

¹²⁰ Three of the six court documents in which women were filing suit as in forma pauperis plaintiffs were initiated by widows. *See supra* note 113.

¹²¹ Anastasia B. Crosswhite, Note, *Women and Land: Aristocratic Ownership of Property in Early Modern England*, 77 N.Y.U. L. REV. 1119, 1125 (2002).

¹²² *See id.*

¹²³ STRETTON, *supra* note 2, at 133 & n.23 (citing *Johane Spraggen v. Martyn Spraggen*, PRO Req. 2/273/67). The separation was legally recognized in an ecclesiastical court, according to Joan. Bill of Complaint, *Joan Spragin v. Martin Spragin*, REQ 2/273/67 (Nov. 19, 1595), in *MARITAL LITIGATION*, *supra* note 60, at 121. Regarding their relationship, deponents testified that Martin poisoned her and almost succeeded in killing her. *See id.* at 144–46.

¹²⁴ Bill of Complaint, *Joan Spragin v. Martin Spragin*, REQ 2/273/67 (Nov. 19, 1595), in *MARITAL LITIGATION*, *supra* note 60, at 121, 123.

¹²⁵ *Id.* at 124 & n.301.

possible for women of the time to find work-arounds to coverture in the courts of equity and receive the benefit of *in forma pauperis* status.

2. “*We Whose Names are Underwritten*”: *The Role of the Community*

Although it was not required that plaintiffs in Requests present certificates from members of their community,¹²⁶ seven of the ninety-two court documents examined include neighbors’ affidavits that testify to the plaintiff’s poverty.¹²⁷ This pattern implies that poor individuals likely had a better chance at establishing their credibility in court with their community behind them.

For litigants in Requests, community support for their lawsuit could take the form of a collective affidavit on the litigant’s behalf. The petition of George Adams, a poor laborer from the town of Tingewick, provides an example of such an affidavit.¹²⁸ Seven neighbors signed a certificate asserting his poverty, stating that he was a “very poore man not worth Fyve Markes.”¹²⁹ They went on to endorse Adams’s theory of the case: “[T]here is good cause as we conceive that hee should bee releevd in equity agaynst Edward Jeffery . . . In witnes wherof wee have hereunton subscribed our names.”¹³⁰ A procedural notation on the back reveals that the Master of Requests Christopher Perkins granted Adams’s request and admitted him in *in forma pauperis*.¹³¹ The petition of William Adlane, a London cardmaker involved in an inheritance dispute, presents a similar affidavit of his neighbors.¹³² In his case, at least ten neighbors signed on attesting to his poverty, some using marks in place of signatures due to their illiteracy.

¹²⁶ See *supra* Section I.C.

¹²⁷ The documents, including affidavits, testifying to the plaintiff’s poverty are: Bill of Complaint and Affidavit, Adams v. Jeffery, TNA, REQ 2/416/3 (July 7, 1620); Petition of Thomas Flemyng to the Masters of the Requests, Saunders v. Grubber, TNA, REQ 2/410/119 (Apr. 20, 1611); Petition of William Edmond to Sir Lawrence Tanfield, TNA, SP 46/70/fol. 3 (Jan. 30, 1611); Letter to the Court, Clarke v. Fyshe, TNA, REQ 2/157/97 (May 28, 1594); Petition, Adlane v. Ledger, TNA, REQ 2/137/23 (Feb. 2, 1593); Bill of Complaint and Certificate, Machocke v. Wolley, TNA, REQ 2/149/9 (May 10, 1592). See also Affidavit, Millward v. Wilson, TNA, STAC 10/6/1–10/6/5 (Dec. 25, 1585) for testimony that the plaintiff is *not* poor.

¹²⁸ Bill of Complaint and Affidavit, Adams v. Jeffery, TNA, REQ 2/416/3 (July 7, 1620).

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ Order, Adams v. Jeffery, TNA, REQ 2/416/3 (July 7, 1620) (“admitted in *in forma pauperis*” and signed “Ch. Perkins”).

¹³² Bill of Complaint and Petition, Adlane v. Ledger, TNA, REQ 2/137/23 (Feb. 2, 1593).

According to a procedural notation, he received in forma pauperis status as well.¹³³

A certificate for Robert Clarke on behalf of two of his neighbors in the town of Woodhamferris offers a deeper understanding of these affirmations of poverty. The neighbors stated that they were providing this certificate at the request of Robert Clarke, “a verie poore man.”¹³⁴ The top of the certificate notes that the letter is a “true cobby of the letter . . . Mr. Maddock had for the Courts.”¹³⁵ Maddocks, the well-known Court of Requests lawyer, may have had the letter copied after his client, Clarke, had requested support from his neighbors.¹³⁶ It is possible that Maddocks himself urged Clarke to seek the support of his neighbors, knowing the power such a certificate held in obtaining in forma pauperis admittance.

Though the affidavits vary in length, all seven identify the drafters’ place of residence, their relationship to the petitioner, and their testimony as to his or her poverty.¹³⁷ Judges may have valued these affidavits because they were an inexpensive and trustworthy method of verifying an individual’s poverty. Community networks in early modern England were tightly woven entities in which news of people’s personal lives and finances spread quickly.¹³⁸ As a result, community support through an affidavit was likely the product of both interpersonal contact and an individual’s local reputation.

Still, these affidavits raise the question of what motivated community members to involve themselves, even marginally, in a third party’s litigation. Though two of the affidavits claim to be written out of “pittie and [c]ompassion” for the poor litigant,¹³⁹ the drafters may have had more self-interested motives. Dozens of neighbors may have signed on to a petition like William Adlane’s,¹⁴⁰ who sought to recover land in Suffolk, because they hoped to disempower a member of the community they disliked. Or they

¹³³ *Id.* (signed by Julius Caesar).

¹³⁴ Letter to the Court, Clarke v. Fyshe, TNA, REQ 2/157/97 (May 28, 1594).

¹³⁵ *Id.* Maddocks’s name is alternatively spelled as Maddocks, Maddox, and Maddock in various petitions.

¹³⁶ Maddocks may have also presented an original to the court and kept a copy for his own records. The original might also have been lost and reconstructed here.

¹³⁷ *See supra* note 127.

¹³⁸ Historian Professor Adam Fox described small towns in early modern England as a setting “where privacy was typically scarce and people were encouraged to know the business of others.” Adam Fox, *Rumour, News, and Popular Political Opinion in Elizabethan and Early Stuart England*, 40 *HIST. J.* 597, 601 (1997). As a result, gossip about personal lives “thrived as news” in this environment. *Id.*

¹³⁹ Letter to the Court, Clarke v. Fyshe, TNA, REQ 2/157/97 (May 28, 1594); *see* Petition of Thomas Flemmyng to the Masters of the Requests, Saunders v. Grubber, TNA, REQ 2/410/119 (Apr. 20, 1611).

¹⁴⁰ Adlane v. Ledger, TNA, REQ 2/137/23 (Feb. 2, 1593).

may have sought to avoid taking on the charges of their poor community members. Robert Clarke's neighbors admitted that they feared on a daily basis that "the charge of relieving of him, his said wiffe and Children will lie upon the inhabitantes of the said parishe of Woodhamferris."¹⁴¹ They describe granting the *in forma pauperis* petition as a "[c]haritable deed," as success in court would provide the maintenance Clarke needed to support his family.¹⁴² Under the Poor Law of 1563, parishioners were subject to a local tax that went to aid the "deserving poor"—those who were unable to work.¹⁴³ Parish officers also provided temporary aid to community members who needed short-term relief.¹⁴⁴ Because the affidavit cited both Clarke's poverty and disability, he may have fallen into the category of the "deserving poor" or may simply have needed the parish's short-term aid. In either case, avoiding taking on the funding of an indigent community member suggests there were potential benefits for the drafters of the affidavit as well as for the beneficiaries.

3. *Fraudulent Claims of Poverty*

Litigants fraudulently portraying themselves as paupers were a constant concern among the heads of equity courts, particularly in Chancery, likely because of its overflowing docket.¹⁴⁵ Six of the court documents examined include accusations of fraud;¹⁴⁶ they reveal how both plaintiffs and defendants manipulated *in forma pauperis* status to their advantage in equity courts.

In these disputes, proving the plaintiff's poverty often appeared to come down to which party the court believed. For example, in *Bulbrooke v. Coleman*, in which the plaintiff alleged a tax owed to him on the sale of corn, it is unclear why the court trusted the defendant's affidavit that the plaintiff was worth £300 over the plaintiff's previous oath of poverty.¹⁴⁷ The Exchequer order did not elaborate on evidence the defendant presented,

¹⁴¹ Letter to the Court, Clarke v. Fyshe, TNA, REQ 2/157/97 (May 28, 1594).

¹⁴² *See id.*

¹⁴³ ROBERT BUCHOLZ & NEWTON KEY, EARLY MODERN ENGLAND 1485–1714: A NARRATIVE HISTORY 89, 386 (2d ed. 2009).

¹⁴⁴ *Id.* at 186.

¹⁴⁵ *See supra* note 93 and corresponding text.

¹⁴⁶ *See* Bill of Complaint, Ashmonde v. Brownsmythe, TNA, STAC 8/41/11 (Jan. 2, 1619); Order, Bulbrooke v. Coleman, TNA, E 126/2/29v (May 26, 1614); Order, Daye v. Robert Flick, TNA, REQ 1/19/638v (Oct. 18, 1596); Order, Newman v. Carpenter, TNA, REQ 1/47 (Oct. 11, 1596); Affidavit, Millward v. Wilson, TNA, STAC 10/6/1–10/6/5 (Dec. 25, 1585); Letter to Mr. Manwood, TNA, SP 46/27/fol. 252 (June 7, 1565). This sample constitutes 6.52% of the court documents examined.

¹⁴⁷ Order, Bulbrooke v. Coleman, TNA, E 126/2/29v (May 26, 1614).

instead simply declaring that due to the defendant's affidavit, the plaintiff would be disallowed from suing in forma pauperis.¹⁴⁸

In other cases, the testimony against a plaintiff for claiming in forma pauperis was overwhelming. In a series of five letters, dozens of inhabitants of the town of Alchurche protested the admission of William Millward as a pauper in his Chancery and Star Chamber lawsuits.¹⁴⁹ Detailing his expansive farm, livestock, and well-furnished house, and describing his reputation as "Riche and Craftie Mylward," his neighbors argued that he had falsified his identity as a pauper to save on legal fees.¹⁵⁰ One letter claimed that Millward's frauds had "[i]mpoverished and hindred many men" in the community, thus suggesting an inducement for the detailed testimonies against him.¹⁵¹ Just as community reputation could help bolster an individual's claim of poverty, it could also work against him.

A complex accusation of poverty fraud demonstrates the ways in which both parties attempted to capitalize on the benefits of the status, or the lack thereof. Plaintiff Thomas Ashmonde's original suit over land entitlement began in Chancery, where Ashmonde was admitted in forma pauperis.¹⁵² According to Ashmonde, after the defendants realized that his suit was likely to prevail in Chancery, they hatched a plot to disallow him from bringing a suit by claiming that his land was truly worth £7 per year, considerably more than the forty-shilling-per-year cutoff for in forma pauperis status.¹⁵³ After the defendants submitted an affidavit to that effect to the Master of the Rolls in Chancery, the court prohibited Ashmonde from continuing his suit in forma pauperis. This order, in turn, led to the suit's dismissal, as Ashmonde could not afford to pursue it.¹⁵⁴ But Ashmonde did not take these accusations lying down. He subsequently filed suit in the Star Chamber, accusing the defendants of fraud and perjury.¹⁵⁵

¹⁴⁸ *Id.* Judges rarely, if ever, provided rationales or reasoning for their decisions in court orders. Still, it is curious here that the Chancellor was ready to dispauper the plaintiff as soon as the defendant submitted an affidavit claiming that the plaintiff was worth £300, as he claimed.

¹⁴⁹ Affidavit, Millward v. Wilson, TNA, STAC 10/6/1–10/6/5 (Dec. 25, 1585).

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Bill of Complaint, Ashmonde v. Brownsmythe, TNA, STAC 8/41/11 (Jan. 2, 1619).

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* These were appropriate claims to bring in Star Chamber given that it had jurisdiction over criminal misdemeanors. *See supra* Section I.A.3.

The outcome of this suit remains unknown.¹⁵⁶ It appears suspect, however, that Ashmonde would have the funds to pursue a suit against the same defendants in Star Chamber without filing for in forma pauperis there if he could not sustain the costs of a suit in Chancery. No matter the ultimate outcome, Ashmonde's suit displays the ways in which accusations of fraud could spell the end of a suit in one of the equity courts. Fraud was present in both claims for and against in forma pauperis admission, with plaintiffs presenting themselves falsely to their advantage¹⁵⁷ and defendants capitalizing on a well-timed accusation to end suits against themselves.¹⁵⁸

An examination of these petitions points to the comprehensiveness and flexibility of the in forma pauperis right in early modern England. The right applied to costs beyond a filing fee waiver and legal representation; it extended to litigants at the margins of English society, and it involved a litigant's reputation in his or her community. Furthermore, it was retractable by the court. The strategy that went into both asserting the right and accusing an opposing party of falsely claiming it is reflected in the claims of fraudulent paupers. The next Section illustrates these implications through the study of a particularly complex series of in forma pauperis petitions.

B. A Case Study of John Daniell: Perpetual Pauper or Persistent Fraud?

The following case study traces John Daniell's struggle to obtain in forma pauperis status over seven years and in three courts of equity. Twelve separate petitions and two court orders piece together his narrative. These petitions are rare in the richness of their procedural notations, documented by their respective heads of court. Examining Daniell's prolonged journey in search of in forma pauperis status illuminates many of the themes discussed above. His petitions speak to the judges' fear of fraudulent pauper applications and the specificity they demanded to prove pauper status. Moreover, the judicial intent to maintain a uniform conception of the in forma pauperis right is exhibited in the petitions' procedural notations.

It is important to remember, however, that Daniell's assertions in these petitions cannot be taken at face value. Daniell's ultimate desire was to persuade the court to allow him to sue in forma pauperis, not necessarily to present the absolute truth of his wealth. For that reason, these petitions reveal

¹⁵⁶ Almost none of the court orders from Star Chamber have survived. *See Court of Star Chamber Records, 1485–1642*, NAT'L ARCHIVES, <https://www.nationalarchives.gov.uk/help-with-your-research/research-guides/court-star-chamber-records-1485-1642/> [perma.cc/VD68-5E5J].

¹⁵⁷ *See supra* note 151 and corresponding text.

¹⁵⁸ *See supra* note 147–148 and corresponding text.

more in their inconsistencies, Daniell's narrative framing, and the judicial discussion surrounding them than they do about the accuracy of his claims.¹⁵⁹

In the spring of 1601, the Count and Countess of Clanricarde sued John Daniell for fraud in the Star Chamber.¹⁶⁰ The court found Daniell guilty of deceiving the Countess out of £1700 and consequently forced him to pay a £3000 fine.¹⁶¹ According to Daniell, he had established a payment plan with commissioners from Cheshire,¹⁶² agreeing to pay them the £3000 owed over a set period of time. Unfortunately for Daniell, a corrupt local sheriff stymied his payment plan after persuading Daniell's tenants to abstain from paying him their taxes. Combined with the £2000 Daniell claimed other debtors owed him, he was forced to give up his estate, worth £10,000, and was placed in debtors' prison.¹⁶³

¹⁵⁹ STRETTON, *supra* note 2, at 179 (asserting that the “inconsistencies between accounts and . . . resort to stereotyping, exaggeration and other methods of story-weaving” can be more revealing than the facts stated).

¹⁶⁰ See Order in the Exchequer Dismissing Daniell's Suit, TNA, SP 46/54/fol. 243 (Nov. 14, 1609); John Daniell's Petition to Sir William Peryam [Lord Chief Baron], TNA, SP 46/55/fol. 187 (June 15, 1602). The fraud is detailed in John Hawarde's *Reports of Cases in the Star Chamber*. According to the case report, the Countess had employed John Daniell's wife, Jane, a woman of Dutch origin, as her servant. The Countess had entrusted a “casket” of letters to Jane for safekeeping at her home, including love letters she had exchanged with the Count before their marriage. While “looking for his slippers” one morning, John Daniell came across the letters under his bed and immediately took twenty or thirty letters to a notary to be copied. The notary remarked that Daniell had written several lines into one of the letters in his own handwriting and refused to continue. When the Countess asked for the casket back and discovered the missing letters, Daniell demanded £3000 for their return. The Countess agreed to pay £1720 to Daniell. After discovering what had transpired, the Count brought suit against Daniell in the Star Chamber. Daniell's request for counsel in Star Chamber was denied. Daniell was sentenced to be nailed to the pillory with papers (typically used to broadcast the criminal's offense), perpetual imprisonment, and a £3000 fine. JOHN HAWARDE, *LES REPORTES DEL CASES IN CAMERA STELLATA, 1593 TO 1609*, at 119–23 (William Paley Baildon ed., 1894). Star Chamber would have been the appropriate court to bring a suit concerning fraud. Additionally, the Count and Countess fit the profile of the typical plaintiff. See *supra* Section I.A.3.

¹⁶¹ Order in the Exchequer Dismissing Daniell's Suit, TNA, SP 46/54/fol. 243 (Nov. 14, 1609).

¹⁶² The Commissioners were tasked with collecting the money from Daniell's estate. John Daniell's Petition to Sir William Peryam [Lord Chief Baron], TNA, SP 46/55/fol. 187 (June 15, 1602) (“I was called (ore tenus) to the Starre Chamber barr in trinity term Ro 43: And there Censured to paye her Majestie 3000 pounds a fyne which was the same terme estreated into th'exchequer without qualification wheruppon two severall Comysioners were presently sent into the Cowntyces of Cheshire and Mydd to levye 3000 pounds uppon my estate.”).

¹⁶³ *Id.*; see also Petition from Jane Daniell to the Lord Treasurer, TNA, SP 46/55/fol. 117 (Dec. 22, 1601).

In December 1601, Jane Daniell, John's wife, filed a preliminary petition in Chancery.¹⁶⁴ In it, she requested that her imprisoned husband be allowed to sue the corrupt sheriff in Star Chamber with the benefit of *in forma pauperis*.¹⁶⁵ Jane acknowledged that this petition was an amended version of a first attempt to obtain *in forma pauperis* status, given that the Baron had rejected Jane's initial petition for its lack of specificity on the remedy she sought.¹⁶⁶

The judges' reluctance to admit John Daniell *in forma pauperis* is reflected in the petition's procedural notes. Lord Buckhurst, the Lord High Treasurer of England,¹⁶⁷ expressed his hesitance: "It hath been confidently affirmed to me that Mr. Daniell delivered sundry detters either neerly [to] desperation . . ." ¹⁶⁸ In response, Francis Bacon, Queen's Counsel at the time,¹⁶⁹ offered more faith in Daniell's petition, noting that if his oath of poverty was true, "it seemeth his state remayneth of no valem."¹⁷⁰ According to Bacon, if it was true that Commissioners, who were meant to collect money from Daniell's estate, had sold his goods for their own profit, a bill in Star Chamber was the correct avenue and Daniell could be admitted there upon an oath of poverty.¹⁷¹ Bacon and Buckhurst's back-and-forth indicates that *in forma pauperis* admittance was not always at the discretion of a single judge, but the product of a consultation between heads of court.

Despite Bacon's approval to pursue his case in Star Chamber, John Daniell filed a secondary petition in Exchequer to bring his suit against the sheriff there.¹⁷² Baron William Peryam approved it and assigned Daniell both counsellors and attorneys to take on the case.¹⁷³ The puzzling decision to file

¹⁶⁴ It is unclear why Jane filed a petition in Chancery to pursue a suit in Star Chamber. She may have done so to pursue a countersuit against the sheriff in Star Chamber, or she may have viewed filing a petition in Chancery as a better route to receiving *in forma pauperis* status. *See supra* Section I.A.4.

¹⁶⁵ Petition from Jane Daniell to the Lord Treasurer, TNA, SP 46/55/fol. 117 (Dec. 22, 1601).

¹⁶⁶ *Id.*

¹⁶⁷ WILLIAM FRANCIS COLLIER, A HISTORY OF ENGLISH LITERATURE IN A SERIES OF BIOGRAPHICAL SKETCHES 132 (1871).

¹⁶⁸ Petition from Jane Daniell to the Lord Treasurer, TNA, SP 46/55/fol. 117 (Dec. 22, 1601).

¹⁶⁹ Henry Morley, *Introduction to THE ESSAYS OR COUNSELS CIVIL AND MORAL OF FRANCIS BACON* (New York City, George Routledge and Sons 1885) (1597). Though he served as a barrister, Francis Bacon is best known for his contributions to philosophy and science. Among other intellectual advances, he is credited with shaping the modern scientific method. *See* John Portmann, *An Appreciation of Francis Bacon*, 74 VA. Q. REV. 747, 747, 750 (1998) (book review).

¹⁷⁰ Petition from Jane Daniell to the Lord Treasurer, TNA, SP 46/55/fol. 117 (Dec. 22, 1601).

¹⁷¹ *Id.*

¹⁷² John Daniell's Petition to Sir William Peryam [Lord Chief Baron], TNA, SP 46/5/fol. 187 (June 15, 1602).

¹⁷³ *Id.*

a second suit in Exchequer may have been because the Star Chamber had expressed some hesitancy regarding his claim. He may also have strategically filed two suits to hasten his liberation from debtors' prison.

Despite his admittance and assignment of counsel, four years later, Daniell was back in Exchequer again, this time claiming that he had received no relief from the previous Lord Treasurer.¹⁷⁴ Threatened with reimprisonment, Daniell sought to bring a new suit against his alleged debtors. Without acknowledging Daniell's past petitions, Chancellor of the Exchequer Julius Caesar granted him in forma pauperis status to proceed with his suit. In his procedural note, Caesar remarked that Daniell "shall enjoy the benefitt of the statute for furthering poore mens suits made 11.H.7 according to the tenour of that statute."¹⁷⁵ As an equity judge, Caesar was not obligated to follow this statute, but his notation suggests that it contributed, if not governed, his approach to poor litigants' suits in Exchequer.

Daniell's procedural battle grew only more complicated from there. In a series of five petitions in Chancery, Daniell pressed his case, arguing that he should be freed from the cost of purchasing a writ in Chancery to proceed with his case in the Court of Common Pleas.¹⁷⁶ Despite the liberty with which previous equity judges granted Daniell in forma pauperis status in past petitions, he seemed to have met his match in Lord Chancellor Ellesmere. From the start, Ellesmere identified several procedural defaults in Daniell's petitions. In his response to the first petition in May 1607, Ellesmere wrote that he refused to grant in forma pauperis requests except in extraordinary cases.¹⁷⁷ Such a rejection aligns with the increasing reluctance of Chancery to approve in forma pauperis petitions following Lord Hatton's Order of 1588.¹⁷⁸ Yet this did not deter Daniell, who followed up with a second petition six months later. Ellesmere declared this one to be too general, instructing Daniell to limit his claim to three defendants.¹⁷⁹ Daniell followed the instruction in a December petition naming Henry Gates, James Morren,

¹⁷⁴ Petition of John Daniell to the King, TNA, SP 46/55/fol. 276 (Apr. 19, 1606).

¹⁷⁵ *Id.*

¹⁷⁶ John Daniell's Petition to the Lord Chancellor, TNA, SP 46/55/fol. 313 (Nov. 30, 1607); John Daniell's Petition to the Lord Chancellor, TNA, SP 46/55/fol. 309 (May 11, 1607); *see also* Petition to the Lord Chancellor, TNA, SP 46/55/fol. 324 (Dec. 20, 1608); Petition to the Lord Chancellor, TNA, SP 46/55/fol. 320 (Aug. 28, 1608); Petition to the Lord Chancellor, TNA, SP 46/55/fol. 322 (Aug. 26, 1608). Litigants were able to purchase writs in Chancery. *See supra* note 35.

¹⁷⁷ John Daniell's Petition to the Lord Chancellor, TNA, SP 46/55/fol. 309 (May 11, 1607).

¹⁷⁸ *See supra* notes 93–95 and corresponding text.

¹⁷⁹ Petition to the Lord Chancellor, TNA, SP 46/55/fol. 313 (Nov. 30, 1607) ("[L]et hym first make choyse of any three [defendants] that he will, for these generall complantes may not be allowed.").

and Richard Hill as his chosen three. Ellesmere allowed him to proceed against the three named debtors, but again proclaimed Daniell's claims too general to warrant a response at that point.¹⁸⁰

Eight months passed before Daniell ventured another petition.¹⁸¹ This time, he reminded Ellesmere that he had been granted allowance to sue in *forma pauperis* in Exchequer and was entitled to do so under the statute of Henry VII. Ellesmere responded that the statute only applied to those who were too poor to sue and were able to provide an affidavit of poverty, whereas Daniell had been filing "multiplicies of suits under pretence of poverty."¹⁸² Consequently, Ellesmere declared that he would "informe the Judge & understande what consideration they make of the statute in like cases in other courtes for yt is well that one uniforme Course shulde [be] kept in all these Courtes."¹⁸³

Here, Ellesmere took a similar approach to interpreting the relevant statute as Chancellor of the Exchequer Julius Caesar but arrived at the opposing conclusion. To Ellesmere, Daniell racking up suits and petitions—and their corresponding costs—spoke to his lack of credibility, rather than to his desperation for remedy. Furthermore, his concluding line indicates the level of collaboration he sought between the judges of different courts. Perhaps more consequentially, it reveals a desire to ensure that the *in forma pauperis* right was applied uniformly across different courts. In Ellesmere's view, consultation of precedent and consistent procedure was a prerequisite to correctly implementing this right.¹⁸⁴

In an August 1608 petition to Chancery, Daniell once again emphasized his previous admittance in the court of Exchequer and underscored his five-year delay in collecting on his debt.¹⁸⁵ Ellesmere reminded Daniell to set out who he would sue and his cause of action, but allowed him to pursue the suit *in forma pauperis* upon an affidavit of poverty.¹⁸⁶ In December of that same

¹⁸⁰ Petition to the Lord Chancellor, TNA, SP 46/55/fol. 313 (Dec. 4, 1607) ("Let hym proceede agaynst these three as he desires; But these generalities I understande not anie therefore can not answere.").

¹⁸¹ Petition to the Lord Chancellor, TNA, SP 46/55/fol. 322 (Aug. 26, 1608).

¹⁸² *Id.*

¹⁸³ *Id.* (emphasis removed).

¹⁸⁴ This coordination may also have been Ellesmere's personal approach to statutory interpretation. Ellesmere once argued that past precedent revealed that judges had consulted with the King's Privy Council about questions of statutory interpretation. According to Ellesmere, this practice had bolstered the power of the equity courts, particularly over the common law courts. See G.W. Thomas, *James I, Equity and Lord Keeper John Williams*, 91 ENG. HIST. REV. 506, 517 (1976).

¹⁸⁵ Petition to the Lord Chancellor, TNA, SP 46/55/fol. 320 (Aug. 28, 1608).

¹⁸⁶ *Id.*

year, Daniell followed up with Ellesmere, noting that Ellesmere had promised to confer with his fellow Judges on the interpretation of 11 Hen. 7 c. 12.¹⁸⁷ This time, the petition concluded with a note by Matthew Carew, Chancery Master, affirming Daniell's oath that he was not worth £5 due to the fine Star Chamber had imposed on him.¹⁸⁸ Ellesmere finally conceded, granting that though Daniell "is full of conynges . . . nevertheless . . . let hym be admitted to sue in forma pauperis."¹⁸⁹ Perhaps Carew's note offered the credibility Ellesmere found lacking to grant Daniell the status. Or potentially, Daniell had simply worn Ellesmere down with the barrage of constant petitions.

Despite the permission to go forward in Chancery, Daniell did not stop there. At the end of 1608, Daniell filed a subsequent petition against eight alleged debtors in Exchequer, again under Julius Caesar.¹⁹⁰ The route forward was easier here. Caesar granted his petition immediately and assigned counsellors and attorneys to his case.¹⁹¹

The final remaining document of the case, an Order from Exchequer, dismisses Daniell's cause of action in respect to seven of the eight defendants. According to the order, Daniell had brought this case against the defendants, tenants on his formerly held property, "onlie to trouble and wrongfully to molest them."¹⁹² Yet should he wish to proceed with his suit against the Earl and Countess of Clanricarde instead, he would be permitted to do so in forma pauperis.¹⁹³ It is unclear whether Daniell took the court up on that proposition or abandoned the litigation altogether at that point.

In the end, was Daniell a true pauper or simply a man trying to game the system to escape a £3000 fine? What is interesting about this case study is that it traces the procedural struggle of an atypical in forma pauperis petitioner—an individual with an estate—who claimed to have lost everything in a court enforcement order. In that sense, his petitions are those of a temporarily, not perpetually, poor man. His ability to continue waging suit over seven years and his persistence in different courts after being granted the benefit in one court suggests that he was not truly as poor as he characterized himself to be in the petitions. More likely, he was attempting to work the system to seek relief for a poorly supported claim.

¹⁸⁷ Petition to the Lord Chancellor, TNA, SP 46/55/fol. 324 (Dec. 20, 1608).

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ Petition to the Right Honorable Sir Julius Caesar, TNA, SP 46/55/fol. 328 (Dec. 27, 1608).

¹⁹¹ Order, Petition to the Right Honorable Sir Julius Caesar, TNA, SP 46/55/fol. 328 (Dec. 27, 1608).

¹⁹² Order, Daniell v. Dutton, TNA, SP 46/54/fol. 243 (Nov. 14, 1609).

¹⁹³ *Id.*

III. RECONCEPTUALIZING THE HISTORICAL IN FORMA PAUPERIS RIGHT

The petitions examined in this Note represent only a fraction of the in forma pauperis petitions filed in Elizabethan and Jacobean England. Yet, analyzing these primary-source petitions unveils a different picture of the right than its previous portrayal in legal scholarship. A thorough understanding of the origins of this right and its potential to influence its modern-day iteration demands an evaluation of the court records themselves, rather than the treatises that described them. This Part briefly addresses three of the key implications of the foregoing survey of court records: the accessibility, comprehensiveness, and uniformity of the right to in forma pauperis status. It concludes with lessons this analysis offers for the modern era.

*A. Implications of the Survey of Petitions**1. Accessibility*

Despite the scholarly critique that in forma pauperis remained a right in theory and not in practice in early modern England,¹⁹⁴ the primary-source petitions indicate the contrary to be true. Indeed, the existence of a clear procedure in the petitions suggest that at least some litigants were aware of their right to in forma pauperis benefits and exercised it.¹⁹⁵ Additionally, the fact that those at the fringes of English society, including prisoners, immigrants, and women, were able to take advantage of the right speaks to its widely accepted use. Moreover, an individual did not need to be well-versed in English law or even literate in order to invoke their right to in forma pauperis—or to be told to do so by a clerk or solicitor. Because the motion for such status could be made orally in the Court of Requests, illiterate individuals and those without a formal education were still able to request court-appointed counsel for their suits.¹⁹⁶ Though it is impossible to know the success rate of their cases, both the volume of petitions and the petitioners' identities suggest the ease of access to the courthouse door for indigent litigants.

¹⁹⁴ See *supra* notes 28–29.

¹⁹⁵ Though this Note deals with only ninety-two court records of in forma pauperis cases, scholars estimate that 10% of all cases in the Court of Requests involved in forma pauperis litigants. See Hole, *supra* note 41, at 10 & n.6.

¹⁹⁶ See *supra* note 92 and accompanying text.

2. *Comprehensiveness*

Scholars have asserted that English courts imposed further restrictions on *in forma pauperis* litigants because the courts likened poverty to depravity.¹⁹⁷ Yet that narrative does not play out in the study of these petitions. The scope of the right encompassed appointing various legal professionals to pursue the client's cause of action, including an attorney and a barrister, as well as receiving the services of a clerk and a solicitor if needed.¹⁹⁸ Additionally, the court would provide a poor litigant with a range of free court services including providing copies of the pleadings, subpoenaing witnesses, and arranging a commission to investigate a case in the plaintiff's hometown.¹⁹⁹ The court provided a poor litigant with all of the necessary tools to stake out a winning case, including assigning their most renowned lawyers to take a poor plaintiff's cause.²⁰⁰ In that sense, even though judges in equity were not bound by 11 Hen. 7 c. 12, they enacted its assurances of equity for poor litigants from the inception to the conclusion of their cases.

3. *Uniformity*

Both the procedure itself and the services that accompanied *in forma pauperis* status were more uniform than previously made out to be.²⁰¹ According to Professor John Maguire, early modern England did not have the administrative mechanisms in place to provide for uniform *in forma pauperis* procedure and enforcement.²⁰² However, the petitions from the Court of Requests confirm a common procedure: Litigants presented a statement of their case, an optional affidavit from their community members, and a required oath of poverty.²⁰³ Judicial reasoning behind granting or denying a request for *in forma pauperis* status was not typically provided, with the exception of Daniell's procedural battle.²⁰⁴ However, Ellesmere's stated conferral with his peers on the interpretation of Henry VII's statute reveals a desire to both interpret the statute faithfully, despite it not applying in equity, and to apply the right to sue *in forma pauperis* uniformly.

¹⁹⁷ See Catz & Guyer, *supra* note 18, at 657.

¹⁹⁸ See *supra* notes 91, 101–102, and corresponding text.

¹⁹⁹ See *supra* Section II.A.

²⁰⁰ See *supra* notes 13, 136, and corresponding text.

²⁰¹ Although there is little documentation on the procedure for *in forma pauperis* petitions in Exchequer and Star Chamber, it is presumed that it resembled the procedure used in the Court of Requests based on the similarity of the petitions examined from these courts. See *supra* note 108.

²⁰² See Maguire, *supra* note 26, at 378.

²⁰³ See *supra* Section I.C.

²⁰⁴ See *supra* note 148 and accompanying text; see also *supra* Section II.B.

For all of the discretion given to the heads of court, particularly in courts of equity where legislation could not constrain them, the accessibility, comprehensiveness, and uniformity of the *in forma pauperis* right appears all the more remarkable. John Daniell's case study demonstrates that not all claims to *in forma pauperis* were similarly straightforward. Nonetheless, the right that these petitions portray is one that is more robust and well-exercised than legal scholars may previously have considered.

B. *Implications for Today*

Today, potential critiques of a uniform and comprehensive *in forma pauperis* standard include the unpredictability of federal funding to finance fee waivers, an uptick in false claims of poverty, and the inappropriateness of applying a national standard across states where costs of living vary.²⁰⁵ Opponents have also forcefully criticized the idea of a civil right to counsel, citing the burden on taxpayers and the impracticability of future caseloads as insurmountable obstacles to guaranteeing this right.²⁰⁶

Examining the early modern English right to *in forma pauperis* does not provide well-defined responses to these critiques or easily transferable solutions. However, it offers a window into a small court system, where the benefits of *in forma pauperis* status were fully resourced and where a comprehensive right functioned. In the early modern period, the English court system remained relatively limited, both in the numbers of courts and legal actors. The two common law courts, the Court of Common Pleas and King's Bench, and the four equity courts in London served as the main trial and appeals courts for the entire country. Qualified judges were few in number, and most of them served on two or three courts at a time.²⁰⁷ Moreover, limits were placed on the numbers of barristers that could be barred every year to preserve high professional standards.²⁰⁸ At the turn of the sixteenth century, the number of newly barred barristers was set at four per year—though it was raised to eight in 1614—and only 489 barristers

²⁰⁵ See Hammond, *supra* note 25, at 1516–20.

²⁰⁶ See Benjamin H. Barton, *Against Civil Gideon (and for Pro Se Court Reform)*, 62 FLA. L. REV. 1227, 1251–55 (2010); Ted Frank, *The Trouble with the Civil Gideon Movement*, AM. ENTERPRISE INST. (Aug. 7, 2008), <https://www.aei.org/research-products/report/the-trouble-with-the-civil-gideon-movement/> [perma.cc/X8GC-NQ3F].

²⁰⁷ In 1660, twenty years after the period discussed, there were only twelve common law judges that remained in the London courts. *History of the Judiciary*, CTS. & TRIBUNALS JUDICIARY, <https://www.judiciary.uk/about-the-judiciary/history-of-the-judiciary/> [perma.cc/3CNV-R7E6].

²⁰⁸ ROSEMARY O'DAY, *THE PROFESSIONS IN EARLY MODERN ENGLAND, 1485–1800: SERVANTS OF THE COMMONWEAL* 140 (2000).

were practicing in the London courts.²⁰⁹ The poor population, or those who likely qualified for in forma pauperis status, ranged from 5% to 50%,²¹⁰ as compared to the nearly 12% of Americans living below the poverty line today.²¹¹ And yet, in spite of the relative sizes of the court system and poor population, early modern English courts succeeded where the American judicial system has not in creating a comprehensive and uniform right to in forma pauperis.

It could be argued that the smaller size of the English judicial system and the location of its central courts in the capital enabled the uniformity of the in forma pauperis right, as opposed to the extensive and sprawling modern American court system. However, the modern American system possesses an advantage—a governing set of procedural rules and federal laws—that early modern courts of equity did not have. As a result, a consistent in forma pauperis right could be imposed from the top down in American courts.

Therein lies the key lesson for modern America, and a reason to believe it would be possible to revitalize the in forma pauperis right for our times. The early modern English right to in forma pauperis functioned in large part due to the consistency of its procedure—a threshold standard of poverty across courts, a formulaic petition, and a routine oath that could be supported by third-party affidavits. This consistency guided judges in admitting or denying poor litigants the benefit of the status, and thus the right did not hinge wholly on judicial discretion. Similarly, proposals for reforming the modern in forma pauperis right have called for guiding standards while preserving judicial discretion.²¹² That such a system operated effectively in sixteenth-century England bolsters the claims of those who believe it should be revived and reformed for our contemporary courts.

²⁰⁹ *Id.* By comparison, the United States had over 1.3 million licensed attorneys actively practicing in 2018. *New ABA Data Reveals Rise in Number of U.S. Lawyers, 15 Percent Increase Since 2008*, ABA (May 11, 2018), https://www.americanbar.org/news/abanews/aba-news-archives/2018/05/new_aba_data_reveals/ [perma.cc/F8CJ-SN7J]. The number of practicing attorneys in the United States has been identified as the highest concentration in the world. Deborah L. Rhode, *Whatever Happened to Access to Justice?*, 42 *LOY. L.A. L. REV.* 869, 869–70 (2009).

²¹⁰ See *supra* note 89.

²¹¹ *The Population of Poverty USA*, POVERTYUSA, <https://www.povertyusa.org/facts> [perma.cc/5GKF-NVPW]. It is estimated that 80% of the poor in America do not have their legal needs met. Rhode, *supra* note 209, at 869.

²¹² See Hammond, *supra* note 25, at 1518 & n.162 (asserting that “a discretionary system does not necessarily mean the decision maker must be deprived of standards” and citing the Federal Sentencing Guidelines as a salient example).

CONCLUSION

Analyzing the primary-source petitions reveals the extensiveness of the right to *in forma pauperis* in early modern England—judges applied it flexibly and comprehensively to account for costs of litigation beyond the standard waiver of court and counsel fees. Moreover, it was far-reaching in who could claim it, extending to prisoners, widows, immigrants, and the working class. Finally, the right was flexible enough to be retracted if evidence came to light about a litigant’s financial situation. The procedure was thus sufficiently comprehensive to account and correct for instances where judges’ initial determinations of poverty proved to be incorrect. This stands in contrast to the modern American version of the right, as judges struggle to determine a benchmark poverty level, distinguish false claims of poverty, and provide resources beyond the initial filing fee waiver.²¹³

Questions remain for further study on the early right to sue *in forma pauperis*, namely how exactly attorneys were paid for their work and how litigants first established contact with attorneys or barristers to craft the initial petition. An initial study into these records, however, indicates the expansiveness of the early modern conception of this right. Legal scholars have drawn upon the historical right to argue for both restraining²¹⁴ and amplifying²¹⁵ the contemporary *in forma pauperis* right. Yet, without a thorough understanding of the reality of historical *in forma pauperis* procedure, neither can lay a convincing foundation for a reconceptualization of the right today.

²¹³ See *id.* at 1489 n.31, 1498 (noting that only certain district courts use a threshold standard of poverty and that though the Supreme Court has allowed false *in forma pauperis* claims to be subject to perjury prosecutions, no such prosecutions appear in federal opinions); Timothy M. Biddle, Comment, *In Forma Pauperis and the Civil Litigant*, 19 CATH. U. L. REV. 191, 191 (1969) (asserting that an *in forma pauperis* litigant will be “saved the filing fee but little else”).

²¹⁴ See Kalkwarf, *supra* note 23, at 804–05, 818.

²¹⁵ See Llewellyn & Hawkins, *supra* note 23, at 656.

APPENDIX: IN FORMA PAUPERIS COURT RECORDS

	Title	Document Type	Date	Status of the Litigant	Subject Matter	National Archives Reference
1	Sharp v. Puttocke	Bill	Nov. 17, 1558	Defendant (IFP)	Claim of plaintiff to title on a tenement. Defendant admitted IFP.	C 2/Eliz/S23/31
2	Shilling v. Holditche	Bill	Feb. 6, 1591	Plaintiff (IFP)	Suit of Plaintiff to collect on unpaid credit of defendant.	REQ 2/166/170
3	Adlane v. Ledger	Bill, petition, and affidavit	Feb. 2, 1593	Plaintiff (IFP), former soldier and current cardmaker	Petition to proceed IFP on a claim to land and tenements in Suffolk. Affidavit from neighbors in St. Katherine testifying to his poverty.	REQ 2/137/23
4	Newman v. Carpenter (alias) Harroden	Order	Oct. 11, 1596	Plaintiff (IFP)	IFP status is revoked from plaintiff after commission finds proof of his deception.	REQ 1/47
5	Ellis v. Wray	Bill, petition, and interrogatories	June 28, 1598	Plaintiff (IFP)	Plaintiff requests to proceed IFP against his creditors. Admitted IFP.	REQ 2/203/11
6	Petition from Jane Daniell to the Lord Treasurer	Petition	Dec. 22, 1601	Plaintiff (IFP)	Wife of plaintiff requests in Chancery for plaintiff to sue IFP in Star Chamber.	SP 46/55/fol. 117

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	Title	Document Type	Date	Status of the Litigant	Subject Matter	National Archives Reference
7	Harvey v. Jones	Bill and answer	Jan. 1, 1603	Plaintiff (IFP), feltmaker	Suit against former lawyer who represented plaintiff IFP, alleging that defendant conspired to take money of plaintiff through a series of loans and bonds.	C 2/JasI/H13/37
8	Barne v. Dingle	Bill	May 13, 1605	Plaintiff (IFP)	Claim about inheritance of lands in Cornwall. Plaintiff admitted IFP.	C 2/JasI/B26/57
9	Petition of John Daniell	Petition	Apr. 19, 1606	Plaintiff (IFP)	Request of plaintiff to bring IFP suit in Exchequer to recover his property.	SP 46/55/fol. 276
10	Bevon v. Gryffithes	Petition	Nov. 28, 1608	Plaintiff (IFP)	Request of plaintiff to bring IFP suit to collect on debt. Petition granted.	REQ 2/412/5
11	Petition of John Daniell to the Lord Chancellor	Petition	May 11, 1607	Plaintiff (IFP)	Petition to sue IFP. Petition denied.	SP 46/55/fol. 309
12	Petition of John Daniell to the Lord Chancellor	Petition	Nov. 30, 1607	Plaintiff (IFP)	Petition of plaintiff to bring IFP suit against debtors. Petition denied.	SP 46/55/fol. 313
13	Petition of John Daniell to the Lord Chancellor	Petition	Aug. 26, 1608	Plaintiff (IFP)	Petition to proceed IFP in Chancery. Tables decision on petition contingent on consulting with other courts.	SP 46/55/fol. 322

	Title	Document Type	Date	Status of the Litigant	Subject Matter	National Archives Reference
14	Petition of John Daniell to the Lord Chancellor	Petition	Aug. 28, 1608	Plaintiff (IFP)	Petition of plaintiff to proceed IFP in Chancery. Petition granted contingent on plaintiff clarifying aspects of the suit.	SP 46/55/fol. 320
15	Order in the Exchequer for John Daniell	Order	Oct. 17, 1608	Plaintiff (IFP)	Order to deliver evidence, bonds, and bills remaining in Exchequer to John Daniell.	SP 46/56/fol. 379
16	Petition of John Daniell to the Lord Chancellor	Petition	Dec. 20, 1608	Plaintiff (IFP)	Petition to proceed IFP in Chancery against several debtors. Petition granted.	SP 46/55/fol. 324
17	Petition of John Daniell to the Lord Chancellor	Petition	Dec. 20, 1608	Plaintiff (IFP)	Petition to proceed IFP in Chancery against different debtors. Petition granted.	SP 46/55/fol. 326
18	Petition of John Daniell to the Chancellor of the Exchequer	Petition	Dec. 27, 1608	Plaintiff (IFP)	Petition to proceed IFP in Exchequer. Petition granted.	SP 46/55/fol. 328
19	Petition of William Edmonds to Sir Lawrence Tanfield	Petition and affidavit	Jan. 30, 1611	Defendant (IFP), former soldier, currently a prisoner	Petition to proceed IFP in Exchequer and request for particular counsel and attorney. Affidavit on behalf of neighbor testifying to plaintiff's poverty. Petition granted.	SP 46/70/fol. 3

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	Title	Document Type	Date	Status of the Litigant	Subject Matter	National Archives Reference
20	Bulbrooke v. Coleman	Order	May 26, 1614	Plaintiff (IFP)	Ordering defendant to submit an affidavit to support his claim that plaintiff is not truly poor enough to qualify for IFP status. When the affidavit is filed, the status will be revoked.	E 126/2/29v
21	Bulbrooke v. Coleman	Order	Oct. 13, 1614	Plaintiff (IFP)	IFP status of plaintiff is revoked and case is transferred to Court of Common Pleas.	E 126/2/40r
22	Davies v. Lewis	Bill and answer	Jan. 10, 1618	Plaintiff (IFP)	Plaintiff admitted IFP.	STAC 8/121/14
23	Ashmonde v. Brownsmythe	Bill	Jan. 2, 1619	Plaintiffs (IFP)	Subornation of perjury case in which defendants allege plaintiffs have feigned their poverty.	STAC 8/41/11
24	Petition of Richard Oxenbridge	Petition	May 19, 1629	Plaintiff (IFP), prisoner	Petition to sue IFP on habeas corpus claim granted upon oath of poverty by parish priest.	E 185/16
25	Certificate by Robert Holland, Solicitor	Certificate	May 25, 1631	Solicitor's certificate of fees	Certificate of fees paid to clerk in Chancery for IFP work.	E 215/614

	Title	Document Type	Date	Status of the Litigant	Subject Matter	National Archives Reference
26	Petition of Elizabeth Shipper	Petition	c. 1586–1595	Plaintiff (IFP), widow	Petition to proceed IFP in a property suit against guardian of her trust, a ropemaker, and a tailor.	REQ 3/32
27	Letter to Master Manwood	Letter	June 2, 1565	Plaintiff (IFP)	Assertion that plaintiff is lying about his income and should not have been granted IFP status.	SP 46/27/fol. 252
28	Petition to the Lord Treasurer by Robert <i>Starkey</i>	Petition	1579	Plaintiff (IFP)	Petition to proceed IFP in Exchequer on a property claim. Petition granted.	SP 46/41/fol. 151
29	Petition of Thomas Brendly	Petition	1587	Plaintiff (IFP)	Petition to proceed IFP in Chancery. Petition granted but transferred to Requests.	REQ 2/157/66
30	Clarke v. Fyshe	Letter to the court	May 28, 1594	Plaintiff (IFP)	Request on behalf of community to allow plaintiff to proceed IFP on dispute over three to four acres, in order to avoid having him becoming a charge of	REQ 2/157/97
31	Goodwin v. Slater	Order	Nov. 17, 1595	Defendant (IFP), woman	Ordering plaintiff to deliver a copy of the bill and appointing attorney to defendant.	REQ 1/18/692v
32	Pasley v. Neale	Order	Oct. 15, 1597	Plaintiff (IFP)	Property dispute concerning three houses. Counsel appointed to plaintiff IFP.	REQ 1/19/12
33	Housecastell v. Pedder	Petition	1599	Plaintiff (IFP)	Petition to be admitted to sue IFP in Chancery. Transferred to Court of Requests.	REQ 2/157/229
34	Taylor v. Farrington	Petition	June 20, 1601	Plaintiff (IFP)	Petition to sue IFP to collect rent on a house. Petition granted.	REQ 2/276/15

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	Title	Document Type	Date	Status of the Litigant	Subject Matter	National Archives Reference
35	Johnson v. Wolf	Petition	1604	Plaintiff (IFP)	Petition to sue IFP in Chancery over land dispute in Radford. Petition granted.	REQ 2/421/59
36	Roberts v. William & others	Order	June 17, 1607	Plaintiff (IFP)	Order to arrest defendants for disobeying an order of the Court of Requests.	REQ 2/416/100
37	Kelbye v. Cressall	Bill and petition	Nov. 27, 1609	Plaintiff (IFP)	Petition to sue IFP to collect on debt owed for two cows.	REQ 2/411/70
38	Petition of Thomas Flemyng to the Masters of the Requests	Petition and affidavit	Apr. 20, 1611	Plaintiff (IFP)	Petition on behalf of plaintiff attesting to her poverty.	REQ 2/410/119
39	Clyff v. Chunn	Petition	1612	Plaintiff (IFP)	Petition to sue IFP to collect inheritance. Petition granted.	REQ 2/416/19
40	Barefoote v. Turner	Petition	Dec. 7, 1613	Plaintiff (IFP)	Petition to sue IFP to collect on alleged entitlement to wife's property and goods.	REQ 2/411/5
41	Petition of Henry Forrett	Petition	June 3, 1627	Plaintiff (IFP), Irish merchant	Petition to sue IFP. Petition granted.	E 185/16

	Title	Document Type	Date	Status of the Litigant	Subject Matter	National Archives Reference
42	Boyston v. Keddington	Bill	Jan. 8, 1619	Plaintiff (IFP)	Suit on failure to perform contract.	C 2/JasI/B11/54
43	Daniell v. Dutton, Mynshall, Sutton & others	Order	Nov. 14, 1609	Plaintiff (IFP)	Dismisses Daniell' s suit against all defendants in Exchequer, but allows Daniell the option to bring a new suit IFP against the Earl of Clanricarde.	SP 46/54/foI. 243
44	Complaint to Sir Roger Manwood, Baron in Exchequer, by Phelip [Philippa] Warde	Bill of complaint	Feb. 13, 1587	Plaintiff (IFP)	Request for retrial in which jury found copyhold of plaintiff should be forfeited to the Crown. Plaintiff allowed to proceed IFP.	SP 46/34/foI. 174
45	Petition of Edward Bushe	Petition	c. 1609–1639	Plaintiff (IFP)	Petition to sue IFP in Exchequer. Petition granted.	E 185/16
46	Petition of Thomas Cornwall	Petition	c. 1633–1643	Plaintiff (IFP)	Petition to proceed IFP.	E 185/16
47	More v. Haukes	Petition	c. 1509–1558	Plaintiff (IFP)	Petition to proceed IFP in a property suit.	C 1/1508/51
48	Griffiths v. Prosser	Bill	Jan. 23, 1623	Plaintiff (IFP)	Property suit with plaintiff admitted IFP.	C 2/JasI/G12/24

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	Title	Document Type	Date	Status of the Litigant	Subject Matter	National Archives Reference
49	Baker v. Sandes	Interrogatories	date unknown	Plaintiff (IFP), woman	Property claim with plaintiff admitted IFP.	E 133/8/1307
50	Petition of William Johnson	Petition	date unknown	Defendant (IFP), laborer	Petition to proceed IFP. Signatures testifying to the defendant's poverty. Petition granted.	E 185/16
51	Petition of Frances Mowntford	Petition	June 10, 1640	Plaintiff (IFP)	Petition to proceed IFP regranted after plaintiff lost original certification of approval for IFP.	E 185/16
52	Pomfrett v. Grace & Avelin	Order	Oct. 16, 1595	Plaintiff (IFP)	Ordering defendants to bring goods mentioned in the bill into court and allowing plaintiff to proceed IFP.	REQ 1/18/635
53	Warner v. Clarek	Order	Oct. 27, 1595	Plaintiff (IFP)	Ordering plaintiff to amend his bill for clarity and allowing him to proceed IFP.	REQ 1/18/659
54	Shipper v. Good	Order	Feb. 11, 1595	Plaintiff (IFP), widow	Ordering both parties to examine witnesses for this case.	REQ 1/18/859r
55	Haydon v. Sansom	Order	June 21, 1596	Defendant (IFP)	Allowing defendant to proceed IFP.	REQ 1/47

	Title	Document Type	Date	Status of the Litigant	Subject Matter	National Archives Reference
56	Baylief v. Dunne	Petition	Apr. 27, 1594	Defendant (IFP)	Petition to proceed IFP on right to land and tenements in Dorset.	REQ 2/138/51
57	Evans v. Anger	Bill and petition	Nov. 28, 1590	Plaintiff (IFP), laborer	Request in bill to proceed IFP on suit to have defendant discharge him from debts.	REQ 2/147/10
58	Hillarie v. Lunock	Bill and petition	Dec. 3, 1590	Plaintiff (IFP)	Complaint over cattle dispute with request to sue IFP. Request granted.	REQ 2/147/3
59	Lewes v. William	Bill and petition	c. 1596–1606	Plaintiff (IFP)	Petition to sue IFP to recover land in Breconshire. Petition granted.	REQ 2/148/2
60	Lake v. Whetley	Petition and bill	c. 1596–1606	Plaintiff (IFP)	Plaintiff's petition to sue IFP over dispute over land deed. Petition granted.	REQ 2/148/6
61	Lamberte v. Lamberte	Bill	Nov. 19, 1572	Unclear which party was filing for IFP.	Dispute over right to land.	REQ 2/148/7
62	Machocke v. Wolley	Bill and affidavit	May 10, 1592	Plaintiff (IFP)	Suit to recover inheritance and affidavit on behalf of neighbors as to poverty of plaintiff.	REQ 2/149/9

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	Title	Document Type	Date	Status of the Litigant	Subject Matter	National Archives Reference
63	Pallmer v. Skeete	Bill	Oct. 25, 1600	Plaintiff (IFP), tanner	Suit to recover value of goods and household furniture that was sold to defendant.	REQ 2/150/83
64	Petition of Henry Wood	Petition and bill	Nov. 17, 1590	Plaintiff (IFP)	Suit to recover bonds and request to proceed IFP in Chancery. Procedural note to move suit to Requests because of backlog in Chancery.	REQ 2/155/25
65	Howet v. Astrey	Petition	c. 1596–1606	Plaintiff (IFP), clerk	Petition to sue IFP in Court of Requests.	REQ 2/157/214
66	Woollett v. Carden	Petition	c. 1590–1600	Plaintiff (IFP)	Petition to proceed IFP on property claim.	REQ 2/157/500
67	Pepper v. Nutbourne	Petition and bill	1599	Plaintiff (IFP)	Petition to proceed IFP on property claim.	REQ 2/159/120
68	Shorly v. Serjant	Petition	date unknown	Plaintiff (IFP)	Petition to sue IFP.	REQ 2/159/140
69	Curtys v. Sebright	Petition	c. 1596–1606	Defendant (IFP), laborer	Petition of defendant to answer and be admitted IFP in this suit. Petition granted.	REQ 2/159/35

	Title	Document Type	Date	Status of the Litigant	Subject Matter	National Archives Reference
70	Kymber v. Browne	Petition and bill	1597	Plaintiff (IFP)	Request to be admitted IFP in this suit. Admitted IFP.	REQ 2/162/73
71	Apreston v. Wheelpdale	Bill and letter of commissioners	1562	Plaintiff (IFP), widow	Claim to disputed land with plaintiff admitted IFP.	REQ 2/163/3
72	Poole v. Nicholson	Petition and letter of neighbors	Nov. 23, 1598	Plaintiff (IFP), prisoners	Petition to proceed IFP by plaintiffs who are in debtors' prison. Petition granted.	REQ 2/166/143
73	Potter v. Cross	Petition	c. 1589	Defendant (IFP)	Request of defendant to be admitted IFP.	REQ 2/252/50
74	Prior v. Denton	Bill	1600	Plaintiff (IFP), laborer	Request of plaintiff in bill to be admitted IFP in will dispute. Admitted IFP.	REQ 2/252/60
75	Purnell v. Yonge, Higgs, Bridgett his wife, and Tobie	Bill and reply	Oct. 9, 1591	Plaintiff (IFP), grocer	Dispute on inheritance of land. Admitted IFP.	REQ 2/252/70
76	Plummer v. Hunter	Petition	c. 1616–1640	Plaintiff (IFP)	Petition to sue IFP in inheritance dispute. Petition granted.	REQ 2/406/71

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	Title	Document Type	Date	Status of the Litigant	Subject Matter	National Archives Reference
77	Jolles v. Birchmore	Petition and letter from attorney	Nov. 9, 1611	Plaintiff (IFP)	Petition to sue IFP to collect on promised inheritance. Letter from attorney testifying to poverty of plaintiff. Petition granted.	REQ 2/413/66
78	Adams v. Jeffery	Bill and affidavit	July 7, 1620	Plaintiff (IFP), laborer	Affidavit from neighbors that plaintiff is a very poor man. Plaintiff suing over a pole and a half of land.	REQ 2/416/3
79	Hollande v. Hollande	Petition	July 7, 1598	Plaintiff (IFP), widow	Petition to sue IFP to collect on inheritance.	REQ 2/47/25
80	John Daniell' s Petition to Sir William Peryam, Lord Chief Baron	Petition	June 15, 1602	Plaintiff (IF)	Petition to sue IFP to collect on bonds. Petition admitted.	SP 46/55/fol. 187
81	Tiplaty v. Moorhouse	Bill	date unknown	Plaintiff (IFP), woman	Rape suit, plaintiff was admitted IFP.	STAC 2/18/15
82	Wore (alias Worth) v. Berston	Bill	date unknown	Plaintiff (IFP)	Plaintiff admitted IFP.	STAC 2/31/104
83	Waterhouse v. Cotton	Bill	1579–1580	Plaintiff (IFP), widow	Bill to recover promised cows from plaintiff. Plaintiff admitted to sue IFP in Chancery.	STAC 5/W3/28
84	Daye v. Robert Flick & others	Order	Oct. 18, 1596	Plaintiff (IFP)	Suit dismissed from Requests as plaintiff filed an identical suit in King' s Bench. Plaintiff found to not qualify for IFP status.	REQ 1/19/638v

	Title	Document Type	Date	Status of the Litigant	Subject Matter	National Archives Reference
85	Hine v. Savage	Bill	1590	Plaintiff (IFP)	Witnesses ordered to appear and be examined in court at their own charge because of the IFP status of plaintiff.	STAC 5/H70/10
86	Daniell v. Earl of Clanricarde	Interlocutory order	Nov. 3, 1608	Plaintiff (IFP)	Orders defendant to deliver evidence, bills, bonds, and statutes to plaintiff.	E 124/7/153v
87	Daniell v. Grymsditch et al.	Interlocutory order	Feb. 20, 1609	Plaintiff (IFP)	Orders the Earl and Countess of Clanricarde to answer bill of plaintiff within two weeks and to put down a security that they will adhere to court orders.	E 124/8/321r
88	Daniell v. Earl of Clanricarde & Lady Francis, his wife	Interlocutory order	Feb. 3, 1610	Plaintiff (IFP)	Overturning former order dismissing suits against other defendants and allowing Daniell to file suits against them. Further ordering the Earl and Countess of Clanricarde to respond to Daniell's bill by the coming Friday.	E 124/8/282r-282v

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	Title	Document Type	Date	Status of the Litigant	Subject Matter	National Archives Reference
89	Daniell v. Bigges, Anne his wife, and John Atkinson	Interlocutory order	Nov. 18, 1608	Plaintiff (IFP)	Ordering defendant to allow Daniell to continue quiet possession of a tenement in Westminster.	E/124/6/319v
90	Maddocks Papers	Miscellaneous papers and financial record	1582	Personal papers of John Maddocks, a Court of Requests lawyer	These papers are uncatalogued, but refer to Maddocks' s accounts and fees collected for his various cases.	REQ 3/44
91	Petition of Ralph Wilkes to the Attorney General	Petition	1570	Plaintiff (IFP)	Petition to bring IFP suit against an individual in Dorset for the removal of his goods.	SP 46/27/fol. 18
92	Millward v. Wilson	Affidavits	Dec. 25, 1585	Plaintiff (IFP)	Affidavits on behalf of neighbors to the plaintiff claiming that he owns a farm, which brings in thirty pounds a year, and has feigned his pauper status.	STAC 10/6/1- 10/6/5