

Sources and Interpretations

Knowing When to Fold: Litigation on a Writ of Debt in Mid-Eighteenth-Century Virginia

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Major challenges inhibit modern analysis of debt litigation in eighteenth-century Virginia. Entries about individual suits are scattered throughout manuscript county order books, and their interpretation requires an understanding of arcane English common law. Most suits settled out of court before trial. Historians disagree whether these were genuine contests between plaintiffs and defendants. From a game-theory perspective, pretrial settlements demonstrate sophisticated economic processes. To analyze those processes, individual case records for five counties have been assembled for the period January 1746 through May 1755, producing a study group of 2,142 suits on a writ of debt. The writ of debt dealt primarily with written, signed, and witnessed promises to pay a particular amount. When litigated, suits unfolded as what in game theory is called a sequential game, each party responding in turn to the other side's move. Litigants' maneuvering expressed their expectations for the legal system. Both parties' strategic considerations can be discovered by working backward from the conclusions of suits to the creation of contested debts. The data reveal a high volume of effective and uncontroversial debt enforcement by Virginia courts, a reality that continually bolstered popular perceptions that elite-dominated county courts were both fair and just.