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Marie Juliet Alfaro

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Secured Transactions History: The Impact of Southern Staple Agriculture on The First Chattel Mortgage Acts in The Anglo-American World

GEORGE LEE FLINT, JR.* AND MARIE JULIET ALFARO**

PRELUDE

In 1638 John Neale mortgaged his pinnace, a small ship, by deed to Nathaniel Littleton and William Burdett.¹ The debtor, John Neale, was a merchant who first located in 1632 at Elizabeth City, Virginia, across the Chesapeake Bay from Accomack County, Virginia, on the Eastern Shore leasing fifty acres for twenty-one years.² By 1636 Neale had patented 1500 acres on the seaboard side in Accomack County.³ In 1637 he had patented the 500-acre tract, "Smith's Island", with another merchant, John Redman of London, that they relinquished to stock-raisers.⁴ A few months later, Neale obtained 200 acres at King's Creek and in 1644 would obtain "Magotha Bay", both well located for trading.⁵ Neale maintained a store to sell goods to

* Professor of Law, St. Mary's University School of Law, San Antonio, Texas; B.A., 1966, B.S., 1966, M.A., 1968, University of Texas at Austin; Nuc. E., 1969, Massachusetts Institute of Technology; Ph.D. (Physics), 1973, J.D., 1975, University of Texas at Austin.

** Instructor of Political Science, San Antonio College, San Antonio, Texas; B.A., 1988, Texas A & M at Corpus Christi; M.A. 1992, St. Mary's University.

1. The authors have loosely taken the facts of this scenario from Littleton & Burdett v. Drew contained in the court records of Northampton (then called Accomack) County, Virginia. See COUNTY COURT RECORDS OF ACCOMACK-NORTHAMPTON, VIRGINIA 1632-1640 137-38, 177 (Susie M. Ames ed., American Historical Association 1954) (the name sometimes appears as Burdecke) [hereinafter 1 Ames]. The authors clarified the facts in two instances. The court records describe the transaction as a conveyance without any mention of security. Since Mr. Neale retained possession of the pinnace, the conveyance was a mortgage. See *infra* notes 92-104 and accompanying text for seventeenth century mortgages.

The court records also do not name the defendant. In later lawsuits, creditors sued the sheriff to recover their property. See George Lee Flint, Jr. & Marie Juliet Alfaro, *Secured Transactions History: the First Chattel Mortgage Acts in the Anglo-American World*, 30 WM. MITCHELL L. REV. 1403 (2004). The court records do not match the early sheriffs, William Stone, John Neale, Stephen Charlton, and Edward Drew, with their years' of service except that Stone served first in July 1634. See 1 Ames, *supra*, at xxiv, 17-18. The court records do provide the nominees for the position each year: for September 1636, Littleton, Neale, Roper, Drew, Mountney, and Wilson; for November 1637, Wilkins, Drew, and Bagwell; and for May 1639, Neale, Bagwell, and Berryman. See 1 Ames, *supra*, at 58, 96 & 146. So Neale was sheriff in 1636 and 1639, leaving Drew for 1637.

2. See 1 Ames, *supra* note 1, at xxxvi.

3. See *id.*

4. See *id.*

5. See *id.*

planters in Elizabeth City and carried on an extensive trade.⁶ The Accomack County Court records contain numerous references to debts owed to him.⁷ Two years before he himself became a commissioner of that court, the court in 1637 ordered one of its commissioners to pay him an amount due for 122 yards of trading cloth, half of which he intended to trade for corn and furs with the Indians.⁸ In 1636 Neale became a member of the local parish vestry and served a one-year term as the appointed Sheriff of Accomack County.⁹ He would become an appointed commissioner of the Accomack County Court in 1639 and later an elected burgess for Accomack County.¹⁰ Neale would use the funds he borrowed in trading with the local planters situated along the bay's rivers for their tobacco. This trade required use of his pinnace, so Neale would keep possession of the pinnace.

The secured parties also had political connections for appointed office. One secured party, Nathaniel Littleton, descended from Sir Thomas Littleton, a famous judge and the author of Littleton's *Tenures*,¹¹ the principal authority on English real estate law, the sixth son of Sir Edward Littleton, Chief Justice of Wales, and brother of Baron Edward Littleton, Chief Justice of Common Pleas and Lord Keeper of the Great Seal in London from 1640 to his death in 1645.¹² Littleton had come to the Eastern Shore of Virginia in 1635.¹³ He had become an appointed commissioner of the Accomack County Court in 1637 and the appointed commander of the county in 1638.¹⁴ He would become an appointed councilor advising the Governor in Jamestown in 1641.¹⁵ Littleton would marry the daughter of socially prominent family, the Hammers.¹⁶ He would patent 3500 acres in 1640 to add the 900 acres inherited by his wife.¹⁷ When Littleton died in 1654, he was the most prominent person on the Eastern Shore of Virginia.¹⁸

The other secured party, William Burdett, embodied the typical success story of early Virginia. Burdett had come in 1615 at age 16 and was a servant

6. *See id.*

7. *See* 1 Ames, *supra* note 1, at xxxvi.

8. *See id.* at xxiv, xxxvi & 70 (Commissioners were justices of the county court).

9. *See id.* at xxiv, xxxvi & 58.

10. *See id.* at xxiv, xxxvi.

11. *See* 2 WILLIAM HOLDSWORTH, A HISTORY OF ENGLISH LAW 573-75 (A.L. Goodhart et al. eds., 5th ed. 1966); *see also* SIR THOMAS LITTLETON, LITTLETON'S TENURES IN ENGLISH (London, H. Butterworth 1825).

12. *See* 1 Ames, *supra* note 1, at xxxv.

13. *See id.*

14. *See id.* at xx, xxxiv-xxxv (The commander served as the county's chief official).

15. *See id.* at xxxv.

16. *See id.*

17. *See* 1 Ames, *supra* note 1, at xxxv.

18. *See id.* at xxxv-xxxvi.

of the commander in 1624.¹⁹ But he had the good fortune to marry widow Sanders, whose first husband had reached gentleman status.²⁰ By 1634 he was an appointed commissioner and shortly thereafter a parish vestryman.²¹ With her plantation, which Sanders had leased in 1628 for ten years, came social position.²² Burdett patented the plantation in 1638 and would acquire 1250 acres in 1639 and 300 acres in 1641.²³ He would become an elected Burgess for Accomack County by 1639, and a large landholder on the Eastern Shore before his death in 1643.²⁴

But Neale had other creditors. Philip Taylor had sold 21 hogsheads of salt to Neale at 150 pounds of tobacco per hogshead in January of 1635-36.²⁵ Taylor would also become a councilor and commissioner in June 1642, a Burgess in 1642-43, and sheriff of Accomack County in 1643.²⁶ He became the chief lieutenant of William Claiborne during the controversy between Maryland and Virginia over Kent Isle in Maryland. Conflict with both Marylanders and Indians marked Taylor's career. He patented 1500 acres on the Eastern Shore. On October 28, 1638, Taylor obtained a judgment in the Accomack County Court against Neale entitling Taylor to obtain satisfaction by having Sheriff, Edward Drew, seize Neale's personalty and selling it.²⁷ Since Neale possessed the pinnace, the sheriff seized the pinnace in satisfaction of the execution of the judgment. Informed about the seizure and alarmed about losing their collateral for their loan to Neale, on January 24, 1638-39,²⁸ Littleton and Burdett sued the sheriff in Accomack County Court to void the execution.²⁹ They figured to win. Under the common law they owned the pinnace, not Neale.³⁰ The mortgage was a sale to the secured

19. *See id.* at xxxii.

20. *See id.*

21. *See id.*

22. *See* 1 Ames, *supra* note 1, at xxxii.

23. *See id.*

24. *See id.* at xxxii, 144.

25. *See id.* at 12.

26. *See* COUNTY COURT RECORDS OF ACCOMACK-NORTHAMPTON, VA. 1640-45 xiv, 178, 255 (Susan Ames ed., 1973) [hereinafter 2 Ames].

27. *See* 1 Ames, *supra* note 1, at 127. Nathaniel Littleton was then commander with Obedience Robins, Capt. William Stone, Mr. Burdett, William Andrews, Capt. William Roper, and John Wilkins serving as the other justices. *See id.* at 125.

28. Until the adoption by England of the Gregorian Calendar in 1752, the year began on Mar. 25 and ended on Mar. 24. *See* 3 HELEN HEMINGWAY BENTON, PUB., THE NEW ENCYCLOPEDIA BRITANNICA 603 (Encyclopedia Britannica, 15th ed. 1978) [hereinafter BENTON].

29. *See* 1 Ames, *supra* note 1, at 137-38 (Nathaniel Littleton then served as commander with Obedience Robins, Capt. William Roper, Capt. William Stone, William Andrews, William Burdett, and John Wilkins).

30. *See, e.g.,* Stone v. Grubham, 2 Bulst. 225, 226, 80 Eng. Rep. 1079, 1080, 1 Roll. Rep. 3, 81 Eng. Rep. 283 (K.B. 1615).

parties subject to a condition defeasance if the debtor paid. The debtor could remain in possession of the collateral provided the conveyance so permitted. The Accomack County Court decided for Littleton and Burdett, voiding the execution and ordering the pinnace placed in the custody of Littleton and Burdett in accordance with their deed of mortgage.³¹

Littleton, Burdett, Taylor and Sheriff Drew had suffered some inconvenience and litigation costs in determining the owner of the pinnace. Littleton and Burdett had left another individual in possession of their item of personalty. The sheriff had levied on the pinnace as the property of Neale since Neale possessed it. Littleton, Burdett, and the sheriff could have avoided this confusion as to ownership had there been another method to provide notice of ownership besides possession. And Littleton and Burdett as a counselor and a burgess, that is, legislators, would bring about this change shortly.

I. INTRODUCTION

The most striking feature of Anglo-American secured transaction law is the requirement to file notice in public files for the nonpossessory secured transaction for court enforcement of the transaction against third parties.³² Not all legal jurisdictions follow this example. Roman law recognized the transaction without any filing.³³ The Napoleonic Code banned the transaction.³⁴

31. See 1 Ames, *supra* note 1, at 137-38.

32. *E.g.*, U.C.C. §§ 9-317 (unfiled nonpossessory secured transaction loses to judgment lien) & 9-322 (2000) (nonpossessory secured transactions rank by order of filing); 11 U.S.C.A. § 506 (1993) (granting priority in bankruptcy to secured claims); 4 HALSBURY'S LAWS OF ENGLAND 373 (current law is the Bill of Sale Act of 1878 and the 1882 amendments), 450 (§ 8 of the amendment act of 1882 requires registration within a specified time or the security bill of sale is void) (Lord Mackay of Clashfern ed., The Bath Press, 4th ed. 2002).

33. See 14 SAMUEL PARSONS SCOTT, THE CIVIL LAW INCLUDING THE TWELVE TABLES, THE INSTITUTES OF ULPAN, THE OPINIONS OF PAULUS, THE ENACTMENTS OF JUSTINIAN, AND THE CONSTITUTION OF LEO 267 (Central Trust Co., 1973) (1932) (Code of Justinian, Bk VIII, tit. 18, § 11 (priority by order of execution)).

Businessmen under modern German law, to avoid the restrictions of a pledge, have created the transfer by way of security that operates similar to the old Roman law. See NORBERT HORN ET AL., GERMAN PRIVATE AND COMMERCIAL LAW: AN INTRODUCTION 185 (since possessory pledge under German Civil Code §§ 1205ff is too restrictive, businessmen deposit business assets with creditor, yet retain possession for the owner-creditor under the constructive ownership rules of § 930 to create security), 237-38 (this transfer by way of security evades notice rules for possession of pledges under § 1205 and registration of real estate mortgages under § 1115) (Clarendon Press, 1982); see also IAN S. FORRESTER ET AL., THE GERMAN CIVIL CODE 155 (§ 930), 183 (§ 1115) & 196 (§1205) (*as amended to January 1, 1975*) (North-Holland Publ'g. Co., 1975).

34. See FRANCE, CODE NAPOLEON (Claiton's Book Store, 1960) (in English), art. 2118 (can mortgage only immovables and usufruct), art. 2119 (can not mortgage movables); see also JOHN H. CRABB, TRANS., THE FRENCH CIVIL CODE (*as amended to July 1, 1976*) (Fred B. Rothman & Co., 1977), 378 (arts. 2118 & 2119 still provide the same).

A secured transaction insures that a lender receives repayment.³⁵ In return for the loan, the lender receives a priority interest in the borrower's personalty.³⁶ Secured transactions differ depending upon whether the creditor takes possession of the collateral, a pledge, or the debtor retains possession of the collateral, a nonpossessory secured transaction.³⁷

The traditional explanation of the Anglo-American notice filing requirement for the nonpossessory secured transaction deals with its potential to create a secret lien.³⁸ Without disclosing the existence of a prior nonpossessory secured transaction with respect to the collateral, the debtor may enter a subsequent secured transaction. If the two loan amounts aggregated exceed the value of the collateral, one secured party could fail to recover its loan if the debtor becomes insolvent. Roman law solved the problem by imposing a fraud penalty on the debtor for entering into subsequent secured transactions.³⁹ The Napoleonic Code solved the problem by not enforcing any nonpossessory secured transaction. Anglo-American law solves the problem by granting priority to prior secured transactions that provide notice to subsequent lenders, typically through a filing.

Yet some legal scholars have challenged the priority accorded the Anglo-American nonpossessory secured transaction under both bankruptcy,⁴⁰ and non-bankruptcy law.⁴¹ Rather than permit the holder of the nonpossessory secured transaction contractually to receive the collateral, these scholars suggest that Anglo-American law should reserve some of the debtor's assets

35. See George Lee Flint, Jr., *Secured Transactions History: The Fraudulent Myth*, 29 N.M.L. REV. 365 (1999) (showing development from hostage taking of slaves to work off the debt, to taking personalty to work of the debt through rents, to leaving the debtor in possession to earn moneys for the debt payments).

36. See U.C.C. § 1-201(35) (2003).

37. See *id.* § 9-102(2) (2000 Official text of Article 9).

38. See, e.g., DOUGLAS G. BAIRD & THOMAS H. JACKSON, *CASES, PROBLEMS, AND MATERIALS ON SECURITY INTERESTS IN PERSONAL PROPERTY* 8, 35 (2d ed. 1987).

39. 4 SCOTT, *supra* note 33, at 198 (Digest of Justinian, Bk XIII, tit. 7, § 36(1)) (criminal action of *stellionatus*); 11 *id.*, at 8 (Digest of Justinian, Bk. XLVII, tit. 20, § 3(1) (same); see J.A.C. THOMAS, *THE INSTITUTES OF JUSTINIAN* 206 (debtor to inform successive chargees of those charges and their value prior to making the successive charge or face civil and criminal liability for fraud) (North-Holland Publishing Co., 1975); MAC RADIN, *HANDBOOK OF ROMAN LAW* 207 (West Publishing Co., 1927).

40. See Lucian Arye Bebchuk & Jesse M. Fried, *The Uneasy Case for the Priority of Secured Claims in Bankruptcy*, 105 YALE L.J. 857, 909 (1996) (a 25 % carve out); see also Note, *Switching Priorities: Elevating the Status of Tort Claims in Bankruptcy in Pursuit of Optimal Deterrence*, 116 HARV. L. REV. 2541 (2003); Rebecca J. Hass, *Revamping Veil Piercing for All Limited Liability Entities: Forcing the Common Law Doctrine into the Statutory Age*, 70 U. CIN. L. REV. 95, 133 (2001) (arguing that tort claims should be given superiority in bankruptcy because tort creditors have no ability to allocate risks or require security).

For the priority rules, see *supra* note 32.

41. See Elizabeth Warren, *An Article 9 Set-Aside for Unsecured Creditors*, 51 CONSUMER FIN. L.Q. 323 (1997) (a 20 % set aside).

for general creditors,⁴² most notably tort claimants with judgment liens for ridiculous sums, thus destroying the assurance sought by the secured lender.

An eminent jurist once theorized that lawmakers adopt legal rules to solve a particular problem.⁴³ Centuries later, the original problem ceases, yet the rule remains. Subsequent lawmakers devise a new rationale to justify the rule. If they succeed, the rule takes on a new life. Only when this effort fails should lawmakers change the rule to accommodate the new conditions. Efforts at an economic justification for the nonpossessory secured transaction's priority have so far failed.⁴⁴

Before searching for a replacement justification and before succumbing to calls to alter the nonpossessory secured transaction's priority, an understanding of the original reason for the rule granting the nonpossessory secured transaction priority upon a filing would prove helpful. This article aims to provide that understanding. The rule under assault is the priority accorded a nonpossessory secured transaction with a notice filed in the public records.

The authors have recently shown that the earliest chattel mortgage statutes in the Anglo-American world arose in the seventeenth and eighteenth centuries.⁴⁵ Legislatures in the southern English-American colonies passed these statutes for Virginia in 1643,⁴⁶ South Carolina in 1698,⁴⁷ North Carolina in 1715,⁴⁸ Maryland in 1729,⁴⁹ Georgia in 1755,⁵⁰ and British West Florida in

42. See, e.g., *Benedict v. Ratner*, 268 U.S. 353, 364-65 (1925) (rejecting chattel mortgage of accounts even though transaction has no ostensible ownership problem, effectively reserving accounts for general creditors).

43. OLIVER WENDELL HOLMES, JR., *THE COMMON LAW* 5 (Boston, Little Brown, 1881).

44. See, e.g., Lois R. Lupica, *Asset Securitization: The Unsecured Creditor's Perspective*, 76 TEX. L. REV. 595, 620 (1998); *Bebchuk & Fried*, supra note 40, at 862-63 n.23 (providing numerous citations); see also Claire A. Hill, *Is Secured Debt Efficient?*, 80 TEX. L. REV. 1117 (2002).

45. See Flint & Alfaro, supra note 1.

46. See 1 WILLIAM WALLER HENING, *STATUTES AT LARGE; BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA FROM THE FIRST SESSION OF THE LEGISLATURE IN THE YEAR 1619 248-49* (1643, ch. 12) (Richmond, W.W. Gray, Printer, 1820).

47. See JOHN FAUCHERAUD GRIMKE, *THE PUBLIC LAWS OF THE STATE OF SOUTH CAROLINA, FROM ITS FIRST ESTABLISHMENT AS A BRITISH PROVINCE DOWN TO THE YEAR 1790, INCLUSIVE* 3 (Act No. 161, § 1) (Philadelphia, R. Aitken & Son, 1790).

48. See JAMES IREDELL, *LAWS OF THE STATE OF NORTH CAROLINA* 22, 25 (ch. 38, § 11) (Edenton, N.C., Hodge & Wills, 1791), reprinted in 1 JOHN D. CUSHING, COMP., *THE FIRST LAWS OF THE STATE OF NORTH CAROLINA* (Michael Glazier, Inc., 1984).

49. See *LAWS OF MARYLAND, ENACTED AT A SESSION OF ASSEMBLY, BEGUN AND HELD AT THE CITY OF ANNAPOLIS, ON THURSDAY THE TENTH DAY OF JULY, IN THE FIFTEENTH YEAR OF THE DOMINION OF THE RIGHT HONOURABLE CHARLES, LORD BARON OF BALTIMORE, ABSOLUTE LORD AND PROPRIETARY OF THE PROVINCES OF MARYLAND AND AVALON, & C., ANNO; DOMINI 1729 7, 8-9* (1729, ch. 16, § 5) (Annapolis, Md., William Parks 1729).

50. See OLIVER HILLHOUSE PRINCE, *A DIGEST OF THE LAWS OF THE STATE OF GEORGIA* 158 (Athens, Ga., 2d ed. 1837).

1770.⁵¹ Two other English-American colonial legislatures passed ineffective chattel mortgage acts, namely Maryland in 1642⁵² and New York in 1774.⁵³ In contrast, the Lower Counties on the Delaware banned the transaction in 1740.⁵⁴

The chattel mortgage statutes in Greater Virginia voided the unfiled transaction, but allowed various grace periods to file. The chattel mortgage statutes in Greater Carolina permitted filing, providing a priority rule by order of filing. From an examination of the readily available appellate decisions of the late eighteenth and early nineteenth centuries, that prior work hypothesized that the original situation confronted by these early chattel mortgage acts dealt with debtor-planters granting preferences to neighboring planters to defeat judgment liens,⁵⁵ much in the fashion as did Neale secure Littleton and Burdett and left Taylor unsecured.

This article determines why the initial chattel mortgage acts arose in 1643. As part of this inquiry, this work explains why the other five chattel mortgage acts appeared later. This work also provides reasons for the failure in Maryland in 1642 and the rejection in Delaware. The article also examines why some acts required mandatory filing, others required permissive filing, and some allowed grace periods for filing. This work develops these explanations from an examination of the available records of chattel mortgages and other security and debt instruments during the seventeenth and eighteenth centuries in the provincial and county courts.

This article first outlines the seventeenth century procedures for making loans and taking security so that the documents found in the courthouses will make sense. The article then proceeds colony by colony to examine the court records, to reveal the economic situation driving the need for secured debt, and to delve into the political situation to explain the passage of the respective chattel mortgage act.

Two principles aid this investigation. First, the inability to achieve the desired result under the old rule motivates legal change. Second, legislative change comes only from a group with control of the legislative power.

The chattel mortgage acts generally arose in an American colony when the colony had sufficiently advanced to establish a plantation economy.

51. See THE MINUTES, JOURNALS, AND ACTS OF THE GENERAL ASSEMBLY OF BRITISH WEST FLORIDA 377-79 (University of Alabama Press, 1979).

52. See 1 MARYLAND, MARYLAND ARCHIVES 154 (1642 act) (Baltimore, Md.: Maryland Historical Society, 1883-1925) [hereinafter MARYLAND ARCHIVES].

53. See 1775 N.Y. Laws 208-10 (ch. 72: ch. 124 of the printing).

54. See 1 DELAWARE, LAWS OF THE STATE OF DELAWARE FROM THE FOURTEENTH DAY OF OCTOBER ONE THOUSAND SEVEN HUNDRED 218-19 (1740: ch. 82a: an Act to prevent frauds by clandestine bills of sale) (Newcastle, Del, Samuel & John Adams, 1797).

55. See Flint & Alfaro, *supra* note 1.

Planters could make decent profits by raising the colony's staple crop on easily obtainable land with a captive labor force. Small planters could aspire to riches by borrowing to acquire more land and servants. Large planters could capture the trade for the colony's staple crop by using their crop profits consisting of European credits to acquire the crops of the small planters through selling them tools and household goods and through loans. Some lenders used the old security device, the recognizance, a judgment lien authorized by early colonial statutes. Others used the recently developed chattel mortgage, a sale to the secured party. In an era when parties did not disclose chattel mortgages, there would inevitably arise a few situations where the sheriff would levy a judgment on personalty that appeared to belong to the debtor, but under the chattel mortgage belonged to the secured party. This happened for Littleton and Burdett with respect to Neale's pinnace. When the persons lending gained control of their provincial legislatures, they could end the added expense of litigating the wrongful levies by requiring notice through filing, the same method then used for real estate mortgages and real estate transfers.

II. SEVENTEENTH CENTURY LENDING LAW

Seventeenth century court records do not resemble modern court records. Rather than possessing several different books, depending on the type of record filed, whether real estate deed, vital statistic record, depositions, or court minutes, the seventeenth century courts generally kept one book in which the clerk transcribed all records in chronological order. To view the record of interest, the researcher must skillfully cull out the other records. Once the court record is found it is not easy to identify the transaction of interest since the seventeenth century clerk or twentieth century abstractor seldom had legal experience to ferret out the important language. The most numerous records deal with the entries for lawsuits and their depositions. The searcher usually can easily identify those lawsuits not relating to debts from the brief descriptions of their subject matter.⁵⁶ The debt lawsuits, however, might tangentially touch a chattel mortgage.

A. Debt Lawsuits

The most common lawsuits in the seventeenth century involved debt.⁵⁷ Recorded chattel mortgages do not involve lawsuits, so identification of these debt lawsuits eases the hunt for the chattel mortgages. Blackstone, writing in

56. See Appendix B (Accomack County) and *infra* note 112 (York County) for lapses in clerk's description.

57. See 1 Ames, *supra* note 1, at xlii.

the eighteenth century, a century after the era of interest, described the English system of suing over debt instruments as involving three different situations depending on the evidence available: the recognizance, the speciality, and the simple contract.⁵⁸ The seventeenth century colonial lawsuits exhibit the same three situations.

England had a statute authorizing the security device in vogue during the middle ages, namely the collusive judgment⁵⁹ referred to in the subsequent English land recording statutes as “judgments, statutes, and recognizances.”⁶⁰ For a collusive judgment the debtor confessed in court to a fictional debt. The creditor obtained entry of a judgment against the debtor with an agreement to delay execution. Then the debtor received the lent moneys.⁶¹ Upon non-payment, the creditor would go to the sheriff to levy the writ of execution. These collusive judgments had obtained statutory authorization in England during the late middle ages.⁶² These statutes established three types of collusive judgments, the recognizance, the statute merchant, and the statute staple.⁶³ The English-American colonies used the recognizance.⁶⁴ Creditors could enforce the statute merchant through debtor’s prison,⁶⁵ a feature that

58. See 2 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 465 (Chicago, Callaghan & Co. 1879).

59. See Flint, *supra* note 35, at 373-80.

60. See, e.g., 2 & 3 Anne ch. 4, *reprinted in* 8 Great Britain, STATUTES OF THE REALM 253 (1703 for West Riding, Yorkshire) (London, Dawson’s of Pall Mall 1800-28) [hereinafter STAT. OF REALM]; 6 Anne ch. 35, *reprinted in* 8 STAT. OF REALM, *supra*, at 653 (1707 for East Riding, Yorkshire); 7 Anne ch. 20, *reprinted in* 9 STAT. OF REALM, *supra*, at 89 (1708 Middlesex).

61. See ANGELA CONYERS, WILTSHIRE EXTENTS FOR DEBTS: EDWARD I-ELIZABETH I 10 (the writ was issued soon after the recognizance, no money was actually advanced until judgment had been accorded the creditor; it was in the creditor’s interest to specify an early date for repayment to keep the loan as liquid as possible) (Whiltshire Record Society 1973); see also Flint, *supra* note 35, at 373.

62. See 11 Edw. I (1283), *reprinted in* 1 STAT. OF REALM, *supra* note 60, at 53 (Statute of Acton Burnell authorizing enrollment of mercantile debts in the principle town’s of London, York, and Bristol in addition to the king’s courts, the recognizance); 13 Edw. I, st. 1, §§ 18 & 45 (1285), *reprinted in* 1 STAT. OF REALM, *supra*, at 82, 93 (Second Statute of Westminster extended the procedure to include levy against land, unavailable for other judgments); 13 Edw., st. 3, ch. 1 (1285), *reprinted in* 1 STAT. OF REALM, *supra*, at 98 (Statute of Merchants enforced statute merchants through debtor’s prisons); 27 Edw. III, st. 2, ch. 9 (1353), *reprinted in* 1 STAT. OF REALM, *supra*, at 337 (Statute of Staples extended the enrollment of mercantile debts to staple towns of Newcastle-upon Tyne, York, Lincoln, Norwich, Westminster, Canterbury, Chichester, Winchester, Exeter, Bristol, Kaemerdyn in Wales, and Dublin, Waterford, Cork, and Drogheda in Ireland, the statute staple); 36 Edw. III, st. 1, ch. 7 (1362), *reprinted in* 1 STAT. OF REALM, *supra*, at 373 (making all merchant securities available for all debts); see also Flint, *supra* note 35, at 374-76 (a lengthier discussion of these statutes).

63. See 11 Edw. I (1283), *reprinted in* 1 STAT. OF REALM, *supra* note 60, at 53 (the recognizance); 13 Edw., st. 3, ch. 1 (1285), *reprinted in* 1 STAT. OF REALM, *supra*, at 98 (the statute merchant); 27 Edw. III, st. 2, ch. 9 (1353), *reprinted in* 1 STAT. OF REALM, *supra*, at 337 (the statute staple).

64. See *infra* note 84.

65. See 13 Edw., st. 3, ch. 1 (1285), *reprinted in* 1 STAT. OF REALM, *supra* note 60, at 98.

also appeared in the English-American colonies.⁶⁶ The more recent of such statutes provided:

[I]t is enacted . . . the chieffe Justice of the Kinges Benche and the chieff Justice of the comon Place . . . by himselff, and in thir absence . . . the Maier of the Stapull of Westmynster and the Recorder of the Citie of London . . . jointly . . . shall have full power . . . to take recognixaunces or knowleges of evy of the Kinges Subjectes for the payment of dettes according to such fomre as hereafter ensueth . . . and that evy obligacion that shalbe made as is aforesaide and knowleged . . . shalbe sealed with the seale of the ptie . . . that shall recognise or knowledge the same, and also with suche Seale as the Kinges highnes shall ordeyne and appoynt for the same.⁶⁷

The recognizance statute provided the documentary form for the recognizance.⁶⁸ The authors do not have a translation for this form from the Anglo-French, but the form obviously begins with "Be it known by these presents", contains the key words of "held and firmly bound", and provides a statute staple remedy. This language appeared in southern English-

66. See *infra* note 84.

67. 23 Hen. VIII ch. 6, 3 STAT. OF REALM, *supra* note 60, at 372 (to authorize the recording of statutes of staple with the King's Bench and Common Pleas and to prevent non-merchants from using statutes staple).

68. 23 Hen. VIII ch. 6, 3 STAT. OF REALM, *supra* note 60, at 372 ("Nov^{int} univ^{si} p^{entes} me A.B. & D.C. armidū teneri & firmit^r obligari Johi at [Syle=] in centum libris sterlynd solvend eidem Johi aut suo c^{to} attorii hoc scriptum ostendii hered vel executoribz suis in tali festo &c. p^x futur^r post dai p^{senciū}; et si defic^o vel defic^{im} in soluc^{ve} debiti p^{dci}, volo & concedo vel sic volum^r & concedim^r quod tunc currat sup me hered & executores nicos, vel sup non & quemlt nōm hered & executores nōos, pena in statuto stapule de debitis p m^{candisis} in eadem emptis recupand ordinat & pviš. Dai tli die anno regni regis, &c.").

Anglo-French uses shorthand, so the passage probably reads: Nov[er]int univ[er]si p[er] p[re]sentes me A.B. & D.C. armig[er]o teneri et firmit[er] obligari Joh[ann]i at[que] (Syle[bant]) in centum libris sterlynyng[is] solvend[is] eidem Joh[ann]i aut suo c[er]to attor[nat]i hoc scriptum ostend[um]i[r]i hered[ibus] vel executorib[us] suis in tali festo &c p[er]du[x]isse futur[fo] post da[tur]i p[re]senci[mento]; et si defic[i]o vel deficim[us] in solut[i]o[n]is debiti p[rae]d[i]c[at]i, volo & concedo vel sic vola[bi]m[us] & concede[bi]m[us] quod tunc currat sup[er] me hered[ibus] & executori[bus] nicos, vel sup[er] non & quem legaba[t] nr[um] hered[ibus] & executores nr[os], pena[e] in statuto stapule de debitis p[er] m[er]candisis in eadem empt[or]is recup[er]and[um] ordinat[um] erit & p[ro]vis[um] erit. Da[r]i t[er]t[i]o die anno regni regis, & c.

In English, the passage reads: Know all men by these presents that I, A.B. & D.C., Esquire, am held and firmly bound to John and also [omitted] in hundred pounds sterling to be paid to the said John or to his authorized attorney shown by this writing his heirs or executors on such feast day etc. in the future after presentment; and if I fail or we fail to pay the acknowledged debt, I will and grant or in such manner shall we will and grant to what passed from me my heirs and executors or was bequeathed to me as heir and executos, a penalty in statute staple (that) buyer's recovering of debts through merchandizing the same shall have been ordained and provided for Given such day of the year of the king's reign, etc.

American colonial recognizances, helping their identification.⁶⁹ Englishmen used the collusive judgment for all sorts of debts.⁷⁰ The debtor remained in possession of the property subject to the judgment so the collusive judgment operated as a nonpossessory secured transaction, albeit one with notice in the court records.⁷¹

Collusive judgments on personalty originally dated from the date of the writ of execution.⁷² In contrast, the collusive judgment dated from the date of the judgment for land.⁷³ So a party could lag in obtaining the writ after the award of the judgment to allow payment with no deleterious effects with respect to land. But for personalty, an intervening sale or chattel mortgage between the granting of the judgment and the obtaining of the writ of execution⁷⁴ could lead to the loss of that piece of collateral for the delaying secured party.⁷⁵ And secured parties could also delay the execution after obtaining the writ to allow additional time to pay the debt. Both of these instances could operate as a secret lien. The court record would indicate a stale execution, when in fact it had yet to occur. So in 1677 when Parliament passed the Statute of Frauds, one provision changed the date for the collusive judgment on personalty from the date of the writ of execution, to the date of the delivery of the writ of execution to the sheriff for levy.⁷⁶ This change in

69. See *infra* notes 88, 523 and accompanying text.

70. See CONYERS, *supra* note 61, at 7-8 (merchants constituted only a one-third of all the creditors and slightly less of all debtors, with professional men, churchmen, and knights serving as creditors and with peers and knights as debtors), at 9-11 (trade debts represented only one-fifth of all debts, with family arrangements and guarantees well represented).

71. See Flint, *supra* note 35, at 375; see also 29 Car. II, ch. 3, § 14, reprinted in STAT. OF REALM, *supra* note 60, at 839, 841 (decrying the secret lien problem in changing the effective date for judgments statute and recognizances).

72. See, e.g., Baskerville v. Brocket, 79 Eng. Rep. 384 (K.B. 1618) (recognizance against personalty binds from date the execution writ is awarded); Baucher v. Wiseman, Cro. Eliz. 440, 78 Eng. Rep. 680 (C.P. 1595) (nothing can stop execution against personalty after the date of the writ of execution); Anon, Cro. Eliz. 174, 78 Eng. Rep. 431 (Q.B. 1590) (writ of *fieri facias*, the execution writ against personalty, defeats purchase after its date but before levy).

73. See, e.g., 29 Car. II, ch. 3, § 14, reprinted in STAT. OF REALM, *supra* note 60, at 839, 841 (stating that as the law the Statute of Frauds of 1677 replaces).

74. Secured parties in colonial Virginia engaged in this practice. See, e.g., 1 Ames, *supra* note 1, at 52, 55 (May 16, 1636: recognizance; Aug. 8, 1636: execution for same debt), 64, 70 (Jan. 1, 1636-37: recognizance; Mar. 27, 1637: execution for same debt), 65, 70 (Jan. 1, 1636-37: recognizance; Mar. 27, 1637-38: execution for same debt), 66, 70 (Jan. 1, 1636-37: recognizance; Mar. 27, 1637: execution for same debt) & 141-42 (Jan. 24, 1638-39: recognizance; Feb. 19, 1638-39: execution for same debt).

North Carolinians also engaged in this practice. See, e.g., RECORDS OF THE EXECUTIVE COUNCIL 1664-1734 42-43 (had agreement not to execute confessed judgment for 12 months) (Robert J. Cain ed., State Dept. of Archives 1984) [hereinafter 1 Cain].

75. See *supra* note 30 and accompanying text.

76. See 29 Car. II, ch. 3, § 16, reprinted in 5 STAT. OF REALM, *supra* note 60, at 839, 841 (1677).

dating allowed the chattel mortgage, dating from its signature date, to have priority and eventually led to the demise of the collusive judgment.⁷⁷

A recognizance contains language of an acknowledgment or confession of the debt in open court.⁷⁸ Under the English common law, a creditor could have the sheriff levy a judgment by selling assets only against personalty.⁷⁹ The English statutes authorizing the collusive judgment expanded the assets subject to the levy to land. But rather than authorize a sale of the land, these statutes only authorized delivering the possession of the land to the creditor for a term sufficient to work off the debt.⁸⁰ The writ of *feri facias* was the execution writ by sheriff's sale against the debtor's goods and chattels and the writ of *eligit* gave possession to the creditor of the debtor's goods and one-half his lands for use to satisfy the debt.⁸¹

Colonial recognizances differed slightly from the practice in England. The first colonial difference was that the English collusive judgment statutes only applied to certain courts in England.⁸² English statutes did not

77. See also Flint, *supra* note 35, 376-80.

78. See 2 BLACKSTONE, *supra* note 58, at 160 (acknowledged).

79. See 2 FREDERICK POLLACK & FREDERIC WILLIAM MAITLAND, THE HISTORY OF ENGLISH LAW BEFORE THE TIME OF EDWARD I 596 (Cambridge University Press, 2d ed., reissued 1978); 2 REEVES' HISTORY OF THE ENGLISH LAW FROM THE TIME OF THE ROMANS TO THE END OF THE REIGN OF ELIZABETH 485 (W.F. Finlason ed., Philadelphia, M. Murphy 1880) [hereinafter Finlason]; THEODORE FRANK PLUCKNETT, A CONCISE HISTORY OF THE COMMON LAW 390-91 (Little Brown 1956).

80. See 13 Edw., st. 1, § 18 (1285), reprinted in 1 STAT. OF REALM, *supra* note 60, at 82 (providing for the acknowledged debt in the King's Court a creditor's choice of levy by sheriff's sale on all the lands and goods, or possession of all the goods and a moiety of land, a lease of half the land); see also U.S. Fidelity & Guaranty Co. v. Carter, 170 S.E. 764, 767-68 (Va. 1933) (explaining the old common law writs of *feri facias* for sheriff's levy on goods and the writ of *eligit* for possession of the goods and a moiety of land).

81. See 3 BLACKSTONE, *supra* note 58, at 417-18. The statute creating the writs of *feri facias* and *eligit*, 13 Edw. I, st. 1, § 18, reprinted in 1 STAT. OF REALM, *supra* note 60, at 337 (Second Statute of Westminster); see also 2 Finlason, *supra* note 79, at 486 n.2 (dismissing the theory the writ of *feri facias* was earlier than the statute), provided that the writ of *feri facias* also applied to land; however, it did not. See Harbert's Case, 3 Co. Rep. 11b, 76 Eng. Rep. 647, 654 (1584); 2 Finlason, *supra*, at 486 n.2 (noting the language discrepancy); 8 HOLDSWORTH, *supra* note 11, at 230 (writ of *feri facias* limited to personalty).

82. The statutes specified which courts, all in England. See, e.g., 11 Edw. I (1283), reprinted in 1 STAT. OF REALM, *supra* note 60, at 53 (Statute of Acton Burnell authorizing enrollment of mercantile debts in the principle town's of London, York, and Bristol in addition to the king's courts, the recognizance); 27 Edw. III, st. 2, ch. 9 (1353), reprinted in 1 STAT. OF REALM, *supra*, at 337 (Statute of Staples extended the enrollment of mercantile debts to staple towns of Newcastle-upon Tyne, York, Lincoln, Norwich, Westminster, Canterbury, Chicester, Winchester, Exeter, Bristol, Kaemerdyn in Wales, and Dublin, Waterford, Cork, and Drogheda in Ireland, the statute staple); 23 Hen. VIII ch. 6, 3 STAT. OF REALM, *supra*, at 372 (to authorize the recording of statutes of staple with the King's Bench and Common Pleas and to prevent non-merchants from using statutes staple).

automatically apply to colonial English-America.⁸³ So the southern English-American colonies adopted their own collusive judgment statutes recognizable from their procedures for confessing the debt in court.⁸⁴

Secondly, the colonial levying process for collusive judgments developed a major difference from its English counterpart. Although most of the southern mainland English-American colonies followed the common law and did not allow a sheriff's sale of land until the late eighteenth century, 1764 for North Carolina, 1785 for South Carolina, 1789 for Georgia, and 1849 for Virginia,⁸⁵ Maryland and Delaware did permit a sheriff's sale of the land.⁸⁶

83. See ELIZABETH GASPAR BROWN, *BRITISH STATUTES IN AMERICAN LAW, 1776-1836* 1-4 (Parliament's jurisdiction did not extend to non-English dominions, instead the King in council legislated, usually through charters) (Da Capo Press, Inc., 1964).

84. For Virginia, see 1 HENING, *supra* note 46, at 304 (1645, ch. 11, authorizing the process by acknowledgment of a judgment before a commissioner of the county court), 447 (1657-58, ch. 32, restating the 1645 act). Virginia also had evidence of the statute merchant since several statutes refer to debtor's prison. See 1 *id.* at 294 (1644-45, ch. 11, poor laid in the hands of the sheriff under execution), 346 (1647, ch. 8, poor persons imprisoned upon actions of debt) & 453 (1657-58, ch. 43, same); see also 2 PHILIP BRUCE, *THE ECONOMIC HISTORY OF VIRGINIA IN THE SEVENTEENTH CENTURY 371-72* (so concluding from the statutes) (New York, MacMillan & Co. 1896); PETER J. COLEMAN, *DEBTORS AND CREDITORS IN AMERICA: INSOLVENCY, IMPRISONMENT FOR DEBT, AND BANKRUPTCY 1607-1900* 191 (providing other examples of imprisonment for debt in colonial Virginia) (The State Historical Society of Wisconsin, 1974). Not all of the Virginia statutes have survived. See 1 HENING, *supra*, at 119-120.

For Maryland, see 1 MARYLAND ARCHIVES, *supra* note 52, at 66, 67-68 (Mar. 1638-39: Act for Recovering Debts: If defendant acknowledge or confess by answering or by affidavit with one witness, plaintiff may levy to extent of acknowledgement or confession, thereby avoiding wager of law). Maryland also had evidence of the statute merchant since statutes authorized debtor's prison. See, e.g., 1 *id.* at 152-53 (indentured servitude or jail time).

The early statutes of North Carolina are missing. See 23 *THE COLONIAL RECORDS OF NORTH CAROLINA* (only a few references to those passed before 1715) (Raleigh, N.C., William L. Saunders ed., P.M. Hale 1886) [hereinafter Saunders]. North Carolinian records, however, do show recognizances. See *infra* notes 338-340 and accompanying text.

South Carolina might not have used recognizances. See *infra* note 262 and accompanying text.

British West Florida statutes make reference to recognizances. See *infra* note 470 and accompanying text.

85. For Georgia, see ROBERT WATKINS & GEORGE WATKINS, *A DIGEST OF THE LAWS OF THE STATE OF GEORGIA FROM ITS FIRST ESTABLISHMENT AS A BRITISH PROVINCE DOWN TO THE YEAR 1798, INCLUSIVE* 398, 403 (1789, No. 421, § 52) (Philadelphia, R. Aitken 1800); see also WATKINS & WATKINS, *supra*, at 67 (1761 act subjecting land of absconders to levy).

For North Carolina, see 23 Saunders, *supra* note 84, at 663-67 (1764, ch. 4, to end the confusion concerning the 1732 English statute); see also 24 *id.* at 494-98 (1766, ch. 7 making sure goods went before lands and Negroes). North Carolina had a few earlier statutes authorizing levy on land in certain circumstances. See 23 *id.* at 21 (1715, ch. 18 for absconders), 259 (1746, ch. 2 repealing the 1715 act and putting the land in the hands of the creditor).

For South Carolina, see GRIMKE, *supra* note 47, at 366 (1785, No. 1395, subjecting land to the writ of *fieri facias* and ensuring that goods went before lands and Negroes).

For Virginia, see *THE CODE OF VIRGINIA* 773 (ch. 187, § 8) (Richmond, Va., George W. Munford ed., Ritchie, Dunnavant & Co. 2d ed. 1860); U.S. Fidelity and Guaranty Co. v. Carter, 170 S.E.

Great Britain mandated such a sale of colonial land for British creditors in 1732.⁸⁷ So recognizances during the seventeenth century in several southern mainland English-American colonies would be more expansive than in England.

A perusal of the court records eventually leads to the identification of the three types of debt lawsuit. For recognizances the court clerks used these key words “acknowledged” or “confessed”.⁸⁸ The specialty was a sealed document; the simple contract, an unsealed document.⁸⁹ For lawsuits involving the unsecured debt instruments the court clerks generally wrote “indebted to A by specialty”⁹⁰ or “indebted to B by [type of simple contract]”.⁹¹

764, 768 n.8 (Va. 1933) (explaining an exception by a practice of not levying on land, not supported by statute, adopted not long before the American Revolution of a court decreeing sale of the moiety of land whenever the rents and profits from the land would not in a reasonable time satisfy the debt); Stefan A. Riesenfeld, *Collection of Money Judgments in American Law—A historical Inventory and a Prospectus*, 42 IOWA L. REV. 155, 169 (1957); see also 1 HENING, *supra* note 46, at 259 (1642, ch. 30 on appraising only goods upon execution); 1 *id.* at 442 (1657-58, ch. 19, same); 2 *id.* at 80 (1661-62, ch. 48, same); 5 *id.* at 526, 531 (1752, ch. 12 can sell land of debtor dying in prison). After 1726 Virginia did have the writ of *eligit* authorizing a moiety on the land. Compare 4 *id.* at 151, 154 (1726, ch. 3 authorizing the writ of *eligit* for executions) with 3 HENING, *supra*, at 385 (1705, ch. 37 executions with no mention of the writ of *eligit*).

86. Delaware allowed levy on land as early as 1688 when it was part of Pennsylvania. See 1 JAMES BOOTH, LAWS OF THE STATE OF DELAWARE FROM THE FOURTEENTH DAY OF OCTOBER, ONE THOUSAND SEVEN HUNDRED, TO THE EIGHTEENTH DAY OF AUGUST, ONE THOUSAND SEVEN HUNDRED AND NINETY-SEVEN App. 18 (1688 from Pennsylvania, lands liable to pay debt) (Newcastle, Del., John Adams, 1797).

For Maryland, see 1 MARYLAND ARCHIVES, *supra* note 52, at 187 (Sept. 1642: for execution can sell land, goods, and chattels at outcry, except clothing, bedding, and tools).

87. This issue burdened British creditors, so much so that they obtained a Parliamentary statute in 1732 providing that land was subject to debt as in England for specialties and recognizances, see 3 William & Mary, c. 14 (land subject to devisee’s debt); *D’Urphey v. Nelson*, reported in 12 S.C.L.R. 129n (Constitutional Ct. 1803), and authorizing them to levy on colonial land in America the same as they could on goods by sheriff’s sale. See 15 GEO. II ch. 7, reprinted in 16 DANBY PICKERING, THE STATUTES AT LARGE FROM THE SECOND TO THE NINTH YEAR OF KING GEORGE II 272 (Cambridge, Joseph Bentham 1765); see also 13 GEO. III ch. 14, reprinted in 30 DANBY PICKERING, THE STATUTES AT LARGE FROM MAGNA CHARTA TO THE END OF THE THIRTEENTH PARLIAMENT OF GREAT BRITAIN, ANNO 1773 22 (1773, similar act for the West Indies) (Cambridge, Eng., John Archdeacon 1773); see also *Harrison v. Halley*, Jeff. 58 (Va. 1738) (sold land in Virginia as goods taken upon the writ of *feri facias* under the 1732 Parliamentary act).

88. See *infra* notes 137 (Virginia), 512 (Maryland), 329 (North Carolina) & 262 (South Carolina) had no recognizances).

89. See 2 BLACKSTONE, *supra* note 58, at 465.

90. See *infra* notes 137 (Virginia), 513 (Maryland) & 329 (North Carolina).

91. See *infra* notes 137 (Virginia), 514 (Maryland) & 329 (North Carolina).

South Carolina, Georgia, and British West Florida do not have early court records available to examine for the form used to create a specialty or simple debt. See, *infra* notes 260, 440 & 468 and accompanying text.

B. Debt Recordings

None of these lawsuit orders refer to a recording or have copies of the signatures of the debtor with witnesses, the characteristics of recorded documents in these court records. The recorded documents, however, contain far more than just mortgages. Many involve subjects that statutes do not require a party to file, such as powers of attorney and bills of sale for items of personalty.⁹²

The nonpossessory secured transaction consists of using personalty as collateral and leaving its possession with the debtor. Whether the parties labeled the transaction a pledge, a mortgage, deed of trust, or a conditional sale is not of interest. For the English a pledge required delivery of the collateral to the creditor and so would not fit the class of interest.⁹³ The distinction between a pledge and a mortgage, deed of trust, or conditional sale lay with who had ownership. The debtor retained ownership of the collateral under a pledge, and did not for a mortgage, deed of trust, or conditional sale.⁹⁴ The difference between a mortgage and a deed of trust and a conditional sale involved redemption of the collateral. For a mortgage or deed of trust the debtor retained equitable title for purposes of reacquiring ownership of the collateral, a redemption in an equity court for a reasonable period after default. A conditional bill of sale eliminated this right of redemption. Instead, the debtor had a right to repurchase, provided the debtor satisfied the contractual payment conditions.⁹⁵ The difference between a mortgage and a deed of trust was that for a deed of trust a trustee owned the property on behalf of the secured party and usually under the direction of the secured party.⁹⁶

Mortgage law first developed for real estate during the early seventeenth century. Originally, the parties structured mortgages with the secured-mortgagee in possession of the collateral, not the debtor-mortgagor.⁹⁷ By the

92. See, e.g., 1 Ames, *supra* note 1, at 3 (bill of sale for cows), 63 (bill of sale for servants), 80 (bill of sale for crops), 104 (discharge), 131 (receipt) & 163 (power of attorney); see also, e.g., 1 LOWER NORFOLK COUNTY VIRGINIA COURT RECORDS: BOOK A 1637-46 AND BOOK B 1646-52 149 (bill of sale for servant), 152 (power of attorney), 166 (bill of sale for cow) & 166 (realty lease) (Alice Granbery Walter ed., Clearfield Co. 1994) [hereinafter Walter and separately paginated, so hereinafter Book A is vol. 1, Book B is vol. 2].

93. E.g., *Ross v. Norvell*, 1 Va. (1 Wash.) 14, 19 (1791).

94. E.g., *id.* at 19.

95. E.g., *Ambler v. Warwick*, 28 Va. (1 Leigh) 195, 209 (1829) (deed of trust subject to redemption); *Robertson v. Campbell*, 6 Va. (2 Call.) 421, 428 (1800) (pledge of slaves); *Chapman v. Turner*, 5 Va. (1 Call.) 280, 287-88 (1798) (pledge of a slave); see LEONARD JONES, A TREATISE ON THE LAW OF MORTGAGES OF PERSONAL PROPERTY 7-13, 196 (Boston, Houghton Mifflin & Co. 1881).

96. E.g., *Clayton v. Anthony*, 27 Va. (7 Rand.) 285, 286 (1828).

97. See, e.g., *Evans v. Thomas*, 79 Eng. Rep. 150 (C.P. 1607) (mortgagor may reenter land after paying 100 pounds at end of 13 years); *Cordall v. Gibbons*, 1 Leon. 18, 74 Eng. Rep. (Q.B. 1584) (possession by mortgagor's tenant, but have transfer ceremony to mortgagee before tenant as a witness);

early seventeenth century, the English had developed the technique of leaving the debtor-mortgagor in possession of the land to work off the loan.⁹⁸ The English also had developed the use of personalty as collateral by the late sixteenth century.⁹⁹ Naturally, the technique of leaving the debtor in possession of the personalty would emerge early in the seventeenth century.¹⁰⁰

Some of the recorded documents in colonial courts do refer to a debt and offer listed property either as "security" or bound "over for payment". Many of these filed "security" or bound "over for payment" documents contain language suggestive of a mortgage, such as conditions defeasance or conditions specifying procedures for a reconveyance or a repossession sale.¹⁰¹ Others resemble the statutory form for an English recognizance, containing language binding the debtor to pay.¹⁰² Unlike recognizances, however, most of these documents enumerate the collateral, although a few list the "whole estate".¹⁰³ Historians have suggested that the Virginia colonists were far more familiar with the procedures of local English courts, such as county courts, hundred courts, or baronial courts, than they were with the royal courts in Westminster.¹⁰⁴ Consequently, this article regards these recorded documents

Reniger v. Fogossa, 1 Plw. 1, 75 Eng. Rep. 1 (Ex.1550) (Mortgagor not in possession, and when pays mortgagor to have benefit of his land again); *see also* R.W. TURNER, EQUITY OF REDEMPTION 88 (William W. Gaunt, & Sons, Inc., 1986).

98. *See, e.g.*, Powsley v. Blackman, 79 Eng. Rep. 569 (K.B. 1623); *see also* TURNER, *supra* note 97, at 89; *see also* Wyard v. Worse, 21 Eng. Rep. 528 (1640) (mortgagor possession); Hales v. Hales, 21 Eng. Rep. 520 (1637) (same), Silson v. Fletcher, 21 Eng. Rep. 507 (1633) (same); Lucas v. Pennington, 21 Eng. Rep. 776 (Ch. 1630) (same); Crips v. Grysil, 79 Eng. Rep. 636 (K.B. 1626) (same).

99. *See, e.g.*, Wollaston Dixie Case, 74 Eng. Rep. 89 (Ex. 1588) (criminal information on usurious contract by way of mortgage on cloth).

100. *See infra* note 120 and accompanying text for examples from the English colonies. *See also* Winter v. Loveday, 74 Eng. Rep. 487 (K.B. 1589) (documents serving as collateral held by mortgagee).

101. *See, e.g.*, HENRY READ MCILWAINE, MINUTES OF THE COUNCIL AND GENERAL COURT OF COLONIAL VIRGINIA 1622-32, 1670-76 48 (Feb. 23, 1623: called mortgage) (The Colonial Press, 1924); 1 Ames, *supra* note 1, at 130 (Nov. 26, 1638: if debtor pays, reconvey; if not, debtor to deliver); 1 Walter, *supra* note 92, at 86 (Oct. 4, 1641: condition defeasance), 149-50 (Nov. 16, 1643: authorizes foreclosure sale and return of surplus) & 189 (Oct. 15, 1645: possessory, hold until paid); 2 *id.* at 43 (June 15, 1647: delivery back upon payment), 171 (June 15, 1651: condition defeasance); 24 BEVERLEY FLEET, VIRGINIA COLONIAL ABSTRACTS 79 (Mar. 27, 1646: mortgage), 45 (Feb. 5, 1646-47: mortgages), 65 (Dec. 1, 1647: mortgage) (Genealogical Publishing Co., 1961).

102. *See, e.g.*, 1 Walter, *supra* note 92, at 210 (Dec. 15, 1645: "This bill byndeth mee Robert Loveday my heirs & c to pay or cause to bee paid unto William Shipp or his assignes the full and just summe of . . ."); 2 *id.* at 156 (Jan. 15, 1650-51: "This bill bindeth me George Heigham of Elizabeth River, my heirs & c to pay to Ensigne Thomas Lambert of ye same place Gent: his heires & c the full and just some of . . .").

103. *See, e.g.*, 24 FLEET, *supra* note 101, at 80 (Mar. 27, 1646); 25 *id.* at 60 (Oct. 25, 1647).

104. *See* 1 Ames, *supra* note 1, at xiii-xv (citing *Order of Keeping a Court Leet and Court Baron* (1510)).

as chattel mortgages if they specify a debt and list some item of personalty as included amongst the collateral used for security.

III. THE PASSAGE OF THE PLANTER CHATTEL MORTGAGE

The determination of the reasons for the adoption of the colonial chattel mortgage acts requires an examination of the colonial court records. These records exhibit several drawbacks. Although some states have published central government colonial documents from their archives.¹⁰⁵ These published provincial documents are not complete since some documents were sent overseas,¹⁰⁶ destroyed by fire,¹⁰⁷ or otherwise lost.¹⁰⁸ County records are even less accessible, generally only having a few transcribed or abstracted records in print.¹⁰⁹ Handwritten documents may yet be available.¹¹⁰ These records suffer from tears, smudges, and illegibility such that many transcriptions contain lacunae.¹¹¹ Moreover, some clerks did not record all the events.¹¹²

A. Virginia

Virginia only had one central court and ten counties¹¹³ formed before 1648, the period of interest for Virginia's 1643 chattel mortgage act. Only the records between 1622 and 1633 for the General Court have survived.¹¹⁴ Of the ten counties, only Accomack County records from formation in 1632 to 1645 and Lower Norfolk County from formation in 1637 to 1652 are transcribed in print.¹¹⁴ Two other counties have abstracts available, York County from

105. For Virginia, *see infra* note 113. For South Carolina, *see infra* note 258. For North Carolina, *see infra* note 317. For Georgia, *see infra* notes 440-442 and accompanying text. For British West Florida, *see infra* note 468 and accompanying text. For Maryland, *see infra* note 473. For Delaware, *see infra* note 292 and accompanying text.

106. *See, e.g.*, 1 HENING, *supra* note 46, at 121 (Virginia acts of 1619 sent to the London Company); 1 SAUNDERS, *supra* note 84, at iii (a few early records sent to London)

107. *See, e.g.*, MCILWAINE, *supra* note 101, at viii (These records survived the Richmond fire of 1865 because the archives loaned them out before the fire.)

108. *See* 1 SAUNDERS, *supra* note 84, iii (Council records begin 1712 although had Council since 1664; Assembly records begin 1754 although had Assembly since 1665).

109. *See infra* notes 114-118 and accompanying text.

110. *See* 2 BRUCE, *supra* note 84, at 369-70 (citing York County records in the Virginia State Library).

111. *See, e.g.*, 1 WALTER, *supra* note 92, at i (impossible to read some script due to holes and water damage).

112. *See* 1 AMES, *supra* note 1, at xxiii (York County's clerk only listed the commissioners during the early years).

113. *See, e.g.*, MCILWAINE, *supra* note 101.

114. *See* WARREN BILLINGS ET AL., COLONIAL VIRGINIA: A HISTORY 379 (KTO Press, 1986); *see also* 1 AMES, *supra* note 1; 2 AMES, *supra* note 26; 1 WALTER, *supra* note 92.

formation in 1633 to 1662 and Charles City County in the 1650s.¹¹⁵ Two other counties have court order books on microfilm.¹¹⁶ The other four counties' surviving records start much later.¹¹⁷ Virginia also has abstracted records for the three additional counties formed before 1651, namely Lancaster, Northumberland, and Westmoreland Counties in the 1650s.¹¹⁸

1. Virginia Chattel Mortgages

Seventy-nine recordings of chattel mortgages exist within the records of early Virginia during the 1640s and 1650s. Chart A1 exhibits information on these chattel mortgages.¹¹⁹ Not all of these recorded chattel mortgages deal with the nonpossessory secured transaction. Some follow the early English practice of leaving the collateral with the secured party, a sort of pledge.¹²⁰ In both possessory and nonpossessory chattel mortgages, the collateral consists of personalty related to seventeenth century Virginia plantations, namely crops of tobacco and corn, livestock of cattle and hogs,¹²¹ and labor contracts for

115. See FLEET, *supra* note 101, vols. 24-26 (York County 1633-1662), vols. 10-13 (Charles City County 1655-65, formed in 1632).

116. See Church of the Latter Day Saints, film #31122 (Elizabeth City County 1648-1770, formed in 1632) and film #31776 (Henrico County 1650-1807, formed in 1632).

117. The counties are Isle of Wight, James City, and Warwick Counties, all formed in 1634 and Upper Norfolk County formed in 1637.

118. See 1 FLEET, *supra* note 101 (Lancaster County 1654-1666); 2 *id.* (Northumberland County 1652-55); 23 FLEET, *id.* (Westmoreland County 1653-57).

119. See Appendix A.

120. See, e.g., MCLWAIN, *supra* note 101, at 48 (Feb. 23, 1623: 3 milch kyne in pawn, kyne to be redelivered); 1 Walter, *supra* note 92, at 189 (Oct. 13, 1645: secured to hold heifers), 210 (Dec. 1645: bull in custody of another); 2 *id.* at 43 (June 7, 1647: secured given possession, to redeliver), 156 (Sept. 12, 1650: secured to hold and enjoy).

121. Southern English-American colonial livestock husbandry reversed the English practice. Instead of fencing in the livestock and controlling breeding, settlers fenced in fields of tobacco and corn, letting the livestock roam the woods since they lacked sufficient labor for the English method. Virginia De John Anderson, *Animals in the Wilderness: Development of Livestock Husbandry in Seventeenth Century Chesapeake*, 59 WM. & MARY QTLY 377, 386-89 (2002). Since settlers could not determine ownership of livestock by possession, they resorted to earmarks. *Id.* at 398. They recorded these earmarks and bills of sale for livestock denoting the earmarks in the county records. See, e.g., 1 Ames, *supra* note 1, at 8 (Accomack County, Dec. 30, 1633: bill of sale for cows, heifer, and bull calf dated Mar. 13, 1632-33); 1 Walters, *supra* note 92, at 166 (Lower Norfolk County, Mar. 11, 1644-45: bill of sale for heifer dated Mar. 10, 1644-45); 10 FLEET, *supra* note 101, at 2 (Charles City County, June 4, 1655: cattle mark registration); 1 *id.* at 80 (Lancaster County, June 10, 1654: earmark recorded). The surviving Virginia statutes contain none for recording earmarks or bills of sale of livestock, see 1 HENING, *supra* note 46, at 429 (no assembly for 1657), but Lancaster County Court records do refer to an earmark recording statute. See 1 FLEET, *supra*, at 140 (Thomas Williams "according to act of Assembly 10 Nov. 1657" register mark on cattle); see also 1 HENING, *supra*, at 429 (a chasm of records between 1656 and 1660); Warren Billings & John Kukla, *Some Acts not in Hening's Statutes: the Acts of Assembly, April 1652, November 1652, and July 1653*, 83

indentured servants.¹²² A few recordations deal with other types of collateral such as weapons, small ships, horses, and furniture, also useful to plantation operations in seventeenth century Virginia,¹²³ and one instance of equipment used by a blacksmith. The due dates generally fell in the fall, after planters harvested, dried, and packed their tobacco crop.¹²⁴ Planters used tobacco as money.¹²⁵ The term of the loan generally was less than a year, except in one instance that provided for two years. Generally, planters secured substantial debts with chattel mortgages. The debts averaged over twelve hundred pounds of tobacco. A small planter's annual crop generally only amounted to about a thousand pounds of tobacco.¹²⁶ Some contain information on the transaction. Some constitute renewals,¹²⁷ some create second liens,¹²⁸ some deal with purchase money security interests,¹²⁹ and some secure marriage settlements in deed of trust form,¹³⁰ bills of exchange,¹³¹ construction contracts,¹³² future delivery,¹³³ guarantees,¹³⁴ and education obligations.¹³⁵

Chart A2 supplies information concerning the fifty-four parties demanding security in the 1640s though use of a chattel mortgage. Almost all resided in Virginia. Only six listed London as their residence, with seven indeterminate. Of those residing in Virginia, most held political office. Besides the

THE VIRGINIA MAGAZINE OF HISTORY AND BIOGRAPHY 22, 35 (1975) (adding to Henning only statutes for 1652, 1653, and 1660).

122. Even Negroes first came to the Chesapeake as indentured servants with their terms not becoming for life until 1663. See 1 MARYLAND ARCHIVES, *supra* note 52, at 533-34 (1663, ch. 30: Act concerning Negroes and Other Slaves); 2 HENING, *supra* note 46, at 280, 283 (1670, ch. 12).

123. The early statutes contain several laws forbidding roaming the country-side without the presence of a well-armed group. See 1 HENING, *supra* note 46, 127 (Mar. 1623-24), 173 (Feb. 1631) & 198 (Sept. 1632).

Tobacco shippers could only reach the plantations, situated on rivers and creeks, by water. See 2 BRUCE, *supra* note 84, at 432.

124. Overseas merchants left England in September so as to reach Virginia in October and November when the tobacco crop was in shape (dried and casked) for transfer to England. See 2 BRUCE, *supra* note 84, at 622.

125. See 2 *id.* at 495-96 (tobacco as money).

126. See AUBREY C. LAND, COLONIAL MARYLAND: A HISTORY 28 (one hand could produce 1500 to 2000 pounds of tobacco a year in Chesapeake Bay area, but actual production was only at 600 pounds of tobacco), 68 (in 1660 small planters produced 600 pounds to 1000 pounds of tobacco) (KTO Press, 1981).

127. See, e.g., 2 Ames, *supra* note 26, at 18.

128. See, e.g., *id.* at 116.

129. See, e.g., *id.* at 338-39, 345-46.

130. See, e.g., *id.* at 433-34.

131. See, e.g., *id.* at 98-99.

132. See, e.g., 2 Ames, *supra* note 26, at 154-55; 2 FLEET, *supra* note 101, at 127.

133. See, e.g., 21 FLEET, *supra* note 101, at 109.

134. See, e.g., 1 *id.* at 90; 2 *id.* at 121.

135. See, e.g., 12 *id.* at 77.

twenty office-holders, six additional received land grants for over one thousand acres, making them also members of the elite.¹³⁶ Nine had grants for less than one thousand acres. Six came as indentured servants and never received a land grant. As a group, they averaged receipt of over fifteen hundred acres. Predominantly the local elite demanded chattel mortgages for security.

Chart A3 supplies information concerning the fifty-four debtors who granted chattel mortgages as security in the 1640s. They comprised the less successful. Again almost all resided in Virginia, with only one listing London as a residence with thirteen indeterminable. Of those residing in Virginia, most were small planters. Fifteen received land grants for less than one thousand acres. An additional eleven came as indentured servants and never received a land grant. The records name one with land, but without receiving any land grant. Only five held political office and eight received land grants over one thousand acres. As a group, they averaged receipt of less than eight hundred acres. Three of these borrowers also appeared on Chart A2 as obtaining chattel mortgages for security. Predominantly the small planters willingly gave chattel mortgages to secure their borrowings.

2. Virginia Recognizances

Parties secured more of their loans through recognizances than chattel mortgages. They are so numerous that this work only listed those from Accomack, Lower Norfolk, and York Counties before 1646, since only these counties have records from the 1640s.¹³⁷ Chart B1 lists information of the one

136. See BILLINGS ET AL., *supra* note 114, at 58 (small planters seldom possessed more than two hundred acres).

137. For the standard formula of a recognizance in Accomack County, *see, e.g.*, 1 Ames, *supra* note 1, at 52 (May 16, 1636: "upon the suit of Robert Swanson against John Furbush for two barrels of come which upon the confession of the said Furbush to be a lawful debt it is now ordered that the said Furbush shall make present payment of the said come . . ."), 55 (Aug. 8, 1636: "In the first place upon the complaint of Robert Swanson against John Furbush for two barrels of come which was granted unto him by an order of Court made 16th day of May 1636 it is ordered that the said Swanson shall have an execution against the said Furbush to the valew of two barrels of come . . .").

For the standard formula of a recognizance in Lower Norfolk County, *see, e.g.*, 1 Walter, *supra* note 92, at 36 (Sept. 8, 1640: "Whereas it appeareth to this Court that Richard Owine is indebted unto John Wright the some of 80 lb of tobacco as by acknowledgement appeareth. It is therefore ordered that the aforesaid some of tobacco shall be satisfied in stripped and smoothed tobacco this present cropp with the charges of the court otherwise execution.").

The procedure in both counties granted the execution writ at a later date.

For the standard formula of a specialty lawsuit in Accomack County, *see, e.g.*, 1 Ames, *supra* note 1, at 52 (May 16, 1636: "Roger Barrow commenced a suit against Richard Cooke for seventh barrels of come as by his specialty appeareth which upon dew examination it is ordered that the said Cooke shall make present payment of the said come with all charges in suit.").

For the standard formula of a specialty lawsuit in Lower Norfolk County, *see, e.g.*, 1 Walter, *supra* note 92, at 3 (Oct. 26, 1637: "Whereas it doth appear to this Court that John Penrice of the County

hundred twenty-two recognizances in the 1640s.¹³⁸ Generally, the recognizances secured smaller debts than those secured by chattel mortgages, averaging less than nine hundred pounds of tobacco, less than forty percent as secured by the average chattel mortgage in the same county. Recognizances did not describe collateral since the judgment lien covered all chattels along with a moiety of the land.¹³⁹

Chart B2 supplies information concerning the ninety-two parties demanding security through use of a recognizance. Almost all resided in Virginia. Only one came from London and had indeterminable residences. Of those residing in Virginia, most were small planters. Besides the twenty-six small planters, thirteen came as indentured servants and received no land grants, and the records named three with land but without receiving any land grant. But several elites did use recognizances, including nineteen office holders and twelve additional with land grants totaling over one thousand acres. Seven of these elites also used a chattel mortgage for security as did four others. As a group, they averaged receipt of a little more than eleven hundred acres. Predominantly the small planters with a significant elite demanded recognizances for security.

Chart B3 supplies information concerning the one hundred debtors who granted recognizances as security. They resembled those secured by recognizances but slightly less successful. Almost all resided in Virginia, with only twenty-two with indeterminable residences. Of those residing in Virginia, most were small planters. Besides the thirty small planters, twenty-eight came as indentured servants and received no land grants, while two bought land. Few elites appeared in this group, with only five officeholders and thirteen with land grants for more than one thousand acres. As a group, they averaged receipt of less than five hundred acres. Sixteen of these borrowers also appeared on Chart B2 as obtaining a recognizance for security. This, along with the great numbers of recognizances, suggests that the recognizance was the standard method of obtaining security whenever needed, whether borrower

of Elizabeth City, Carpenter, is indebted unto Cornelius Lloyd in the sum of 800 weight of Virginia Tobacco as by specialty appeareth, it is ordered that the said John Penrice shall pay the said sum of tobacco at or before the first of December next ensuing or else execution to be awarded.”).

For the standard formula of a simple contract lawsuit in Accomack County, *see, e.g.*, 1 Ames, *supra* note 1, at 44 (Jan. 5, 1635-36: “Edward Drew commenced a suite against John Hayes for tow hundred pounds of [tobac]co as by his bill appeareth and upon examination it is ordered that the said John Hayes shall make present payment of the said summe of tobacco and all charges in this suite.”).

For the standard formula of a simple contract lawsuit in Lower Norfolk County, *see, e.g.*, 1 Walter, *supra* note 92, at 109 (Sept. 15, 1642: “Whereas John Holbeck deceased standeth indebted unto ffrancis Land the quantitie of 800 weight of tobb as by one bill and a note under the sd Holbecks hand appeareth It is therefore ordered that the sd Land shalbe payd out of the sd Holbecks estate . . .”).

138. *See* Appendix B.

139. *See supra* notes 79-81 and accompanying text.

or lender. Four of these borrowers, three office holders, also appeared as lenders demanding security by a chattel mortgage.

In general, those with higher social status used chattel mortgages, those with lesser status, recognizances. Literacy may have driven this choice.¹⁴⁰ Recognizances did not take any writing skill on the part of the parties. They merely showed up in court. Other factors may have made chattel mortgages more convenient for those literate enough to prepare the mortgage. In Virginia, execution of the judgment was subject to an appraisal procedure including the debtor to lead to a fair price.¹⁴¹ Use of the mortgage would allow a steeply discounted price on foreclosure.¹⁴² Parties could enter into a chattel mortgage at the time and place when the debtor needed the borrowing, when a merchant's ship landed at the plantation dock. Recognizances, in contrast, required a court session. Justices held court sessions irregularly four times a year at one of the justice's house.¹⁴³ So the more substantial local residents, comprising the lenders, demanded chattel mortgages for their lendings. Small planters became the borrowers that granted those chattel mortgages.

3. The Staple Economy in Seventeenth Century Virginia

For Virginia these chattel mortgages signified credit. Seventeenth century Virginia had two groups of lenders, overseas merchants and planter-merchants. The overseas merchant normally dealt with the planter by sending out a cargo placed in the hands of a factor.¹⁴⁴ Factors, who received their authority from powers of attorney filed with the local authorities, were paid a commission of ten percent.¹⁴⁵ If the overseas merchant did not own the ship,

140. See 1 PHILIP ALEXANDER BRUCE, INSTITUTIONAL HISTORY OF VIRGINIA IN THE SEVENTEENTH CENTURY 448 (all officials and almost all county justices could write), 452-53 (illiteracy among the general male population at less than half) (The Knickerbocker Press, 1910).

141. See, e.g., 1 HENING, *supra* note 46, at 259 (1642, ch. 30 on appraising only goods upon execution).

142. See, e.g., *Jewett v. Warren*, 12 Mass. 300 (1815) (determining chattel mortgage on collateral valued greatly in excess of the debt was not fraudulent). The fraudulent conveyance attack on overcollateralized chattel mortgages did not begin until the late seventeenth century. See *Bassett v. Nosworthy*, Temp. Finch 102, 23 Eng. Rep. 55 (Ch. 1673) (real estate mortgage). The attack succeeds only if the value given is grossly inadequate. See, e.g., *Copis v. Middleton*, 56 Eng. Rep. 386 (K.B. 1818) (setting forth cases upholding the transaction as not grossly inadequate and cases finding gross inadequacy).

143. See, e.g., 1 Walters, *supra* note 92, at iii (Lower Norfolk County: listing places and dates from 1638 to 1646); see also 1 Ames, *supra* note 1, at lxiv (inconvenience to hold monthly due to planting and winter so legally reduced to six per year in 1643); 1 HENING, *supra* note 46, at 273.

144. See 2 BRUCE, *supra* note 84, at 342-43 (tallow-chandlers, haberdashers, distillers, stationers, pewterers, fletchers, ironmongers, cordwainers, apothecaries, felt-makers, merchant tailors, weavers, goldsmiths, coopers, vintners, woolen-drapers, and tobacconists).

145. See *id.* at 364.

he hired one or banded with other merchants for one ship.¹⁴⁶ Risks for the overseas merchant involved losses from rough handling, embezzlement by the seamen and shipmaster, untrustworthy factors with which there were numerous lawsuits, as well as wartime capture.¹⁴⁷ Costs included pay for the crew or freight of three pounds per ton, castle duty to pay for the fortification at Point Comfort in Virginia, and the liquor tax, if applicable for importation, at Jamestown.¹⁴⁸ The overseas merchant dealt with two types of cargo, indentured servants and goods. The overseas merchants unloaded indentured servants at the widely dispersed planters' river landings.¹⁴⁹ The overseas merchants exchanged the indentures of these servants, whose terms were set in England before sale if consigned to a planter or set by Virginian law if not consigned, for tobacco.¹⁵⁰ In contrast, the Virginian authorities envisioned the overseas merchants unloading their goods in Jamestown at a local warehouse and bartering for tobacco, paying the storekeeper a commission in order to avoid forestalling and engrossing of goods (hoarding and charging monopoly prices) by local planters.¹⁵¹ Planters, especially for mixed cargos with indentured servants, would find ways to board the ships to barter tobacco for goods without obstruction.¹⁵² So the overseas merchant clearly sought tobacco, and the overseas merchant's currency for this trade was indentured servants and goods. Ships would leave Europe in September to guarantee a return cargo of tobacco.¹⁵³ If the tobacco crop was insufficient to purchase all the indentured servants and goods available, the overseas merchants extended credit.¹⁵⁴ The overseas merchants collected these debts by sending agents, typically a ship captain to reduce the cost of passage, with powers of attorney placed on record.¹⁵⁵ The agents frequently represented more than one merchant and had authority in several counties.¹⁵⁶

Colonial Virginia passed numerous laws to protect the unfortunate debtor from these merchants. In 1645 the Assembly provided that for planters unable to pay in kind (tobacco, grain, or other commodities) could be discharged from debtor's prison by surrendering their property to the commissioners for

146. *See id.* at 344.

147. *See id.* at 345, 366.

148. *See id.* at 347-49, 353.

149. *See* 2 BRUCE, *supra* note 84, at 632-33.

150. *See id.* at 622, 633.

151. *See id.* at 353.

152. *See id.* at 355.

153. *See id.* at 622.

154. *See* 2 BRUCE, *supra* note 84, at 299 (citing a 1630 letter of Governor West to Attorney General Heath complaining of such debt.).

155. *See id.* at 370.

156. *See id.* at 370.

determination of what part would be delivered to the merchant.¹⁵⁷ The Assembly modified the discharge procedure several times by providing for appraisement of the planter's estate, first in 1645 by two persons, one chosen by the planter, the other by the merchant with a justice settling disagreements, in 1647 with two justices settling disagreements, and in 1658 by four justices.¹⁵⁸ In 1658 the Assembly deprived the merchant from demanding settlement on demand if payable in tobacco; instead the payment would occur between October 10th and January 31st and if not made the merchant could sue on the security the following year.¹⁵⁹ In 1672 the Assembly specified that statute of limitations for accounts was three-years for residents and five-years for non-residents.¹⁶⁰

The overseas merchants came from England and the Netherlands. The Dutch merchants posed a problem to English authorities since they could evade English importation customs on tobacco by not sailing to England.¹⁶¹ This of course reduced their costs in comparison with English merchants, as did their lower freighting costs from smaller crews.¹⁶² The Dutch generally provided cloth, liquor, both exempted from Dutch export customs, and African indentured servants.¹⁶³ Virginia authorities tolerated Dutch merchants, however, despite English orders as early as 1623 to prohibit the Dutch trade since the planters preferred the lower prices.¹⁶⁴ Until enforcement of the Navigation Acts with the Restoration in 1660, Virginia authorities used two rubrics to circumvent these orders. The English merchants could not provide all the needed supplies so Dutch supplies became vital in times of distress, typically whenever a Dutch ship entered the estuary.¹⁶⁵ English merchants residing in the Netherlands conducted the Dutch-Virginia trade, so the cargos on the Dutch ships were English cargos.¹⁶⁶ Records indicate that when the Dutch merchants sold goods on credit, they did so unsecured.¹⁶⁷ But some

157. See 1 HENING, *supra* note 46, at 296.

158. See *id.* at 346 (one), 452 (two); 2 *id.* at 189-90.

159. See 1 *id.* at 489.

160. See 2 *id.* at 296-97.

161. See 1 BRUCE, *supra* note 84, at 293.

162. See 2 *id.* at 376.

163. See *id.* at 76, 310. Virginia did not provide by law that the term of indenture for Negroes was infinite until 1670 for non-Christian Negroes, and 1682 for Christian Negroes and Mulattos. 2 HENING, *supra* note 46, at 283 (1670, ch. 12), 490 (1682, ch. 1).

164. See 2 BRUCE, *supra* note 84, at 293, 302.

165. See *id.* at 305-06.

166. See *id.* at 300, 302 & 311.

167. See DAVID PETERSON DE VRIES, VOYAGES FROM HOLLAND TO AMERICA, A.D. 1632 TO 1644, IN 3 COLLECTIONS OF THE NEW YORK HISTORICAL SOCIETY, SECOND SERIES 75 (May 1635: left cargo with instructions to trade when crop of tobacco ripe), 76-77 (Sept. 1635: returned to collect dues for goods, unable since crop was small and taken by English traders with stores) (N.Y. D. Appleton & Co., 1857).

overseas merchants extended secured credit. A recognizance from Lower Norfolk County securing a English merchant resident in the Netherlands used existing African indentured servants and required payment in tobacco.¹⁶⁸ Consequently, overseas merchants sought to obtain tobacco, either through barter for goods or indentured servants, as payment under a bill obligatory, or as collateral under security agreements.¹⁶⁹

Not all planters bartered their tobacco for goods and indentured servants. Some realized they could avoid the fifty percent higher prices of goods from English export duties and Virginia import duties by sending their tobacco directly to merchants in England with instructions to exchange the crop for goods to be returned to Virginia.¹⁷⁰ These planters purchased their neighbors' tobacco crops in great quantity and shipped it overseas, commencing as a consortium in 1628 and continued individually thereafter.¹⁷¹ The English merchants became commission merchants and bankers for these planters, who began to accumulate large deposits in England.¹⁷² Observing the gain made by the annual vessels of overseas merchants, these planters used their credits to enter the Atlantic trade on their own accounts, commencing in 1637.¹⁷³ These planter-merchants sat as burgesses and councilors and filled the high offices.¹⁷⁴ The planter-merchants acquired lots of land through the headright system (receiving fifty acres for each indentured servant brought to America).¹⁷⁵ They also maintained stores to supply the needs of the other planters, mostly cloth garments.¹⁷⁶

De Vries had made an earlier journey to Virginia in March of 1633, *see id.* at 33-37. Stephen Charlton, justice in Accomack County, engaged in extensive trade with the Dutch. *See* 1 AMES, *supra* note 1, at xxxvii.

During the later part of the seventeenth century, after English authorities had eliminated the Dutch trade, the Royal African Company sold slaves on credit, also without taking security. *See* K.G. DAVIES, *THE ROYAL AFRICAN COMPANY* 318-325 (only took penal bonds and relied on enforcement of judgments unsuccessfully) (Atheneum, 1970).

For a misinterpretation of the de Vries transaction, *see* 2 BRUCE, *supra* note 84, at 303 (de Vries, a Dutch trader, dispersed his goods among the planters upon the security of the growing crops), 304 (security for de Vries's credit preempted by English traders resident in Virginia).

168. *See* 2 Walter, *supra* note 92, at 153-54 (1650: Capt. Francis Yeardley indebted to Mr. William Harris of Rotterdam).

169. A bill obligatory is a sealed promissory note. *See* JOHN BOUVIER, *BOUVIER'S LAW DICTIONARY* 346 (West Publishing Co., 8th ed. 1944).

170. *See* 2 BRUCE, *supra* note 84, at 336-37.

171. *See id.* at 338.

172. *See id.*

173. *See id.* at 377.

174. *See id.* at 378.

175. *See* 2 BRUCE, *supra* note 84, at 380.

176. *See id.* at 382.

Several factors encouraged the extension of credit to the early Virginia planters. Planter-merchants had accumulated wealth to lend, generally lent by transferring indentured servants, goods, or bills of exchange for the secured promise to repay. The bill of exchange lending in mid-seventeenth century Virginia worked as follows. The planter-merchants sold their tobacco on credit for bills of exchange drawn by agents of the purchasing merchants, the drawers of the bill, on other merchants England, New England, Barbados, or another English colony, the drawees of the bill, with whom the purchasing merchants had credit balances, to pay the planter-merchant or the planter-merchant's overseas agent, the payee.¹⁷⁷ Planter-merchants appreciated receiving the bills since they generally had dealings with the drawee-merchants in these other places.¹⁷⁸ The bill if accepted by the drawee, which released the drawer, the purchasing merchant, from liability under the bill, would provide the planter-merchant payee with credit in that overseas market. The planter-merchant payee could use the bill for lending to debtor-planters by assigning the bill to the debtor-planter for the debtor-planter's secured promise to repay.¹⁷⁹ The problem with bills was that the drawer might not have sufficient credit with the drawee to cover the amount of the bill, in which case the drawee rejected (protested) the bill.¹⁸⁰ The risk of protest was so great that the planter-merchants would require security, normally a penal bond in twice the amount of the bill.¹⁸¹ To deter the damage caused by protest, the planter-merchants passed legislation imposing a heavy thirty percent penalty on drawers, even if they showed a justification for the default.¹⁸²

177. See EMORY HAWK, *ECONOMIC HISTORY OF THE SOUTH* 150-51 (Prentice-Hall, Inc., 1934).

The common law courts reluctantly recognized the bill of exchange in 1602. See *Martin v. Boure*, 79 Eng. Rep. 6 (Ex. 1602). Before 1602 England followed the rule that a party could not assign a bill (chose in action) to another. See JOHN W. DANIEL, *A TREATISE ON THE LAW OF NEGOTIABLE INSTRUMENTS* 1 (citing Coke Litt. 214a) (Baker, Voorhis & Co., 1933).

This structure differs from the use of the bill of exchange during the Middle Ages. In the Middle Ages the bill of exchange developed as a method to handle different currencies of the seller's residence and buyer's residence. See *id.* at 5. The medieval transaction involved a loan of money in the first city by the selling-merchant to the buying-merchant, the drawer, and transfer or remittance of funds represented in the bill from that city to the buying-merchant's agent, the drawee, in a foreign city, who repaid the funds lent through the bill to the selling merchant's agent, the payee, in that foreign city. See *id.*

178. See 2 BRUCE, *supra* note 84, at 516.

179. See *id.* at 517 (bill of exchange could pass through many hands before sending for acceptance with the drawee).

180. See *id.* at 518.

181. See *id.* (citing Records of Rappahanock County, vol. 1668-72, p. 54). Bruce suggests security of recorded assignments of servants, slaves, cattle, and tobacco, but his single cited example is a penal bond. It is unlikely that the drawers would have these items available to serve as collateral.

182. See 2 HENING, *supra* note 46, at 171, 243 (changing the penalty to fifteen percent); see also *id.* at 519 (citing litigation over the matter from Records of York County, vol. 1664-72, p. 456). Bruce

A second factor encouraging credit was the desires of the small Virginian farmers. Small Virginia farmers sought wealth through conversion of their small subsistence farms growing a variety of crops to a large estate growing a single cash crop.¹⁸³ For Virginia, that staple crop was tobacco. The Virginia Company had tried an astonishing number of items to establish an export product, including manufacturing iron, glass, ships, lumber, pitch, tar, and soap ash, growing silk, grapes, and sassafras, making salt, fishing, and trading for furs.¹⁸⁴ The Virginia Company failed to find an export product since colonial wages rose to six times that of England, meaning the English could buy all these products elsewhere for less.¹⁸⁵ But where the Virginia Company failed, the colony succeeded. The Company allowed private land holdings in 1617 through a land dividend to stockholders of 100 acres for every 12 pounds and 10 shillings sterling contributed, to ancient planters who came before 1616 of 100 acres, and to those who transported others (estimated at six pounds sterling) 50 acres for each transportee.¹⁸⁶ These private landowners, allowed to grow what they wanted, sought an immediate profit.¹⁸⁷ The records of one hundred survive from this era.¹⁸⁸ Those records reveal immigrants of a few construction workers and the rest unskilled laborers and bills of lading for items need to establish an agricultural community.¹⁸⁹ The second year's return cargo in 1621 consisted of 4932 pounds of tobacco providing a 35 % return on the investment.¹⁹⁰ The owners of this hundred intended to establish a tobacco plantation from the beginning.¹⁹¹

Tobacco planting commenced with John Rolfe's experimental crop of 1612, exported in 1613.¹⁹² At the time, the Spanish Indies supplied most of the world's tobacco.¹⁹³ Encouraged by the Company's Governor Thomas Dale, John Rolfe experimented with the desirable varieties of West Indies tobacco since the local varieties could not compete.¹⁹⁴ When Rolfe sent some tobacco leaf to England in 1614, it quickly became the colony's chief crop,

suggests the penalty lay on Virginia drawers, *see id.* at 516 (drawers are native Virginian traders), but the cited example from York County has the overseas merchant as drawer and the native Virginian as the payee.

183. *See, e.g.*, DAVIES, *supra* note 167, at 317.

184. *See* IRENE HECHT, *THE VIRGINIA COLONY 1607-1640: A STUDY IN FRONTIER GROWTH* 95, 103 (University Microfilms, 1969).

185. *See id.* at 112, 124.

186. *See id.* at 78, 143 & 146.

187. *See id.* at 145, 152.

188. *See id.* at 152 (Berkeley Hundred).

189. *See* HECHT, *supra* note 184, at 158-60, 162.

190. *See id.* at 163, 165.

191. *See id.* at 163.

192. *See id.*

193. *See* BILLINGS ET AL., *supra* note 114, at 40.

194. *See id.*

producing 50,000 pounds of leaf export by 1617.¹⁹⁵ Although the London Company opposed tobacco as the cash crop, since James I despised smoking and the shareholders desired exotic crops with less competition,¹⁹⁶ during 1614 and 1615, Virginia's economy began to center on tobacco.¹⁹⁷ English factors encouraged tobacco under their mercantilist theory to reduce English bullion going to Spain for Spanish tobacco.¹⁹⁸ Governmental policies also spurred the tobacco trade. To reduce smuggling losses to custom duties, the English reduced the 6-shilling tariff on imported tobacco to 2 shillings in 1615.¹⁹⁹ To encourage colonial tobacco production, England banned growing tobacco in England and Ireland in 1619, and in 1631 reduced the tariff for Virginian and Bermudan tobacco to 9 pence per pound.²⁰⁰

With a sales price around 3 pence per pound of tobacco and a cost below 0.75 pence per pound of tobacco, a person could earn 60 pounds sterling a year while it cost only 20 pounds sterling to live a year.²⁰¹ All a person needed to grow tobacco was to clear the land of trees and plant randomly between the stumps.²⁰² By 1616 several hundreds devoted most of their land to tobacco growing.²⁰³ The rapid return on investment, taking only one year, spurred the growth.²⁰⁴ Tobacco exports rose dramatically from 609 pounds in 1615 to 134,607 pounds in 1623.²⁰⁵ After 1625 tobacco, with a high per-acre yield, high price in England into the 1650's, and light shipping weight, became the colony's lifeblood.²⁰⁶ Although a tobacco crop required constant attention on a tight timetable and was susceptible to disease, poor weather, competition from elsewhere, high labor costs, and shipping losses, Virginians made no effort to establish a different cash crop.²⁰⁷ New settlements formed to engage in tobacco production.²⁰⁸ Land grants began a marked expansion after 1635 going from the 1000s of acres to 70,000s of acres.²⁰⁹ These grants, granted under the headright system, signify a massive immigration of

195. *See id.*

196. *See id.* at 41.

197. *See* HECHT, *supra* note 184, at 164.

198. *See id.* at 181.

199. *See id.* at 189.

200. *See id.* at 191.

201. *See id.* at 187.

202. *See* HECHT, *supra* note 184, at 187.

203. *See id.* at 164.

204. *See id.* at 166.

205. *See id.* at 175.

206. *See* BILLINGS ET AL., *supra* note 114, at 66.

207. *See id.* at 67.

208. *See* HECHT, *supra* note 184, at 178.

209. *See id.* at 196.

transportees, 75 % of which represented commercial investments in servants.²¹⁰

Of all the staple crops during the colonial era, tobacco suffered the most rapid price swings.²¹¹ The expectation of profit the next year lead planters to purchase goods from the planter-merchants on credit, which the tobacco crop the next year did not always enable the planter to cover.²¹² The hope of these planters was the next season's profits would cover the loss and provide a profit, an event they had observed many times before.²¹³ But a series of unproductive years could render it impossible for these planters to extricate themselves from debt.²¹⁴ Consequently, merchants selling goods to these Virginia planters would reduce the risk of the situation by selling at a lucrative rate.²¹⁵ To further insulate themselves from fluctuating tobacco prices, these merchants required payment in sterling.²¹⁶ To encourage their own trade, the planter merchants passed a 1637 law providing that the parties keep bargains and credit accounts in sterling, not tobacco as was the custom.²¹⁷ And to protect themselves from the inevitable long-lasting decline in tobacco prices, these planter-merchants resorted to the familiar collusive judgment. So these planter-merchants required the planter to consent to a judgment in court in the amount of the debt to be incurred and providing for payment by a specified date in tobacco, with a deed authorizing execution on the subject property, personalty, upon the failure to pay at the appointed time.²¹⁸ Alternatively, the planter-merchants would have the planter give a conditional deed placed on record in the books of the county court where the transaction occurred, acknowledging the amount lent, containing a statement of payment the following fall, when the tobacco crop would come in, and providing that upon non-payment, the merchant could take possession of the property, realty and personalty, subject to the document.²¹⁹

The problem requiring the passage of the Virginia chattel mortgage act in 1642 is now apparent. The problem involved the conflict between a publicly recorded judgment and an unrecorded chattel mortgage on the same personalty serving as collateral. The judgment lienor could have acquired its judgment one of two ways, as a recognizance or through a lawsuit on a

210. *See id.* at 205.

211. *See* 2 BRUCE, *supra* note 84, at 368.

212. *See id.*

213. *See id.*

214. *See id.*

215. *See id.*

216. *See* 1 HENING, *supra* note 46, at 216 (1633 statute requiring all contracts, bargains, pleas, and judgments to be specified in sterling).

217. *See id.*

218. *See* 2 BRUCE, *supra* note 84, at 369-70.

219. *See id.* at 369.

specialty or bill. Under the derivation principal then in vogue,²²⁰ the earlier of the two conflicting devices would receive the collateral. The judgment dated from the date of the writ of execution, the chattel mortgage from its signing date.²²¹ Since planter-merchants also served as justices, they probably knew of any judgments entered against their debtor before obtaining their chattel mortgages. A subsequent judgment lienor, however, would not necessarily have any knowledge of a prior chattel mortgage. Consequently, the chattel mortgagee should ultimately obtain the collateral. In the case of wrongful levy, however, the chattel mortgagee would suffer the costs of additional litigation to recover the collateral or its value.²²² Planter-merchants engaged in transactions on both sides of this conflict. Some took recognizances, in which case they risked losing to a secret chattel mortgage, and some took chattel mortgages, in which case they risked recovery costs.

Accomack County Court records do record a number of wrongful levies about 1639.²²³ During this early period, Accomack County records reflect similar goings-on as in the rest of the Virginian province.²²⁴ Lower Norfolk County also has a case of wrongful levy.²²⁵ Liability for a wrongful levy

220. See, e.g., *Stone v. Grubham*, 80 Eng. Rep. 1079, 1080 (K.B. 1615).

221. See *id.*; see also *Baskerville v. Brocket*, 79 Eng. Rep. 384 (K.B. 1618) (recognizance against personalty binds from date the execution writ is awarded); *Baucher v. Wiseman*, Cro. Eliz. 440, 78 Eng. Rep. 680 (C.P. 1595) (nothing can stop execution against personalty after the date of the writ of execution); *Anon*, Cro. Eliz. 174, 78 Eng. Rep. 431 (Q.B. 1590) (writ of *feri facias*, the execution writ against personalty, defeats purchase after its date but before levy).

222. See BENTON, *supra* note 28, at 603; 1 Ames *supra* note 1, at 137-38; *Stone*, 80 Eng. Rep. 1079 (K.B. 1615).

223. The primary case involves voiding a levy on a ship due to a prior mortgage. See 1 Ames, *supra* note 1, at 137-38 (Jan. 24, 1638-39: whereas attachment formerly granted to Philip Taylor on a pinnas belonging to Mr. John Neale and accordingly the said pinnas has been attached, it is ordered that the attachment and execution be void in regard to a former conveyance signed by John Neale of the said pinnas unto Mr. Nathaniel Littleton and Mr. William Burdick and that the said pinnis rest in the custody of said parties according to the conveyance.).

These records also reveal lawsuits to resolve ownership of levied personalty. See *id.* at 108 (May 7, 1638: deposition of Thomas Demmer that steer seized from Capt. John Howe deceased now in the possession of Mr. Nathaniel Littleton was given to Mrs. Cugley by Capt. Claiborne), 134 (Jan. 7, 1638-39: an attachment awarded by the court upon 2 hogsheads of tobacco being in the house of Philip Taylors and belonging to James Barnibye, the aforesaid tobaccos to stand seized by the sheriff) & 137 (Jan. 24, 1638-39: attachment in favor of John Angood upon 25 lb pewter with six saucers and 12 spoons in the custody of William Holmes, as been executed, ordered said pewter be delivered to Angood). There are also lawsuits over the validity of conflicting conveyances. See *id.* at 134 (Jan. 1638-39: whereas it appears that Stephen Charlton has received 1000 lb tobacco belonging to estate of Thomas Rochester, ordered that said tobacco shall be repaid to George Scovell, assignee of Thomas Rochester).

224. See *id.* at xviii.

225. See 1 Walter, *supra* note 92, at 218 (Feb. 15, 1645-46: Thomas Ward attached corn belonging to Mr. Woodhouse, ordered to measure shrinkage and damage.)

generally lay with the sheriff.²²⁶ Planter-merchants also filled the fee-generating office of sheriff on a rotating basis.²²⁷ So to reduce losing the collateral under a recognizance, to reduce collateral recover costs under a chattel mortgage, and to reduce potential liability when they served as sheriff, the planter-merchants had a choice. They could forgo profits by not lending through a ban of the chattel mortgage, or they could protect their lending profits by putting the chattel mortgage on the same footing as a recognizance, requiring its recordation in the courthouse. The planter-merchants did not desire to forgo profits.

The Virginians already had a recordation statute for real estate mortgages. The planter-merchants only needed to graft chattel mortgages onto the mandatory real estate mortgage filing law. That law, modeled after the Fraudulent Conveyance Statute of 1571,²²⁸ provided for voiding secret mortgages.²²⁹ Moreover, small planters needed credit to purchase goods and indentured servants when the overseas merchants' ships landed at the planters' landing, a site and time not convenient for potentially distant county courts that met irregularly to hear small lawsuits.²³⁰ This, coupled with the mandatory filing requirement, would require a grace period in which to file.²³¹ To legislate such a law would only require political power in the hands of the planter-merchants.

4. Politics in Mid-Seventeenth Century Virginia

The London Company established the colony of Virginia to make a profit.²³² To achieve this goal, the Company reorganized in 1609 by replacing

226. See 1 Ames, *supra* note 1, at 64 (Jan. 1, 1636-37: in suit of John Parramore against Richard Cook for 8030 lb tobacco due on order of Nov. 28, 1636, ordered if not had according to the attachment, then the sheriff to pay the sum of tobacco).

227. See CYRUS HARRELD KARRAKER, *THE SEVENTEENTH CENTURY SHERIFF: A COMPARATIVE STUDY OF THE SHERIFF IN ENGLAND AND THE CHESAPEAKE COLONIES 1607-1689* 68 (choice of sheriff confined to large landowners), 70 (rare sheriff is not a commissioner before and after term) & 73 (sheriff picked by governor with consent of council, but commissioners selected the candidates and early on limited it to three, each one a commissioner) (University of North Carolina Press, 1930).

228. See 13 Eliz. I, ch. 5, § 1, *reprinted in* 4 STAT. OF REALM, *supra* note 60, at 537, *reenacted*, 143 Eliz. I, ch. 11, § 1 (1572), *reprinted in* 4 STAT. OF REALM, *supra*, at 602, *made permanent*, 29 Eliz. I, ch. 5, § 1, *reprinted in* 4 STAT. OF REALM, *supra*, 709.

229. See 1 HENING, *supra* note 46, at 227 (fraudulent if not registered).

230. See *id.* at 125 (monthly courts created 1624 in cities for controversies under 100 pounds of tobacco), 272 (1642: jurisdiction of monthly county courts for controversies under 1600 pounds of tobacco).

231. See *id.* at 417-18 (1656, ch. 4); Billings & Kukla, *supra* note 121, at 35 (15th act of 30 Apr. 1652) (a six-month grace period).

232. See BILLINGS ET AL., *supra* note 114, at 37.

its royal council with one elected by the stockholders.²³³ The success of tobacco as the staple crop after 1614 and the introduction of land ownership in 1616 led to that profit.²³⁴ So an enterprising Englishman with a little cash to invest could build a substantial estate by exploiting the labor of indentured servants brought over.²³⁵ Those Virginians that came after 1625 tended to replicate English society.²³⁶ At the top were those that lived off unearned incomes, the younger sons of the English well-to-do who amassed fortunes in land, servants, and political offices.²³⁷ Most of this aristocracy came from the merchant class.²³⁸ The middle rank planters, who came with capital and connections, acquired servants and land, went into tobacco farming using their mercantile connections, and sought political office.²³⁹ The small planters, consisting of those who came with enough to acquire a small tract, artisans, and former indentured servants lucky enough to work their way up, seldom owned more than two hundred acres or held political office.²⁴⁰ Last were the underclass of former indentured servants and failed immigrants.²⁴¹ But those who labored with their hands had the possibility of social mobility, rising through commerce, the church, or the military.²⁴² Most came from London and the Home Counties.²⁴³

The enterprising Englishmen, soon to become the planter-merchants, would gain political power in the colony shortly after 1641. One Company governor, George Yeardley, allowed an assembly with representatives elected by the leading colonists to meet with him as early as 1619.²⁴⁴ Company control of the colony, however, lapsed due to the fiscal stress caused by a war

233. *See id.* The original 1606 charter had the council selected from England under the King's control. *See also* THOMAS J. WERTENBAKER, *VIRGINIA UNDER THE STUARTS 1607-1688* 33 (Russell & Russell, 1914).

234. *See* BILLINGS ET AL., *supra* note 114, at 39, 41.

235. *See id.* at 41.

236. *See id.* at 52.

237. *See id.* at 52, 59.

238. *See* THOMAS J. WERTENBAKER, *PATRICIAN AND PLEBIAN IN VIRGINIA 16-19* (former merchants such as Ralph Wamet, Abraham Piersey, John Chew, and George Menifrie, sons of merchants such as Ralph Hamor), 28-29 (dealers in tobacco), 31 (trading acumen of planters recognized by overseas merchants), 91 (overseas merchants constantly complained of unfair treatment by planters over recovery of debts through lawsuits) & 92 (planters took advantage of tobacco price fluctuations, committed frauds in weights, used public funds for private use, and escaped payment of taxes) (Russell & Russell, 1910).

239. *See* BILLINGS ET AL., *supra* note 114, at 59.

240. *See id.* at 58.

241. *See id.*

242. *See id.* at 52.

243. *See id.* at 54.

244. *See* BILLINGS ET AL., *supra* note 114, at 42. The Virginia Company's third charter of 1612 allowed the company to hold quarter courts and assemblies, which the liberals among the shareholders demanded when they gained control of the Company in 1618. *See* WERTENBAKER, *supra* note 233, at 35.

with the local Indians beginning with their surprise attack in 1622.²⁴⁵ The Crown intervened with the result of establishing a Royal Colony in 1627.²⁴⁶ The status of the assembly was assured when Royal Governors continued to call it into session and Charles I approved such practices in 1639.²⁴⁷ The councilors, the upper house, sat as the Quarter Court,²⁴⁸ consented to provincial policies, had a say in appointments, drew up bills, managed the burgesses, the lower house elected by the freemen, and had to approve the laws passed.²⁴⁹ The Assembly, unlike Parliament, had authority to create counties, the seats of local government, and exercised that power beginning in 1634.²⁵⁰ The Assemblymen lacked the English lawyer's attachment to complex procedures and to precedent, so the laws they supported tended to support their effort to gain wealth.²⁵¹

The initial Royal Governors made no attempt to associate with the leading colonists and were continually at odds with their councils composed of those leading colonists.²⁵² One of these governors, Governor William Harvey, incensed the councilors by granting tax exemptions to one and imprisoning others, favoring the establishment of a competing Maryland colony, an act the councilors regarded as treason, and confiscating their property and subjecting them to unjust fines.²⁵³ The situation changed in 1641 when Sir William Berkeley became the long-time Governor of the colony. One of Berkeley's first acts was to reappoint the councilors harassed by Harvey.²⁵⁴ Berkeley identified with the leading colonists, abetted the rise of the General Assembly as a miniature Parliament, and sanctioned decentralized power, passing control of local affairs, the counties, to the great men.²⁵⁵ Berkeley's penchant to sharing authority allowed the local government to grow independent of his control.²⁵⁶ In return, Berkeley expected these great men to support in external affairs and diversification of the economy.²⁵⁷ Consequently, the assembly could easily pass laws that would benefit the

245. See BILLINGS ET AL., *supra* note 114, at 44.

246. See *id.* at 45.

247. See *id.* at 69.

248. 1 HENING, *supra* note 46, at 174 (quarterly courts created 1632 in Jamestown).

249. See BILLINGS ET AL., *supra* note 114, at 70-71. The King appointed Councilors from among Virginians recommended by the Governor. See WERTENBAKER, *supra* note 233, at 41.

250. See BILLINGS ET AL., *supra* note 114, at 71-72.

251. See *id.* at 75-76.

252. See *id.* at 48.

253. See also WERTENBAKER, *supra* note 233, at 65-66, 72 & 80.

254. See *id.* at 86.

255. See BILLINGS ET AL., *supra* note 114, at 49.

256. See *id.* at 49.

257. See *id.*

planter-merchants now in power, such as a chattel mortgage act in 1643 among others.

The Virginia experience shows that the early Anglo-American chattel mortgage acts needed two conditions for adoption: (1) a booming plantation economy in which small planters could aspire to greater wealth through expansion based on secured loans and (2) local planter-merchants in control of the local legislature with sufficient moneys to make those secured loans. Several other southern English-American colonies exhibited these conditions subsequently, namely South Carolina, North Carolina, Georgia, and British West Florida.

B. South Carolina

The Carolina proprietors established South Carolina with a centralized government. Courts for the central government before 1700, the period of interest for South Carolina's 1698 chattel mortgage act numbered one, the Grand Council, which also served as the Chancery.²⁵⁸ Records between 1671 and 1682 and in 1692 for the Grand Council and from 1700 for the Chancery exist in transcript form.²⁵⁹ South Carolina did not institute county government until late in the eighteenth century,²⁶⁰ so the South Carolina counties possess no records of interest. The Secretary of the Province, with whom parties filed various documents, does have abstracts of some records, including a volume dated 1694 to 1705 that includes ten filed chattel mortgages under the filing act.²⁶¹

258. See Robert M. WEIR, *COLONIAL SOUTH CAROLINA: A HISTORY* 55 (Grand Council) (KTO Press, 1983). During this period, South Carolina had other courts. See 1 *JOURNAL OF THE GRAND COUNCIL OF SOUTH CAROLINA* 57 (mention of a judgment from a Court in Charles Town) (Alexander S. Salley, ed., The State Co., 1907) [hereinafter Salley]; 2 *id.* at 4 (creation of a court of common pleas in Berkeley County), 11 (appointment of sheriffs for courts in Berkeley, Craven, and Colleton Counties).

259. See 1 Salley, *supra* note 258, at 4, 11 (For South Carolina's Council 1670-1680); 2 *id.* (For South Carolina's Council 1692); see also ANNE KING GREGORIE, *RECORDS OF THE CHANCERY COURT OF S.C. 1671-1779* (American Historical Association, 1950) (other than in *Journal of Grand Council*, starts in 1700). Few of the records survived. See *id.* at 17 (records subject to war, earthquake, fire, and negligence), 22 (only Grand Council records to survive came from 1671-82 and 1692, which end in mid-sentence) & 35 (Chancery files 1700-16 not complete, generally only the complaint, some with only the answer). The Grand Council and Chancery records reference lower court records, but none survived. See 1 Salley, *supra*, at 29 (1671 reference to a Record Book of Pleadings for a plea of debt), 57 (1673 reference to judgment from common pleas).

260. See M. EUGENE SIRMANS, *COLONIAL SOUTH CAROLINA: A POLITICAL HISTORY 1663-1763* 250-52 (The University of North Carolina Press, 1966).

261. See CAROLINE T. MOORE, *RECORDS OF THE SECRETARY OF THE PROVINCE OF SOUTH CAROLINA 1692-1721* 119-252 (R.L. Bryan Co., 1978). The other books of record relate to probate proceedings. An earlier volume of the secretary's records exists. See ALEXANDER S. SALLEY, *RECORDS OF THE SECRETARY OF THE PROVINCE OF SOUTH CAROLINA 1671-1675* (Historical Commission of South Carolina, 1944) [hereinafter 2 SALLEY]. This volume contains numerous deeds of sale for land, and a few other instruments

1. South Carolina Filings

Although South Carolinian records number few, the Grand Council did record one recognizance.²⁶² The records also showed South Carolinians used specialties and simple contracts,²⁶³ and even recorded some of them with the Secretary of the Province prior to the passage of South Carolina's chattel mortgage act.²⁶⁴ South Carolinians also used mixed mortgages, with realty as well as personalty serving as collateral, during the South Carolinian pre-chattel mortgage act era.²⁶⁵

The Secretary of the Province's records between the passage of the South Carolina chattel mortgage act and 1705 contained ten chattel mortgages, all using Negroes as collateral.²⁶⁶ The mortgagee for half of these recorded chattel mortgages were the Governor of the Province, Joseph Blake, and Robert Stevens, the assemblyman who proposed the chattel mortgage act to the legislature.²⁶⁷ These lenders obviously had political clout and were engaged in financing the plantation economy.

2. The Staple Economy in Late Seventeenth Century South Carolina

South Carolinians early on knew the Virginian model to success. Many came from Barbados that had participated in the same tobacco boom.²⁶⁸ The

such as bonds, receipts, wills, and indentures of servitude. *See id.* at 11 (bond), 16 (receipt), 21 (will), 24 (indenture).

262. *See* 1 Salley, *supra* note 258, at 69 (July 24, 1674 petition of John Pinkerd v. Thomas Archcraft, confession of the debt by Archcraft, ordered Archcraft to pay 17 lb sterling within 3 months); *but see* Dupont v. Screven, 20 S.C.L. 298 (1834) (statutes merchant never applied in South Carolina).

263. *See* GREGORIE, *supra* note 259, at 75-79 (Mears v. Valentine 1701, lost books of account in Jamaican earthquake, so can not bring common law debt action on debt, seeking equitable relief), 97-98 (Loane v. Tindall 1714, action of debt on bond with condition to abide by arbitrator's award, but arbitrator did not make an award, so seeking equitable relief).

264. *See, e.g.*, MOORE, *supra* note 261, at 121 (Oct. 17, 1694, 800 lb current money Jamaica bond for 400 lb debt, recorded Oct. 19, 1694), 135 (demand note made before July 16, 1696, recorded Oct. 26, 1696).

265. *See* 1 Salley, *supra* note 258, at 65 (recorded Jan. 29, 1673, John Norton planter acknowledged a debt to Lt. Col John Godfrey for 7000 pounds of muscovado (raw) sugar to be paid in Barbados in May 1675 and bound his Negroe Emanuel and his plantation and all appurtenances, and if not paid Godfrey to take).

266. *See* Appendix C; *see also* GREGORIE, *supra* note 259, at 254-56 (Yorkson v. Buckley 1718, petition to redeem possessory chattel mortgage made 1711 on one Negro, willing to pay amount on mortgage, mortgagee will not yield up year after year).

267. *See* ALEXANDER S. SALLEY, JR., JOURNAL OF THE COMMONS HOUSE OF ASSEMBLY OF SOUTH CAROLINA FOR THE TWO SESSIONS OF 1698 6 (The State Company, 1916) [hereinafter 3 SALLEY].

268. *See* Robert M. Weir, *supra* note 258, at 49 (Barbadian wealth first came from tobacco), 60 (Barbadians comprised one half of the third for whom historians know their origins).

Barbadian shift from tobacco to sugar as the staple crop resulted in difficulty obtaining sufficient land and less political autonomy.²⁶⁹ Emigration from Barbados began when the consolidation of Barbadian sugar plantations forced them out.²⁷⁰ The Carolina proprietors negotiated for their first settlers with three groups of Barbadians, all of whom settled near Charlestown in 1670.²⁷¹ These Barbadians were wealthy and aggressive, exercising disproportionate power, and sought self-profit.²⁷²

As in Virginia, these Barbadian settlers had difficulty finding the staple crop that would lead them to riches. The proprietors forced the settlers to experiment with exotic tropical commodities associated with southern Europe and the Middle East, such as silk, grapes, oranges, cotton, and indigo.²⁷³ The Barbadians favored shipping lumber and foodstuffs, such as corn, peas, and salt meat, both beef and pork, to their familiar West Indies.²⁷⁴ Although the Carolina cattle industry provided profits for some, and utilized as cowboys the slaves the Barbadians brought with them, it never made fortunes for the many.²⁷⁵ In the 1690s, King William's War (1689-1697) spurred the naval stores industry, consisting of producing tar and pitch from pine sap for greasing wagon wheels, waterproofing cordage, and caulking ships, by cutting the British Baltic supply for Swedish naval stores.²⁷⁶ The settlers produced tar, a labor intensive commodity, by digging a saucer-like depression lined with clay with a pipe running to a barrel on lower ground, piling in dead wood covered with earth, and burning the wood in low oxygen.²⁷⁷ A settler could earn 500 pounds sterling with twelve laborers and 2000 acres.²⁷⁸ Profits from naval stores, however, depended on subsidies, which did not come until 1705.²⁷⁹

As in Virginia, the Carolinians finally found the staple crop to bring riches. The settlers reintroduced rice in the early 1690s and in a few years mastered the technique.²⁸⁰ Rice, another labor-intensive commodity, took skill to cultivate and prepare for market.²⁸¹ Rice cultivation required land that

269. *See id.* (difficulty obtaining land and lack of local control of government accompanied the shift from tobacco sugar)

270. *See id.*

271. *See id.* at 51, 58.

272. *See id.* at 60.

273. *See id.* at 142.

274. *See WEIR, supra* note 258, at 142.

275. *See id.* at 174.

276. *See id.* at 143.

277. *See id.* at 144, 174 (created a demand for slaves).

278. *See id.* at 144.

279. *See WEIR, supra* note 258, at 143.

280. *See id.* at 145.

281. *See id.* at 150.

settlers could flood to keep out weeds and drown insects, construction of dikes and ditches, and learning when and for how long to flood.²⁸² This effort allowed only three to four acres per hand.²⁸³ Rice preparation required pounding in a large wooden mortar to remove the inner husk.²⁸⁴ Once the settlers mastered the technique, they began to bring more and more land under cultivation and imported thousands of slaves.²⁸⁵ This staple crop required such a large slave labor force that by 1703 there were three slaves for every four free persons.²⁸⁶ Purchase of this many slaves of course required liberal extension of credit.²⁸⁷

As in Virginia, the rice boom provided opportunity for the large planters, those that had come from Barbados with capital. Rice went to market in oxcarts to plantation landings and then by boat.²⁸⁸ Large planters provided this transportation for their neighbors, some of whom owned ships and stores.²⁸⁹ The goods from the stores would allow them to purchase their neighbors' smaller lots of rice for one large shipment overseas in their ships or to extend credit to their neighbors.²⁹⁰ These planter-merchants came to reside in Charlestown, which had all the courts, maintaining nearby countryseats on their plantations.²⁹¹

South Carolina's first settlers had the capital to lend from the initial settlement, but it was not until the mid-1690s that an agricultural boom for rice encouraged small planters to gamble on riches through borrowing. Similarly, South Carolina politics did not place these planter-merchants in power until the latter 1690s.

3. Politics in Late Seventeenth Century South Carolina

South Carolina during the period of interest was a proprietary colony. The charter of 1663 granted the proprietors the rights of the Bishop of Durham to set up a government apart from the King and with the right to create nobility.²⁹² Due to numerous failures of prior attempts to settle the region, the proprietors determined to minimize the problem of encouraging settlers by granting them almost complete self-government through an elected assembly

282. *See id.*

283. *See id.*

284. *See WEIR, supra* note 258, at 151.

285. *See id.* at 145.

286. *See SIRMANS, supra* note 260, at 60-61.

287. *See id.* at 58.

288. *See WEIR, supra* note 258, at 158.

289. *See id.* at 153.

290. *See id.* at 96.

291. *See id.* at 108, 153.

292. *See id.* at 50.

with the right to tax, freedom of religion, and free land under a head right system of 150 acres for each person brought over.²⁹³ The proprietors tried to impose a Fundamental Constitution drafted by John Locke, secretary to Anthony Ashley Cooper, Lord Shaftsbury, the proprietor with a Barbadian plantation and involved in the slave trade. In the Fundamental Constitution, they reserved the right to veto the unicameral Assembly's legislation and controlled the Grand Council, the appellate court and collective executive consisting of the proprietors with appointed and elected councilors.²⁹⁴ In practice, the Grand Council proposed legislation and the Assembly accepted or rejected it.²⁹⁵

The Anglican Barbadian settlers that benefited from these proprietary policies settled on Goose Creek, a tributary of the Cooper River near Charlestown on the Ashley River.²⁹⁶ The Goose Creek men, however, refused to cooperate with the proprietors. They did not settle where the proprietors desired, diverted all the profit to themselves, settled in isolated plantations rather than compact townships, enslaved Indians contrary to instructions, tolerated the presence of pirates contrary to instructions, and steadfastly refused to adopt the Fundamental Constitution and its county system.²⁹⁷

Consequently, the proprietors attempted to counter the Goose Creek men's efforts with a proprietary party composed of English dissenters and after 1685, French Huguenots, by creating a dissenter Colleton County and a Huguenot Craven County with more voting power than the Barbadians' Berkeley County and appointing a dissenter Governor.²⁹⁸ The proprietors' effort led to years of factionalism between the dissenters seeking power and the Goose Creek men seeking to preserve power, with individuals switching sides for their own advantage.²⁹⁹

The resulting turmoil led to seven administrations in the 1680s and five more in the first five years of the 1690s.³⁰⁰ In the late 1680s, the Goose Creek men succeeded in deposing the London proprietors' governor, a proprietor's brother, imposing their own governor, a recently made proprietor residing in Carolina, based on arguments taken from the Fundamental Constitution.³⁰¹ The Goose Creek men passed legislation for their own economic benefit and

293. See WEIR, *supra* note 258, at 51.

294. See *id.* at 51, 55 & 68.

295. See *id.* at 72.

296. See *id.* at 65; SIRMANS, *supra* note 260, at 27-29.

297. See WEIR, *supra* note 258, at 58, 60-62 & 71; SIRMANS, *supra* note 260, at 30-34.

298. See WEIR, *supra* note 258, at 64-65; SIRMANS, *supra* note 260, at 35-37.

299. See WEIR, *supra* note 258, at 65; SIRMANS, *supra* note 260, at 40-43.

300. See WEIR, *supra* note 258, at 65.

301. See *id.* at 68; SIRMANS, *supra* note 260, at 45-48.

punitive legislation against their opposition.³⁰² In 1691, the proprietors retaliated, repealed the recently passed laws, imposed their own governor, and removed elected members from the Grand Council, but allowed the Assembly to initiate legislation.³⁰³ In the mid-1690s at the height of King Williams War, the legislature gained control of its own membership by disenfranchising the Huguenots as disloyal Frenchmen, and gerrymandered election districts so that the Anglican Goose Creek men had twice as many assemblymen as the dissenters.³⁰⁴ The proprietors selected a fellow proprietor as governor, who could work with these Goose Creek men to pass much needed legislation, by giving them what they wanted for paying quit rents in commodities and selling land at cheaper prices in return for payment of officials' back pay, enforcement of quitrents, and construction of a fort at Charlestown.³⁰⁵ Under the next governor, the reforms of 1698 allowed the Assembly to repeal laws, coin money, limit land grants size, and end plural office holding.³⁰⁶ The Goose Creek men had broken the proprietors' power.³⁰⁷ The Assembly now sat as a separate body, initiated legislation, and controlled its own membership.³⁰⁸ Shortly one of the Goose Creek leaders, Robert Stevens,³⁰⁹ would propose,³¹⁰ and the Assembly pass, South Carolina's chattel mortgage act of 1698.³¹¹

South Carolina passed a permissive chattel mortgage act, rather than a mandatory one similar to the Virginia chattel mortgage act, due to English legal developments. Originally the English mortgage constituted a transfer of legal ownership to the mortgagee.³¹² During the seventeenth century, the Court of Chancery developed the equity of redemption, allowing the mortgagor to recover the property even after default.³¹³ By the late seventeenth

302. See WEIR, *supra* note 258, at 68; SIRMANS, *supra* note 260, at 48-50.

303. See WEIR, *supra* note 258, at 68; SIRMANS, *supra* note 260, at 50-54.

304. See WEIR, *supra* note 258, at 76; SIRMANS, *supra* note 260, at 67-71.

305. See WEIR, *supra* note 258, at 69-70; SIRMANS, *supra* note 260, at 61-67.

306. See SIRMANS, *supra* note 260, at 66.

307. See WEIR, *supra* note 258, at 65.

308. See *id.* at 70.

309. Robert Stevens (1720), an Anglican planter from Goose Creek, lead the Goose Creek faction in opposing the Proprietors in the Commons House of the Assembly and became a spokesman for the Anglicans who favored an establishment of the Church of England in South Carolina. SIRMANS, *supra* note 260, at 71, 79.

310. 3 SALLEY, *supra* note 267, at 6.

311. See GRIMKE, *supra* note 47, at 3.

312. See R.W. TURNER, *THE EQUITY OF REDEMPTION* 114 (Cambridge University Press, 1931).

313. See TURNER, *supra* note 312, at 21-22 (Chancery under Henry VI and Edward IV first takes mortgage cases to decree reconveyance when already paid in special circumstances), 24-26 (Chancery under Elizabeth I and James I grants relief to mortgagors who have not paid for hardship), 27 (Chancery in 1625 recognizes equity of redemption and grants relief as matter of course, provided mortgagor tenders principal, interest, and costs) & 28 (Chancery in 1629 issues first decree of foreclosure to terminate equity of

century, the Court of Chancery came to view the mortgagee's interest as personality, not realty.³¹⁴ This meant that the mortgagor could create more than one mortgage and caused further legal problems such as the priority rule between them.³¹⁵ South Carolina opted for a priority rule of the first recorded.³¹⁶

C. North Carolina

North Carolina had two provincial courts, the General Court and the Executive Council.³¹⁷ Records for the General Court from 1670 to 1730 and for the Executive Council from 1664 to 1775 exist in transcript form,³¹⁸ but both effectively commence in 1712, with a few records from 1694 and 1703 for the General Court.³¹⁹ Unlike South Carolina, North Carolina developed

redemption); *see also* *How v. Vignes*, 1 Ch. Rep. 32, 21 Eng. Rep. 499 (1629); *Emanuel College v. Evans*, 1 Ch. Rep. 18, 21 Eng. Rep. 494 (1625).

314. *See* TURNER, *supra* note 312, at 39 (mortgage is merely a security, so interest of mortgagee is personality and descends to executors, not heirs); *see also* *Thornbrough v. Baker*, 3 Swan. 628, 36 Eng. Rep. 1000 (Ch. 1676).

315. *See* WILLIAM SEARLE HOLDSWORTH, AN HISTORICAL INTRODUCTION TO THE LAND LAW 259 (Clarendon Press, 1927). Besides priority, two other problems dealt with (1) the doctrine of tacking for the third mortgage who paid off the first mortgage thereby receiving priority over the second mortgage and (2) the doctrine of consolidation for the mortgagor of two properties with subsequent advances forcing payment of both debts before redemption of the second mortgage on the first property could redeem. *See id.*; GEORGE OSBORNE, HANDBOOK ON LAW OF MORTGAGES 198, 330 (West Publishing Co., 1970); *see also* *Marsh v. Lee*, 1 Eq. Rep. 322, 21 Eng. Rep. 1076 (1670) (tacking); *Shuttleworth v. Laycock*, 1 Vern. 245, 23 Eng. Rep. 443 (Ch. 1681) (consolidation).

316. This priority rule changes the first in time rule of the common law. *See* HOLDSWORTH, *supra* note 315, at 259.

317. The General Court consisted of the Governor and the Councilors and served as a court of original jurisdiction for matters involving larger amounts than handled by the lower courts and heard appeals from the precinct and county courts. NORTH CAROLINA HIGHER-COURT RECORDS 1670-1696 lxiii (Mattie Erma Edwards Parker, ed., State Dept. of Archives, 1968) [hereinafter 1 Edwards Parker]. The councilors comprised the Executive Council, which served as the Court of Chancery, Palatine Court, and Court of Claims. 1 Cain, *supra* note 74, at xii.

318. For North Carolina's Executive Council, *see* 1 Cain, *supra* note 74; RECORDS OF THE EXECUTIVE COUNCIL 1735-54 (Robert J. Cain, ed., State Department of Archives, 1988); RECORDS OF THE EXECUTIVE COUNCIL 1755-1775 (Robert J. Cain, ed., State Department of Archives, 1994). For North Carolina's General Court, *see* 1 Edwards Parker, *supra* note 317; NORTH CAROLINA HIGHER-COURT RECORDS 1697-1701 (Mattie Erma Edwards Parker, ed., State Department of Archives, 1971) [hereinafter 2 Edwards Parker]; NORTH CAROLINA HIGHER-COURT RECORDS 1702-08 (William S. Price, ed., State Department of Archives, 1974) [hereinafter 1 Price]; NORTH CAROLINA HIGHER-COURT RECORDS 1709-23 (William S. Price, ed., State Department of Archives, 1974) [hereinafter 2 Price].

319. For the minutes of the General Court, called the Albemarle County Court (1694-1706) and later the North Carolina General Court (1712-15), *see* 1 Saunders, *supra* note 84, at 405, 423, 442, 566, 583, 588 & 591; 2 *id.* at 80, 98, 107 & 148; *see also* 1 Edwards Parker, *supra* note 317; 2 Edwards Parker, *supra* note 318; 1 Price, *supra* note 318; 2 Price, *supra* note 318. For the minutes of the Executive Council, called the North Carolina Council (1712-15), *see* 1 Saunders, *supra* note 84, at 855, 864, 867 & 869; 2 *id.* at 1,

county governments. Before 1715 North Carolina had two counties, Albemarle formed in 1663 and Bath formed in 1696.³²⁰ North Carolina, however, divided these two counties into several precincts, each with their own court where parties ultimately had to file their chattel mortgages.³²¹ Of the seven precincts formed before 1715, four have had their minutes transcribed, and one abstracted,³²² but only Perquimans Court has records from the seventeenth century, while Currituck, and Craven Precinct Courts have records before 1730.³²³

1. North Carolina Filings

Despite the paucity of records, the existing records reflect sufficient debt transactions to discern a pattern in North Carolina similar to that in earlier Virginia, namely local elite secured parties taking security in the staple product. For North Carolina tobacco served as the staple product.³²⁴

The North Carolina records contain few chattel mortgages before the required filing act.³²⁵ This paucity might have resulted from record destruction

32, 42, 51, 55, 64, 65, 69, 117, 124, 129, 139, 146, 147, 168, 170, 180, 181, 182, 188 & 204. For the creation of a North Carolina separate from South Carolina, *see infra* note 412 and accompanying text.

320. *See* HUGH T. LEFLER & WILLIAM S. POWELL, *COLONIAL NORTH CAROLINA: A HISTORY* 38, 56 (Charles Scribner's Sons, 1973).

321. *See* IREDELL, *supra* note 48, at 25 (file in register's office of the precinct).

322. The four precincts for Albemarle County formed in 1671 were Chowan, Currituck, Pasquotank, and Perquimans. *See* 1 Saunders, *supra* note 84, at xxvii; GEORGE E. EVERTON, *HANDY BOOK FOR GENEALOGISTS* 191-94 (Everton Publishers, 5th ed. 1967). For the transcribed records, *see* WEYNETTE PARK HAUN, *CHOWAN CO., N.C. COURT MINUTES (COURT OF PLEAS AND QUARTER SESSIONS)* (W.P. Haun, 1983) (1730-54); WEYNETTE PARK HAUN, *PASQUOTANK CO., N.C. COURT MINUTES (COURT OF PLEAS AND QUARTER SESSIONS)* (W.P. Haun, 1983) (1737-62); WEYNETTE PARK HAUN, *OLD ALBEMARLE CO., N.C., PERQUIMANS PRECINCT, COURT MINUTES 1688 THRU 1738* (DURHAM, N.C.: W.P. HAUN, 1980) [hereinafter HAUN, *PERQUIMANS*]. For the abstracted records, *see* GORDON C. JONES, *ABSTRACTS OF LAND GRANTS, TAX LISTS, ORPHANS DOCKET, INVENTORY AND OTHER RECORDS: CURRITUCK AND DARE COUNTIES, N.C. (1666-1831)* (only lists of names from deeds before 1723) (G.C. Jones, 1982).

The three precincts of Bath County formed in 1705 were Beaufort, Craven, and Hyde. *See* 1 Saunders, *supra*, at xxvii (originally called Pompteceough, Wickham, and Archdale); LEFLER & POWELL, *supra* note 320, at 57. For the transcribed records, *see* WEYNETTE PARK HAUN, *N.C. COURT OF PLEAS AND QUARTER SESSIONS (CRAVEN CO.)* (W.P. Haun, 1978) (1712-78) [hereinafter HUAN, *CRAVEN*].

323. For the minutes of the Perquimans Precinct Court (1693-1706), *see* 1 Saunders, *supra* note 84, at 386, 392, 396, 399, 478, 485, 486, 488, 493, 494, 495, 520, 522, 524, 531, 532, 534, 548, 550, 561, 562, 564, 573, 575, 577, 579, 581 & 604; *see also id.* at 175 (1668); HAUN, *PERQUIMANS*, *supra* note 322 (book 1 1689-92, book 2 1693-1706, next book begins 1735).

324. *See* 1 Edwards Parker, *supra* note 317, at xx (as early as 1660 in Albemarle).

325. The parties to two chattel mortgages recorded them in the General Court (Provincial) shortly after South Carolina passed their chattel mortgage act. *See* 2 Edwards Parker, *supra* note 318, at 236 (Oct. 25, 1698 General Court: "a deed of sale of certain cattle from Henry Lisle to Mr. William Duckenfeild defeisable on the payment of 29 pounds 9 shillings 8 pence and acknowledged by Mr. Plater attorney of the said Lisle. Ordered that it be recorded."); 1 Price, *supra* note 318, at 397 (Mar. 1708, General Court: bill

caused by political upheavals in North Carolina.³²⁶ The North Carolina records do contain orders to record certain documents, suggesting a separate recording book that subsequent clerks may have lost.³²⁷ The description of these documents is not sufficient enough to determine whether the document included a security interest in personally.³²⁸ These records, however, contain numerous records of recognizances.³²⁹

North Carolinians had a custom of paying in commodities.³³⁰ Tobacco, along with pork and pitch and tar dominated the commodity prescribed for payment in the period before the 1715 passage of a chattel mortgage act.³³¹

of sale for beds, dishes, pots, cow and calf, and boat void upon payment of 16 pounds 2 shillings 2 $\frac{3}{4}$ pence, for being jointly and severally bound).

326. See 1 Saunders, *supra* note 84, at 250 (letter of 1677 complaining of seized records during the Culpeper Rebellion); 1 Edwards Parker, *supra* note 317, at lxxiv (destruction of court records by political factions, providing examples of refilings).

327. See, e.g., BILLINGS ET AL., *supra* note 235.

328. The Perquiman Precinct Court's practice originally during the 1690s was to record the document. See, e.g., 1 Saunders, *supra* note 84, at 399 (1694 power of attorney), 403 (1694 power of attorney, also a deed of sale for plantation) & 484 (1697 two deeds for sale of land and plantation); HAUN, *PERQUIMANS*, *supra* note 322, at 1 (1689 sale of gelding), 7 (1690 Indenture for daughter). But in the early eighteenth century the minutes reflect only a request to record, see, e.g., 1 Saunders, *supra*, at 580 (1703 three requests to record deed for sale of land). After 1703 the clerk recorded orders to record and they were numerous. See, e.g., *id.* at 620 (1705: 3 powers of attorney, 2 assignments of patent, 2 deeds of sale, assignment of deed of sale, conditional bond), 650 (1706: 2 deeds of sale, 3 powers of attorney). Each precinct had its own Register of Writings. See 1 Cain, *supra* note 74, at 376 (John Stepney, Register of Writings for Perquimans Precinct).

Similarly, the Albemarle General Court had a filing, see 1 Saunders, *supra* note 84, at 583 (1703: power of attorney), but most often the clerk merely recorded an order for a recording. See, e.g., *id.* at 427 (1694: 4 powers of attorney), 432 (1694: assignment of land patent); 2 *id.* at 80 (1713: sale of plantation of 400 acres), 148 (1714: conveyance of 400 acres). Some of the recorded documents relate to sales of personally. See 1 Price, *supra* note 318, at 204-05 (Nov. 1705, General Court: deed of sale for 23 slaves).

329. See Appendix D.

The clerks generally recorded recognizances as a debt lawsuit confessed by the debtor. See, e.g., 1 Saunders, *supra* note 84, at 392 (1694 Perquimans County). They reserved the term "acknowledgment" for recording documents. See, e.g., 1 Cain, *supra* note 74, at 29 (Chancery petitions with respect to 1712 deed of conveyance acknowledged for registration).

Among the registered documents, clerks recorded specialties. See, e.g., HAUN, *PERQUIMANS*, *supra* note 322, at 69 (recorded bond Jan. 9, 1704-05). The court clerk did not denote which debt lawsuits involved specialties or accounts, at first not even specifying the type of action. See *id.* at 8 (1690: just denoting plaintiff commenced suit against defendant and the jury found). Later, the clerk added "in a plea of debt" before his summary of jury action. See *id.* at 29 (1700).

330. See 1 Saunders, *supra* note 84, at 715 (1709 letter: no money in province and pay by commodity with corn, pork, pitch and tar the chief ones).

331. For tobacco, see 2 Edwards Parker, *supra* note 318, at 469 (1701: 4998 pounds of tobacco). Tobacco occasionally appeared in debt instruments. See HUAN, *PERQUIMANS*, *supra* note 322, at 2 (1689 debt of 1882 pounds of tobacco before jury), 9 (1690: debt of 5779 pounds of tobacco before jury). For pitch, see 2 Saunders, *supra* note 84, at 81 (1713: three transactions), 102 (1713) & 103 (1713). Pork was

Tobacco had served as North Carolina's cash crop.³³² The tobacco depressions of the 1680s and 1690s convinced some North Carolinians to turn to pork production to supplement income.³³³ The Crown viewed Virginia and Maryland as the tobacco colonies and North Carolina merely as a source of West Indian food supplies.³³⁴ When North Carolinians used commodities as money in the 1710s, they spoke of pitch and tar, not tobacco as in Virginia in the 1640s.³³⁵ The reason of course was French privateering caused by Queen Anne's War (1702-1713), which could find an unguarded private tobacco ship easy prey while a guarded ship carrying naval stores for the Royal Navy would be more difficult.³³⁶ North Carolinians engaged in pitch production when their fields were too wet to cultivate and to occupy plantation labor in winter, again to supplement income.³³⁷

The average debt secured by a recognizance amounted to about 10 pounds sterling, or 850 pounds of tobacco, slightly less than the comparable figure for Virginia in the 1640s. Several of those taking recognizances numbered amongst the elite, serving as governors, councilors or provincial justices, and precinct justices. Others came from the Albemarle families with large estates.³³⁸ Two listed addresses in New England, namely a merchant

the other important commodity sold as foodstuffs to the West Indies. See 1 *id.* 520 (1699), 532 (1700) & 548 (1701); 2 *id.* at 32 (1713).

332. See 2 Edwards Parker, *supra* note 318, at xv.

333. See 2 Saunders, *supra* note 84, at xiv.

334. See 1 *id.* at 156 (1715 report).

335. See 1 *id.* at 175 (1709 letter); 2 *id.* at 220 (1716 letter for minister pay in commodities of corn, wheat, beef, pork, and pitch), 286 (1717 letter minister used bill of exchange to get pitch for money), see also 2 *id.* at 196 (listing North Carolinian products as pitch, tar, and other naval stores with rice and skins for South Carolina), 236 (1716 order of the Palatine making Bath a seaport since it is the most proper place for ships to take in masts, pitch, tar, turpentine and other naval stores). In Perquimans Precinct in 1706, parties recorded barrel marks, see HUAN, *PERQUIMANS*, *supra* note 322, which could be for pitch and tar, or for tobacco or corn.

336. Cf. LEWIS CECIL GRAY, *HISTORY OF AGRICULTURE IN THE SOUTHERN UNITED STATES TO 1860* 154 (American tar and pitch exports rose from 872 barrels in 1704 to 9,358 barrels in 1708, then fell to 4,825 barrels in 1713) (P. Smith, 1941).

337. See LEFLER & POWELL, *supra* note 320, at 161.

In 1705 the Crown decided, in the midst of Queen Anne's War, which cut England off from its Baltic sources of naval stores, to subsidize naval store production in the colonies. See WEIR, *supra* note 258, at 143; see also 1 Saunders, *supra* note 84, at 598 (1704 document on need for subsidies to compete with Baltic naval stores). These subsidies would last until 1724 when the Crown decided to favor a different method of production that the colonials refused to use. See WEIR, *supra*, at 143-45 Subsidy eliminated in 1724, resumed in 1729 in favor of the Swedish method using live trees. These subsidies encouraged some North Carolinians in their off-time to engage in production of naval stores on credit in the hopes of joining the elite, evidenced in the pre-1716 recognizances. Production grew rapidly between 1713 and 1718. See GRAY, *supra* note 336, at 154. Since they used knee and chips, rather than green wood, the quality of their naval stores was poor. See LEFLER & POWELL, *supra*, at 163.

338. See JACK P. GREENE, *THE QUEST FOR POWER: THE LOWER HOUSES OF ASSEMBLY IN THE*

from Boston with three transactions and another from Rhode Island. A third listed an occupation of factor for a London firm.³³⁹ Attorneys took many recognizances for others, most notably Thomas Snowden with eight, Edward Mosely, a councilor, with four, and Edward Bonwick with three. The secured parties took several of the recognizances after having relied on a specialty or writing obligatory or from deceased person's estates.

These records suggest that some secured parties took security interests only after becoming insecure with respect to a prior loan reflected by a specialty or writing obligatory. This of course would permit a secret chattel mortgage to defeat the recognizance if taken between the lending and obtaining the recognizance. The prospective recognizance seeker could avoid the resulting litigation over ownership of the collateral through a recording statute. Since the chattel mortgage would win under the common law as prior,³⁴⁰ the statute need only provide for a priority rule based on filing. Then the insecure party with a specialty would know that proceeding to obtain a recognizance would not improve his position. These records also suggest that the staple product driving this credit is a trade in tobacco through northern middlemen.

2. The Staple Economy in Early Eighteenth Century North Carolina

North Carolina began as an outgrowth of Virginia. The first permanent settlers, Virginians, moved into the Albemarle region, east of the Chowan River in 1655.³⁴¹ As an extension of Tidewater Virginia, they came with the social and economic pattern of Virginia.³⁴² They created a mixture of plantations and small farms, concentrating on tobacco production.³⁴³ Few had capital, most immigrating as indentured servants.³⁴⁴ Although scattered settlements eventually spread southward from Albemarle, first to the Roanoke River, then to the Pamlico River with a later significant settlement of French Huguenots from Virginia in 1704, and to the Nuese River by 1706 with a later

SOUTHERN ROYAL COLONIES 1689-1776 39 (the Swanns, Pollocks, Moseleys, Harveys, Lawsons, and Blounts had large estates) (University of North Carolina Press, 1963).

339. The New Pennsylvania Company had London merchants as directors and had interests in New York, Pennsylvania, Maryland, and Carolina. See 1 Price, *supra* note 318, at xxi.

340. See *Stone v. Grubham*, 2 Bulst. 225, 226, 80 Eng. Rep. 1079, 1080, 1 Roll. Rep. 3, 81 Eng. Rep. 283 (K.B. 1615).

341. See LEFLER & POWELL, *supra* note 320, at 32; see also 1 Saunders, *supra* note 84, ix-x (before 1660 on the east side of the Chowan River, based on Indian and Virginian land grants).

342. See GREENE, *supra* note 338, at 39.

343. See *id.* at 39; LEFLER & POWELL, *supra* note 320, at 49.

344. See GRAY, *supra* note 336, at 44 (of 1663 grants only four significant, two for transporting thirty persons, one for seventeen, and one for seven).

significant settlement of Palatines in 1709, proprietary restrictions on entry and survey outside of the Albemarle region prevented new settlers from obtaining land outside of Albemarle.³⁴⁵ To encourage settlement, like Virginia the proprietors adopted a head right system for Albemarle, granting sixty acres to every person bought over.³⁴⁶

The absence of ports, however, stifled development of their staple product in North Carolina.³⁴⁷ Goods could come, and exports leave, by way of Virginia subject to crossing fees and embargos.³⁴⁸ During the multi-decade tobacco depression, Virginia tried to curtail tobacco production through agreements with Maryland and Albemarle beginning in 1664.³⁴⁹ These efforts had only sporadic success.³⁵⁰ So in 1679, the Virginians passed the first of a series of acts that would appear throughout the proprietary period until 1729 to prohibit Carolina tobacco from being carried into Virginia.³⁵¹ Such policies resulted in North Carolinians trading through small vessels that could maneuver in the numerous small inlets, namely those of New England and the West Indies.³⁵²

Two economic events, however, would allow the Albemarleans to acquire large estates in the first decade of the eighteenth century. First, in 1698 the Crown ended the Royal African Company's monopoly on importing slaves to the colonies.³⁵³ Before then, because of the absence of good ports, North Carolina planters had difficulty in obtaining a plantation labor force. All servants transported into North Carolina came through Virginia or South Carolina, whose citizenry left only the less desirable workers for transporting to North Carolina.³⁵⁴ To expand a tobacco plantation to elite status required servants.³⁵⁵ With the demise of the Royal African Company's monopoly, New

345. See 1 Saunders, *supra* note 84, at x-xi; LEFLER & POWELL, *supra* note 320, 56 (Huguenots), 61 (Palatines).

346. See 1 Saunders, *supra* note 84 at 169 (instructions to Samuel Stephens, Gov. 1667), 182 (instructions to Samuel Stephens, Gov. 1670), 236 (instructions to John Harvey, President of the Council 1679) & 334 (instructions to Henry Wilkinson, Gov. 1681).

347. See LEFLER & POWELL, *supra* note 320, at 47.

348. See *id.* at 47.

349. See 1 Saunders, *supra* note 84, at xxi.

350. See *id.* at 142 (a Maryland reference to 1666 Albemarle act prohibiting tobacco planting in 1667).

351. See *id.* at xxi, 261 (1679 Virginian act: half of cargo to Crown, half to informer) & 628 (1705 Virginian act: same); 2 HENING, *supra* note 46, at 445 (1679 act); *id.* at 253 (1705 act); REGINALD JEFFERY, HISTORY OF THIRTEEN COLONIES OF NORTH AMERICA, 1597-1763 73 (North Carolina became a royal province in 1729) (Kennehat Press, 1908).

352. See 1 Saunders, *supra* note 84, at 230 (1676 instructions to Gov. Thomas Eastchurch to ban the New England trade in favor of England), 461 (New England) & 467 (West Indies).

353. See DAVIES, *supra* note 167, at 46.

354. See 2 Saunders, *supra* note 84, at xii.

355. See *supra* notes 183-191 (large plantations) and accompanying text.

England coastal traders could bring in a more numerous labor force.³⁵⁶ The population of slaves more than doubled between 1700 and 1710 to one-tenth of the population.³⁵⁷

Secondly, in 1707 the England and Scotland united, so that Scots merchants could trade in the English colonies.³⁵⁸ The Scots at the turn of the eighteenth century had already engaged in the smuggling of tobacco from North Carolina to New England, using ships from New England and Pennsylvania,³⁵⁹ evidenced in the pre-1716 recognizances. With the coming of legal trade, the second tobacco boom was well under way by the mid-1710s.³⁶⁰ With the boom in tobacco, North Carolina saw the rise of its planter-merchants.³⁶¹

In 1700 few North Carolinians had wealth or prospects for it.³⁶² Most lived on plantations of only 50 to 100 acres.³⁶³ Few had the means to pay wages or maintain slaves or indentured servants.³⁶⁴ They exported in small lots tobacco, corn, pork, hides, and skins all on one ship.³⁶⁵ Pork and hides developed as exports to replace tobacco during the severe tobacco depressions of the 1680s and 1690s.³⁶⁶ But by 1710 planter-merchants began to appear. Samuel Swann and Thomas Pollock had become men of great wealth on the basis of exporting corn, pork, hides, and tobacco to New England and corn, pork, and tobacco to the Leeward Islands.³⁶⁷ Some planter-merchants, such as Thomas Pollock, John Porter, William Wilkison, and John Tooke, had their own ships. Others, such as Christopher Gale and John Lawson achieved

356. See 2 Saunders, *supra* note 84, at xii (coastal trade); 1 *id.* at 693 (1708 letter describing ratio of independent traders' ships to Royal African ships in Virginia at 9:1).

357. See 2 Price, *supra* note 318, at xiii.

358. See Jacob Price, *The Rise of Glasgow in the Chesapeake Tobacco Trade 1707-1775*, 11 WM & MARY QRTLY 179, 180 (1954) (describing the jump in tobacco volume of the Scots in the mid-1710s after the 1707 Union).

359. See 1 Saunders, *supra* note 84, at 461 (1696 letter of Edmund Randolph complaining of the illegal trade of Scots through boats from New England and Pennsylvania to Scotland), 546 (1701 report of Edmund Randolph describing the illegal traffic of North Carolina tobacco to Boston and the islands off Connecticut, from where Scots ship it to Scotland).

360. See *infra* note 533-534 and accompanying text.

361. Cf. LEFLER & POWELL, *supra* note 320, at 155 (tobacco North Carolina's export/cash crop), 175 (planter class top of social hierarchy); GRAY, *supra* note 336, at 268 (tobacco depression 1703 to 1713 followed by boom 1714 to 1724), 444 (North Carolina plantation system made considerable progress during first half of eighteenth century).

362. See 2 Edwards Parker, *supra* note 318, at xiii.

363. See *id.* at xiii.

364. See *id.* at xv.

365. See *id.* at xix.

366. See *id.* at xv.

367. See 2 Price, *supra* note 318, at xviii.

wealth in the Indian trade.³⁶⁸ Gale and Edward Mosely married rich widows of those who used provincial offices to achieve wealth, namely the widows of Thomas Harvey and Henderson Walker, respectively, both Deputy Governors.³⁶⁹

3. Politics in Early Eighteenth Century North Carolina

For these newly created planter-merchants to pass a chattel mortgage act to protect their lendings to aspiring mid-level planters, required a working government. North Carolina achieved a stable government shortly after the rise of the planter-merchants. When Charles I made the Carolina Province proprietary, he moved the border north so it would include the Albemarle settlers in Carolina.³⁷⁰ The eight proprietors placed the original government of Albemarle in the hands of one of the Carolina proprietors, Governor William Berkeley of Virginia, who granted land to settlers in the area beginning in September 1663.³⁷¹ After appointing a Governor in 1664, in 1665 the proprietors decided to create eight counties, each named after one of the proprietors and with its own government, modeled after Virginia with a governor, council, and assembly.³⁷² Albemarle County encompassed the Chowan settlements, Clarendon County, a 1663 expedition of Barbadians at Cape Fear, both with their own governor and assembly by 1666.³⁷³ Clarendon County ceased in 1667.³⁷⁴ The Albemarle Assembly only had authority to consent to laws proposed by the Governor.³⁷⁵ Only a very few acts of the Albemarle Assembly and its successor the North Carolina Assembly before 1715 have survived.³⁷⁶ Consequently, historians can only guess at the laws of North Carolina before the passage of its chattel mortgage act in 1715 from other records.³⁷⁷

368. *See id.*

369. *See id.*

370. *See* LEFLER & POWELL, *supra* note 320, at 33.

371. *See* 1 Saunders, *supra* note 84, at xiv.

372. *See id.* at xii, xiv-xv.

373. *See id.* at xv (Governor John Yeoman's instructions; Clarendon Assembly's 1666 petition), xv (instructions to second governor of Albemarle, Samuel Stephens in 1667) & xxxiii (Albemarle's 1666 act prohibiting of planting tobacco in 1667); LEFLER & POWELL, *supra* note 320, at 44.

374. *See* 1 Saunders, *supra* note 84, at x.

375. *See id.* at 182 (instructions to Samuel Stephens, Gov. 1670), 236 (instructions to John Harvey, President of the Council 1679) & 334 (instructions to Henry Wilkinson, Gov. 1681); *see also id.* at 163 (Instructions to Samuel Stephens, Gov. 1667, consent of the proprietors).

376. For Albemarle, *see id.* at xxxiii, 142 (a Maryland reference to one of 1666), 183 (copies of 9 from 1669) & 218 (four from 1673 in a letter). For North Carolina, *see id.* at 543 (1701 vestry act), 571 (same), 665 (1707 debtor relief act), 674 (same) & 787 (1711 sedition act and land grant act).

377. 2 Edwards Parker, *supra* note 318, at xvi (assumes a cattle mark recording statute since settlers record them). Virginians recorded cattle marks prior to their 1657 statute. *See* 1 FLEET, *supra* note 101,

The first retardive to a stable government involved factionalism. Seventeenth century North Carolina had two sources of factionalism. First, in 1669 the Albemarle Assembly passed a law to encourage settlement, by exempting new settlers from debt prosecution for five years and exempting them from taxes.³⁷⁸ That same year the proprietors tried to impose the same Fundamental Constitution they developed for South Carolina, creating a feudal system with little local control.³⁷⁹ The result was to divide settlers into the anti-proprietary party of those already in the Albemarle region and the proprietary party consisting of those settlers coming after 1669 that were indebted to the proprietors.³⁸⁰ Second, a number of the original settlers had become Quakers after George Fox's missionary trip through Albemarle in 1672.³⁸¹ These not-so-religious Quakers, most numerous in Pasquotnk and Perquimans Districts, would dominate the Anglicans in the anti-proprietary party.³⁸² Proprietary efforts to establish Anglicanism and expel dissenters from public office would create turmoil. The factionalism thus created engendered situations where the North Carolinians would turn against their own governors.³⁸³

The second retardive element involved the poor choice of officials by the Crown and proprietors. After 1670 the proprietary interests turned to Charles-town as more likely to produce profits. This neglect permitted Albemarle settlers to turn to smuggling of tobacco through New England coastal traders,³⁸⁴ by appointing customs officers that allowed the nonpayment of the penny duty per pound of tobacco not exported to England.³⁸⁵ Enforcement of the duty by Thomas Miller, the President of the Council serving as governor and appointed as customs collector by the Crown,³⁸⁶ led to the anti-proprietary party's first rebellion. In 1677 during the Culpeper Rebellion, the anti-

at 80 (recorded cattle earmark 1654), 140 (reference to Nov. 10, 1657, cattle mark filing act).

378. See LEFLER & POWELL, *supra* note 320, at 44.

379. See *id.* at 46.

380. See *id.* at 47.

381. See 1 Saunders, *supra* note 84, at 216 (George Fox trip), 250 (claims of some Quakers not to have participated in Culpeper's rebellion and to have settled in Albemarle by 1663) & 709 (Anglican churchman in 1709 denouncing the Cary rebellion as caused by Quaker manipulation and Quaker claim to be the original settlers).

382. See *id.* at 600 (1704 Anglican churchman letter claiming Assembly controlled by Quakers), 686 (same for 1708 allied with the Presbyterians) & 709-15 (1709 letter describing Quaker manipulation of the Cary Rebellion and their predominance in Pasquotank and Perquimans Districts).

383. See *id.* at x (1677, 1678, and 1679 they turned out Miller and Eastchurch during the Culpeper Rebellion; 1708, 1709, 1710, and 1711 they turned out Glover and Hyde during the Cary Rebellion)

384. See *id.* 232 (instructions to Thomas Eastchurch, Gov. 1676, to discourage trading with New England and encourage trading with England).

385. See *id.* at 257 (report of the rebellion to the proprietors); LEFLER & POWELL, *supra* note 320, at 48-49.

386. See 1 Saunders, *supra* note 84, at 255

proprietary party arrested Miller and his supporters.³⁸⁷ The rebels elected a new Albemarle Assembly, tried Miller, and opposed the force sent from Virginia that successfully put down the rebellion.³⁸⁸ In 1684 the proprietors sent a proprietor, Seth Sobel, as governor, who disregarded his instruction, accepted bribes, jailed settlers without trial, and seized plantations.³⁸⁹ In 1689 the Albemarle Assembly put this governor on trial and banished him.³⁹⁰

The Culpeper Rebellion and Sothel experience led the proprietors to eliminate Albemarle's separate government and rule the colony from Charlestown. They reorganized the colony in 1691 by providing for one Governor, resident in Charlestown, who ruled the northern part of the province, now called North Carolina.³⁹¹ This procedure would continue until 1712 when the proprietors formally split the province in two and appointed governors to rule each as a separate colony.³⁹² This reorganization also mandated proprietors or their deputies as the councilors, a procedure that lasted to the end of the proprietary period in 1729.³⁹³ But as early as 1689, the proprietors had agreed to allow the Albemarle Assembly to initiate laws.³⁹⁴ The 1691 reform mandated one Assembly for all of Carolina to which Albemarle County, along with three other counties from South Carolina, sent representatives.³⁹⁵

The 1691 reforms, however, contained the seed for separate government. They authorized the Carolina Governor to appoint a deputy governor for the north, with powers to call an assembly in the event representatives found it difficult to travel to Charlestown.³⁹⁶ The Carolina Governor began appointing deputy governors by 1694.³⁹⁷ The North Carolina Assembly, however, did not

387. See LEFLER & POWELL, *supra* note 320, at 51; see 1 Saunders, *supra* note 84, at xxi (Thomas Miller serving as governor), 249 (captured Thomas Miller, President of the Council).

388. See LEFLER & POWELL, *supra* note 320, at 51-52.

389. See *id.* at 54; 1 Saunders, *supra* note 84, at 345 (Sothel a proprietor), 349 (Sothel governor in 1684) & 361 (1691 letter of proprietors explaining the removal of Sothel).

390. See LEFLER & POWELL, *supra* note 320, at 54.

391. See JEFFERY, *supra* note 351, at 73; 1 Saunders, *supra* note 84, at xxiii, 369 (in 1690 have governor of North Carolina). The term North Carolina originally referred to the territory north of Albemarle Sound in dispute with Virginia pursuant to the 1665 charter. See *id.* at xxii-xxiii.

392. See JEFFERY, *supra* note 351, at 73.

393. See GREENE, *supra* note 338, at 237.

394. See 1 Saunders, *supra* note 84, at 362 (instructions to Philip Ludwell, Gov. of North of Cape Fear 1689).

395. See *id.* at 377 (instruction to Philip Ludwell, Gov. of Carolina 1691).

396. See *id.* at 380 (additional instructions to Philip Ludwell, Gov. of Carolina 1691).

397. See *id.* at 373 (governor has power to create courts), 386 (Perquimans Precinct Court records begin in 1693), 405 (North Carolina General Court and Chancery Court records begin on Sept. 25, 1694, and name Thomas Harvey as deputy governor) & 467 (a 1696 report names Jarvis as deputy governor under Gov. Philip Ludwell, before Harvey).

develop until 1701.³⁹⁸ The anti-proprietary party managed to control this assembly through its four precincts in Albemarle County with five delegates each, to Bath County's three precincts with two delegates each.³⁹⁹ This meant Quaker control, which commenced with councilor appointments under Carolina Governor Archdale, a Quaker, and subsequent justice appointments in 1695.⁴⁰⁰ Never-the-less, reports to the Crown from this period reflect North Carolinians as without a regular government and engaging in lawless activities of smuggling and piracy.⁴⁰¹

Because of the Quaker control, this time the spark for the Cary Rebellion would be England's 1704 Test Act intended to remove dissenters from public office.⁴⁰² Removed as councilors, justices, and burgesses for failure to take the oath, the Quakers obtained proprietary removal of the deputy governor.⁴⁰³ But the new deputy governor, Thomas Cary, also enforced the Test Act.⁴⁰⁴ A second appeal to the proprietors in 1707 produced appointments of Quakers as councilors.⁴⁰⁵ The result produced two claimants to the deputy governorship, one selected by the old councilors, one by the Quaker councilors.⁴⁰⁶ The Quakers gathered a mob and supplied a brigantine to support their governor.⁴⁰⁷ This situation continued with two governors, no assembly, and no courts until the proprietors appointed their own deputy governor, Edward Hyde, who called an assembly in 1711 to pass punitive legislation.⁴⁰⁸

398. *See id.* 571 (1703 letter, two years ago with great effort got an assembly); *see also* 1 Saunders, *supra* note 84, at 543 (1701 act creating church parish vestries), 601 (1704 letter assembly controlled by Quakers), 665 (1707 letter mentions act to protect newly arrived settlers from prior debts), 672 (same), 681 (1708 letter mentions clergy pay act), 682-83 (1708 letter mentions act to protect debtors) & 696 (1708 letter mentions calling assembly into session).

399. *See id.* at 681 (1708 letter: Albemarle has 4 precincts, Bath 3), 697 (1708 letter of Thomas Pollock: 28 burgesses, 5 from Chowan, 5 from Currituck).

400. *See id.* at 571 (1703 letter, half the burgesses are Quakers intent on repealing 1701 Anglican vestry act), 600 (1704 letter, Quakers control assembly and denied Anglican support bill), 686 (1708 letter, Quakers are one-seventh, but with Presbyterians control assembly) & 713-14 (1709 letter: Quakers are very numerous in Perquimans and Pasquotank, not in Chowan and no mention of any in Currituck).

401. *See id.* at 467 (1696 report of Edmund Randolph describing Albemarle region drawing Virginia tobacco, Roanoke region as harboring West Indies pirates), 546 (1701 report of Edmund Randolph on high crimes describing tobacco trade to New England, lawlessness of Roanoke region).

402. *See id.* at 709 (1708 letter describing use of the oath to remove Quakers control from the council, assembly, and courts).

403. *See* 1 Saunders, *supra* note 84, at 709.

404. *See id.* at 709.

405. *See id.* at 710.

406. *See id.*

407. *See id.* at 779 (1711 Gov. Spotswood letter from Virginia).

408. *See* 1 Saunders, *supra* note 84, at 733, 768 & 787 (1711 acts against sedition and to grant titles refused by Cary).

An Indian attack in Bath County in September of 1711 further destabilized North Carolina. The Tuscarora Indians, upset over the settlement of the Palatines on the Neuse River in 1710, attacked the Neuse River settlements, nearly depopulating Bath County.⁴⁰⁹ The pacifism of the Quakers and the refusal of Virginia to send aid forced Governor Hyde to obtain the assistance of South Carolina.⁴¹⁰ The combined Carolina force crushed the main towns and forts of the Tuscaroras in January of 1712, effectively ending the war although fighting dragged on for three years.⁴¹¹

To finally establish a stable government, the proprietors formally split the two Carolinas, each with its own Governor early in 1712.⁴¹² Under this stable government, the recently created planter-merchants, firmly in control as councilors and burgesses, passed a chattel mortgage act within three years.

D. The Mid-Eighteenth Century Acts

Georgia, along with British West Florida, differed from the other southern provinces in the reason for adopting a chattel mortgage act. The other provinces, Virginia, South Carolina, North Carolina, and Maryland adopted chattel mortgage acts to protect local planter-merchants lending to aspiring mid-level planters from litigation with the old form of security, the recognizance. Georgians with a proven staple crop and West Floridians dreaming of a staple crop obtained credit from their slave-sellers, from Charles Town and Savannah respectively. Consequently, Georgians adopted a South Carolinian type of chattel mortgage act, and West Floridians adopted a Georgian type of chattel mortgage act.

1. Georgia

Georgia, like the southern provinces to its north, began as a proprietary province. Taken from South Carolina territory when it became a royal province and granted to a twenty-one year Trusteeship in 1732, Georgia was to provide a refuge for England's deserving poor as well as a buffer between Carolina and the Spanish and French along the Gulf of Mexico.⁴¹³ Led by James Oglethorpe, the Trustees had utopian ideas about how to operate a province, most notably the desire to produce silk, wine, and spices, the prohibitions of rum and of participatory government, and limitation of land

409. See LEFLER & POWELL, *supra* note 320, at 65, 67 & 71-72.

410. See *id.* at 72.

411. See *id.* at 74-75, 78-79.

412. See 1 Saunders, *supra* note 84, at 844 (1712 instructions to Edward Hyde).

413. See KENNETH COLEMAN, *COLONIAL GEORGIA: A HISTORY* 13, 17 (Charles Scribner's Sons, 1976).

grants to 500 acres.⁴¹⁴ The Trustees granted land in male-tail to insure 50 acres per militia soldier, required the planting of a certain number of mulberry trees to foster the silk industry, and refused to grant land in fee simple to prevent the charity colonists from mortgaging their land.⁴¹⁵ The inability to mortgage land led to abandonment of farms during hard times.⁴¹⁶ They also prohibited slavery since charity colonists could not afford slaves and the presence of slaves might encourage their sloth.⁴¹⁷ The regulations of the Trusteeship retarded the province's economy and the population growth until their relaxation after King George's War in 1748.⁴¹⁸ The silk industry never materialized since late spring frosts killed early leaves needed for the silk worms, equipment was in short supply, and the imported experts refused to train the settlers.⁴¹⁹ Similarly, wine production failed since the weather was not right for European vines and the native grapes produced unpalatable wine.⁴²⁰ There was little production of staple crops.⁴²¹

During the Trusteeship, the only significant settlements were Savannah along the South Carolina border with the original charity colonists, Ebenezer further north along the South Carolina border with Germans from Salzburg, Augusta further north along the South Carolina border with South Carolinians, and Darien south along the coast with Highland Scots.⁴²² The Indian trade, centered on Augusta and its connections to Charles Town, South Carolina, exchanging English manufactured goods for deerskins, became the major export but provided profits for South Carolina.⁴²³ Water trade for English manufactured goods also came through Charles Town.⁴²⁴ The Trustees instituted a Town Court in Savannah with three justices, but neglected to set up courts in Darien, Ebenezer, and Augusta.⁴²⁵ Appeals went to the Trustees.⁴²⁶ The Trustees also appointed a recorder, a register of land grants, and a secretary of the province, but only the journals of the secretary prior to 1745 survived.⁴²⁷

414. *See id.* at 17, 32, 35, 91, 99 & 103.

415. *See id.* at 111, 122.

416. *See id.* at 128.

417. *See id.* at 112.

418. *See* COLEMAN, *supra* note 413, at 52.

419. *See id.* at 114-16.

420. *See id.* at 117.

421. *See id.* at 133.

422. *See id.* at 25, 43, 49, & 51.

423. *See* COLEMAN, *supra* note 413, at 51, 77 & 134.

424. *See id.* at 135.

425. *See id.* at 91-92.

426. *See id.* at 107.

427. *See id.* at 93, 95 & 96.

After King George's War, the Trustees lost interest in the province and relaxed their regulations, repealing the slavery prohibition and allowing a recommendative assembly with representatives from Savannah, Augusta, and Ebenezer, both in 1750.⁴²⁸ The province's leaders, Patrick Graham, Noble Jones, James Habersham, Thomas Causton, William Stephens, and Joseph Ottolenghe, had circumvented the acreage limitation on plantations by consolidating small acreages through marriage and special exceptions.⁴²⁹ And South Carolina planters owning land in Georgia had used their slaves to work Georgia lands.⁴³⁰ With the relaxation of the acreage amount and planting requirements, people, especially South Carolinians with experience in rice farming, began to take up freshwater swamps along the Savannah and Ogeechee Rivers, ideal for rice plantations patterned on the South Carolina model.⁴³¹

The Trusteeship disbanded and the royal province commenced in 1752.⁴³² The presence of slavery, unrestricted availability of land, and increased credit available to Georgians created an agricultural revolution between 1752 and 1760.⁴³³ Coastal plantations of 2,000 to 5,000 acres appeared in the freshwater swamps along streams for 20 miles inland, worked by slaves thought able to tolerate the swamp fevers, made rice Georgia's greatest money crop.⁴³⁴ Planters brought slaves with them from South Carolina or the West Indies, or purchased them on credit extended by Charles Town merchants.⁴³⁵ By 1754 planters had occupied most of the good rice land, and immigration slackened

428. See COLEMAN, *supra* note 413, at 103-04 & 174.

429. See *id.* at 127. James Habersham was a major Savannah merchant, combining his mercantile business with a substantial plantation, owning over 10,000 acres and 198 slaves. See *id.* at 132, 213 & 214. James Habersham's mercantile house was a major importer of slaves. See BETTY WOOD, *SLAVERY IN COLONIAL GEORGIA 1730-1775* 99 (University of Georgia Press, 1984). Noble Jones, Joseph Ottolenghi, and James Habersham supported the passage of Georgia's chattel mortgage act. See 13 THE COLONIAL RECORDS OF THE STATE OF GEORGIA 33, 39, 41, 43-44, 48 & 58 (Allen D. Candler, ed., Franklin-Turner Co., 1906).

430. See COLEMAN, *supra* note 413, at 139.

431. See *id.* at 120; see also WOOD, *supra* note 429, at 91-93 (Georgia's plantation economy began with South Carolinians seeking rice lands, since they had the advantage over other settlers of rice cultivation knowledge and slave labor need for it).

432. See COLEMAN, *supra* note 413, at 175.

433. See *id.* at 210.

434. See *id.* at 210 & 213.

435. See *id.* at 213, 224 & 229; see also WOOD, *supra* note 429, at 89-99 (1000 slaves taken from South Carolina to Georgia in 1752 and 1753; Charles Town, South Carolina merchants sent newly arrived Negroes to Savannah merchants on consignment; Georgians visited Charles Town to purchase Negroes on their own behalf). West Indians came to the Ogeechee and Altamaha Rivers in the late 1740s and 1750s with their slaves to plant rice, as did Puritans from Dorchester, South Carolina, at Midway, between Ebenezer and Savannah. See COLEMAN, *supra* note 413, at 224. The English merchants got into the credit business by 1763. See *id.* at 213.

until 1760 due to the French and Indian War.⁴³⁶ The royal government also brought participatory government for the first time. Local leaders became royal officeholders, such as James Habersham, Secretary, Noble Jones, Treasurer, and Patrick Houstoun, Register of Grants.⁴³⁷ To become an assemblyman required ownership of 500 acres.⁴³⁸ So the rice planters, eager to purchase additional slaves on credit, controlled the first assembly in 1755.⁴³⁹ They would quickly adopt a chattel mortgage act of the sort familiar to the Charles Town merchants selling those slaves to insure that credit.

Royal Georgia created two new courts, the General Court and the Court of Session of Oyer and Terminer and General Gaol Delivery for criminal cases, and continued the Town Court of Savannah.⁴⁴⁰ None of their records are readily available to search for chattel mortgages and other debt instruments. James Halbersham, Secretary of the Province both under the Trusteeship and the Royal Province, however, did keep a book for recording conveyances and a book for recording miscellaneous documents.⁴⁴¹ Although the conveyance book, started when Halbersham became Secretary in 1752,⁴⁴² comprises mostly realty conveyances, there are a few other types of recorded instruments.⁴⁴³ The book contained no chattel mortgages other than in connection with real estate.⁴⁴⁴ The mortgages on realty, however, indicated that the 63 percent of the secured lenders were not local planter-merchants, but merchants from Charles Town, South Carolina.⁴⁴⁵ The aspiring Georgian

436. See COLEMAN, *supra* note 413, at 224.

437. See *id.* at 177.

438. See *id.*

439. See *id.* at 181.

440. See *id.* at 178.

441. See FRANCES HOWELL BECKEMEYER, ABSTRACTS OF GEORGIA COLONIAL CONVEYANCE BOOK C-1 1750-1761 xii (R.J. Taylor, Jr., Foundation, 1975).

442. See *id.* (referring to the 1755 act and suggesting its purpose was to continue Halbersham's useful recordings).

443. See *id.* at xv (referring to powers of attorney, wills, a premarital agreement, gifts); GEORGE FULLER WALKER, ABSTRACTS OF GEORGIA COLONIAL BOOK J 1755-1762 1 (referring to bonds, bills of dale, deeds of gifts, and powers of attorney) (R.J. Taylor, Jr., Foundation, 1978).

444. See BECKEMEYER, *supra* note 441, at 146 (mortgage made Apr. 17, 1755, recorded Oct. 25, 1757, from Robert Baillie, planter of Midway, to John Graham, merchant of Savannah, on 500 acres and 10 neat cattle to secure debt of 100 lb. sterling). There are recordings of sales of personalty. See *id.* at 174 (Aug. 22, 1755, sale of Negro by Robert Bailey, planter of Midway, to Alexander Wyly, merchant of Savannah), 192 (Apr. 16, 1756, sale of breeding horses, cattle, hogs, and plantation tools by John Barnard, gentleman of Willimington Island, to Nathaniel Polhil, gentleman of Mount Pleasant).

445. See *id.* at 200 (mortgage on 300 acres in Midway by Peter Baillou, shopkeeper of Georgia, to Richard lambton, merchant of Charles Town, South Carolina made June 11, 1754, recorded July 23, 1756), 216 (mortgage on 600 acres from William Low, planter of Newport, Georgia, to Robert McKinsie, merchant of Charles Town, south Carolina), 222 (mortgage on 150 acres made Mar. 15, 1757, from Richard Johnston, tavernkeeper of Augusta, to William Woodrop, merchant of Charles Town, South Carolina), 253

planters borrowed from South Carolinians and when in control of the assembly, they passed security legislation familiar to their borrowers in South Carolina. The book for recording miscellaneous documents, however, obviously was the book for recording personalty transactions mandated by the 1755 chattel mortgage act. This book begins in 1755 and contains numerous bills of sale for slaves, sloops, and livestock.⁴⁴⁶ This book also contains several chattel mortgages, all on slaves and most to secure Indian traders from Augusta also involved in the slave trade through Charles Town, South Carolina.⁴⁴⁷

2. British West Florida

British West Florida differed from the other southern provinces. British West Florida was a frontier province.⁴⁴⁸ Created as a royal province, rather than a proprietary province, in 1763 from recently acquired Spanish territory, the Board of Trade intended West Florida to draw settlers from the other American province and former soldiers that had served in the army during the

(indenture to secure payment of loan on 5 acres made Aug. 3, 1758, by William Johnson, taylor of Savannah, to William Glenn, John Cooper, Charles Stevenson, and William Michie, merchants of Charles Town, South Carolina) & 262 (indenture of release as mortgage to secure debt made Aug. 2, 1758, on 300 acres by Joseph Massey, planter of St. John's Parish, to Isaac Holmes and Henry Peroneau, of Charles Town, South Carolina); *but see id.* at 164 (security deed on Savannah town lots from William Lee, gentleman of Savannah, to James Rutherford, silversmith of Savannah, made July 18, 1755), 203 (mortgage annuity on 500 acres from Edward Barnard of Augusta to Margaret Fraser, widow of James Fraser, of Augusta) & 236 (indenture of release by way of mortgage made Sept. 30, 1757, from William Clifton, Esq. of Savannah, to Henry Ellis, Esq. Lt. Gov.).

446. *See, e.g.*, WALKER, *supra* note 443, at 17 (1754 nine negroes), 28 (1755 sloop) & 39 (1756 cattle, horses).

447. *See id.* at 109 (bill of sale of Negro woman and child with right of redemption from Nehemiah Wade, Jr., of Augusta to Lachlan McGillivray of Augusta to secure 203 lb. 4 sh. current money of South Carolina void if paid before Oct. 1, 1758, made Dec. 17, 1757, recorded Mar. 16, 1758), 186 (trust agreement with respect to three Negroes by Mathew Roche, gent., Jonathan Bryan, and James Devereaux, Esqrs., Trustees for William and Henry Roche of Savannah, to secure 116 lb. payable in three years to John Jagger with right to repossess if not paid), 217-18 (bill of sale of four Negroes with right of redemption from Samuel Piles to Joseph Pruniere to secure 152 lb. void if paid before Aug. 10 next, made July 2, 1761, recorded Aug. 24, 1761), 224-25 (bill of sale of three Negroes with right of redemption and town lot from Samuel Piles, Indian trader of Turtle River to John Wreat, gent. of Savannah to secure 230 lb., 6 sh., 6d of Great Britain void if paid before Dec. 16, 1762, made Dec. 16, 1761, recorded Jan. 4, 1762) & 244-45 (bill of sale of four Negroes, horse, mare, colts, cattle, and hogs on Blyth, Topson, and Talbot Islands with right of redemption from Samuel Piles to Edmund Gray to secure 126 lb. void if paid within two months or return from St. Augustine, made Feb. 11, 1762, recorded June 10, 1762).

Lachlan McGillivray's firm, as well as that of James Habersham, were major importers of slaves into Georgia with almost all coming from Charles Town, South Carolina, before 1765 when these importers established contacts in England. *See* EDWARD J. CASHIN, LACHLAN MCGILLIVRAY, INDIAN TRADER: THE SHAPING OF THE SOUTHERN COLONIAL FRONTIER 258 (University of Georgia Press, 1992).

448. *See* CECIL JOHNSON, BRITISH WEST FLORIDA 1763-1783 20 (Yale University Press, 1942).

last American war, thus preventing them from settling west of the Alleghenies and disturbing the Indians.⁴⁴⁹ Due to its isolated location, a long sea voyage from English colonial ports and without roads to those colonies, it failed in its primary purpose.⁴⁵⁰ Consequently, most of its leading citizens were government officeholders seeking wealth from official fees.⁴⁵¹ Fear of Indian attacks from a supposed 10,000 warriors made the citizens sensitive to protection provided by royal troops.⁴⁵² So the second largest class of leading citizens were military officials.⁴⁵³ The only commerce that the province had involved the Indian trade for skins.⁴⁵⁴ This business attracted English capital and speculators, resulting in merchants providing additional leading citizens.⁴⁵⁵ Planters were a distinct minority.⁴⁵⁶ The soil was infertile in the coastal areas available for settlement, and the fertile Mississippi Valley lands had no access to ready markets, being subject to Spanish harassment at New Orleans.⁴⁵⁷ Consequently, British West Florida did not develop a staple crop nor a powerful planter class,⁴⁵⁸ as did the other southern English provinces. Not only did British West Florida lack a substantial planter class, the Royal Governor controlled the government. Unlike the situation in the other southern English provinces, the assembly did not determine the Governor's salary, Parliament did, as part of an annual grant.⁴⁵⁹ The Governor also appointed the councilors, loyal to him.⁴⁶⁰ Consequently, when disputes arose

449. See *id.* at 124 (land grants to former soldiers), 116 (function of Proclamation of 1763 was to drive provincial settlers to the Floridas).

450. See *id.* at 132 (far from Jamaica or Charles Town by sea, land route threatened by Creek Indians).

451. See *id.* at 154 (top class, the officeholders); ROBERT R. REA, *THE MINUTES, JOURNALS, AND ACTS OF THE GENERAL ASSEMBLY OF BRITISH WEST FLORIDA* xiii (officeholders comprised 10 of 26 councilors) (University of Alabama Press, 1979).

452. See *id.* at x.

453. See *id.* at xiii (military men comprised 7 of 26 councilors), xvii (military men comprised 12 % of assembly); CLINTON N. HOWARD, *THE BRITISH DEVELOPMENT OF WEST FLORIDA 1763-1769* 22 (imperialists appointed ex-military men as governors after 1763) (University of California Press, 1947).

454. See HOWARD, *supra* note 453, at 39 (in 1772 Indian trade dominant and exports primarily derived from the Indians).

455. See *id.* at 18-19 (London merchants eager to invest through company patronized by royal family); REA, *supra* note 451, at xiii (merchants comprised 9 of 26 councilors), xvi (merchants controlled commons with 54 %); JOHNSON, *supra* note 448, at 98 (merchants dominated the assembly).

456. See JOHNSON, *supra* note 448, at 154 (planters not much in evidence until 1774 in the west); REA, *supra* note 451, at xiii (no planters became councilors), xvii (planters only comprise 23 % of commons).

457. See JOHNSON, *supra* note 448, at 7 (coastal land fit only for cattle, fertile land above Pensacola and Mobile held by Choctaws, Chickasaws, and Creeks, who refused to cede land), 170 (fertile region in the Mississippi Valley).

458. See *id.* at 170 (never developed a cash crop).

459. See *id.* at 20-21 (annual grant made governor independent of assembly).

460. See *id.* at 15 (appointed by governor).

between the Governor and the Commons, the Governor dismissed the assembly.⁴⁶¹ Yet, British West Florida passed a chattel mortgage act in 1770.

The government officeholders had visions of becoming planters. Their major government investment was to build a sea route the Mississippi Valley region through Lake Ponchartrain to provide the missing sea access to the area.⁴⁶² They granted themselves large land grants, especially along the Mississippi.⁴⁶³ These officeholders envisioned rice as the staple crop.⁴⁶⁴ They brought in numerous slaves into the Mississippi Valley.⁴⁶⁵ These officeholders obtained slaves from the firm of McGillivray and Struthers of Mobile, formerly of Augusta, Georgia.⁴⁶⁶ In control of the assembly, these officeholders first attempted to clear the waterway to the west in 1764, granted themselves extensive land grants in the west in 1769, and in preparation of the impending plantation boom, passed the chattel mortgage act necessary to granting credit to speculating planters for the purchase of slaves.⁴⁶⁷

461. *See id.* at 101-02 (Lt Gov. Browne suspended the 1767 assembly), 108 (Gov. Chester called no assembly 1771-1778) & 110 (Gov. Chester suspended the 1778 assembly).

462. *See* JOHNSON, *supra* note 448, at 33-35 (the Irbeville project).

463. *See id.* at 30-31 (land grants distributed the reverse of the New England model, to councilors first, to the neediest last), 119 (25,000 acres on Mississippi to Earl of Eglinton, in law of Governor Johnstone), 124 (most Manchac town lots went to office holders) & 130 (Philip Livingston, secretary of the province and councilor, uses front men to obtain 100,000 acres).

464. *See id.* at 171 (plantation at Manchac used Negroes to grow and export rice, but also grew indigo on a small scale and a little tobacco in 1776); *cf.* REA, *supra* note 451, at 211 (only legislation mentioning crops before 1775 is 1770 bill to prevent sale of rice, ship bread, and flour other than by weight). Later, tobacco became the crop at Natchez. *Cf. id.* at 301 (1778 bill for inspection of tobacco and restrain export if unmerchantable).

465. *See* JOHNSON, *supra* note 448, at 173 (slave population predominated along the Mississippi), 176 (slave trade thrived on Mississippi).

466. *Cf. id.* at 175 (firm had 40 slaves in 1770), 194-195 (firm of Mobile engaged in Indian trade). John McGillivray of Mobile, heavily involved in the Indian trade, was an assemblyman representing merchant interests. *See id.* at 98; REA, *supra* note 451, xxiv (represented Mobile in 1767 and 1772). William Struthers, Indian trader, was an assemblyman from Mobile. *See* JOHNSON, *supra* note 448, at 25; REA, *supra*, at xxv (represented Mobile in 1771 and 1772). Both John McGillivray and William Stuthers are named in the 1767 will of cousin Lachlan McGillivray of Augusta, Georgia, successful planter and slave trader and member of the Savannah gentry. *See* CASHIN, *supra* note 447, at 256-57.

467. *See* JOHNSON, *supra* note 448, at 130 (provincial officials enriched themselves through land grants), 33-35 (attempt to clear Iberville waterway in 1764) & 149 (land boom in Mississippi Valley brings in 2500 whites and 600 slaves between 1770 and 1774).

British East Florida did not pass a chattel mortgage act. Its societal make-up resembled that of British West Florida. CHARLES LOCH MOWAT, *EAST FLORIDA AS A BRITISH PROVINCE 1763-1784* 16-17 (two-thirds of the population lived in St. Augustine, society consisted of the military and higher officials as the elite, the rest were small traders, artisans, and minor government officials) (University of California Press, 1945). The huge difference between British West Florida and British East Florida, however, was the potential of a plantation economy for British West Florida along the Mississippi, and the absence of any comparable fertile land for British East Florida. *See* BERNARD BAILYN, *VOYAGERS TO THE WEST: A PASSAGE IN THE PEOPLE OF AMERICA ON THE EVE OF THE REVOLUTION* 476 (British East Florida lacked

Although British West Florida established provincial courts as well as county courts,⁴⁶⁸ none of their records are readily available to search for chattel mortgages and other debt instruments. Consequently, this article did not examine any British West Florida chattel mortgages. The available statutes of the assembly⁴⁶⁹ make reference to confessed judgments,⁴⁷⁰ so British West Florida undoubtedly had recognizances. These statutes also refer to debt by specialty and simple contract.⁴⁷¹ Every statute of British West Florida generally had a counterpart in the Georgia statutes.⁴⁷²

IV. THE SPECIAL ACTS

A. *Maryland*

Maryland had three provincial courts, the Provincial Court founded in 1637, the Court of Chancery founded in 1661, and the Court of Appeals, for appeals from the other two, founded in 1694.⁴⁷³ Transcribed records exist for these three courts.⁴⁷⁴ Of the transcribed records, only those of the Court of Appeals cover the period immediately before the passage of the Maryland chattel mortgage act in 1729. Maryland has no county records transcribed in print during the early eighteenth century, the period of greater interest, but does have several for the seventeenth century. Maryland had eleven counties formed before 1700, of which only five have printed records.⁴⁷⁵ Since

the fertile land available in British West Florida) (Alfred A. Knopf, 1986); *see also* MOWAT, *supra*, at 64 (1771 reports only one-third of 288 men as planters, and those really were small planters), 66 (planters large and small used slaves) & 77 (main export was indigo, a mere fraction, 4 %, of what came from Carolina).

468. *See* REA, *supra* note 451, at 324 (Mobile became the seat for Charlotte County in 1767); *see* JOHNSON, *supra* note 448, at 143 (Governor sets up court for Manchac and Natchez in 1774).

469. The Council and Governor passed laws before the first assembly met in 1766. *See* JOHNSON, *supra* note 448, at 16. These are not in print.

470. *See* REA, *supra* note 451, at 348.

471. *See id.*

472. *See* JOHNSON, *supra* note 448, at 111.

473. Before 1694 when the Court of Appeals was founded, the Upper House constituted the highest court. *See* 49 MARYLAND ARCHIVES, *supra* note 52, at 9. Before 1661 when the Chancery was formed, the Governor and Council sat as the chancery. *See id.*

474. For Maryland's Provincial Court, *see* 4 *id.* (1637-1650); 10 *id.* (1650-1657); 41 *id.* (1658-1662); 49 MARYLAND ARCHIVES, *supra* note 52 (1663-1666); 65 *id.* (1671-1675); 66 *id.* (1675-1677); 67 *id.* (1677-1678); 68 *id.* (1678-1679); 69 MARYLAND ARCHIVES, *supra* (1679-1681); 70 *id.* (1681-1683), for Maryland's Court of Chancery, *see* 51 *id.* (1669-1679); and for Maryland's Court of Appeals, *see* 77 *id.* (1695-1729). The Provincial Court records from Feb. 1644-45 to May 1647 were lost. *See* 4 *id.* at 5.

475. For Charles County, *see* 53 MARYLAND ARCHIVES, *supra* note 52 (1658-1666); 60 *id.* (1666-1674); for Kent County, *see* 54 *id.* (1648-1676); for Talbot County, *see* 54 *id.* (1662-1674); for Somerset County, *see* 54 *id.* (1665-1668); 86 MARYLAND ARCHIVES, *supra* (1670-1671); 87 *id.* (1671-1675); 88 *id.* (1675); 89 *id.* (1675-1677); 90 *id.* (1683); 91 MARYLAND ARCHIVES, *supra* (1687-1689); 106 *id.* (1689-1690); 405 *id.* (1691-1692); 406 *id.* (1692-1693); 407 *id.* (1693-1694); 535 MARYLAND ARCHIVES, *supra*

Maryland courts accepted voluntary filings of documents,⁴⁷⁶ these provincial courts and county courts do have filings of chattel mortgages in the seventeenth century.

1. Maryland's Economy and Politics

Since both Virginia and Maryland share the Chesapeake Bay and developed with tobacco as the cash crop, historians tend to treat the two colonies together as a unit.⁴⁷⁷ Maryland's situation, however, differed significantly from Virginia with respect to chattel mortgages. Because of these differences, Maryland did not satisfy the necessary conditions for the adoption of the chattel mortgage acts until the mid-eighteenth century, and then adopted its characteristically different chattel mortgage act for a different reason.

Maryland lacked sufficient mid-level planters to borrow speculatively during the initial tobacco boom on the Chesapeake Bay. Lord Baltimore established Maryland in 1634,⁴⁷⁸ late in that tobacco boom, which ended in the early 1640s.⁴⁷⁹ Lord Baltimore had structured his province under the manorial system, which lasted during the colony's first two decades.⁴⁸⁰ By 1642, the population was only 625 including 173 freemen, of which 136 owned no land, leasing plots or entering into wage agreements with the manorial lords.⁴⁸¹ These tenant planters lacked capital and did receive credit from their landlord's for tools, seed, and livestock.⁴⁸² Working only by their own hands, they could produce only 600 pounds of tobacco annually,⁴⁸³ not the 1000 pounds of tobacco annually required to obtain servants and the resulting land under the head-right system.⁴⁸⁴ This deprived state of the potential mid-level planters continued throughout the seventeenth century, although some man-

(1692-1696); and for Prince George's County *see* 202 *id.* (1696-1697). Additionally, the Provincial Court served as the county court for St. Mary's County in the earliest years. *See* 4 *id.* at 5.

476. *See infra* notes 510-519 and accompanying text.

477. *See* BILLINGS ET AL., *supra* note 114, at 375.

478. *See* LAND, *supra* note 126, at 8-9.

479. *See id.* at 27-28 (tobacco prices rose from 1 cent per pound to 4 cents per pound by the late 1620s, where they remained until the tobacco glut of the early 1640s.).

480. *See id.* at 23 (Under the manorial system, a few of England's elites would control more than 80% of the province's cultivatable land by 1642 with the majority of the settlers as tenants.).

481. *See id.* at 26.

482. *See id.* at 27 (lacked capital), 29 (received credit).

483. *See* LAND, *supra* note 126, at 28.

484. *See id.* at 28 (one hand could produce 1500 to 2000 pounds of tobacco a year in Chesapeake Bay area, but actual production was only at 600 pounds of tobacco), 68 (in 1660 small planters produced 600 pounds to 1000 pounds of tobacco).

aged to acquire a little land and rise to the status of small planters.⁴⁸⁵ The multi-decade long tobacco depression lasted until 1710 with the end of King William's War and subsequent Queen Anne's War with the French, which had subjected the tobacco fleet to enemy capture, disrupting and preventing tobacco shipments.⁴⁸⁶ The second tobacco boom began in the mid-1710s with the entry of the Scots in the Chesapeake Bay area allowed by the 1707 Union with England.⁴⁸⁷ Not until this time could speculating on the staple crop lead to riches for mid-level planters in Maryland.⁴⁸⁸

During the initial tobacco boom and much of the seventeenth century, Maryland lacked a local elite with political power. Lord Baltimore's interpretation of his charter left him with lawmaking authority and the assembly only with authority to approve or suggest changes.⁴⁸⁹ Despite some political gains made by local elites, this situation would prevent them from controlling legislation. In 1638, the assembly obtained recognition of its right to initiate legislation.⁴⁹⁰ In 1650, the assembly became representative, consisting of burgesses rather than all freemen in the colony.⁴⁹¹ Lord Baltimore's power, except for periods of Protestant control, first under the Commonwealth in the mid-1650s and after the Glorious Revolution in the 1689, continued during the seventeenth century through the upper house of the assembly, composed of councilors Lord Baltimore selected from his relatives and friends allied to them who would do his bidding.⁴⁹² Only during the fifteen-year period following the Glorious Revolution did the assembly establish itself as a power in provincial affairs.⁴⁹³

When Maryland's elite finally arose, they consisted of a different sort of planter-merchant than Virginia, being more merchant than planter. Maryland's planter-merchants arose after the Restoration. All began as petty merchants, some coming with sufficient capital to open business, others rising

485. *See id.* at 28 (deprived), 40 (by 1655 some had money enough to become small family planters), 67-68 (after the Restoration over-planting of tobacco produced a glut such that by 1666 the price of tobacco had halved.) & 70 (the decline continued for decades).

486. *See id.* at 102-103, 113.

487. *See Price, supra* note 358, at 180 (describing the jump in tobacco volume of the Scots from 1.45 million pounds of tobacco, to 2.5 million pounds in 1715, and to 6 million pounds in 1722, eventually rising to 47 million pounds in 1771).

488. *See LAND, supra* note 126, at 103 (appearance of the local planter-merchant elite lenders with wealth based on land and slaves occurs after 1710).

489. *See id.* at 34.

490. *See id.* at 36.

491. *See id.* at 25 (all freemen attended the initial assemblies), 37 (burgesses gain right to met separately).

492. *See id.* at 51-52 (rule by ten Puritan commissioners 1654-57), 62 (appointment of councilors after the Restoration) & 87-88 (25 year royal colony started by the Protestant Association).

493. *See LAND, supra* note 126, at 106.

from the ranks of small farmers, and others rising from indentured servitude.⁴⁹⁴ They sold goods from their stores, such as cloth, hoes, axes, sugar, and rum, collecting in return the tobacco crops of their neighbors amassing them for overseas shipment.⁴⁹⁵ None grew more tobacco than their neighbor-customers.⁴⁹⁶ Like their earlier Virginia counterparts, they became representatives or appointed officials from justices to councilors.⁴⁹⁷ The return of the tobacco boom after 1715⁴⁹⁸ augmented their ranks, again with those rising through merchandising or trading or the professions, such as Daniel Dulaney,⁴⁹⁹ the lawyer who would propose the Maryland chattel mortgage act.⁵⁰⁰ They used their business profits to acquire planter status through acquisition of plantations manned by slaves under overseers.⁵⁰¹

2. Evidence of Early Efforts at a Maryland Chattel Mortgage Act

Although Maryland lacked the speculative fever, a planter-merchant elite, and local political power, the province did not ignore the developments in its sister province of Virginia. In August 1642, prior to Virginia's chattel mortgage act of March 1642-43, the rogue Maryland Assembly passed a recording statute for mortgages on the tobacco and corn crops. In this era the Maryland Assembly consisted of all freemen, but in 1642 a Kent Island burgess, Robert Vaughn, requested the burgesses to meet by themselves.⁵⁰² At that meeting, the burgesses passed a bill on August 1 concerning levying on corn or tobacco, before they could be put in the house or struck in cask, respectively, directed at the problem of wrongful attachment so evident in Virginia.⁵⁰³ The

494. See *id.* at 77.

495. See *id.*

496. See *id.*

497. See *id.* at 78.

498. See BILLINGS ET AL., *supra* note 114, at 119-20 (the growth rate of tobacco was tenfold in the fifty years before 1675, slowed to doubling by 1700, and was stagnant thereafter until a tripling occurred over 50 years with the expansion of the Continental market from a French monopoly and the replacement of the great planters by the Scots for collection of the small planters' crops.) See generally Price, *supra* note 358; JACOB M. PRICE, *FRANCE AND THE CHESAPEAKE: A HISTORY OF THE FRENCH TOBACCO MONOPOLY, 1674-1791, AND OF ITS RELATIONSHIP TO THE BRITISH AND AMERICAN TOBACCO TRADE* (University of Michigan Press, 1973).

499. See LAND, *supra* note 126, at 125.

500. See 26 MARYLAND ARCHIVES, *supra* note 52, at 407.

501. See LAND, *supra* note 126, at 127.

502. See *id.* at 37.

503. See 1 MARYLAND ARCHIVES, *supra* note 52, at 154. The assembly read the bill the first time on July 23, *id.* at 133, the second time on July 29, *id.* at 135, and the third time on August 1 with amendments made on July 30 and Aug. 1, *id.* at 137. The bill passed on Aug. 1 with 5 dissenting votes of Thomas Greene, George Pye, William Brough, and the two burgesses from Kent Island, Richard Thompson and Robert Vaughn. *Id.* at 137. For the Virginia situation, see *supra* notes 223-227 and accompanying text.

act indicates a problem with not only unrecorded mortgages, but delayed execution of recognizances. The act provided that a judgment had priority over any subsequent judgment, except proprietor levies for rent and taxes, and royal customs.⁵⁰⁴ The act defined subsequent judgment to include those recognizances, mortgages, and similar contracts for security not on file in the county where the land lay on the date of entry for the levying judgment.⁵⁰⁵ The act's treatment of both recognizances and chattel mortgages the same, as contracts for security, merely reflected the practice of the Provincial Court, which recorded both types of contracts, making the distinction between the two blurred.⁵⁰⁶

The act apparently never had a period of effectiveness. The burgesses specified its continuance only to the next assembly, which began on September 5.⁵⁰⁷ At that subsequent meeting with all the freemen, not just the burgesses, the freemen repealed all laws passed by the burgesses.⁵⁰⁸ Their adopted acts contained one concerning levying on tobacco, but without any requirement to record mortgages.⁵⁰⁹

Although Maryland during the seventeenth century had no effective chattel mortgage act, after recording of chattel mortgages began in Virginia, a similar custom appeared in Maryland. Printed county records in Maryland are even more sporadic than in Virginia. Of the eleven counties formed in the seventeenth century, only four have printed records available and none before 1648.⁵¹⁰ The Maryland county filings resemble the Virginian filings for the

504. See 1 MARYLAND ARCHIVES, *supra* note 52, at 154 ("Act touching executing upon Come or Tobacco. No execution etc on tobacco before it can be struck in cask nor upon come before it be in the house but after a judgment entered against any party on the tobacco, all corn and tobacco shall stand and be obliged and bound for use of such judgment until such judgment be released penalty of tresspass and treble damages and tobacco restored except precedent judgment delayed execution for landlords rents and public levies and customs.").

505. See 1 *id.* ("And further provided that noe such judgment as aforesaid be extended to the invalidating of any recognizance mortgage or like contract (heretofore or before the publishing hereof in the County) made bona fide for security and entered upon record afore the next court day after the publishing hereof (if the party interested in such mortgage be within the province before court day) and that no such recognizance mortgage or contract for security to be made after the publishing hereof in the county where they shall be made be valid to stop or suspend the use and effect of a judgment of aforesaid unless such only as shall be extant upon record at or aforesaid the time of such judgment given provided that no judgment upon a recognizance or confession of the defendant may be entered but in court.").

506. See *infra* notes 516-518 and accompanying text.

507. See 1 MARYLAND ARCHIVES, *supra* note 52, at 154 (This act to endure till end of next assembly), 165 (call for an assembly to meet on Sept. 5).

508. See 1 *id.* at 174 (governor receptive to motion, especially for the execution on tobacco statute), 176 (agreed to repeal).

509. See 1 *id.* at 195.

510. For Kent County formed 1642, see 54 MARYLAND ARCHIVES, *supra* note 52 (1648-76). For Charles County formed 1658, see 53 *id.*; 60 *id.* (1658-1670). For Talbot County formed 1662, see 54 *id.*

1650s. These filings include various items for which no statute requires a filing.⁵¹¹ The standard form in Maryland counties for the various types of debt lawsuits were (1) “plaintiff complains against defendant . . . said defendant doth acknowledge in court” for the recognizance,⁵¹² (2) “plaintiff hath made his complaint, that defendant is indebted to him for amount, which by spessialtie for so much tobacco and cask he hath made appear owed” for the specialty,⁵¹³ and (3) “plaintiff complains against defendant . . . hath pdust the bill and made the debt appear”⁵¹⁴ for the bill and “plaintiff complains that defendant is indebted to him upon a true and just accoumpt” followed with testimony for the account.⁵¹⁵

The only court recording documents during the 1640s, however, was not a county court, but the Provincial Court. Although the Provincial Court treated debt lawsuits by specialty and simple contract as did later the county courts,⁵¹⁶ its treatment of recognizances differed considerably. The Governor and councilors obviously knew the procedure from the King’s Courts in London. So rather than record recognizances as a lawsuit with a confession or acknowledgment, they merely recorded the documentary form specified in the 1531 English statute⁵¹⁷ modified for Provincial Maryland substituting levying on land and goods for merchandizing of the writ of eligit.⁵¹⁸ This

(1662-74). For Somerset County formed 1666, *see* 54 *id.*; 86-91 MARYLAND ARCHIVES, *supra*; 106 *id.*; 405-07 *id.*; 535 *id.* (1666-95). For Prince George County formed 1695, *see* 202 *id.* (1696-99). Absent from these transcribed records are St. Mary’s County formed 1637, Anne Arundel and Calvert Counties formed 1650, Baltimore County formed 1659, Dorchester County formed 1669, and Cecil County formed 1674.

511. For the Provincial Court, *see, e.g.*, 4 MARYLAND ARCHIVES, *supra* note 52, at 272 (bill of sale for a cow), 340 (bill of sale for a pinnace), 517 (a release) & 525 (a bill of exchange). For Kent County Court, *see, e.g.*, 54 *id.* at 58 (bill of sale for a cow), 59 (cattle earmark), 112 (discharge), 128 (receipt), 128 (bill of exchange), 133 (power of attorney), 156 (contract of sale for servant) & 212 (bill of sale for servant).

Although Maryland had yet to require filing of realty deeds or mortgages, parties filed realty deeds and mortgages. *See, e.g.*, 54 *id.* at 65 (mortgage), 71 (mortgage), 105 (deed) & 120 (deed). Maryland did not require filing of realty deeds until 1663. *See* 1 *id.* at 467-68 (making filing of bargains and sales of land mandatory). Yet, even in this three-decade period without mandatory filing of deeds, the Provincial Court had over 50 deeds recorded. *See* 49 *id.* at 8

512. *See, e.g.*, 54 MARYLAND ARCHIVES, *supra* note 52, at 34.

513. *See, e.g.*, 54 *id.* at 64; *see also* 4 *id.* at 228 (Provincial Court).

514. *See, e.g.*, 54 *id.* at 34, 36 & 41; *see also* 4 *id.* at 123 (Provincial Court: by account) & 137 (Provincial Court: by bill).

515. *See, e.g.*, 54 MARYLAND ARCHIVES, *supra* note 52, at 35, 43.

516. *See supra* notes 511-515 and accompanying text.

517. *See supra* note 68.

518. *See, e.g.*, 4 MARYLAND ARCHIVES, *supra* note 52, at 4 (1638: “This day came before the Lieutent Grall, Robert Nicholls of St Maries Hundred planter, and acknowledgeth himselfe to owe unto John Lewger Secretary, foure hundred & twney sixe pounds of good merchantable tobacco, to be paid unto the said John Lewger his heires exequutors admrators or assignes, at the first season of striking tobacco the next yeare, and except he shall so doe, he willetth and granteth that the said somme of foure hundred twenty and six pounds of tobacco shalbe raised and levied upon the lands goods and chattels of him the said Robert

meant that both recognizances and chattel mortgages would have the form of documents signed by the debtor. But the clerk of the Provincial Court generally used the language of "came before me" or "acknowledged a judgment",⁵¹⁹ when recording a recognizance.

Chart E1 lists the fifty-three filings of chattel mortgages before 1665 contained in these provincial and county transcripts.⁵²⁰ Only three counties have pre-1665 records, namely Kent County with seventeen filings, Talbot County with two filings, and Charles County with four filings. Secured parties made these filings not because of a statute, but because of custom, most likely the Maryland provincial documentary filings for recognizances, but possibly the practice of filing chattel mortgages in the neighboring province of Virginia.⁵²¹ This custom vanished by the late seventeenth century or Marylanders continued it in other court books, not available in transcription, besides the transcribed court order books.⁵²² Although many of the provincial and county filings resemble the form of a recognizance with the "by these presents" language and "bind",⁵²³ their reference to security distinguishes them from recognizances. Many of these filings differ from the recognizance practice by containing language of sale, conditions defeasance, and references to paying the over-plus to the debtor, to returning the security if paid, and to taking the collateral if not paid, procedures expected in a chattel mortgage.⁵²⁴ The collateral for these chattel mortgages resembled the Virginian collateral, namely items related to the plantation agriculture, such as tobacco, corn, cattle, hogs, and indentured servant contracts.

Several of the chattel mortgages in the provincial records involved lawsuits rather than filings. That the parties did not file these chattel mortgages attests to the absence of a recording statute. Four dealt with the wrongful levy problem, with one chattel mortgage plaintiff seeking to void an execution, two others seeking to recover their collateral, and one seeking to prevent execution.⁵²⁵ Three other lawsuits involved foreclosure procedures, with one chattel mortgage debtor seeking to prevent foreclosure for partial payment and the

Nicholls, his heires exequutors or admrators wheresoever they shalbe found witnesse the said Lieutenant generall Leonard Calvert signum + Robert nicholls.".)

519. See, e.g., 4 *id.* at 4 (came before me), 512 (acknowledged a judgment).

520. See Appendix E.

521. See 49 MARYLAND ARCHIVES, *supra* note 52, at 8 (parties occasionally filed real estate deeds before required in 1663, but it was unusual).

522. See 202 *id.* (no mortgages in Prince George's County, 1696-99); 91 *id.* (no mortgages in Somerset County judicial records, 1690-91). In 1679 the provincial court began the practice of recording realty deeds in special recording books. 49 *id.* at 8.

523. See Appendix E (secured party only signed two).

524. See *id.*

525. See 10 MARYLAND ARCHIVES, *supra* note 52, at 200-01 (to void execution), 209 (to recover collateral); 41 *id.* at 70 (same); 53 *id.* at 508 (prevent execution).

other for impossibility.⁵²⁶ One chattel mortgage debtor sought a release from his mortgage.⁵²⁷ The significant lawsuit detailed the priority rule for a recorded chattel mortgage against an unrecorded one.⁵²⁸ Since there was no requirement to file, the chattel mortgage first executed had priority. So a prior unrecorded chattel mortgage defeated a subsequent recorded chattel mortgage.

Similar to the other southern English-American colonies, Maryland authorized the recognizance.⁵²⁹ Chart E2 contains the twenty-eight filings in lieu of lawsuits for recognizances before 1650.⁵³⁰ Since the Provincial Court clerk recorded recognizances the same as he did chattel mortgages, some of the recognizances have limited collateral as do chattel mortgages, rather than extend to all lands, goods, and chattels.⁵³¹ This suggests that the main advantage of a chattel mortgage was to match the amount of collateral and the amount of the debt, leaving the unaffected collateral available for subsequent loans. Although some recognizancees did not mind taking second position when the first recognizance was overcollateralized.⁵³²

3. Impact of *Adams v. Caldwell*

Although Maryland's early flirtation with recording chattel mortgages failed and Maryland lacked Virginian-style planter-merchants to gather in the tobacco crop, Maryland never-the-less adopted a chattel mortgage statute. The impetus to pass a chattel mortgage act stemmed from a lawsuit involving Daniel Dulaney, the proponent of Maryland's chattel mortgage act, concerning in his eyes a miscarriage of fraudulent conveyance law. During the second tobacco boom beginning during the 1710s, lending practices changed. The major lenders would become the Scots merchants.⁵³³ But they lent unsecured,⁵³⁴ and so did not impact the use of chattel mortgages.

526. See 4 *id.* at 184; 10 *id.* at 145 (impossibility), 198-99 (partial payment).

527. See 4 MARYLAND ARCHIVES, *supra* note 52, at 177.

528. See 4 *id.* at 502 (filing of chattel mortgage), 542 (priority rule).

529. See 1 *id.* at 67-68 (Mar. 1639, authorizing confessed judgments). Maryland case law indicated that they did use the statute merchant. See *Lessier v. Wyse*, 3 Bla. Ch. 28 (1830) (claiming the 1732 British land levy statute destroyed the statute merchant); *Coombs v. Jordan*, 3 Bla. Ch. 284 (1831) (same).

530. See Appendix E.

531. See 4 MARYLAND ARCHIVES, *supra* note 52, at 34 (3 servants), 116 (crop of tobacco in ground) & 512 (crop of tobacco).

532. See, e.g., 1 *Walter*, *supra* note 92, at 47 (Lower Norfolk Co., Va.: to be paid after Robert Smith's), 48 (Lower Norfolk Co., Va.: to be paid after Thomas Sayer's).

533. See *Price*, *supra* note 358, at 197 (the Scots financed the Piedmont frontier).

534. See *id.* at 197 (the Scots lent to small planters in small amount, seldom formally or long-term, and almost never lent secured, taking a mortgage or bond only to secure an otherwise dubious loan).

The debtor in the case was William Brewerton of Somerset County.⁵³⁵ In 1719, William Brewerton of Somerset County, Maryland, had two creditors.⁵³⁶ Brewerton had granted a recognizance, a security device permitted under Maryland law,⁵³⁷ on a hundred acre tract to secure a small amount owed to his brother-in-law, John Waltham of Kent County, Maryland. Waltham had assigned the recognizance to Alexander Adams, one of the Clerks of Somerset County and a friend of Brewerton, near the end of the recognizance's term.⁵³⁸ The assignment of the recognizance made Adams a judgment lienor of Brewerton.

Brewerton also owed a substantial amount, 7000 pounds of tobacco unsecured, to John Caldwell of Somerset County on several instruments.⁵³⁹ In February 1718-19,⁵⁴⁰ Brewerton requested his friend Adams to pay Caldwell 7000 pounds of tobacco to discharge all Brewerton's debt to Caldwell and to make bond to pay Caldwell's charges.⁵⁴¹ In return Brewerton would convey to Adams all of Brewerton's interest in "Smiths Adventure", the tract of land subject to Adams's recognizance, plus a fee simple in an additional contiguous sixty acres, "Charles's Miles".⁵⁴² Adams declined since he had already sold that year's tobacco crop.⁵⁴³ Adams told Brewerton to transfer his land to Caldwell.⁵⁴⁴ Brewerton claimed he would rot in prison before he would let that Scotsman Caldwell have his land since Caldwell aimed to destroy Brewerton.⁵⁴⁵

When Adams failed to agree to pay Caldwell, Brewerton became concerned that Caldwell would sue him.⁵⁴⁶ Adams advised Brewerton to follow his directions and stay out of the way of the sheriff.⁵⁴⁷ Any delay would allow more time to pay the debt.⁵⁴⁸ In March 1718-19 Caldwell sued

535. 77 MARYLAND ARCHIVES, *supra* note 52, at 557.

536. The author had loosely taken the facts of this scenario from Adams v. Caldwell contained in the records of the Maryland Court of Appeals. See 77 *id.* at 556-81.

537. See *supra* notes 77-88 and accompanying text for an explanation of a recognizance.

538. 77 MARYLAND ARCHIVES, *supra* note 52, at 560 (Brewerton's answer), 578.

539. 77 *id.* at 557 (Caldwell's bill).

540. Until the adoption by England of the Gregorian Calendar in 1752, the year began on Mar. 25 and ended on Mar. 24. See 3 THE NEW ENCYCLOPEDIA BRITANNICA 603 (15th ed. 1978).

541. 77 MARYLAND ARCHIVES, *supra* note 52, at 560 (Brewerton's answer), 562 (Adams's answer).

542. 77 *id.* at 560 (Brewerton's answer), 562 (Adams's answer) & 569 (deposition of Brewerton's sister, Diana Waltham).

543. 77 *id.* at 562 (Adams's answer).

544. 77 *id.* (Adams's answer).

545. 77 *id.* (Adams's answer).

546. 77 MARYLAND ARCHIVES, *supra* note 52, at 560 (Brewerton's answer).

547. 77 *id.* (Brewerton's answer).

548. 77 *id.* (Brewerton's answer).

Brewerton in two actions, one of which a creditor had assigned to Caldwell.⁵⁴⁹ Adams concealed Brewerton for a time from the sheriff trying to compel his court appearance for an answer.⁵⁵⁰ These efforts included warning Brewerton to flee as the sheriff approached, fastening Brewerton in Brewerton's outlying kitchen, lying low in John Waltham's sloop, and locking and boarding up Brewerton in a neighbor's house for four days.⁵⁵¹ Adams served as security for Brewerton's appearance in both lawsuits.⁵⁵² When Brewerton heard rumors that Caldwell would seek execution under the lawsuits, Brewerton expressed to Adams his fear of losing his land.⁵⁵³ Adams advised a sale to someone to avoid the execution.⁵⁵⁴ During the summer of 1719, Brewerton sold "Smith's Adventure" and "Charles' Miles" to a friend, who did not meddle with the land, for seven years and afterwards to Adams in fee simple for a pretended 4000 pounds of tobacco.⁵⁵⁵ Adams enrolled the deed with the Somerset County Court as required by law, but the clerk did not record file dates.⁵⁵⁶ Adams never paid, although Brewerton once asked Adams for the tobacco.⁵⁵⁷ Adams had preferred a sale to someone other than himself, but agreed to the deal due to his friendship with Brewerton.⁵⁵⁸ Adams had promised Brewerton a penalty bond of 124,000 pounds of tobacco to recover the land, but refused to do so on the grounds it would evidence fraud.⁵⁵⁹ The bond for redelivery would have converted the fee simple sale into a secret unrecorded mortgage. Brewerton also made over his cattle, reserving only the use of the cow's milk, in trust for his use by deed to Adams for security and delivered the cattle.⁵⁶⁰ Brewerton also carried his household goods to Adams with Adams's consent to prevent execution.⁵⁶¹ With the delivery, these pledges would not be secret.

549. 77 *id.* at 557 (Caldwell's bill), 562-63 (Adams's answer).

550. 77 *id.* at 560 (Brewerton's answer).

551. 77 MARYLAND ARCHIVES, *supra* note 52, at 567 (deposition of Thomas Dashiell, Sheriff of Somerset County in 1719), 569 (deposition of Brewerton's sister, Diana Waltham).

552. 77 *id.* at 562 (Adams's answer).

553. 77 *id.* at 560 (Brewerton's answer).

554. 77 *id.* (Brewerton's answer).

555. 77 *id.* (Brewerton's answer), 563 (Adams's answer).

556. 77 MARYLAND ARCHIVES, *supra* note 52, at 571 (deposition of Andrew Hill, clerk).

557. 77 *id.* at 560 (Brewerton's answer).

558. 77 *id.* (Brewerton's answer).

559. 77 *id.* at 561 (Brewerton's answer). *See supra* notes 93-96 and accompanying text for mortgage documents.

560. 77 MARYLAND ARCHIVES, *supra* note 52, at 561 (Brewerton's answer). *See supra* notes 93-96 and accompanying text for pledges and chattel mortgages.

561. 77 MARYLAND ARCHIVES, *supra* note 52, at 561 (Brewerton's answer).

Caldwell got three judgments from the Somerset County Court on August 1719 for damages in the two lawsuits and charges.⁵⁶² The awarded damages and costs to Caldwell. Caldwell tried to get Adams to pay the debt.⁵⁶³ In November of 1719, Adams tendered his security for damages and costs in all three suits.⁵⁶⁴ Adams paid part of the Caldwell debt, namely 3640 pounds of tobacco.⁵⁶⁵ Adams returned possession of the cattle to Brewerton in the Spring of 1719-20.⁵⁶⁶ This had the effect of converting the pledge into a chattel mortgage under the trust deed.⁵⁶⁷ Figuring that he would fare better with Provincial officials than Somerset County officials, Caldwell obtained a judgment from the Provincial Court to replace the local judgments.⁵⁶⁸ For this 13,000-pounds-of-tobacco judgment Caldwell took out a writ of *eligit* despite Adams's promise to pay damages.⁵⁶⁹ Adams and Brewerton continued their efforts to defeat the execution, with Adams setting up the deed and deed of trust.⁵⁷⁰ The sheriff attempted to levy on a bed and silver cup at Adams's house, but Adams denied they belonged to Brewerton.⁵⁷¹ Adams was willing to turn the personalty over to the sheriff as his own property, but the sheriff declined.⁵⁷² The execution expired unsatisfied due to the deed conveying all of Brewerton's real estate and the deed of trust for Brewerton's own benefit to Adams on most of Brewerton's personalty.⁵⁷³

On August 5, 1721, Caldwell, through his attorney Daniel Dulaney, filed a bill in Chancery against both Brewerton and Adams to void the offending deeds, one a fee simple for land, the other a chattel mortgage for cattle, as fraudulent conveyances.⁵⁷⁴ Caldwell alleged Brewerton refused to pay the debts at the instigation of Adams.⁵⁷⁵ On July 12, 1722, Adams, through his attorney William Gunning, denied the claim in a demurer.⁵⁷⁶ Adams claimed that (1) the bill lacked a statement that the deeds were made after the judgment and if made before, fraud could not be intended, (2) if the deeds

562. 77 *id.* at 557 (Caldwell's bill), 563 (Adams's answer).

563. 77 *id.* at 560 (Brewerton's answer).

564. 77 *id.* at 563 (Adams's answer).

565. 77 *id.* at 561 (Brewerton's answer).

566. 77 MARYLAND ARCHIVES, *supra* note 52, at 563 (Adam's answer).

567. See *supra* notes 93-96 and accompanying text for chattel mortgage documents.

568. 77 MARYLAND ARCHIVES, *supra* note 52, at 558 (Caldwell's bill), 563 (Adams's answer).

569. 77 *id.* at 558 (Caldwell's bill), 563 (Adams's answer). See *supra* note 81 and accompanying text for the writ of *eligit*.

570. 77 MARYLAND ARCHIVES, *supra* note 52, at 558 (Caldwell's bill).

571. 77 *id.* at 574 (deposition of Robert Martin, sheriff of Somerset County in 1721).

572. 77 *id.* at 563 (Adams's answer).

573. 77 *id.* at 558 (Caldwell's bill).

574. 77 *id.* at 556-57 (Caldwell's bill).

575. 77 MARYLAND ARCHIVES, *supra* note 52, at 557 (Caldwell's bill).

576. 77 *id.* at 559 (Adams's answer).

were without consideration as alleged in the bill, then the writ of *eligit* would have been enough to defeat Adams, and (3) the bill did not allege the lack of a legal remedy.⁵⁷⁷ On February 19, 1722-23, Brewerton filed his answer, sworn before Benjamin Tasker, then the Sheriff of Somerset County.⁵⁷⁸ On July 9, 1723, the Chancellor overruled Adams's demurer, requiring an answer, and fining Adams 600 pounds of tobacco for delay.⁵⁷⁹ Adams answered on February 18, 1723-24, sworn before Benjamin Tasker, Sheriff.⁵⁸⁰ Adams claimed Caldwell could have obtained his execution on Adams's security and denied any conspiracy with Brewerton to defeat the execution.⁵⁸¹ Caldwell obtained his decree on February 16, 1724, setting aside both deeds.⁵⁸²

On May 4, 1727, the Chancellor granted Adams's appeal, setting bond at 300 pounds sterling, made by Adams on May 5.⁵⁸³ On July 11, 1727, the Chancery forwarded the records to the Court of Appeals for Adams' appeal.⁵⁸⁴ The Court of Appeals met on July 11, 1727, with Adams represented by the son of Dulaney's friend and nemesis, Michael Macnemera,⁵⁸⁵ and Caldwell represented by William Bedingham.⁵⁸⁶ The grounds for the appeal were (1) Caldwell failed to show the deeds were executed after Caldwell obtained judgment, (2) the decree was contrary to the agreement between Brewerton and Adams, and (3) the decree ordered the release of a fee simple in land when the writ of *eligit* only so applied to chattels.⁵⁸⁷ On October 31, 1728, the Court of Appeals reversed the decree, ordering Caldwell to restore 4000 pounds of tobacco in damages to Adams, pay 3743 pounds of tobacco to Adams that he had previously paid, and pay 8318 pounds of tobacco as costs.⁵⁸⁸ Caldwell could still go after Brewerton for recovery.⁵⁸⁹

The following year, the attorney whose decree the Court of Appeals reversed, Daniel Dulaney, obtained his revenge for this failure of fraudulent conveyance law to defeat the chattel mortgage on Brewerton's goods. Dulaney proposed and shepherded to passage, along with Sheriff Benjamin

577. *77 id.* (Adams's answer).

578. *77 id.* at 560 (Brewerton's answer), 561.

579. *77 id.* at 561.

580. *77 MARYLAND ARCHIVES*, *supra* note 52, at 561, 563.

581. *77 id.* at 559 (Adams's answer).

582. *77 id.* at 556, 578 & 579.

583. *77 id.* at 557 (Caldwell's bill).

584. *77 id.* at 556.

585. *See* AUBREY C. LAND, *THE DULANYS OF MARYLAND* 35, 41 (upon the death of Thomas Macnemera in 1720, Dulaney raised the son Michael Macnemera) (John Hopkins Press, 1968).

586. *77 MARYLAND ARCHIVES*, *supra* note 52, at 579.

587. *77 id.* at 580.

588. *77 id.* at 581.

589. *77 id.*

Tasker, Maryland's Chattel Mortgage Act of 1729.⁵⁹⁰ The act applied to all secret conveyances, whether a mortgage or not.⁵⁹¹

B. Delaware

Delaware, as part of the Province of Pennsylvania, lacked any provincial court records so had no central courts.⁵⁹² Delaware had three counties. Transcribed records exist for all three, but prior to the period of interest.⁵⁹³ These court records contain debt lawsuits for specialty contracts under the action for debt,⁵⁹⁴ and for simple contracts under the action for trespass on the case.⁵⁹⁵ They also have recognizances.⁵⁹⁶ But during this early period the records contained no chattel mortgages.⁵⁹⁷

590. See 26 *id.* 348 (Tasker delivered the bill), 407 (Dulaney drafted the bill) & 413 (Dulaney delivered the bill). Those who delivered bills to the houses were generally the member most concerned about the bill. See SIRMANS, *supra* note 260, at 69.

591. See 1 MARYLAND ARCHIVES, *supra* note 52, at 154.

592. See JOHN A. MUNROE, COLONIAL DELAWARE: A HISTORY 270-71 (KTO Press, 1978).

593. For Newcastle County, see NEW CASTLE (DEL.) COURT, RECORDS OF THE COURT OF NEW CASTLE ON DELAWARE, 1676-1681 (Wickersham Printing Co., 1904) [hereinafter *New Castle*]; New Castle (Del.) Court, *Records of the Court of New Castle on Delaware, 1681-1699* (Tribune Publishing Co., 1935). For Kent County, see LEON DE VALINGER, JR., COURT RECORDS OF KENT COUNTY, 1680-1705 (American Historical Foundation, 1959) (missing records from 1682-1697). For Sussex County, see CRAIG W. HORLE, RECORDS OF THE COURTS OF SUSSEX COUNTY, DELAWARE, 1677-1710 (University of Pennsylvania Press, 1991). New Castle records after 1681 only include land and probate records and Kent County has even fewer records. See *id.* at 5. Appeals from the county courts went to the Governor and Council in Pennsylvania. See *id.* at 10.

594. See, e.g., HORLE, *supra* note 593, at 13, 96 (Feb. 8, 1680-81, plaintiff proving his bill); *New Castle*, *supra* note 593, at 15 (Nov. 8, 1676, defendant indebted by bill); DEVALINGER, *supra* note 593, at 8 (Dec. 1680, defendant indebted by bill).

595. See, e.g., HORLE, *supra* note 593, at 12, 365 (Mar. 2, 1686, according to declaration for oral contract); *New Castle*, *supra* note 593, at 15 (Nov. 8, 1676, defendant indebted by account); DEVALINGER, *supra* note 593, at 51 (Feb. 22, 1681-82, defendant indebted). Kent County also used the action of debt for this lawsuit. See *id.* at 58 (Mar. 21, 1681-82, action of debt by account).

596. See, e.g., HORLE, *supra* note 593, at 14 (confessed judgments), 89 (Feb. 8, 1680-81, John Kiphaven v. Cornelius Johnson for 1841 lb tobacco confessed) & 103 (Mar. 8, 1680-81, Capt. John Avery v. Thomas Dennison for 1500 lb tobacco confessed); *New Castle*, *supra* note 593, at 21 (Nov. 9, 1676, Henry Ward v. Thomas Spry for 460 lb tobacco confessed), 41 (Jan. 2, 1676-77, Johannes de Hass v. Andries Sinnecus for 90 gilders in wheat confessed); DEVALINGER, *supra* note 593, at 7 (Dec. 1680, John Brinckloe v. Thomas Hoocker by Alexander Humphrey his attorney for 300 lb tobacco confessed), 122 (June 15, 1698, William Rodney v. Charles Hillyard for two pounds ten shillings confessed). Both John Kiphaven and Capt. John Avery were justices of the Sussex County Court. See HORLE, *supra*, at 49. Both Henry Ward and Johann de Haes were justices of the New Castle County Court. See *New Castle*, *supra*, at 1, 273. Capt. John Brinckloe was a justice of the Kent County Court, while William Rodney served as clerk of the Provincial Court, the Quarter Sessions, the Orphans Court, and the Kent County Court. See DEVALINGER, *supra*, at 119, 124.

597. There probably was a separate recording book, since there are numerous acknowledgment for realty deeds, but with no recorded deed. See, e.g., HORLE, *supra* note 593, at 117 (patent), 171 (grant) &

Of the southern colonies, Delaware became the only one that failed to pass a chattel mortgage act. Instead, it banned the transaction. Delaware was also the one well-settled southern colony that did not develop a dominant planter-merchant elite.

The Swedish New Sweden Company first permanently settled Delaware in 1638 based on trading for tobacco.⁵⁹⁸ When the Dutch captured the colony in 1655, they similarly hoped for riches from a tobacco trade or tobacco plantations.⁵⁹⁹ By 1663 the staple crop was not tobacco, but wheat.⁶⁰⁰ The successive Anglo-Dutch Wars lead to the English conquest of Delaware, placed under the Province of New York, and the migration of Maryland settlers into Delaware along with their tobacco culture.⁶⁰¹ By 1681, New York had become dependent on the tobacco trade on the Delaware for customs.⁶⁰² So the colony became dual, with corn and wheat the staples of the north and tobacco grown locally or rolled in from Maryland dominant in the south.⁶⁰³

While the Delaware counties were part of William Penn's colony after 1681, their politics consisted of opposing the other Pennsylvania counties, who had become dependent on the revenues from the Delaware tobacco trade.⁶⁰⁴ Although dominated economically by Philadelphia traders, the Delaware counties, however, received a separate assembly in 1704.⁶⁰⁵ The separation highlighted the political differences between a grain north and tobacco south.⁶⁰⁶ Philadelphia became the marketplace for northern grain and lead to the migration of Philadelphia Quaker merchants to northern Delaware to funnel goods to Philadelphia and their dominance in northern politics by 1740.⁶⁰⁷ Philadelphia also became the marketplace for slave acquisition and

317 (conveyance); *see also* New Castle, *supra* note 593, at 34 (ordering inventory to be recorded in Register of Particular Instruments), 52 (reference to recordation in Records of Conveigances, folio 16); HORLE, *supra*, at 14 (1682 act to enroll bills, bonds, and specialties above 5 lb and longer than 3 months within two months or be void); DEVALINGER, *supra* note 593, at 103 (several deeds in 1697). Nevertheless, there were occasional recorded documents. *See, e.g.*, HORLE, *supra*, at 92 (power of attorney), 264 (bill of sale for land), 275 (indenture for sale of land), 389 (gift of cow and horse), 809 (penal bond) & 997 (indenture of son to age 21). Kent County clerks before 1682 recorded the documents in the minutes, by order of the court. *See* DEVALINGER, *supra*, at 2 (receipt), 9 (power of attorney), 16-17 (indenture on land), 41 (partnership agreement), 45 (gift of land), 47 (assignment of patent) & 73 (will).

598. *See* MUNROE, *supra* note 592, at 15, 21.

599. *See id.* at 36-39, 44.

600. *See id.* at 57.

601. *See id.* at 61-62, 66 & 70.

602. *See id.* at 82.

603. *See* MUNROE, *supra* note 592, at 94.

604. *See id.* at 81, 97-98, 104, 112-14, 117 & 129.

605. *See id.* at 121.

606. *See id.* at 149, 164, 166.

607. *See id.* at 149, 153-54, 159.

tobacco disposition for the Anglican planters of the southern counties, the opponents for the northern faction.⁶⁰⁸

Merchants generally opposed security interest as hindering sales from their inventories in an era without the exception for good faith purchasers.⁶⁰⁹ Under the title theory then in vogue, a security interest in inventory would defeat the sale from the debtor's inventory to a purchasing customer.⁶¹⁰ Consequently, when reacting to the secret sales problem of the sort exhibited in Maryland in 1729,⁶¹¹ their reaction, similar to that of their successors in the nineteenth century,⁶¹² was to ban the transaction in 1740.⁶¹³

V. CONCLUSION

The most characteristic element of Anglo-American secured transaction law, the filing of a notice, arose due to conflict between the old method of taking a security interest in use since the Middle Ages, the recognizance, and the more modern contractual method, the chattel mortgage. The resolution of this conflict by filing would never have risen in the mid-seventeenth century Anglo-America if three other events had not come together.⁶¹⁴

First was the emergence of a staple economy able to provide riches cheaply and quickly, with small outlays of funds for land and labor recoverable within a year, to any small entrepreneur who could borrow. These economies developed in the southern English American colonies, first in Virginia during the 1620s through the 1640s for tobacco and later in South Carolina for rice during the 1690s and in North Carolina and Maryland during the 1710s and 1720s, both for tobacco. The prospect of similar wealth generation existed in Georgia during the 1750s and in British West Florida during the 1770s, both for rice. Great Britain could provide none of these opportunities. So Great Britain did not develop this conflict and had no need for a chattel

608. See MUNROE, *supra* note 592, at 164, 186.

609. See George Lee Flint, Jr., *Secured Transactions History: The Northern Struggle to Defeat the Judgment Lien in the Pre-Chattel Mortgage Act Era*, 20 N. ILL. U. L. REV. 1, 53-4 (2000).

610. See *id.* at 54-56.

611. See *supra* note 591 and accompanying text.

612. See George Lee Flint, Jr., *Secured Transactions History: The Impact of Textile Machinery on the Chattel Mortgage Acts of the Northeast*, 52 OKLA. L. REV. 303, 355-65, 369-72 (1999).

613. See 1 DELAWARE, LAWS OF THE STATE OF DELAWARE FROM THE FOURTEENTH DAY OF OCTOBER ONE THOUSAND SEVEN HUNDRED 218-19 (1740: ch. 82a: an Act to prevent frauds by clandestine bills of sale) (Newcastle, Del., Samuel & John Adams, 1797).

614. See 1 GRANT GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY 25-26 (noting that American and British methods of taking security interests diverged considerably, with the Americans using a far greater number of different methods) (Little Brown & Co., 1965).

mortgage act during the seventeenth and eighteenth centuries.⁶¹⁵ Nor could two southern English American colonies provide these opportunities, British East Florida and Delaware. Similar to the home country, these two colonies failed to adopt a chattel mortgage act during the seventeenth and eighteenth centuries.

Second was the hap-hazard use of the recognizance by some colonial lenders. They frequently never bothered to obtain security until circumstances made it abundantly clear they could lose their principal. These lenders obtained the necessary court confession only when the debtor ceased paying or died.⁶¹⁶ By that time some other lender could have already obtained a chattel mortgage from the debtor on some of the personalty that otherwise could become subject to the recognizance. Under the common law conception of the mortgage in the early seventeenth century, the mortgagee owned the property.⁶¹⁷ So a court would ultimately resolve the conflict in favor of the lender taking a chattel mortgage as the first in time. But that could take time and a lawsuit whenever a consignee (holder of the recognizance) had the sheriff levy without knowledge of the mortgagee's ownership.

Third was control of colonial assemblies by the colonial lenders. The mortgagee could avoid the cost and inconvenience of the courthouse resolution of this conflict if the chattel mortgage record appeared in the court minutes or a recording book just as did the recognizance. That could only occur when the lenders achieved sufficient political power in the colonial assemblies to pass such legislation. For Virginia these lenders, the local planter-merchants, gained control of the assembly in 1642 when Governor Berkeley decided to treat the questionably illegal assembly as a colonial parliament. The Virginia chattel mortgage act came in 1643. For South Carolina these lenders, the Charles Town planter-merchants, gained control of the assembly in 1696 when they obtained the right to control their own membership. The South Carolina chattel mortgage act came in 1698. For North Carolina these lenders, the planter-merchants, gained control when the colony became separate from South Carolina in 1712, after years of factionalism, questionable authority, and rebellion. The North Carolina chattel mortgage act appeared in 1715. The potential lenders for the frontier colonies of Georgia and British West Florida, the royal officeholders, controlled the assemblies from the first assembly, in 1755 and 1767

615. See Flint, *supra* note 35, at 376 (recognizance did not die in Great Britain until the mid-eighteenth century), 396 (Great Britain did not pass a chattel mortgage act until 1854).

616. See *id.* at 373 (English practice was not to lend until after the confession).

617. See *supra* notes 312-315 and accompanying text for a discussion of the mid-seventeenth century developments in Chancery giving rise to the potential of multiple mortgagees on the same collateral, and consequently viewing the debtor as the owner of the property subject to the mortgage.

respectively. As soon as the potential arose, they two royal colonies passed chattel mortgage acts, for Georgia in 1755 and for British West Florida in 1770.

APPENDIX A

CHATTEL MORTGAGE FILINGS IN MID-SEVENTEENTH CENTURY VIRGINIA

The following tables display information concerning the early chattel mortgages appearing in the provincial and county records of colonial Virginia during the period before and immediately after the passage of the Virginia chattel mortgage act in 1642. Only records from the General Court and the counties of Accomack, Lower Norfolk, York, Northumberland, Westmoreland, Lancaster, and Charles City are readily available.⁶¹⁸ The transcribed General Court records start in 1622 and end in 1632 while the transcribed records for Accomack County start in 1632 and end in 1645 and those for Lower Norfolk County start in 1637 and end in 1652. The meaningful abstracted records for York County stretch from 1646 to 1648; for Northumberland County, from 1654 to 1666; for Westmoreland, from 1653 to 1657; for Lancaster County, from 1654 to 1666; and for Charles City County, from 1655 to 1665.⁶¹⁹

CHART A1

Chattel Mortgage Information

Chart A1 provides for the seventy-nine early colonial Virginia chattel mortgages the date the parties made the chattel mortgage, the date they recorded it in the court, the name of the secured party, the name of the debtor, the amount of the debt secured, the due date for payment, the collateral, and the page number of the source.

The recording date for some may be off since the clerk would record during the next court session those documents that the secured party had submitted for recording since the last court meeting at the tail end of the prior court meeting's minutes.⁶²⁰ Others, however, possess a more accurate recordation date since they have a recorded date associated with the filing. An # denotes these records.

Generally, only the debtor signed the chattel mortgage, with two witnesses. Many debtors could not write. They represented their signatures

618. See *supra* notes 113-118 and accompanying text.

619. See *supra* notes 113-118 and accompanying text.

620. See 54 MARYLAND ARCHIVES, *supra* note 52, at 31 (Kent Co., Md.: clerk actually notes his instruction to do so.)

by some mark, often the letter commencing their first name. An \$ denotes these records.

The chart also displays the average amount (omitting those records without an indication of the size of the debt) of the secured debt for the three counties with data from the 1640s, namely Accomack, Lower Norfolk, and York Counties. Pounds Sterling were converted to pounds tobacco on the basis of 3 pence per pound of tobacco.⁶²¹ Non-monetary debt and debt denoted in barrels of corn were not included in the average.

For a few of the chattel mortgages the secured party had possession of the collateral and so do not fit the category of nonpossessory secured transaction. The word "possessory" in the collateral column denotes these few.

621. See *supra* note 201 and accompanying text.

Date made/recorded	Secured	Debtor	Debt/Payment Date	Collateral	Page
Feb. 23, 1623/ unrecorded	Capt. Rawley Crowshaw	Lt. John Shipwarde of Newport News	?/Feb. 24, 1624	3 milk cows, possessory	48 *
Nov. 26, 1638/ Nov. 26, 1638	Peter Walker of London, merchant @ Thomas Savage	William Holmes, merchant of London	4256 lb tob./Mar. 24 next	7 sows, 1 boar, 1 boat, 30 bis corn, plantation	1: 130 **
July 4, 1640/ Sept. 7, 1640	William Burdett	Thomas Newte \$	300 lb tob—remainye mortgaged	Crop of corn & tobacco & hogs	2: 18 **
Nov. 26, 1639/ Feb. 22, 1639/ 40	Arent Corssenstam of Accomack #	Roger and Anne Moy \$	1200 lb tob.	Selves as servants	2: 36 **
May 26, 1641/ July 6, 1641	John Severn, Chirurigon	Capt. William Douglas & Co.	40 lbs sterling represented by three bills of exchange, to secure by mortgage	Whole estate, personal and real, land, household stuff, goods, debts, cattle, and chattels in Virginia	2: 98-99 **
July 9, 1641/ Sept. 13, 1641	John Severn, Chirurigon	Marke Hammon of Accomack Co.	208 lb tob., bind over, payable Nov. 10 next	Crop of corn and tobacco	2: 114-115 **
July 29, 1641/ Sept. 13, 1641	John Rabley	Thomas Nute	102 lb tob., bind over, payable Nov. 10 next	Crop of corn and tobacco	2: 115 **
Sept. 13, 1641/ Sept. 14, 1641	William Parry	Hendrick Litchart	140 lb tob., payable Oct. last next, for security (described as speciality in next document)	Crop of corn and tobacco	2: 115-16 ** \$\$
Sept. 13, 1641/ Sept. 14, 1641	Thomas Cooke, Gent. of Accomack Co.	Hendrick Litchart	220 lb tob., payable Oct last next, for security, after John Rabley's speciality	Crop of corn and tobacco	2: 116 ** \$\$
Feb. 7, 1641/ 42/ April 7, 1642	Peter Walker, merchant of Accomack, next deed says of London, merchant	John Towilson of Accomack Co.	1006 lb tob. At 8 % next year, on voyage to West Indies, as security	Cattle (neat beasts) possessory	2: 147-48 **
April 13, 1642/ April 14, 1641	Peter Walker, merchant of Accomack, next deed says of London, merchant	Thomas Cooke of Accomack Co.	20 lbs sterling payable in England for the purchase of 8 female cattle	Crop of corn and tobacco	2: 151-52 **

March 1, 1641/ 42/ April 27, 1642	Obedience Robins and John Wilkins	Anthony Lynmey, millwright	220 lb sterling, advanced 100 lb sterling to finish windmill	Chattels in schedule—4 servants, 4 sows, 10 shoats, 2 cows, bedding, valance and bed, trunk, table cloth, skillets, kettle, pans	2: 154-55 **
Jan. 20, 1641/ 42/ April 27, 1642	William Burdett of Accomack, Gent.	Anthony Hodgkins	20 lb sterling, bond to George Menefie, bind over	Chattels on schedule—bed, steel mill, kettle, dishes, 10 hogs, table, stints of tobacco, hogthead sent to England consigned to Edward Drew	2: 155-56 **
June 2, 1642/ June 2, 1642	Philip Taylor	John Chartes \$	1500 lb tob.	Self and wife for 2 years, hogs, poultry, other goods in schedule—sow, 7 shoats, bedding	2: 174-75 **
July 29, 1644/ Sept. 7, 1644	Capt. William Stone attorney of Samuel Chaundler, merchant of London	Capt. William Hawley, Esq. of Northampton Co	14 lb sterling, payable last of April next in England, bind over	Negro servant	2: 255 **
March 31, 1643/ July 4, 1643	Henry Weed of Northampton Co.	William Johnson of Northampton Co.	2200 lb tob., Dec. 12 next, bind myself	Plantation, goods, moveable chattels	2: 296 **
May 2, 1642/ April 17, 1644 as unpaid	Samuel Chaundler, attorney for William Shrimpton and Richard Hamby, gentleman of London	John Holloway	53 lb, 15 sh. sterling for 10 cows, yearling heifer, 1 bulchin, 1 bull	Said cattle, if 7 hogheads sent to London not sufficient or miscary	2: 338-39 **
May 21, 1642/ April 17, 1644 as unpaid	William Shrimpton and Richard Hamby, gentleman of London	Argoll Yeardeley of Accomack Co.	30 lb 15 sh. sterling, payable May last 1643	6 oxen (has recognizance format)	2: 340-41 **
April 25, 1642/ April 17, 1644 as unpaid	Samuel Chaundler, attorney for William Shrimpton and Richard Hamby, gentleman of London	Samuel Lucas, planter of Virginia	25 lb sterling for purchase of 5 cows	Said cows	2: 345-46 ** \$\$\$

July 2, 1645/ July 30, 1645	Nathaniel Littleton and Philip Taylor, Trustees for Agatha Stubbings widow ###	Ralph Wormely of York Co.	Marriage settlement, in form of deed of trust, bind over	6 negro servants, 10 cows, 6 oxen, 2 mares, 2 beds and furniture, sheets, table clothes, dishes, plus 6 more servants, 10 cows, 6 oxen, and 500a plantation	2: 433-34 **
April 18, 1645/ July 29, 1645	William Roper	William Stevens of Northampton Co. \$	1700 lb tob., Oct. 20 next, else exec.	Whole estate moveables and immoveables	2: 454 **
Sept. 25, 1645/ Sept. 26, 1645	Philip Taylor of Northampton Co.	William Hawley, gent.	2000 lb tob., 20 bis. corn, 2000 lb pork, payable 1/4 Jan. 1 next, rest Jan. 1, 1646?	Whole estate moveables and immoveables	2: 458 **
July 3, 1645	Argoll Yeardley	Capt. William Hawley	3757 lb tob.	2 Negro servants,	2: 459 ** (both sign document)
		TOTAL/ AVERAGE DEBT FOR ACCOMACK COUNTY'S 22 CHATEL MORTGAGES	52,469 lb. tob./ 2385 lb. tob.		
Sept. 23, 1643/ Nov. 16, 1643 #	John Martin of Linhaven	Christopher Burroughs, planter of Linhaven	2000 lb tob./Dec. 10, 16--	3 cows, 2 heifers, 2 bulls, plantation	1: 149 ***
Oct. 13, 1645/ Oct. 15, 1645 #	George Mie of Linhaven, planter	James Phillips, planter of Linhaven \$	500 lb tob./?	2 heifers, possessory	1: 189 ***
Dec. -, 1645/ Dec. 15, 1645	William Shipp	Robert Loveday	255 lb tob./Oct. 10 next	1 bull, possessed by third party	1: 210 ***
Dec. 16, 1645/ Dec. 16, 1645	William Shipp	Savill Gaskine	1118 lb tob./Oct. 10 next	1 cow, 2 steers	1: 210 ***
Dec. 16, 1645/ Dec. 16, 1645 #	William Shipp	Thomas Miles \$	830 lb tob./Oct. 10 next	2 cows	1: 210 ***
June 7, 1647/ June 15, 1647 #	George Spenloe	William Basnett, planter of Linhaven	1900 lb tob./Dec. 10	1 shallop, 100 acres, possessory	2: 43 ***
May 8, 1647/ June 15, 1647 #	John Holmes	Humphrey Sayer, planter of Little Creek	835 lb tob./?	This year's crop	2: 105 ***

Feb. 8, 1647/48/Mar. 20, 1647/48	Mr. William Lucke, captain of London	George Puddington, planter of Lower Norfolk	60 lb tob./?	3 servants, next year's crop	2: 141 ***
Sept. 12, 1650/ Jan. 14, 1650/51 #	Ens. Thomas Lambert	George Heigham of Elizabeth River	3626 lb tob./?	3 servants, 6 cows, 2 heifers, 2 steers, land, possessory	2: 156 ***
June 14, 1651/ June 23, 1651 #	Edward Cannon & Thomas Allen	John Meredith, shipwright	1723 lb tob./?	Illegible	2: 171 ***
June 14, 1651/ June 17, 1651 #	Richard Jones of Elizabeth River	William Dovenall, planter of Elizabeth River \$	840 lb tob./?	Planted crops, all other goods and chattels	2: 171 ***
		TOTAL/ AVERAGE DEBT FOR LOWER NORFOLK COUNTY'S 11 CHATTEL MORTGAGES	13,687 lb. tob./ 1241 lb. tob.		
Mar. 27, 1646/ April 14, 1646	George Ludlow, Esq.	Thomas Beale of York Parish	1200 lb tob./Dec. 10 next	Cattle	24: 79 ****
Mar. 17, 1645/ 46/Mar. 27, 1646	Thomas Harwood of Charles River Co.	Richard Bennett, planter of York in Charles River County \$	800 lb tob./?	Whole crop	24: 80 ****
Mar. 8, 1645/ 46/Mar. 27, 1646	Joseph Hill	William Smote, boatwright of Hampton \$	860 lb tob./?	Whole estate	24: 80 ****
April 6, 1646/ May 26, 1646	William Pryor	William Todd	707 lb tob./Nov. 10 next	1 cow	24: 84 ****
Mar. 24, 1645/ 46/June 26, 1646	Richard Creedle	Jonathan Sutton \$	500 lb tob./Nov. 10 next	2 sows, 12 shoats	24: 84 ****
May 16, 1646/ June 26, 1646	Giles Tavernor	John Sutton \$	500 lb tob./?	1 steer	24: 87 ****
Mar. 27, 1646/ June 26, 1646	Thomas Lucas	Luke Davis \$	400 lb tob./Oct. 10 next	Smith's tools: 1 anvil, 1 bellows, 1 vice, 1 nail tool, 1 hammer	24: 87 ****
July 25, 1646/ July 25, 1646	Thomas Deacon	Edward Wright \$	Maid servant/Dec. 15 next	Crop and cattle	25: 11 ****

Sept. 25, 1646/ Sept. 17, 1646	Nicholas Brooke	Thomas Heath \$	1000 lb tob./Nov. 10 next	Personal property	25: 17 ****
n.d./Sept. 26, 1646	Steven Gill	John Rice \$	Unspecified/?	Crop of corn and tobacco	25: 18 ****
April 14, 1646/ Sept. 26, 1646	Mr. John Barlow	Henry Brooke	12,000 lb tob./?	Cattle and plantation	25: 18 ****
April 3, 1646/ Sept. 26, 1646	Francis Compton	Charles Smith of York	3400 lb tob./?	Crop and man servant	25: 19 ****
n.d./Feb. 5, 1646/47	Henry Lee & Thomas Burns	William Howard	Unspecified/2 years	Cattle and crop	25: 45 ****
Sept. 24, 1647/ Mar. 6, 1647/47	Denis Stevens, merchant	John Oliver, planter of Hampton Parish	1030 lb tob./Oct. 20, 1647	Whole estate	25: 52 ****
Oct. 15, 1647/ Oct. 25, 1647	Edward Hughes	Anthony Lenton \$	1045 lb tob./?	Whole estate	25: 60 ****
Dec. 1, 1647/ Nov. 30, 1647	Capt. Ralph Wormely of York Parish	Robert Vaux of Hampton Parish	4400 lb tob./?	Whole estate	25: 63 ****
Dec. 16, 1647/ Dec. 1, 1647	George Ludlow	Thomas Wallis, doctor of physic of Warwick River Co.	6000 lb tob./?	Negro, English boy, Indian woman, all servants	25 : 66 ****
Jan. 24, 1647/ 48/Jan. 25, 1647/48	Henry Lee	William Fellgatt	1100 lb tob./?	Man servant	25: 81 ****
Jan. 245, 1647/48/Jan. 25, 1647/48	Peter Mackerell, merchant of London	John Batt, planter of York Co. \$	700 lb tob./Oct. 1 next	Crop and plantation	25: 81 ****
Mar. 8, 1647/ 48/Jan. 25, 1647/48	Christopher Copeland	Hugh Allen, planter of York Co.	2200 lb tob./?Oct. 10 next	Whole crop of corn and tobacco	25: 83 ****
n.d./May 25, 1648	Capt. Nicholas Martiau	Christopher Allen, planter of York \$	1000 lb tob./?Dec. 1 next	4 cows	25: 91 ****
Sept. -1648/ Aug. 19, 1648	Anthony Stephens of York Parish	Henry Thackery of York Parish \$	1600 lb tob./?	Crop of tobacco and corn	26: 19 ****
Sept. 25, 1648/ Sept. 25, 1648	Francis Finch	Rowland Vaughn \$	1280 lb tob./?	Crop	26: 25 ****
Dec. 6, 1648/ Nov. 11, 1648	John Madison	Thomas Privitt \$	600 lb tob./Oct. 1 next	1 steer, 1 heifer	26: 32 ****
		AVERAGE DEBT FOR YORK COUNTY	2301 lb tob.		

Aug. 18, 1653/ Sept. 19, 1653 #	Henry Vincent, planter of York Co.	Richard Holdien, blacksmith of Youscomcoe on Potomac River. \$	3000 lb tob./Nov. 10 next	Crops, cattle, whatever is debtor's, plantation	109 +
April 8, 1653/ Sept. 19, 1653 #	John Armsbye of Nominye	Potomac River. \$ merchant	Delivery of 1 servant for 7 years/Dec. 31 next	3 cows, possessed by third party	109 +
--, 1653/Feb. 15, 1653/54 #	Hugh Lee of Northumberland Co.	Robert Sharp of Northumberland Co.	Guarantee of Sharp's debts of 3889 lb tob./?	Tobacco crop	121 +
May 30, 1654/ Nov. 20, 1654 #	---Weaver	John Rogers & George Trewett	Not abstracted/?	5 cows	126 +
Aug. 15, 1654/ Nov. 20, 1654 #	Thomas Brewer	John Prosser, joiner of Wicocomcoe	Construction of a table/Jan. 31 next	1 cow	127 +
Nov. 20, 1654/ Nov. 20, 1654 #	Thomas Wilsford	Edward Henley \$	Not abstracted/?	Crops, cow, plantation	127 +
July 15, 1654/ July 15, 1654 #	Thomas Boys & Thomas Moss	Nicholas Russell of Westmoreland Co.	440 lb tob. (Boys), 1200 lb tob. (Moss)/?	Crop	11 ++
Oct. 29, 1655/ Nov. 20, 1655 #	Thomas Wilsford	David Philips	1000 lb tob./Nov. 10, 1656	2 cows	39 ++
Feb. 10, 1654/ 55. June 6, 1655 #	Thomas Hanks	Abraham Moone of Lancaster Co.	Not abstracted/?	Servants, plantation	5 +++
Feb. 9, 1657/ 58/May 30, 1658 #	Mr. David Fox	John Curtys	2391 lb tob./Nov. 10 next	1 mare	43 +++
May 11, 1661, Aug. 1, 1661 #	Ever Peterson	Jenky Price	2001 lb tob./Nov. 30 next	1 servant, all estate	66 +++
May 30, 1664/ July 20, 1664 #	George Marsh	Robert Kendall	2500 lb tob./?	Crop, 1 cow, 1 yearling, 1 bed, 1 rug, 2 blankets	85 +++
Dec. 21, 1664/ Jan. 20, 1664/65 #	John Carter of Lancaster Co.	John Meredith, boatwright of Lancaster Co.	Guarantee of Meredith's debts of 6008 lb tob./Nov. 10 next	3 men servants, 3 maid servants, plantation	90 +++
--/June 4, 1655	Joseph Parsons	William Lambson \$	475 lb tob./Nov. 10 next	1 cow	10: 1 ++++
Sept. 17, 1655/ Sept. 22, 1655 #	John Howell	Curtis Laud \$	1000 lb tob./Oct. 10 next	Crop of tobacco	10: 9 ++++
Sept. 17, 1655/ Sept. 22, 1655 #	John Howell	Curtis Laud \$	2000 lb tob./Oct. 10 next	3 cows	10: 9 ++++

May 1, 1657/ July 21, 1657 #	John Dibdall, minister	Phillip Ellyott of Weynoke Parish \$	1500 lb tob. for purchase of manservant/Nov. 20 next	Cattle, 1 heifer	10: 79 +++++
Jan. 12, 1658/ 59/Feb. 17, 1658/59 #	Lt John Banister of Merchant Hope	John Burton of Charles City Co \$.	4160 lb tob./Oct. 10 next	1 cow, corp of corn & tobacco, leased plantation	11: 31 +++++
Oct. 29, 1661/ Dec. 5, 1661 #	George Harris, merchant of London	John Flowers of Dicks Hundred	6000 lb tob./?	All personal and real estate	12: 10 +++++
Nov. 27, 1661/ Feb. 24, 1661/62 #	Thomas Covington	Charles Gregory	2300 lb tob./1 year	1 servant	12: 14 +++++
Oct. 20, 1663/ Dec. 3, 1663	Capt. Robert Wynne	John Cogan	Orphans education/?	Schedule listing weapons, furniture, horses, 6 Negroe servants, 48 cattle, plantation	12: 76-77 +++++

* General Court, see MCLWAIN, *supra* note 101.

** Accomack County, see 1 Ames, *supra* note 1; 2 Ames, *supra* note 26.

*** Lower Norfolk County, see 1 Walter, *supra* note 92; 2 *id.*

**** York County, see 24 FLEET, *supra* note 101; 25 *id.*; 26 *id.*

+ Northumberland County, see 2 *id.*

++ Westmoreland County, see 23 *id.*

+++ Lancaster County, see 1 FLEET, *supra* note 101.

++++ Charles City County, see 10 *id.*; 11 *id.*; 12 *id.*

Record date listed.

Corsen Stam was a resident of Amsterdam in Holland. See 2 Ames, *supra* note 26, at 148 (Corsen Stam has lease of Nathaniel Littleton's plantation and is merchant), 295 (Dirck Corsen Stam merchant of Amsterdam in Holland).

Agatha Stubbings was widow of Luke Stubbings merchant. See *id.* at 449 (Wormeley administrator for Luke Stubbings).

\$ Signed by a mark.

\$\$ Litehart died and Rabley and Parry got attachment orders by Thomas Cooke attorney Nov. 30, 1641. See *id.* at 128.

\$\$\$ Discharged as paid by Peter Walker filed Feb. 21, 1644-45. See *id.* at 403-05.

@ Peter Walker by means of this transaction became a resident of Virginia. See 1 Ames, *supra* note 1, at xliii, 159-60 (deposition of Walker, aged 22, that he had not received satisfaction from Holmes and has conveyance of plantation at Magotha Bay), 167 (Walker receives certificate for plantation). He was son of Andrew Walker, tallow chaundler of London. See 2 Ames, *supra* note 26, at 405.

Chart A2

Secured Party Information

Chart A2 provides the political office, total acreage held by provincial land grant, the amount and location of land grants along with titles, and the page of the record⁶²² for the fifty-four secured parties in the earliest transactions occurring in the 1640s. These transactions occurred in Accomack, Lower Norfolk, and York Counties. Since several engaged in more than one transaction, the total numbers less than the number of transactions. The chart also indicates the total acreage held by grant by all secured parties and an average computed by dividing the total by the number of secured parties. The parties occasionally renewed patents, in which case the patent appeared twice but is listed once in the chart.

622. Land grants appear in NELL MARION NUGENT, *CAVALIERS AND PIONEERS: ABSTRACTS OF VIRGINIA LAND PATENTS AND GRANTS 1623-1666* (Genealogical Publishing Company, 1963).

Secured	Office	Acreage	Grants before 1666	Page
Raleigh Crowshaw	Member of London Co., Burgess 1623 **	500a	Gent. of Kiccoughtan, Ancient Planter, 500a Old Point Comfort c. 1623	2
Peter Walker of London		150a	150a Northampton Co. c. 1645	159
Thomas Savage		50a	Gent. 50a Accomack Co. 1627	9, 31 (dead 1635)
William Burdett of Accomack, Gent.	Justice Accomack Co.	1550a	Gent. 200a Accomack Co. 1639	111
			1050a Accomack Co. 1639	121
			300a Accomack Co. 1641	129
Arent Corssenstam of Accomack		860a	with Derrick Corsestam, 860a Elizabeth City Co.	102
John Severn, Chirurigion		500a	500a Northampton Co. 1645	157
John Rabley		--	nib	
William Parry		1440a	350a Upper Norfolk Co. 1637	57
			24 sp. po. James Island 1638	97
			350a Elizabeth City Co. 1639	115
			90a Elizabeth City Co. 1648	175
			550a Northumberland Co. 1651	221
			100a Elizabeth City Co. 1656	331
Thomas Cooke, Gent. of Accomack Co.	County Clerk Accomack Co. 1640-46	--	Transported by George Menifrie merchant, assigned to Richard Kemp before 1638	104
Obedience Robins	Justice Accomack Co.	2650a	Mr. 200a Accomack Co. 1643	132
			Gent. 500a Northampton Co. 1643	224
			Mr. 450a Northampton Co. 1643	401
			Col. 1500a Northampton Co. 1661	407, 525 (dead 1666)
John Wilkins	Justice Accomack Co.	3100a	1300a Accomack Co. 1636	46
			1300a Upper Norfolk Co. 1637	56
			500a Accomack Co. 1637	84
Philip Taylor of Northampton Co.	Justice Accomack Co.	1500a	500a Accomack Co. 1637	74
			1000a Northampton Co. 1643	150
Capt. William Stone	Justice Accomack Co.	2550a	Mr. 1800a Eastern Shore 1635	27
			750a New Kent Co. 1663	480
Henry Weed of Northampton Co. Samuell Chaundler, merchant of London		--	Transported by William Bacon before 1653	234
		--	nib	

William Shrimpton, gentleman of London		3000a	Gent., exec of Dame Elizabeth Dale, relict of Sir Thomas Dale, 1000a Northampton Co. 1645 Gent., exec of Dame Elizabeth Dale, 2000a Northampton Co. 1649 nib	163 181
Richard Hamby, gentleman of London		--	nib	
Nathaniel Littleton	Justice Accomack Co.	--	land of	155, 331
Agatha Stubbings widow		--	nib	
William Roper	Justice Accomack Co.	150a	150a Accomack Co. 1636	46
Argoll Yeardley	Justice Accomack Co.	8200a	500a Upper Norfolk Co. 1637 Esq. 3700a Accomack Co. 1638 Esq. 4000a Mockjay Bay 1640	81 96 126
	TOTAL/ AVERAGE ACREAGE FOR ACCOMACK COUNTY'S 20 SECURED PARTIES	25,700a/ 1285a		
John Martin of Linhaven	Burgess 1652 Lower Norfolk Co. **	3196a	with Lancaster Lovett, 600a Linhaven Parish, Lower Norfolk Co. 1651 1400a Linhaven Parish, Lower Norfolk Co. 1654 268a Rappahannock Co. 1663 578a Linhaven Parish, Lower Norfolk Co. c. 1665 350a Lower Norfolk Co. 1663 nib 200a Lower Norfolk Co. 1647	220 299, 502 481 528 539 174
George Mil of Linhaven		--	Nib	
William Shipp		200a	200a Elizabeth River, assigned to Jonathan Langworth 1638	99
George Spenlow		200a	Nib	
John Holmes		--	100a Elizabeth River 1635	22
Capt. William Lucke of London	Burgess 1648, 1649, 1652, 1656 Lower Norfolk Co. ** Justice Lower Norfolk Co.	850a		
Ens. Thomas Lambert			Mr. 750a Lower Norfolk Co. 1648	173

Edward Cannon		520a	with Thomas Allen, 520 a Lower Norfolk Co. 1652	276
Thomas Allen		1620a	550a Elizabeth City Co. 1630	47
			550a Lower Norfolk Co 1637	57
Richard Jones of Elizabeth River		1500a *	with Edward Cannon, 520a Lower Norfolk Co. 1652	276
			Clerk, 950a Charles City Co. 1850	202
			288a James City Co. 1654	241
			Clerk 1500a Charles City Co. 1655	316
			350a Elizabeth River 1655	332
			with Jonathan Higley 640 a New Kent Co.	424
			Mr. 300a Lower Norfolk Co. 300a	445
			100a Elizabeth City Co. 1663	493
			750a Elizabeth River 1663	510
	TOTAL AVERAGE ACREAGE FOR LOWER NORFOLK COUNTY'S 10 SECURED PARTIES	8,086a/ 809a		
George Ludlow	Councilor 1642, Burgess 1641, ** Justice York Co.	8613a	merchant 500 a Upper Norfolk Co. 1638	96
			1927a York Co. 1646	161
			Esq. Col. 1000a Northumberland Co. 1650	201,246
			Esq. councilor 1000a Rappahannock River 1651	214
			Col., Esq. councilor 2000a Gloucester Co. 1652	239
			Col. Esq. councilor, 2000a, Gloucester Co. 1652	243,262
			Col. Esq. 186a Pyanketank Riv. 1650	295
Thomas Harwood of Charles River	Councilor 1620, Burgess 1631, 1632, 1633, 1639, 1642, 1645, 1648, Speaker 1648 Warwick Co. ** Justice York Co.	3900a	Gent. 100a Skiffe Cr. 1632	15
			1500a Kethes Cr 1635	25
			100a Charles River Co. 1637	75
			Gent. 1850a James City Co. 1637	83

			300 Rappahannock River 1649	186
			150a New Poquosan River 1652	259, 274 (dec. Nov. 1652)
William Pryor	Justice York Co.	2600a	200a Charles Riv. 1635	26
			Gent. 200a Charles Riv. Co. 1637	57
			Gent. 600a Charles Riv. Co. 1637	62
			Gent. 300a Charles Riv. Co. 1637	63
			Gent. 1300a Charles Riv. 1642	132
Richard Creedle		350a	150a & 200a Chas Riv. Co. 1636 (two)	42
Giles Tavernor		--	Transported by Martiau before 1639	121
Thomas Lucas	Burgess 1658, 1663 Rappahannock Co. **	5065a	planter, 400a co-assignee 1641, co-assignor 1642	161
			647a Rappahannock Riv. about 1653	240
			336a unspc with John Cattlett 1652	261
			Gent. 600a Lancaster Co. 1652	262
			Mr. Sr. 1405 ½ a Rappahannock Riv. 1657	345
			Mr. Sr. 1677a Rappahannock Riv. 1662	521
Thomas Deacon		8000a	merchant of London with William Tucker, Maurice Thompson, George Thompson, William Harris, James Stone, Cornelius Lloyd, & Jeremiah Blackman, 8000a Chas Riv. 1636	53
Nicholas Brooke		500a	the younger, Jr., merchant 500a York Co. 1646 assigned to Nicholas Brooke, Sr., Gent., who patents 1649 (p. 186) (p. 224—same)	167
Steven Gill	Justice York Co.	5975a	100a Charles Riv. 1636	52
			300a Charles Riv. 1640	122
			1000a Rosewell Creek 1642	134
			2500a York River Co. 1642	142
			Lt 25a York Co. 1649	179
			1150a York Co. on Rosewell Creek 1649	180
			Capt. 900a Northumberland Co. 1651	213
Francis Compton		--	no grants, 2 transportees	180, 219

Henry Lee	Justice York Co.	973a	247a York Co 1649 with William Clapham, 250 a Rappa Riv. 1650 Mr. 126a York Co 1651 350a Hampton Parish, York Co. 1653 Nib Transported by Capt. Christopher Calthroppe before 1636	189 196 218 237 39
Thomas Burns Christopher Copeland		--	1300a Charles River Co. 1639/40	121
Capt. Nicholas Martiau	Burgess 1623, 1632, 1633, ** Justice York Co.	1300a		
Anthony Stephens of York Parish		4200a	500a Lancaster Co. 1654 850a Westmoreland Co. 1657 650a Mattapan Riv. 1658 with Thomas Stevens 1800a Rappahannock Riv. 1662	297 363 388 411
Francis Finch John Madison		300a 3450a	Gent. 400a Rappahannock Riv. 1662 with Dictoris Christmas 300a Finches Creek 1642 600a Gloucester Co. 1655 800a New Kent Co. 1657 300a New Kent Co. 1658 300a Westmoreland Co. 1658 320a New Kent Co. 1664 300 a New Kent Co. 1662 200 a New Kent Co. 1664 350a New Kent Co. 1666 280a Rappahannock Co. 1663	428 136 280 350 369 389 466 469 515 565 566
Joseph Hill John Barlow Denis Stevens, merchant		--	no grants, 3 transportees no grants, 2 transportees Nib	249, 393, 426 269, 444

Edward Hughs			Nib	
Capt. Ralph Wormely of York Parish	Councilor 1650, Burgess 1648, ** Justice York Co.	4845a	Capt. 3200a Rosegill Creek, Rappa Riv. 1649	181
Peter Mackerell of London ***		--	Capt., councilor 1645a York co. 1649 Transported by Charles Edmonds before 1658	206 386
	TOTAL/AVERAGE ACREAGE FOR YORK COUNTY'S 23 SECURED PARTIES	50,071a/ 2177a		
	TOTAL/AVERAGE	84,357a/ 1562a		

* Only in Lower Norfolk or Elizabeth River. The name is common, so acreage elsewhere may relate to another individual.

** From Colonial Virginia Registry on internet.

*** Resident of St. Mary's County, Maryland. See 4 MARYLAND ARCHIVES, *supra* note 52, at 385-86 (1648 will of Peter Makarill, merchant).

nib Not in land grant book.

Chart A3

Debtor Information

Chart A3 provides the political office, total acreage held by provincial land grant, the amount and location of land grants along with titles, and the page of the record⁶²³ for the fifty-four debtors in the earliest transactions occurring in the 1640s. These transactions occurred in Accomack, Lower Norfolk, and York Counties. Since several engaged in more than one transaction, the total numbers less than the number of transactions. The chart also indicates the total acreage held by grant by all debtors and an average computed by dividing the total by the number of debtors. The parties occasionally renewed patents, in which case the patent appeared twice but is listed once in the chart.

623. Land grants appear in NUGENT, *supra* note 622.

Debtor	Office	Acreage	Grants before 1666	Page
L. John Shipwards of Newport News		--	nib	
William Holmes, merchant of London		--	Transported by Thomas Dyer before 1662	401
Thomas Newte		--	Transported by Capt. John Howe before 1637 (Nute)	73
Roger and Anne Moy		--	nib	
Capt. William Douglas & Co.		--	nib	
Marke Hammon of Accomack Co.		--	land in Accomack Co. 1639	110
Hendrick Liehart		--	nib	
John Towlson of Accomack Co		950a	450a Accomack Co. 1642	130
Thomas Cooke of Accomack Co.	SEE CHART A2, Clerk	--	400a Northampton Co 1653	286
Anthony Lynney, millwright		--	nib	
Anthony Hodgkins (Hoskins)		1100a	700a Northampton Co. 1652	264
John Charles		--	400a Northampton Co. 1653	294
Capt. William Hawley Esq. of Northampton Co.		--	Transported by Philip Taylor before 1637	74
William Johnson of Northampton Co.		--	Nib	
John Holloway		--	can not identify	
Argoll Yeardley of Accomack Co.	SEE CHART A2, Justice	8200a	550a Accomack Co. c. 1640	123
Samuel Lucas, planter of Virginia		--	1300a Northampton Co. 1642	135
Ralph Wormely of York Co.	SEE CHART A2, Justice	4845a	Transported by Charles Harmer before 1635	28
William Stevens of Northampton Co.		700a	700a Northampton Co. 1653	412
	TOTAL AVERAGE ACREAGE FOR ACCOMACK COUNTY'S 18 DEBTORS	17,645a/ 980a		

Christopher Burroughs, planter of Linhaven	Burgess 1644, 1645, 1652 Lower Norfolk Co.**	904a	200a Elizabeth City Co. 1636	38
			200a Lower Norfolk Co. 1638	104
			150a Lower Norfolk Co. 1648	180
			354a Linhaven Parish, Lower Norfolk Co. 1651	221
James Phillips, planter of Linhaven		--	Nib	
Robert Loveday		--	Nib	
Savill Gaskine		250a	250a Lower Norfolk Co 1652	269, 415
Thomas Miles		200a	150a Elizabeth River 1646	171
			50a Lower Norfolk Co. 1647	174
William Basnett, planter of Linhaven		1310a	800a Lower Norfolk Co. 1658	362
			Mr. 510a Lower Norfolk Co. 1664	434
Humphrey Sayer, planter of Little Creek		--	nib	
George Puddington, planter of Lower Norfolk		--	nib	
George Heigham of Elizabeth River		256a	John Marshall assigned to GH, assigned to Thomas Bridge, 256a	306
John Meridith, shipwright		600a	600a Rappahannock Riv. 1665	530
William Dovenall, planter of Elizabeth River		--	nib	
	TOTAL/ AVERAGE ACREAGE FOR LOWER NORFOLK COUNTY'S 10 DEBTORS	3520a/ 352a		
Thomas Beale of York Parish	Councilor 1662 York Co. **	1700a ***	200a York Co. 1651	210
Richard Bennett, planter of York in Charles River County	****	200a	with John Hollis, 200a Charles Riv. Co. 1638	88
William Todd		500a	500a Gloucester Co. 1666, Argoll Yeardley to George Ludlow to Thomas Beale to Todd	555
Jonathan Sutton		--	Transported by Robert Brasseur before 1653	244
John Sutton		--	Transported by William Bamard before 1642	131

Luke Davis			Transported by Richard Cocke before 1652 (Luce?)	266
Edward Wright	50a		50a York Co. 1652	258
Thomas Heath	440a		1642 assignee from Thomas Lucas, assignor to George Wyatt 440a York Co.	161
John Rice			Transported by Lt Richard Popeley before 1637	61
Charles Smith of York	--		Transported by Rice Hoe before 1639	110
William Howard	--		Nib	
Thomas Wallis, doctor in physic of Warwick River Co.	700a		Transported by William Storey before 1641 practitioner of Physicke 700a James City Co. 1638	129 94
William Fellgate	1200a		Mr., of London merchant, dec'd 1650 land 1200a Chichomy Riv. to Mary Hey & her son Robert Hey, exors of William Fellgate, exor of John Fellgate 1654	215 288
Hugh Allen, planter of York Co.	225a		225a Charles Riv. Co. 1638	106
Christopher Allen, planter of York Co.	--		Transported by Edward Diggs before 1651	214
Henry Thackery (Thacker) of York Parish	--		Transported by Hugh Gwyn before 1642	141
Rowland Vaughn	--		Transported by James Vanerit before 1636	50
Thomas Privitt	50a		50a Charles River Co. 1636	41
William Smote (Smoot), boatwright of Hampton	400a		has land Rosewell Creek, York Co. 1648	184
Henry Brooke	1658a		400a Gloucester Co. 1642, assigned to Edmond Peters Jr., merchant 500a York Co. assigned to Nicholas Brooke 1645	393 167
			658a Northumberland Co. 1650	193
			the younger, merchant 500a York Co. 1646	224
John Oliver, planter of Hampton Parish	400a		300a James City Co. 1650	192
			100a Isle of Wight Co. 1652	274
Anthony Lenton	2850a		1025a Northumberland Co. 1653	228
			400a Northumberland Co. 1657	363
			1425a Northumberland Co. 1662	421

Robert Vault (Vaus, Vause) of Hampton Parish	8630a	Merchant, 1200a Freshwater Creek 1642	132
		Mr. 400a York Co. 1647	166
		Gent. 150a York Co. 1651	216
		Mr. 550a York Co. 1654	284
		Merchant, with William Gooch, 6000a Westmoreland Co. 1655 (again p. 322, 496 in 1662)	311
		Mr. 330a York Co. 1657	344
John Batt (Batts), planter of York Co.	1778a	with John Davis, 750a Charles River Co. 1639	107
		526a James City Co. 1643	151
		with John Phillips, 500a Lancaster Co. 1654	291
	TOTAL/AVERAGE ACREAGE FOR YORK COUNTY'S 24 DEBTORS	20,781a/ 866a *	
	TOTAL/AVERAGE FOR YORK COUNTY WITHOUT VAULT*	12,151a/ 528a *	

* Vault chattel mortgage transaction excluded since he is a merchant speculating on a Councilor's crop with his purchase.
 ** From Colonial Virginia Registry on internet.
 *** Obtained 1500a in 1668, after period of land grant book, excluded from totals.
 **** Probably not the Richard Bennett, merchant, with land grants in Nansemond County, see NUGENT, supra note 622, at 23, 45, 66, 104, 109 & 139, who served as Governor 1652, Councilor 1639, and Burgess 1629 and 1632 Warrisquoake County.
 nib Not in land grant book

APPENDIX B

RECOGNIZANCES IN PRE-1646 VIRGINIA

The following tables display information concerning the early recognizances appearing in the provincial and county records of colonial Virginia during the period before and immediately after the passage of the Virginia chattel mortgage act in 1642. The charts list only records from the General Court and the counties of Accomack, Lower Norfolk, and York, since they cover the period of the 1630s and 1640s.⁶²⁴ The transcribed General Court records start in 1622 and end in 1632 while the transcribed records for Accomack and Lower Norfolk Counties start in 1632 and end in 1645. Since parties used recognizances far more often than chattel mortgages, the charts include only those transactions from the first order book for Lower Norfolk and York Counties. These records stretch from 1637 to 1646 for Lower Norfolk County and 1633 to 1646 for York County.⁶²⁵

Chart B1

Recognizance Information

Chart B1 provides for the on hundred twenty-two early Virginia recognizances entered in Accomack County before 1646 and in Lower Norfolk County before 1646 the date the parties entered the lawsuit, the name of the secured party, the name of the debtor, the amount of the debt secured, the conditions on the writ of execution and the page number of the source. The debtor confessed in all cases except where denoted by * for an acknowledgement. The chart also displays the average amount (omitting those records without an indication of the size of the debt in tobacco) of the secured debt for the three counties with data from the 1640s, namely Accomack, Lower Norfolk, and York Counties. Pounds Sterling converted to pounds tobacco on the basis of 3 pence per pound of tobacco.⁶²⁶ Non-monetary debt and debt denoted in barrels of corn was not included in the average.

624. See *supra* notes 113-118 and accompanying text.

625. See *supra* notes 113-118 and accompanying text.

626. See *supra* note 201.

Date made	Secured	Debtor	Debt	Writ period	Page
Jan. 7, 1632/33. +	Nicholas Grainger	Alexander Bradburne	2 bills corn	lie in prison until paid	1: 1 *
Jan. 7, 1632/33	Philip Chapman	Israel Hill	470 lb tob.	w/i fortnight or lie in prison	1: 2 *
Jan. 13, 1633/34 +	Stephen Charlton	Walter Scott	479 lb tob. & 2 ½ lb beaver	Dec. 10 next, put in security w/i 1 month	1: 10 *
Feb. 19, 1634/35	Obedience Robins	William Berriman	500 lb tob.	w/i 4 days else attach 500 lb of 1150 lb tob. owing debtor by Anthony Wills	1: 267 *
Nov. 16, 1635	Anthony Wills & Mr. Neale	Francis Millicent	160 lb tob.	court next	2: 42 *
Jan. 5, 1635/36	Stephen Charlton	Francis Martine	bill corn	present payment	2: 47 *
Feb. 1, 1635/36	Mr. Obedience Robins	John Brooke	80 lb tob.	present payment	2: 50 *
April 4, 1636	Garret Andrews for Nicholas Throckmorton	James Cooke	xx lb tob.		2: 50 *
April 4, 1636	James Cooke for Isaac Watlington	John Furbush	128 lb tob.	execution granted Sept. 5, 1636	2: 51 *
May 16, 1636	Robert Swanson	John Furbush	2 bills corn	execution granted Aug. 8, 1636	2: 52 *
Jan. 1, 1636/37	Robert Dye	Thomas Nuton	2 ½ bills corn	present payment of 2 bills, rest next crop	2: 64 *
Jan. 1, 1636/37	Obedience Robins	John Paramore	1046 lb tob., 1 bill corn	execution granted March 27, 1637	2: 64 *
Jan. 1, 1636/37	Obedience Robins	Alexander Montney	1000 lb tob.	execution granted March 27, 1637	2: 65 *
Jan. 1, 1636/37	John Neale	John Parramore	827 lb tob.	w/i 10 days or execution on body; execution granted March 27, 1637	2: 65 *
Jan. 1, 1636/37	John Neale	Peter Varlow	394 lb tob.	w/i 10 days or execution on body	2: 65 *
Jan. 1, 1636/37	John Neale	John Sea & Robert Dye	204 lb tob.	w/i 10 days or execution on bodies	2: 65 *

Jan. 1, 1636/37	Obedience Robins	Thomas Wyatt	466 lb tob.	execution granted March 27, 1637	2: 66 *
Jan. 1, 1637/37	xxx Moore for John Furbush	John Brooks	400 lb tob.		2: 66 *
Jan. 1, 1636/37	Richard Hopkins	John How	2 bls, 3 bu, 3 pk of corn		2: 67 *
March 27, 1637	Nicholas Grainger	James Bruce	1 bil corn		2: 69 *
March 27, 1637	John Howe	John Paramore	xx lb tob.		2: 69 *
Jan. 24, 1638/39 +	Obedience Robins	Floington Payne	406 lb tob.	3 days else execution	2: 137 *
Jan. 24, 1638/39	Capt. William Stone	Floington Payne	1212 lb tob.	3 days else execution	2: 139 *
Jan. 24, 1638/39 +	James Peryn	John Foster	350 lb tob.	else execution	2: 140 *
Jan. 24, 1638/39 +	James Peryn	Armstrong Foster, by John Foster	200 lb tob.	else execution	2: 140 *
Jan. 24, 1638/39 +	Obedience Robins	Samuel Lucas	400 lb tob.	execution granted Feb. 19, 1638/39	2: 141 *
Feb. 19, 1638/39 +	Floington Payne	John Foster	243 lb tob.	3 days else execution	2: 142 *
April 25, 1642	Nathaniel Littleton	Anthony Hoskins	435 lb tob.	10 days else exec	2: 158 *
April 25, 1642 +	Thomas Dewin	Christopher Stephens	7 lbs tob.	10 days else exec	2: 159 *
April 25, 1642	Anthony Hoskins	Thomas Cooke	500 lb tob.	10 days else exec	2: 160-61 *
April 25, 1642	Samuel Chandler	Mathew Pett	6 lb 5 sh sterling paid to Capt. William Stone	10 days else exec	2: 161 *
April 26, 1642	Argoll Yeardeley	John Wilkins	537 lb tob.	10 days else exec	2: 163 *
Sept. 20, 1642	Mr. John Neale attorney of William Wortleige	John Holloway	6 bls corn	else exec	2: 207 *
Jan. 30, 1642/43	John Stockely	George Cottingham	1 months work	else exec.	2: 245 *
March 6, 1642/43	Henry Williams	William Johnson and Martin Kennett	Repair tubs	else exec.	2: 257 *
Feb. 10, 1643/44	Mr. Luke Stubbings	Richard Buckland	500 lb tob., 40 lb sterling	else exec.	2: 327 *
Feb. 23, 1643/44	William Fisher	Hannah Mountney, widow	1 manservant	else exec.	2: 354 *

		TOTAL / AVERAGE DEBT FOR ACCOMACK COUNTY'S 37 RECOGNIZANCES			
July 6, 1640	Thomas Bullock	Francis Land, for Nicholas Write	11,764 lb. tob./ 470 lb. tob.	else execution on Jul. 15	30 **
Aug. 3, 1640 +	Simond Handcock	William Nash	2000 six penny nails	500 now, 1000 Sat., 500 next Sat. else execution if mech. on tender, if not next crop else execution	33 **
Aug. 3, 1640 +	John Dier	Richard Floide	200 lb tob.	present crop, else execution	36 **
Sept. 8, 1640 +	John Wright	Richard Owine	80 lb tob.		43 **
Nov. 30, 1640 +	Mary Browne, dau. Nicholas Browne	John Holems	10 lb sterling	½ Jan. 1, ½ foll. Nov. 30 else execution	47 **
Jan. 4, 1640 +	John Webb	Gilbert Guy, dec.	1 bil corn, 1 pr hose & shoes	pd after Robert Smith's 90 lb tob. else execution	48 **
Jan. 4, 1640 +	Robert Hayes	Gilbert Guy, dec.	44 lb tob.	Thomas Sayer's order pd first, else execution	83 **
Oct. 4, 1641 +	John Rably (Rables)	Thomas Ward	120 lb tob.	w/ 15 days else execution	97 **
July 5, 1642	Andrew Wamer	John Stratte, security for Gowin Lancaster	100 lb tob.	Nov. 20 else execution	97 **
July 5, 1642	John Martin	Thomas Hall	150 lb tob. for suit of clothes	Nov. 20	144 **
Nov. 26, 1643	Robert Mortine (Martins)	Christopher Needham & Ellis Browne, by atty	230 lb tob. for goods lost on Martine's boat	else execution	156 **
Feb. 15, 1644/45 +	John Yeats	Henry Watters	2 blis corn	10 days else execution	156 **
Feb. 15, 1644/45 +	Thomas Wright	Jesper Hoskins	510 lb tob.	10 days else execution	161 **
Feb. 15, 1644/45 +	Mr. Richard Needham	Cornelius Lloyd	900 lb tob.	10 days else execution	194 **
Oct. 15, 1645 +	Edmund Mathews	George Rutland	270 lb tob.	16 days else execution	194 **
Oct. 15, 1645 +	Mr. John Corker	Geroge Rutland	466 lb tob.	16 days else execution	194 **

Oct. 15, 1645 +	William Scott	Mr. Henry Seawell, orphan by Mr. Phillips, guardian	300 lb tob.	16 days else execution	195 **
Dec. 15, 1645	Mr. William Julian	Richard Kennar	430 lb tob.	10 days else execution	202 **
Dec. 15, 1645 +	Orphans of Mrs. Seawell, decd. #	Thomas Cason	876 lb tob.	10 days else execution	202 **
Dec. 15, 1645	Mr. Mathew Phillips	William Capps	300 lb tob.	10 days else execution	203 **
Dec. 15, 1645	Mrs. Sarah Gookin #	Mr. Thomas Sayer	815 lb tob.	10 days else execution	203 **
Dec. 15, 1645	Thomas Cason	Thomas Ward	432 lb tob.	10 days else execution	203 **
Dec. 15, 1645	Robert Hayes, by Christopher Burrows & Thomas Keeling	Mr. Robert Page	1500 lb tob.	10 days else execution	204 **
Dec. 15, 1645	Savill Gaskine	Thomas Davyes	300 lb tob.	10 days else execution	204 **
Dec. 15, 1645	Mrs. Sarah Gookin #	Henry Westgate	300 lb tob.	10 days else execution	204 **
Dec. 15, 1645	Capt. John Sibsey	Savill Gaskine	300 lb tob.	10 days else execution	204 **
Dec. 15, 1645	Mr. Robert Page	Thomas Myles	524 lb tob.	else execution	205 **
Dec. 15, 1645	Christopher Needham	Richard Hartgreave	250 lb tob.	10 days else execution	205 **
Dec. 15, 1645	Mr. Robert Page	James Lopham	300 lb tob.	10 days else execution	205 **
Dec. 15, 1645	Mrs. Sarah Gookin #	Thomas Davys & Richard Poole	470 lb tob.	10 days else execution	206 **
Dec. 15, 1645 +	Hugh Lee, assigned to Arthur Browne	Thomas Tooker	144 lb tob.	else execution	209 **
Feb. 16, 1645/46 +	Mr. Robert Page	Thomas Cason	735 lb tob.	else execution	213 **
Feb. 15, 1645/46 +	Jeffrey Wright, assigned to Robert Hayes	William Eady, adm of John Moy	230 lb tob.	else execution	215 **
Feb. 15, 1645/46 +	Mr. Phillips, guardian of orphans of Mrs. Seawell decd. #	Ensigne Lambert	830 lb tob.	else execution	216 **
April 15, 1646	Mrs. Sarah Gookin #	Savill Gaskin, by Thomas Ward aty	2046 lb tob.	20 days else execution	224 **
Aug. 15, 1646	Thomas Bushthrode	Roger Williams	948 lb tob.	else execution	236 **

Dec. 20, 1645	Florentine Payne	TOTAL AVERAGE DEBT FOR LOWER NORFOLK COUNTY'S 36 RECOGNIZANCES	15,800 lb. tob./ 479 lb. tob.			36 ***
Dec. 20, 1645	Thomas Wilkinson	John Peade attorney for Francis Browne	348 lb tob.		w/i 5 days	39 ***
Feb. 2, 1645/46	Henry Broke	William Todd authorizes Joseph Croshaw	600 lb tob.			57 ***
Feb. 2, 1645/46	Thomas Vault	xxx	3000 lb tob.		w/i 10 days	57 ***
Feb. 2, 1645/46	Thomas Deacon	xxx	300 lb tob.			57 ***
Feb. 2, 1645/46	Capt. Ralph Wormeley	xxx	900 lb tob.			57 ***
Feb. 2, 1645/46	Nicholas Clarke	xxx	xxx			57 ***
Feb. 2, 1645/46	John Robinson	xxx	900 lb tob.			57 ***
Feb. 2, 1645/46	Thomas Harwood & Mathew Hawkins	xxx	700 lb tob.			57 ***
Feb. 2, 1645/46	Rowland Burnham	xxx	2600 lb tob.			57 ***
Feb. 2, 1645/46	Nicholas xxx	xxx	xxx			57 ***
Feb. 2, 1645/46	Thomas xxx	Charles Smith	xxx			58 ***
Feb. 2, 1645/46	xxx	Elizabeth Hopkins	xxx			58 ***
Feb. 2, 1645/46	William xxx	Thomas Sheppard	xxx			58 ***
Feb. 2, 1645/46	Francis Wheeler	George Wescombe	xxx			58 ***
Feb. 2, 1645/46	xxx	Edward Roberts	xxx			58 ***
Feb. 2, 1645/46	xxx	Stephen Gill	xxx			58 ***
Feb. 2, 1645/46	xxx	Charles Smith	xxx			58 ***
Feb. 2, 1645/46	xxx	Rice Maddox	xxx			58 ***
Feb. 2, 1645/46	Stephen Gill	Robert James	300 lb tob.			59 ***
Feb. 2, 1645/46	Hugh Rookes	xxx	300 lb tob.			59 ***
Feb. 2, 1645/46	Dennis Stephens	xxx	xxx			59 ***
Feb. 2, 1645/46	John xxx	xxx	308 lb tob.			59 ***
Feb. 2, 1645/46	Charles Smith	xxx	xxx			59 ***
Feb. 2, 1645/46	Richard Dunning	xxx	xxx			59 ***
Feb. 2, 1645/46	xxx Ramsey	xxx	300lb tob.			59 ***
March 24, 1646	Arthur Seawell	Dr. Henry Waldron	2500 lb. tob.			71 ***
March 26, 1646	Sir Edmund Plowden knight	Capt. William Brocas Esq.	xxx for two servants		Nov. 10 next	73 ***

March 26, 1646	William Howard	Thomas Adams	1300 lb tob. security for Lt. Nicholas Steelwell	w/ 5 days to Henry Lee attorney for Steevan Hamlin, assignee	73 ***
March 27, 1646	Samuel Snaed	William Todd by Joseph Croshaw, attorney	300 lb tob.		76 ***
March 27, 1647	William Todd	Obediah Williams by William Hockaday, atty.	300 lb tob.		76 ***
March 27 1646	Thomas Deacon	David Doehart	266 lb tob.		76 ***
March 27 1646	Robert Kinsey	John Hutton	1300 lb tob.		76 ***
March 27 1646	John Holding	David Doehart	500 lb tob.		76 ***
March 27 1646	Mr. William Pryor	John Bide	1403 lb tob.		76 ***
March 27 1646	Mr. William Pryor	Thomas Hatfield	607 lb tob.		76 ***
March 27 1646	Mr. William Pryor	Henry Brooke	4000 lb tob.		76 ***
March 27 1646	Mr. William Pryor	William Blackey	661 lb tob.		76 ***
March 27 1646	Capt. Henry Fleet	Thomas Brewer	300 lb tob.		76 ***
March 27 1646	Sir Edmund Plowden	Francis Willis, admr. of Thomas Simons, dec.	500 lb tob.		76 ***
March 27 1646	xxx	Robert Todd	300 lb tob.		76 ***
March 27 1646	Mr. William Pryor	Thomas Sheppard & Thomas Hayles	494 lb tob.		76 ***
March 27 1646	Thomas Deacon	Thomas Taylor	250 lb tob.		76 ***
March 27 1646	Mr. William Pryor	Thomas Taylor	1200 lb tob.		76 ***
March 27 1646	Mr. Richard Lee	Thomas Kerby by atty. Mr. William Whitby	250 lb tob.		77 ***
March 27 1646	Mr. Richard Lee	Edward Woodley	400 lb tob.		77 ***
March 27 1646	Arthur Price	Thomas Beale	2000 lb tob.		77 ***
March 27 1646	Nicholas Dale, exec. of Ralph Watson, clerk	John Holding	230 lb tob.		77 ***
May 26, 1646	William Pryor	William Rennalds	1073 lb tob.	Sept. 10 next	83 ***

May 26, 1646	Charles Smith, assignee of George Wescoombe	Robert Perry attorney for Richard Milborne	500 lb tob.and one pair rudder irons for a shallop	w/i 5 days	83 ***
		TOTAL AVERAGE DEBT FOR YORK COUNTY'S 49 RECOGNIZANCES	31,190 lb. tob./ 891 lb. tob.		

* Accomack County, see 1 Ames, *supra* note 1; 2 Ames, *supra* note 26. Clerk for the years 1637 to 1638 did not provide sufficient description of lawsuits to identify recognizances.
 ** Lower Norfolk county, see 1 Walter, *supra* note 92.
 *** York County, 24 FLEET, *supra* note 101.
 + by acknowledgment.
 # Spouse of Henry Sewell, see 1 Walter, *supra* note 92, at 110, 255.
 ## Spouse of John Gookins, see 1 *id.* at 248.
 xxx record mutilated

Chart B2

Information on Party Secured by the Recognizance

Chart B2 provides the political office, total acreage held by provincial land grant, the amount and location of land grants along with titles, and the page of the record⁶²⁷ for the ninety-two parties secured by the recognizance in the earliest transactions in Accomack, Lower Norfolk, and York Counties. Since several engaged in more than one transaction, the total numbers less than the number of transactions. The chart also indicates the total acreage held by all parties secured by the recognizance and an average computed by dividing the total by the number of parties secured by the recognizance. The parties occasionally renewed patents, in which case the patent appeared twice. Some received no grants, but were listed as transportees in other person's grants.

627. Land grants appear in NUGENT, *supra* note 622.

Secured	Office	Acreage	Grants before 1666	Page
Nicholas Grainger		350a	350a Northampton Co. 1647	170
Philip Chapman		--	Transported by Daniel Gookin before 1637	78
Stephen Charlton	Burgess 1647, ** Sheriff, Accomack Co.	4400a	200a Accomack Co. 1637	79
			1000a Accomack Co. 1638	82
			500a Accomack Co. 1641	129
			1000a Accomack Co. 1650	200
			Mr. 1700a Northampton Co. 1665	529
			2000a Accomack Co. 1643	152
Obedience Robins	Councilor 1655, Burgess 1630, 1639, 1642, 1644, 1652, ** Justice Accomack Co.,	3450a		
			Gent. 500a Northampton Co.v1643	224
			Mr. 450a Northampton Co. 1643	401
			Col. 1500a Northampton Co. 1661	407, 554 (dec. April 1666)
Anthony Wills		--	Nib	
John Neale	Burgess 1639, 1641, ** Sheriff, Justice Accomack Co.	2700a	merchant, 50a Elizabeth City, 21 year lease	18
			1500a Accomack Co. 1636	43, 54
			merchant 200a Accomack Co. 1637	68
			500a Accomack Co. 1637	80
			500a Northampton Co. 1643	225
		--	land in Accomack Co.	129, 152, 164
Garret Andrews		--	nib	
Nicholas		--		
Throckmorton		--	Transported by Henry Poole before 1637	62
James Cooke		--	Nib	
Isaac Watlington		50a	50a assigned to Francis Martin 1638	118
Robert Swanson		--	no grant, 2 transportees	74, 204, 232
Robert Dye		100a	100a Accomack Co. 1636	43
John Forbush		--	no grant, 3 transportees	169, 198, 459
Richard Hopkins		--		

John Howe		1050a	Gent. 50a Accomack Co. c. 1628	12
Capt. William Stone	Sheriff Accomack Co.	1000a *	Capt. 1000a Accomack Co. 1637 Mr. 1000a Hungers Cr. 1635, Capt. 1637, Accomack Co. 1643	72 27, 59, 77
James Peryn		--	750a New Kent Co. 1663	480
Florington Payne		150a	land Northampton Co. 1645 150a Charles River assigned to Richard Lee 1642	165 131
Nathaniel Littleton	SEE CHART A2, Justice	--	Land of	
Thomas Dewin		--	Nib	
Anthony Hoskins	SEE CHART A3	1100a		
Samuel Chandler	SEE CHART A2, London	--		
Argoll Yeardeley	SEE CHART A2, Justice	8200a		
William Wortleige		1350a	L. 550a Mockjack Bay 1643	148
			L. 150a Elizabeth City Co. 1649	186
			L. 650a Mackjack Bay 1650	195
John Stockely		2600a	Mr. 2600a Accomack Co. 1664	454
Henry Williams		350a	150a Accomack Co. 1636	45
			200a Accomack Co. 1638	101
Mr. Luke Stubbings	SEE CHART A2	--	Nib	
William Fisher		--	Transported by Southey Littleton before 1656	327
	TOTAL/ AVERAGE ACREAGE FOR ACCOMACK COUNTY'S 28 SECURED PARTIES	26,800a/ 957a		
Thomas Bullock		--	no grants, 2 transportees	277, 296
Simond Handcock		300a	300a Lower Norfolk Co. 1657 to wife Sarah, admr.	354
John Dier		100a	100a Linhaven, Lower Norfolk Co. 1652	262, 328
John Wright		250a	250a Upper Norfolk Co. 1643	143
Nicholas Browne		50a	50a Elizabeth City Co. 1632, 21 year lease	14
John Webb		50a	mariner 50a Accomack 1627, 10 year lease	11
Robert Hayes		950a	450a Lower Norfolk Co 1645	151
John Rably (Rables)		--	Mr. 500a Lower Norfolk Co. 1648	182
			Nib	

Andrew Warner		--	Nib		
John Martin	SEE CHART A2, Burgess	3196a			
Robert Morrine (Martins)		280a	30a Archers Hope Cr 1632, 21 year lease		17-18
John Yeats		700a	250a Lower Norfolk Co. 1638 (Martyn) 300a Elizabeth City Co. 1636 (Yates) 150a Elizabeth River 1636 (Yates)		98 38 51
			250a Lower Norfolk Co. 1637		72
			100a Lower Norfolk Co 1638		
Thomas Wright		1908a	150a Elizabeth River 1635		27
			460a Lower Norfolk Co. 1647		166
			298a Rappahannock Riv. 1657		364
			Mr. 1000a Rappahannock River 1665		463
Mr. Richard Needham		--	Transported by Francis Burnell 1 before 657		349
Edmund Mathews		--	Transported by Roger Johns before 1651		216
Mr. John Corker	Burgess 1632, 1633, 1645 James City Co.**	1156a	6a James Island 1637		81
			18 poles James Island 1640		124
			1150a Surry Co. 1657		374
William Scott		--	no grants, 9 transportees		25, 136, 214, 232, 262, 285, 310, 357, 514
Mr. William Julian		750a	Yeoman & Ancient Planter, 150a Elizabeth City 1624 600a Elizabeth City Co. 1636		5 1636
Mrs. (Henry) Seawell	SEE CHART B3, spouse Justice	--			
Mr. Mathew Philips		--	no grant, 2 transportees		219,541
Mrs. Sarah (John) Gookins	Spouse Justice Lower Norfolk Co.	1990a	Gent. 500a Nansmund River 1636		50
			Gent. 350a Upper Norfolk Co. 1637		58
			Mr. 500a Nansmund River 1638		100
			Gent. 640a Lower Norfolk Co. 1641		129

Thomas Cason		400a	Transported by Thomas Harwood before 1635 100a to Thomas Keeling 1635, due unto Thomas Casson in right of his wife Elizabeth relict of William Loughton 300a unspecified 1643	25 124 149
Christopher Burrows Thomas Keeling	SEE CHART A3, Burgess	904a 1000a	100a Elizabeth City Co. 1635 Ens. 200a Lower Norfolk Co. 1643 700a Linhaven, Lower Norfolk Co. 1651	34 151 220
Savill Gaskine Capt. John Sibsey	SEE CHART A3 Councilor 1637, Burgess 1639 ** Justice Lower Norfolk Co.	250a 80a	Capt. 80a Lower Norfolk co. 1649	179
Mr. Robert Page		500a	500a Elizabeth River	55
Christopher Needham Hugh Lee	Burgess 1652 Northumberland Co. **	-- 1876a	nib 100a Northumberland Co. 1650	205
			288a Northumberland Co. 1654 388a Northumberland Co.	242 319
Arthur Browne Jeffrey Wright Thomas Bushrode		-- -- --	Mr. 1100a Petomeck Transported by John Harvey before 1663 Nib Nib	351 427
	TOTAL / AVERAGE ACREAGE FOR LOWER NORFOLK COUNTY'S 32 SECURED PARTIES See above, Accomack Co.	16,690a/ 522a 150a 6820a		
Florentine Payne Thomas Wilkinson			500a Potomeck Riv. c. 1650 320a Rappahannock Riv. c. 1653 6000a Patomeck Riv. 1658	201 240 378
Henry Broke		2178a	Jr. mercant 500a York Co. to Nicholas Brooke 1646 658a Northumberland Co. 1650 1020a Westmoreland Co. 1662	167 193 473

Thomas Vaulx		500a	Gent. 500a Northumberland Co. 1650	208
Thomas Deacon	SEE CHART A2	8000a		
Capt. Ralph Wormeley	SEE CHART A2, Justice	4845a		
Nicholas Clarke		150a	150a Charles Riv. 1638	91
John Robinson		1610a	250a Lancaster Co. 1652	284
			360a Lancaster Co. 1657	356
			1000a Northumberland Co. 1664	450
Thomas Harwood	SEE CHART A2, Justice	3900a		
Mathew Hawkins		--	nib	
Rowland Burnham		3200a	Gent. 450a York Co. 1643	144
			Gent. 500a 1649	185
			Gent. 850a Rappahannock Riv. 1651	215
Francis Wheeler		50a	Mr. 1400a Rappahannock Riv.	219
Stephen Gill	SEE CHART A2, Justice	5975a	assigned 50a to John Beale Charles River 1642	135
Hugh Rookes		--	nib	
Denis Stephens	SEE CHART A2	--	Nib	
Charles Smith	SEE CHART A3	--	Nib	
Richard Duning		732a	732a Ware Riv. 1650	200
xxx Ramsey		--	can't indentify	
Arthur Seawell		--	land Charles Riv. 1639	124
Sir Edmund Plowden knight ***		--	nib	
William Howard	SEE CHART A3	--	Transported	
Samuel Snead		200a	200a James Co. 1635	30,224
William Todd	SEE CHART A3	500a		
Robert Kinsey		--	Nib	
John Holding		1239a	Mr. 850a York Co. 1649	190
			389a York Co. 1653	254
Capt. Henry Fleet	Burgess 1652 Lancaster Co. **	5847a	Capt. 1750a Northumberland Co. 1650	194
			Capt. 750a Lancaster Co. 1652	259
			Capt. 347a Peperick Cr. 1655	311
			Capt. 1000a Lancaster Co. 1655	316
			Lt. Col. 2000a Rappahannock Co.	353

Mr. Richard Lee	Attorney General 1643, Secretary of State 1649-52, Councilor 1651, Burgess 1647, 1651 York Co and Northumberland Co. **	12,896a	Gent. 1000a Charles River 1642	131
			Gent. 91a York Co. 1644	155
			Gent. 1250a Charles River 1646	162, 178
			Col. , Esq. Sec. of State, 550a York River 1651	213
			Col. Esq. 300a Gloucester Co. 1651	219
			Col. 300a Lancaster Co. 1653	235, 241
			Col. 5a Gloucester Co. 1656	330
			Col. 600a Northumberland Co. 1656	343
			Col. 1000a Potomack River 1657	346
			Col. 2000a Potomack River 1658	390
			Col. Councilor 4000a Westmoreland Co. 1660	404
			Col. Esq. 2600a Northumberland Co. 1664	522
Arthur Price		1000a	1000a Peanckatancke River 1642	131, 312(dec. Aug. 1655)
Nicholas Dale		75a	75a Charles River Co. 1638	91, 190 (dec. Mar. 1649)
Ralph Watson, clerk		--	Nib	
William Pryor	SEE CHART A2, Justice	2600a		
George Wescombe		--	Transported by William Pierce before 1649	185
	TOTAL/AVERAGE ACREAGE FOR YORK COUNTY'S 32 SECURED PARTIES	61,467a/ 1921a		
	TOTAL/AVERAGE ACREAGE FOR YORK COUNTY WITHOUT LEE + COUNTIES	48,571a/ 1518a		
	TOTAL/AVERAGE ALL THREE COUNTIES	104,957a/ 1141a		

* Only in Accomack Co. as acreage elsewhere may relate to another individual.

** From Virginia Registry on internet.

*** Plowden had a 1634 proprietary grant for New Albion, comprised of Long Island, the adjacent coast down to Cape May, the West Shore of Delaware River, and the Delaware River Valley above the Schuylkill River. See AMANDUS JOHNSON, THE SWEDISH SETTLEMENT ON THE DELAWARE 174-75 (Burt Franklin, 1970).

+ Richard Lee excluded as the only provincial-wide officeholder.

nib Not in land grant book.

Chart B3

Debtor Information

Chart B3 provides the political office, total acreage held by provincial land grant, the amount and location of land grants along with titles, and the page of the record⁶²⁸ for the one hundred debtors in the earliest recognizance transactions occurring in the 1640s. These transactions occurred in Accomack, Lower Norfolk, and York Counties. Since several engaged in more than one transaction, the total numbers less than the number of transactions. The chart also indicates the total acreage held by grant by all debtors and an average computed by dividing the total by the number of debtors parties. The parties occasionally renewed patents, in which case the patent appeared twice.

628. Land grants appear in NUGENT, *supra* note 622.

Debtor	Office	Acreage	Grants before 1666	Page
Alexander Bradburne		--	nib	
Israel Hill		--	nib	
Walter Scott	SEE CHART B2		Transported	
William Berriman		1150a	350a Accomack Co. 1638	101
			800a Northampton Co. 1640	152
Francis Millicent		--	Nib	
Francis Martine		600a	50a unsp. 1638	118
			250a Accomack Co. 1638	123
			300a Northampton Co. 1645	170
John Brooke		--	no grants, 4 transportees	120, 129, 172, 248
James Cooke	SEE CHART B2	--	Transported	
John Forbush	SEE CHART B2	100a	no grants, 2 transportees	293, 327
Thomas Nuton (Newton?)		--	Nib	
John Parramore		--	Yeoman & Ancient Planter, 100a Elizabeth City	6
Alexander Montney		100a	1624	
Peter Varlow		--	no grants, 2 transportees	23, 68
John Sea		--	Transported by Thomas Robinson before 1662	
Robert Dye	SEE CHART B2	--	Transported	
Thomas Wyatt		500a	500a Mockjack Bay 1666, heir Richard Wyatt	553
John How	SEE CHART B2	1050a		
James Bruce		--	Transported by Will Drummond before 1661	404
Florington Payne	SEE CHART B2	150a		
John Foster		300a	300a Northampton Co. 1643	152, 534 (dec. Oct. 1660)
Armstrong Foster		--	Transported by Mr. William Stone before 1635	28
Samuel Lucas		--	no grants, 4 transportees	28, 103, 327, 475
Anthony Hoskins	SEE CHART A3	1100a		
Christopher Stephens		--	nib	
Thomas Cooke	SEE CHART A2, Clerk	--		
Mathew Pett		--	land of Northampton Co. 1646	163

John Wilkins	SEE CHART A2, Justice	3100a				
John Holloway	SEE CHART A3	1850a				
George Cottingham		--		Transported by William Roper before 1636		46
William Johnson	SEE CHART A3	--				
Martin Kennett		--		Transported by Geroge Myniffie before 1638		118
Richard Buckland		--		Transported by James Bruise before 1645		164
Hannah Mountney, widow		1650a		with Edwin Connaway, 1650a Lancaster Co. 1657		359
	TOTAL/ AVERAGE ACREAGE FOR ACCOMACK COUNTY'S 33 DEBTORS	11.650a/ 353a				
Francis Land		1290a		270a Linhaven, Lower Norfolk Co. 1649 1020a Lynhaven, Lower Norfolk Co. 1654		188 288, 489 (dec. Mar. 1662)
Nicholas Write		--		nib		
William Nash		--		nib		
Richard Floide (Floyd)		--		no grants, 3 transportees		207, 265, 285
Richard Owine (Owen?)		--		no grants, 2 transportees		128, 512
John Holmes	SEE CHART A2	200a				
Gilbert Guy		--		nib		
Thomas Ward		--		no grants, 10 transportees		28, 78, 151, 187, 327, 458, 475, 605, 510, 514
John Stratte		--		nib		
Gowin Lancaster		100a		100a Jynhaven, Lower Norfolk Co. 1639		107
Thomas Hall		300a		300a Lower Norfolk Co. 1647		174
Christopher Needham	SEE CHART B2	--		Nib		
Ellis Browne		400a		with Robert Lawrence, 400a Lower Norfolk Co. 1637		156
Henry Watters		--		nib		

Jesper Hoskins		--	Nib			27, 50
Cornelius Loyd	Burgess 1653, 1644, 1645, 1648, 1651, 1653 Lower Norfolk Co. ** Justice Lower Norfolk Co.	1300a	800a Elizabeth Riv. 1635			
George Rutland		900a	100a Elizabeth River 1636 400a Elizabeth River 1638 with William Jacob, 600a Lower Norfolk co. 1642			52 100 141
Henry Seawell	Justice Lower Norfolk Co.	--	300a Lower Norfolk Co. 1643 Transported by Richard Young before 1636 (whole family)			149 51
Richard Kinnar		--	Nib			
Thomas Cason	SEE CHART B2	400a				
William Capps		650a	150a Lower Norfolk Co. 1649			186
			100a Linhaven, Lower Norfolk Co. 1652			287
			250a Lower Norfolk Co. 1656			330, 519
			150a Lower Norfolk Co. 1663			539
Mr. Thomas Sayer (Say?)		350a	350a Mobjack Bay 1642			132
Mr. Pober Page	SEE CHART B2	600a				
Thomas Davyes		--	can not identify*			
Henry Westgate		--	Nib			
Savil Gaskine	SEE CHART B2	250a				
Thomas Myles	SEE CHART A3	200a				
Richard Hartgreave		--	Transported by Christopher Butler before 1663			483
James Lopham		--	Transported by Lewis Burwell before 1640			104
Richard Poole		400a	400a Lower Norfolk Co. 1652			265
Thomas Tooker (Tucker?)		--	no grants, 3 transportees			291, 405, 502
William Eady		--	Nib			
John Moy		--	by Richard Price 1655			312
Ensigne Lambert	SEE CHART A2, Justice	850a				
Roger Williams		350a	350a Carolina River 1663			427
	TOTAL/ AVERAGE ACREAGE FOR LOWER NORFOLK COUNTY'S 35 DEBTORS	8,540a/ 244a				

Francis Browne		2270a	500a Northumberland Co. 1649 300a Lancaster Co. 1652 370a Rappahannock Co. 1657 1100a Rappahannock Co. 1658	186 272 362 366
William Todd	SEE CHART B2	500a		
Elizabeth Hopkins		--	can not identify	
Thomas Shepard		66a	66a Northumberland Co. 1653	234
George Wescombe	SEE CHART B2	--	Transported	
Edward Roberts		--	7 transportees	81, 116, 127, 151, 194, 205, 366
Stephen Gill	SEE CHART B2	5975a		
Charles Smith	SEE CHART B2	--	Nib	
Rice Maddox		600a	300a assignee, assignor Lower Machotix River 300a assignee, assignor Northumberland Co.	292 319
Robert Jones		--	Can not identify #	
Dr. Henry Walton		--	Transported by Dennis Connors before 1653	245
Capt. William Brocas	Councilor 1637 York Co. **	4761a	Esq., Councilor 1621a unspecified 1638	83
			Esq., Councilor 50a Warwick River Co. 1638	88
			Esq., Councilor 600a Charles River Co. 1639	112
			Esq., Councilor 800a Rappahannock River 1650	193
			Esq., 190a Lancaster Co. 1653	245
			to wife of Esq., 700a Lancaster Co. 1652	273
			800a Lancaster Co. 1653 formerly granted to wife	281
Thomas Adams		1803a	with Charles Ashton 300a Northumberland Co. 1656	333
			with Richard Rise 700a Chickaone River	500
			103a Northumberland Co. 1663	540
			with Richard Rice 700a Northumberland Co.	558

Obediah Williams		440a	440a York Co. 1654		314, 497 (dec. Nov. 1665)
David Doehart (Donart)		--	Transported by George Thompson before 1653		247
John Hutton		--	Nib		
John Ride		50a	50 a York Co. 1648		180
Thomas Hatfield		--	Transported by John Hansford before 1653		281
Henry Brooke	SEE CHART B2	2178a			
William Blackey		4400a	300a York Co. 1647		169
			100a Queens Cr. 1655		257
			Gent. 1300a New Kent Co. 1655		310
			Mr. 1000a New Kent Co. 1656		342
			Mr. 1400a New Kent Co. 1658		387
			Gent. 1300a New Kent Co. 1662		422
Thomas Brewer		350a	350a Northumberland Co. 1658		361
Thomas Simons		--	2 transportees		441, 472
Robert Todd		500a	500a Gloucester Co. to son and heir William Todd, bought		555
Thomas Sheppard		66a	66a Northumberland Co. 1653		234
Thomas Hayles		--	land of Northumberland Co 1653, 1666		234, 518
Thomas Taylor		350a	Mariner, 350a Warwick River Co. 1643		149
Thomas Kerby		450a	Assigned 450a Charles River Co. 1642		156
Thomas Beale	SEE CHART A3	1700a			
John Holding	SEE CHART B2	1239a			
Edward Woodley		--	Nib		
William Rennalds		650a	650a Northumberland Co. 1651		213
Richard Milborne		--	Transported by Henry Hart before 1635		31
	TOTAL/AVERAGE ACREAGE FOR YORK COUNTY'S 32 DEBTORS	28,348a/ 866a			

* There are several Thomas Davises, in Upper Norfolk Co., see NUGENT, *supra* note 622, at 57, 156, 163, 230 & 451, Isle of Wight Co., see *id.* at 17, 76, 162 & 163, Warwick Co., see *id.* at 158, 490, Northumberland Co., see *id.* at 223, Potomac River, see *id.* at 252, and Accomack Co. see NUGENT, *supra*, at 552.

** From Virginia Registry on internet.

nib Not in land grant book.

Could be one of three: (1) Gentleman of Northumberland Co. with 2450a, see *id.* at 322, 367; (2) Mr. of Lancaster Co. with 960a, see *id.* at 435, 447 & 448; or (3) New Kent Co with 500a. See *id.* at 370.

APPENDIX C

CHATTEL MORTGAGE FLINGS IN TURN OF THE EIGHTEENTH CENTURY SOUTH CAROLINA

The following table displays information concerning the early chattel mortgages appearing in the provincial records of colonial South Carolina during the period before and immediately after the passage of the South Carolina chattel mortgage act in 1642. Only the records of the Grand Council, Chancery, and Secretary of the Province are readily available.⁶²⁹ Transcribed Grand Council records start in 1671 and end in 1692, the transcribed Chancery records begin in 1671 and continue throughout the period, and the abstracted Secretary of the Province records cover 1694 to 1705.

Chart C1

Chattel Mortgage Information

Chart C1 provides for the eleven early colonial South Carolina chattel mortgages the date the parties made the chattel mortgage, the date they recorded it with the Secretary of the Province, the name of the secured party, the name of the debtor, the amount of the debt secured, the due date for payment, the collateral, and the page number of the of the source.

629. See *supra* notes 258-261 and accompanying text.

Date/recorded	Secured	Debtor	Debt	Collateral	Page
/ Jan. 29, 1673	Lt. Col. John Godfrey	John Norton, planter	7000 lbs of muscavado sugar, payable in Barbados in May 1675, if not paid Godfrey to take	Negro, plantation and all appurtenances	GC: 65 #
Sept. 29, 1698/ Oct. 8, 1698	Thomas Cary, Esq., Berkeley Co.	Sarah Barker, Berkeley Co.	51 lb 5 sh., void if pay 205 pieces of eight in Jamaica by Nov. 15 next or in Charlestown before Jan. 1 next	2 Negro men, 1 Negro woman	158 ##
28 Sept. 1698/ Oct. 26, 1698	Robert Stevens, Gent., of Berkeley Co., mortgagee	Sarah Barker, Berkeley Co.	40 lb.	Mortgaged 2 Negroes, if one dies cattle	161 ##
Aug. 23, 1698/ Dec. 3, 1698	James Williams, chiurgeon	John Millwood late of Jamaica, now of this province	25 current money, void if pay 100 pieces of eight within 12 months after date	1 Negro man	163 ##
Nov. 5, 1698/ Dec. 3, 1698	Joseph Blake, Esq.	John Millwood late of Jamaica, now of this province	25 lb., void if pay 80 dollars in pieces of eight within 6 months after date	1 Negro man	163 ##
Jan. 2, 1698/99/ Jan. 2, 1698/99	John Alexander of Charles Town merchant	Ellenor Barlycorn of Berkeley County, widow	30 lb., void if pay 30 lb before Jan. 1 next	1 Negro man and 1 Negro woman	164 ##
Mar. 2, 1698/99/ Mar. 2, 1698/99	Robert Stevens Gent., of Berkeley Co.	Humphrey Torquett, ship carpenter, of Berkeley Co	38 lb 10 sh current money, deed of mortgage	2 Negro men	168 ##
Mar. 19, 1699/00/ April 8, 1700	Joseph Blake, Esq., Governor	Thomas Cary, Esq. of Carolina & Alexander parries of Charles Town	239 lb 19 sh 8 d, mortgage	Lands, plantations, town lots, cattle, 1/3 brigatine, pastures, Negroes, Indians, horses, and all goods and merchandise	182-83 ##

Mar. 11, 1703/ April 7, 1704	Robert Stevens, Gent., of Berkeley Co., mortgagee	Thomas Barker, planter, Berkeley Co., mortgagor	84 lb current money, conditionsd, if pay 42 lb.	2 Negro men	247 ##
July 17, 1704/ July 21, 1704	Thomas Sumers, butcher, of Charles Town	John Milner, mariner, of Charles Town	Unspecified, deed of mortgage	1 negro woman	248 ##
Feb. 23, 1702/ May 23, 1704	Anthony Matthews, mariner	William Welsby, butcher, Berkeley Co.	60 lb current money, for 30 lb current money, Deed of mortgage	2 Negro men	249 ##

1 Salley, *supra* note 258.
 ## MOORE, *supra* note 261.

APPENDIX D**RECOGNIZANCES IN TURN OF THE
EIGHTEENTH CENTURY NORTH CAROLINA**

The following table displays information concerning the early recognizances appearing in the provincial and county records of colonial North Carolina before 1716. Only records from the General Court and the Precinct of Perquimans are available.⁶³⁰ The transcribed records for the General Court effectively begin in 1712 with some records from 1694 and 1703, while those for the Precinct of Perquimans start in 1693 and end in 1706.

Chart D1**Pre-1715 Chattel Mortgage Information**

Chart D1 provides for the two early colonial chattel mortgages the date the parties made the chattel mortgage, the date they recorded it in the courts, the name of the secured party, the name of the debtor, the amount of the debt secured, the due date for payment, and the collateral.

630. See *supra* notes 317-323 and accompanying text.

Date made/date recorded	Secured	Debtor	Debt/ payment date	Collateral	Pate
ordered recorded Oct. 25, 1698	Mr. William Duckenfield	Henry Lisle	29 lb 8 sh 8 d defeasible	cattle	236 Gen. Ct.*
April 2, 1705/ March 1708	Mr. Nicholas Tiner	George Harkill	16 lb 2 sh. 2 ¾ d, defeasible, to secure guarantee	2 feather beds, furniture, 2 chests, 2 pewter dishes, 1 pewter tankard, 2 pewter porringers, 1 iron pot, 1 brass kettle, 3 earthen plates, 1 cow and calf, 1 14-foot boat	397 Gen. Ct. **

* 1 Edwards Parker, *supra* note 317.

** 1 Price, *supra* note 318.

Chart D2

Pre-1715 Recognizance Information

Chart D1 provides for the eighty-five pre-1715 North Carolina recognizances entered in the General Court and Perquimans Precinct Court the date of the parties entered the lawsuit, the name of the secured party, the name of the debtor, the amount of the debt secured, and the page in the reference. The chart also displays the average amount of the secured debt.

Date made	Secured	Debtor	Debit	Page
Feb. 1693/94	Col. William Wilkinson ++	Capt. George Clark	35 lb 19 sh	392 Perq. #
Feb. 1693/94	Col. William Wilkinson ++	John Holland by attorney Maj. Alexander Littleton	4 lb 2 sh 6 d	392 Perq. #
Jan. 1696/97	John Hopkins	John Picaree (Pearce)	3 lb 11 sh. 6 d	478 Perq. #, 38 P ### (1699/00)
April 1697	William Wilkinson ++	Jonathan Taylor	18 lb 13 sh.	485 Perq. #, 41 ###
July 1697	John Lilly	Thomas Houghton	43 sh 8 d	486 Perq. #, 43 P ###
July 1697	Thomas Blunt + ++	James Oates by attorney William Nunsell	32 sh 2 d	486 Perq. #, 43 P ###
Oct. 10, 1698	Daniel Ackehurst	Stephen Manwaring by attorney Collom flyn	8 lb 1 sh. 2 d	20 P ###
April 1698	Maj. Samuel Swann	Stephen Manwaren	33 sh 4 d	47 P ###
April 1698	Col. William Wilkinson++ & Capt. Henderson Walker exec. ***++of Alexander Lillington**	Johnathan Bateman	30 sh pork	47 P ###
Jan. 1699/00	Capt. Henderson Walker, *** ++ exc. of Alexsan Lillington **	James Oates	32 sh 4 d	520 Perq. #, 21 P ###
Jan. 1699/00	Major Samuel Swann * +	Richard Bacheider	140 lb pork	520 Perq. #, 21 P ###
April 1700	William Smith of Rhode Island by John Anderson attorney	James Ffrugeett	4 lb 9 sh in pork	532 Perq. #, 25 P ###
July 1701	Hon. Henderson Walker *** ++	Abraham Hobs	4lb 12 sh in pork	548 Perq. #, 29 P ###, 388 Exec. Coun. @ (petition for relief from payment)
July 8, 1701	Cap.t Robert Quarry	Abraham Hobs	600 lb tob.	30 P ###
July 11, 1704	Mr. Frederick Jones * by Peter Godfrey attorney	John Gray	2 lb. 10 sh 3 d	610 Perq. #, 62 P ###
July 11, 1704	Col. William Wilkinson++ by Thomas Snowden attorney	David Harris	4 lb 17 sh 6d half pork, half corn	62 P ###
Oct. 8, 1706	Thomas Snowden Sr.	Richard Davenport	26 sh. 6 d	656 Perq. #, 83 P ###
April 6, 1697	Panck Gormack	Capt. Richard Smith	6 lb buckskin	9-10 GC @ @

May 27, 1697	Col William Wilkison++	Mary Clarke, exe. Arthur Workman by Richard Plater attorney	51 sh pork	13 GC @@
May 27, 1697	Joseph Comander assignee of Adam Wintroppe	Daniel Russell	6 lb 11 sh by speciality	16 GC @@
May 28, 1697	William Reed assignee of William Barnsfield	Mr. Thomas Durant, exe. George Durant	23 bu corn	19 GC @@
May 31, 1697	Capt. Thomas Godwin exe Col. John Lear	Col. Thomas Pollock by Nathaniel Chevin attorney	24 lb by bill of exchange	23 GC @@
June 1, 1697	William Godfrey & John Godfrey, exe. Robert Smith	Col. Thomas Pollock	41 pairs of shoes by writing	26 GC @@
Oct. 7, 1697	Thomas Swann	Thomas Durant exe. An Durant	2 lb 6 sh 8 d, confessing to remainder on account assigned by Maj. Lillington	87 GC @@, 106 GC @@
Oct. 12, 1697	John Clapper	Capt. Thomas Relfe exe Thomas White	30 sh by account	95 GD @@, 111 GC @@
Oct. 1695	Richard Williamson	Henry Thigpens	49 sh 10 d (no execution as debtor out of precinct Aug. 1696, appeal from Chowan Precinct Nov. 1697)	173 GC @@ (appeal from Chowan Precinct)
Oct. 26, 1698	Henderson Walker****	Nicholas Daw by John Buntin attorney	11 lb 2 sh 5 d pork	235-36 GC @@
Oct. 28, 1698	William Glover	William Mansell	53 sh pork	238 GC @@
March 7, 1698/99	Col. William Wilkison++ & Capt. Henderson Walker****+ exe. Maj. Alexander Lillington**	Capt. Thomas Relfe exe. Thomas White by Richard Plater attorney	7 lb 1 sh 4 d by writing	262-63, 276 GC @@
March 9, 1698/99	Edward mayo	John Barrow	207 lb pork remaining	264 GC @@
March 9, 1698/99	James Cole exe Jacob Peterson	Stephen manwaring in custody of Marshall	3 lb 5 sh Spanish money	265, 277 GC @@
July 25, 1699	Thomas & William Stevenson	James & John Tooke exe Joseph Comander	4 lb 4 sh 11 d pork for carpenters work	316-17 GC @@

July 28, 1699	William Glover	William Steel	2 lb 4 sh 6 d pork	324 GC @@
July 28, 1699	Hugh Campbell	James & John Tooke exe Joseph Comander	3 lb 7 d remaining	325 GC @@
Nov. 2, 1699	Daniel Phillips	William Nicholson	26 sh 3d remaining	359 GC @@
July 30, 1700	John Wheatley	John Bird	5 lb by bill	368 GC @@
July 31, 1700	John Anderson	Richard Davenport	20 bu corn	371 GC @@
March 25, 1701	William Duckenfield by Christopher Butler attorney	Francis Beison by Daniel Philips attorney	2 lb 2 sh 9 d	422 GC @@
July 29, 1701	Frederick Jones & Julius Deeds, merchants of London, by Daniel Sullivan attorney	William Duckenfield	29 lbs 7 sh 8 d	444 GC @@
July 29, 1701	Maj. Samuel Swan assignee of John Anderson	Thomas Houghton	3 lb 6 sh 8 d	445 GC @@
Oct. 29, 1701	Capt. William Randolph of Henrico Co. by Maj. Samuel Swann attorney	Godfrey Spruill by John Bird attorney	32 lb 16 sh 5d	459 GC @@
Oct. 29, 1701	John Keron	Lewis Williams	498 lb tob., 9 lb sterling to be paid in Nancemond, Va.	469 GC @@
Mar. 31, 1713	Col. Thomas Boyd *	Daniel McKee & Batholomew Phelps	10 lb, confessed to 1 bl pitch, 1 bl beef, 1 cow and calf	81 Gen. Ct. ##
Mar. 31, 1713	Capt. John Pettiver Esq. *	Batholomew Phelps	3 bls pitch by speciality	81 Gen. Ct. ##
Mar. 31, 1713	Capt. John Pettiver, Esq. *	John Snell	9 bls pitch by speciality	81 Gen. Ct. ##
Mar. 31, 1713	Nathaniel Perkins (merchant of Boston) by Thomas Snowden attorney	Robert Coomes	3 lb 4 sh 6 d	82 Gen Ct. ##
Mar. 31, 1713	Nathaniel Perkins (merchant of Boston) by Thomas Snowden attorney	Robert Coomes	50 sh	82 Gen Ct. ##
Mar. 31, 1713	Thomas Snowden	Robert Coomes	50 sh pork	82 Gen. Ct. ##
Mar. 31, 1713	Edward Mosely ** ++	Bartho. Phelps	20 sh	83 Gen. Ct. ##
Mar. 31, 1713	Thomas Peterson ++ by Edward Meseley ** ++ and Edward Bonwick attorneys	George Harris	9 lb 13 sh 11 d	87 Gen. Ct. ##

Mar. 31, 1713	Dame Cath. Hyde, admr Edward Hyde, Esq. *** by Edward Moseley ** ++	Christopher Dudley	8 lb for horse	89 Gen. Ct. ##
Mar. 31, 1713	Thomas Peterson Esq. ++ factor to Thomas Bayfield and New Pisilvania Company by Edward Bonwick and Edward Moseley ** ++ attorneys	Emanuel Loew and William Vaughan	90 lb for sloop, 94 lb for anchors, sails, rigging	91 Gen. Ct. ##
Mar. 31, 1713	Nathaniel Perkins, merchant of Boston by Thomas Snowden attorney	Richard Burtenshell	11 lb 5 sh by writing obligatory, confessed to 2 lb 6 sh	91-92 Gen. Ct. ##
Mar. 31, 1713	Nath Chevin Esq * ++	John Blish, merchant	11 lb by writing obligatory of Mar. 26, 1712 by next Mar. 10	97 Gen. Ct. ##
July 28, 1713	Nath. Chevin Esq. * ++	James Fleming	3 lb 5 sh 4 d	99 Gen. Ct. ##
July 28, 1713	Capt John Pettiver Esq *	Cary Godbey	5 lb by writing obligatory	99 Gen. Ct. ##
July 28, 1713	Isaac Wilson * by Thomas Snowden attorney	Jonathan Whitby	5 lb 18 sh ½ d	101 Gen. Ct. ##
July 28, 1713	Ebenezer White	Jonathan Whitby	10 lb 10 sh pitch & tar	102 Gen. Ct. ##, 42-43 Exec. Counc. @ (petition to recover levied horse)
July 28, 1713	Thomas Swann + by Thomas Snowden attorney	James McDaniel	4 lb 6 sh 4 d	103 Gen. Ct. ##
July 28, 1713	Mary Lawson by Thomas Snowden attorney	John Butter	2 bis pitch, 1 bl of tar	103 Gen. Ct. ##
Oct. 27, 1713	Henry Speller merchant by Thomas Snowden attorney	John Relfe	12 lb by bill	107 Gen. Ct. ##
Oct. 27, 1713	Jacob Overmand, weaver Pasotank	George Scarborough	1 lb 17 sh 6 d	109 Gen. Ct. ##
Oct. 27, 1713	Capt. John Robison by Edward Bonwicke attorney	Martin Francke	24 lb 13 sh 4 d	109-10 Gen. Ct. ##
Oct. 27, 1713	John Hollum by Thomas Snowden attorney	Jonathan Bateman	8 lb by warrant	110 Gen. Ct. ##
Oct. 27, 1713	John Porter +++ assignee of Thomas Collings by Edward Moseley ** ++ attorney	Thomas Averitt	20 lb	111 Gen. Ct. ##

Oct. 27, 1713	Mary Lawson exec by Thomas Snowden attorney	William Witte	1 mare by writingobligatory	113 Gen. Ct. ##
		AVERAGE DEBT	10 lb 14 sh 1 d	
		IN TOBACCO	856 lb tob.	

- * Lord Deputy/ Provincial Justice/Councilor
- ** Precinct Justice
- *** Governor/ Deputy Governor
- + From family with large estate
- ++ Vestryman of St. Paul's Parish, Chowan Precinct
- +++ Vestryman in Bath Co
- # 1 Saunders, *supra* note 84.
- ## 2 *Id.*
- ### HAUN, *PERQUIMANS, supra* note 322.
- @ 1 Cain, *supra* note 74.
- @@ 2 Edwards Parker, *supra* note 318.

APPENDIX E

CHATTEL MORTGAGE FILINGS IN MID-SEVENTEENTH CENTURY MARYLAND

The following tables display information concerning the early chattel mortgages and recognizances appearing in the provincial and county records of colonial Maryland before 1665. Only records from the Provincial Court and the Counties of Kent, Charles, and Talbott are readily available.⁶³¹ The transcribed Provincial Court records start in 1637 while the transcribed records for Kent County start in 1648 and end in 1676, those for Charles County start in 1658 and end in 1674, and those for Talbott County start in 1662 and end in 1674.

Chart E1 Pre-1665 Chattel Mortgage Information

Chart C1 provides for the fifty-three early colonial Maryland chattel mortgages the date the parties made the chattel mortgage, the date they recorded it in the courts, the name of the secured party, the name of the debtor, the amount of the debt secured, the due date for payment, and the collateral. The recording date for some may be off since the clerk would record during the next court session those documents that had been submitted for recording since the last meeting at the tail end of the prior meeting's minutes.⁶³² The chart also displays the average amount of the debt secured by chattel mortgages for the four counties.

Generally, only the debtor signed the chattel mortgage, with two witnesses. Many debtors could not write. They represented their signatures by some mark, often the letter commencing their first name. An # denotes these records.

631. See *supra* notes 473-476 and accompanying text.

632. See 54 MARYLAND ARCHIVES, *supra* note 52, at 31 (Kent Co., Md.: clerk actually notes his instruction to so do.)

Date made/date recorded	Secured	Debtor	Debt/payment date	Collateral	Page
July 23, 1642/ Aug. 4, 1642	Mr. [John] Lewger	Thomas Franklin # & Peter Macrill #	1800 lb tob./ Christmas feast next	Crop of tobacco at St. Jerome's	4: 116 (copy of mortgage—assign, convey, and make over, condition defeasance)
March 8, 1641/ Aug. 4, 1642	Mr. [John] Lewger, Sec.	Robert Nicholls #	1000 lb tob./ Christmas next	1 cow, 1 steer bought of Arthur Prince of Virginia	4: 116 (copy of mortgage—made over & aliened, condition defeasance)
Feb. 2, 1642 /43/ unrecorded, release ##	Thomas Gerard, Gent.	Thomas Boys & James Cauther	2000 lb tob. For engagement in Virginia to Maraduke Snow, brother-in-law of Thomas Boys	Unspecified	4: 177-78 (took a mortgage)
Feb. 13, 1642/43/ unrecorded, foreclosure @ ##	John Medley	William Lewis	1800 lb tob./ Due on Feb. 2 last	3 servants	4: 184 (took deed of mortgage)
Dec. 1, 1642/ March 11, 1642/43	John Dandy	Peter Macrill #	300 lb tob./ Nov. 10 next	1 cow, possessory	4: 190 (for security sells and makes over, condition defeasance [use during, own later])
Dec. 29, 1648/ April 25, 1648	Thomas Greene of St. Marys	Hannah Mathews of St. Marys	1000 lb tob., 3 bis corn, condition defeasance	1 servant (debtor)	4: 464 (Indenture with condition defeasance)
March 9, 1649/ April 20, 1649	John Slingsby	William Stiles #	2000 lb tob./ Oct. last next	Crop of corn and tobacco, if not enough 1 servant (debtor)	4: 482-83 (for security bind over)
July 17, 1649/ July 17, 1649 ##	Abraham Johnson mariner by John Hatch attorney	Philip Land, Sheriff of St. Marys	2293 lb tob./ Feb next, settlement of lawsuit of June 2, 1649	Sheriff's fees, cow, land occupied by Wifim Thompson of Newtowne	4: 502 (for security of payment, assign and make over, deliver, forbearance on execution), 542 (cancelled by priority rule)
July 20, 1649/ Nov. 14, 1649	Paul Simpson, mariner of St. Ingeoes	Robert Holt of Maryland	2300 lb tob./ Nov. 10 next	binds only Cattel in Kent, 1 shallop, crop now in ground at Isle of Kent	4: 516 (bill, for payment bind over)

Sept. 10, 1649/ Nov. 14, 1649	John Medley	Walter Guest #	3000 lb tob.	binds only crop of corn and tobacco on Medlyes plantation and if not enough, debtor's bill	4: 516 (be it known—for security bound, delivered, and set over)
March 1, 1649/50/ April 23, 1650	Walter Beane	Walter Pakes	2790 lb tob.	Plantation, housing moveables, cattle	10: 8 (for security bind over, deliver)
May 24, 1650/ June 5, 1650	William Johnson, planter of St. Georges	Walter Guest, planter of Newtowne \$	2000 lb. tob., guarantee by speciality of John Medley of Newtowne	Crop of corn and tobacco to be planted	10: 14 (for security bind over, deliver)
July 10, 1650	Paul Simpson, mariner	William Lewis of Portobacco Maryland	7384 lb tob.	Crop of tobacco	10: 22 (for security made over)
Feb. 11, 1650/51	Mr. Robert Clarke	Philip Land	2280 lb tob., guarantee by bill of Abraham Johnson, skipper	Whole estate	10: 53 (for security, assign)
Feb. 17, 1650/51/ Mar. 7, 1650/51	Ralph Beane	John Shercliff # & Henry Spinke	3300 lb tob./ Nov. 10 next	Plantation, hogs, cow, calf, crop in ground	10: 59 (for security bind over)
June 20, 1650/ June 10, 1650	Walter Beane	Thomas Hamper #	600 lb tob./ Nov. 10 next	Whole crop	10: 77 (for security mortgage)
Jan. 21, 1651/52/ Jan. 21, 1651/52	Paul Simpson	Lt. William Lewis	6339 lb tob./ Nov. 10 next	Whole crop, both corn and tobacco	10: 82 (for security make over)
May 19, 1651	John Hatch	Walter Guest	355 lb tob./ Nov. 10 next	Whole crop	10: 88 (for security assign)
Nov. 4, 1651/ Feb. 12, 1651/52	Paul Simpson	Thomas Copley, Esq. of St. Indego's,	Unspecified	Estate and debts due	10: 137 (for security bind, make over)
March 22, 1651/52 / unrecorded, suit to foreclose #	Robert Kedger, plaintiff	Capt. William Mitchell, def.	Feb. 1 last	3 servants, one possessory, equity defense against levy for non delivery as in use of the commonwealth, foreclosure ordered	10: 145 (nature of a mortgage)

Nov. 24, 1652/ unrecorded, suit to foreclose ##	Capt. Cornwallis, plaintiff	Mrs. Katheren Hebden, widow of Thomas Hebden, def.	2500 lb tob.	Cattle, equity defense against levy of paid, admitted only 402 lb tob. Recessed to obtain proof	10: 198-99 (Deed of mortgage dated May 26, 1643)
Nov. 29, 1652/ unrecorded, to void execution ##	Richard True, plaintiff	Thomas Warr & Nathaniel Hunt	5000 lb tob., for sale of sloop, 1600 lb tob. levied by Proprietor, def.	Crop, no participation in Warr & Hunt's escape, crop granted to True @@@@	10: 200-01 (mortgage)
Nov. 25, 1652/ unrecorded, suit to recover collateral ##	John Dandy, def.	Francis Brooks, plaintiff	3000 lb tob., for payment of debt to Col. Nathaniel Littleton	Cow, heifer, increase, possessory, recessed to obtain proof	10: 209 (mortgage dated August 1649), 256 (plaintiff showed paid)
Aug. 14, 1653	John Medley & John Thumbleby	Henry Bishop #	Unspecified	Crop	10: 292 (for security bind, deliver over)
Jan. 28, 1653	Mr. Nicholas Cawseene of Maryland	Robert Holt, planter of St. George's #	5500 lb tob/ Nov. 10, 1654, 1655, 1656	Plantation, house, orchard, personal estate	10: 31G (for security bind over)
Nov. 17, 1654, unrecorded, in estate settlement Ticknor v. Zachary Wade, adm. March 1, 1659	Thomas Ticknor, grocer of London	Owen James of Maryland	54 lb sterling for diverse goods, wares, and commodities/ March 10 next	Said goods and commodities plus plantations, servants, cattle in Maryland	41: 360-61 (for better security bargain and sold, void if pay)
Unrecorded, in lawsuit of William Boreman v. Francis Brooks	William Boreman	Edward Claxton	Unspecified, lawsuit to recover taking of collateral by Francis Brooks, granted	1 hogshhead tobacco	41: 70 (for security of a debt)
June 7, 1657/ Feb. 14, 1657/58	Mrs. Jane Fenwick	Luke Barber	30 lb sterling/ June 30, 1658	Mare and horse plus increase	41: 28 (for better security, bind over)
April 23, 1662/ Feb. 9, 1663	George Bradshaw	Richard Wraith	25 lb sterling/ Nov. 20 next	1 man servant	49: 136
Feb. 20, 1663/ 64	John Biskoe and Henry Pennington	William Green, # planter of St. Marys	300 lb tob.	Whole estate, moveables & immoveables, cattle, servants, household goods, 20 hogs	49: 162

Feb. 12, 1651/52/ June 7, 1651/52	Mr. (Nicholas) Brown	Zephania Smith	1500 lb tob., for a servant	Plantation	11 (for security bind over)*
Aug. 15, 1652/ Aug. 25, 1652	Thomas Marsh, merchant	Francis Lumbard of Isle of Kent	5736 lb tob.	Whole estate	19 (for security band, make over)*
June 1655/ Oct. 29, 1655	Mr. Henry Morgan	Rachel Carline for husband Henry Carline	Unspecified	4 cattle, stock of hogs	27 (for security bind over)*
Aug. 3, 1655/ Oct. 29, 1655	Henry Morgan, Gent.	John Salter & William Price	926 lb tob./ Nov. 10 next	Whole crop of tobacco at Crayfort Plantation	28 (bind and make over)*
July 16, 1655/ Nov. 17, 1655	Anthony Calloway	Robert Gammer of Isle of Kent	1250 lb tob./ Nov. 10 next	Crop of tobacco and corn	33-34 (bind over)*
May 3, 1656/ July 1, 1656	Henry Morgan	James Homer #	500 lb tob./ Oct 10 next	Cow and calf at Capt. Robert Vaughn's	62-633 (bind over)*
June 7, 1656/ July 1, 1656	Hugh Lee	Robert Baxter #	1200 lb tob.	2 steers	63 (bind over)*
June 30, 1656/ July 5, 1656	Henry Carline (as trustee) for Thomas Hawkins	John Deare	Delivery of 5 cows and calves, debtor possession	8 cows	67 (void, condition defeasance [until debt worked off])*
Jan. 17, 1656/ 57 / Jan. 18, 1656/ 57	Mathew Reed	Robert Martin of Isle of Kent #	4200 lb tob.	This year's crop of tobacco, stock of cattle, plantation & housing	78-79 (until paid bind over)*
Dec. 20, 1656/ Jan. 1, 1656/ 57	Capt. John Russell of Isle of Kent +	John Jenkins # & Henry Goot # (both)	21,000 lb tob. pmsi/ 1500 per year. 1st Dec. 31, 1658 for 15 years.	Plantation, cows, household stuff, hogs & increase	79-80 (for security bind over)*
July 28, 1657/ Sept. 1, 1657	Henry Clay	James Horner of Isle of Kent #	1000 lb tob./ Nov. 10 next	Crop of tobacco and corn	108 (for security bind over)*
Oct. 4, 1658/ Nov. 15, 1658	Mr. Henry Morgan of Isle of Kent	Henry Tailer, planter of Isle of Kent #	2926 lb tob.	Crop of Tots	142-43 (bind, assign, and make over)*
Oct. 19, 1658/ Nov. 15, 1658	Mr. Henry Morgan	Gregory Murell, planter of Isle of Kent #	650 lb tob.	Corp of planted tobacco	142 (bind and make over)*

Aug. 11, 1658/ Dec. 15, 1658	Will Boreman	John Deere, planter of Kent Co. #	606 lb tob., for July 20 judgment	Crop of planted tobacco	150 (bind and make over, condition defeasance [until debt worked off])*
Nov. 20, 1658/ Dec. 15, 1658	John Salter, planter of Isle of Kent	John Raby, planter of Isle of Kent #	2000 lb tob.	Crop of tobacco to be planted, 1 cow & increase	151 (bind over, condition defeasance [until debt worked off])*
Feb. 16, 1658/59 /April 1659	Thomas Wetheril + #	John Dabb #	10,000 lb tob., for purchase money	Land & cattle	162 (bind over for security)*
Oct. 8, 1659/ Dec. 1, 1659	John Dabb	Edward Rogers, planter of Kent Co., #	1014 lb tob./ Nov. 10 next	Crop of toil planted this year on Richard Blunts plantation	175 (for security bind, make over, condition defeasance [until debt worked off])*
Nov. 21, 1660/ June 7, 1662	James Maxfield	Henry Stope #	unspecified / Oct. 20 next	1 cow with calf	234 (bind over)*
? / Aug. 23, 1670	Thomas Bright, planter of Isle of Kent	John Maggison, planter of Isle of Kent	3132 lb. Tob./ 1000 Oct. 10, 1671, 1000 Oct 10, 1672, rest Oct 10, 1673	Plantation, 2 cows, 1 heifer, 1 gun, 1 shag rug +-	295 (bind and set over)*
Oct. 19, 1663/ Oct. 25, 1663	Mrs. Frances Morgan of Isle of Kent	Robert Martin, # planter of Talbott Co.	3 hogshead tob./ Dec. 10 next	Crop hanging in debtor's tobacco house	363 (bind over and deliver)**
Jan. 11, 1663/64 / Mar. 15, 1663/64	William Elliot of Kent Co.	John Dodson, planter of Talbott Co.	1848 lb tob./ Oct. 10 next	Debtor's crop +++	367 (bind over)**

Sept. 20, 1660/ Oct. 23, 1660	James Longworth	John Wheeler of Charles Co.	2500 lb tob & 280 cask	Crop of tobacco now growing, cattle +++++	95 (bind & make over as security)***
Jan. 15, 1662/63/ Mar. 7, 1662/63	James Bowlin	Arthur Turner	617 lb tob./ April 15	1 cow	347 (for nonpayment, sell)***
April 16, 1664/ July 12, 1664	William Caske	John Lumbruso	41 lb tob. / Nov. 20 next	1 servant, 2 cows	498 (for performance set and make over)***
Oct. 13, 1663/ unrecorded ##	John Neuill	Henry Hudson, Merchant now resident in Maryland	Unspecified / Feb. next	Chests in house of John Neuill.	508 (for security, condition defeasance)***
		AVERAGE DEBT	2830 lb. tob.		

Signed by mark
 ## Shows no requirement to record.
 @ Secured made demand as appears by deed of mortgage, attachment to High Constable of St. Clements returnable next April 1 and commanded cite defendant at the time of attachment in the presence of 2 neighbors, to be at Cort on that day, upon "pill" of judgment.
 @@ This lawsuit, by attorney William Price, caused Mr. Francis Pope to produce an attachment of certain goods of Mr. Henry Hudson, absent from the province.
 @@@ Shows unrecorded chattel mortgage defeats subsequent judgment lien.
 * Kent Co., see 54 MARYLAND ARCHIVES, *supra* note 52. Kent County records have a five-year gap from July 1662 to April 1667. See *id.* at 234.
 ** Talbott Co., 54 MARYLAND ARCHIVES, *supra* note 52.
 *** Charles Co., 53 *id.*
 + Both parties signed.
 ++ Upon nonpayment, enter without trouble at law.
 +++ If unpaid, without course in law; if paid return.
 ++++ Redeliver overplus remaining.

Chart E2**Pre-1650 Recognizance Information**

Chart C2 provides for the twenty-eight pre-1650 Maryland recognizances entered in the Provincial Court, before the establishment of the county courts the date the parties entered the lawsuit, the name of the secured party, the name of the debtor, the amount of the debt secured, and the page in the reference. The chart also displays the average amount of the debt secured by recognizances for the four counties.

Date made	Secured	Debtor	Debt	Page
Jan. 8, 1637/38 #	John Lewger, Secretary	Robert Nicholls, ## planter of St. Mary's Hundred	426 lb tob.	4 (this day came--acknowledged before Lt. Gen.)
Jan. 25, 1637/38 #	Leonard Calvert, Lt. Gen.	Henry James ## and William Edwin of St. Mary's Hundred	326 lb tob., Nov. 10 next	7 (this day came--acknowledged before me)
Jan. 25, 1637/38 #	Capt. Robert Wintour of St. George's Hundred	William Breton ## of St. George's Hundred	336 lb tob., next ensuing crop	8-9 (By these presents--sealed and delivered in presence of Leonard Calvert, this recognizance discharged)
Feb. 1, 1638/37 #	Roger Moy of St. George's Hundred	Thomas Maurice and John Hilliard	650 lb tob., Nov. 10 next, assigned, discharged	10 (this day came--acknowledged before John Lewger)
Feb. 1, 1637/38 #	Capt. Robert Wintour, Esq., Councilor	Thomas Greene, Gent.	500 lb tob., 4 bis corn, Nov. 10 next, withdrawn	11 (this day came--acknowledged before John Lewger)
Feb. 1, 1637/38 #	John Lewger, Secretary	Thomas Greene, Gent.	500 lb tob., Nov. 10 next, satisfied	11 (this day came--acknowledged before Leonard Calvert)
Feb. 1, 1637/38 #	Thomas Cornwaleys, Esq.	Anum Benum, ## Joseph Edlo, ## Thomas Carrington	780 lb. tob., Nov. 10 next	11 (this day came--acknowledged before me)
Feb. 6, 1637/38	Leonard Calvert, Esq.	Robert Philipot Gent, Councilor of Isle of Kent and John Langford	1252 lb tob., last this month, revoked	12 (this day came--acknowledged)
Feb. 8, 1637/38 #	Leonard Calvert, Esq. Of St. Mary's	Edmond Parry, planter of Isle of Kent	391 lb tob., last this month	12 (this day came--acknowledged)
Feb. 8, 1637/38	Leonard Calvert, Esq.	Robert Philipot, Gent, Councilor of Isle of Kent and John Langford, Constable of Isle of Kent	2052 lb tob., last day this month	13 (this day came--acknowledged)
Feb. 13, 1637/38 # (Passmore acknowledged on April 7, 1638)	Thomas Cornwaleys Esq. Councilor	James Cauther ## & Thomas Pasmore ##	400 lb tob., Nov. 10 next	13-14 (this day came--acknowledged before John Lewger)
Feb. 16, 1637/38 #	Justinian Snow	Robert Nicholls & John Medley of St. Mary's Hundred	210 lb tob., Oct. 6 next	15-16 (this day came--acknowledged before Leonard Calvert)

Feb. 22, 1637/38 #, ##	Leonard Calvert Esq.	Thomas Franklin ## and Robert Nicholls, ## planters	72 lb tob., first season of striking next	17 (this day came—acknowledged before John Lewger)
Feb. 25, 1637/38 #	Leonard Calvert Esq.	Thomas Franklin ## planter	500 lb tob., 4 bis com., first season next year, satisfied	17 (this day came—acknowledged before John Lewger)
Feb. 28, 1637/38 #	Leonard Calvert	Capt. Henry Fleet	500 lb tob., last of Nov. next, for purchase of servant with Fleet	21 (acknowledged before John Lewger, standard form recognition)
March 30, 1638 #	Leonard Calvert Esq.	Randoll Revell ## & James Cloughton	2000 lb tob., Nov. 10 next, satisfied	26 (memo that this day came—acknowledged before John Lewger)
April 9, 1638 #	Capt. George Evelin	John Dandie ##	800 lb tob., Nov. next for one year's service by Dandie, assigned to John Lewger	28 (this day—acknowledged before John Lewger)
April 10, 1638 #	James and Thomas Baldridge	Andrew Chappell	400 lb tob., Nov. 10 next	28 (memo this day—acknowledged before John Lewger)
April 29, 1638 #	John Harris the elder	John Ormsby ##	80 lb tob., Nov. 10 next	31 (memo this day—acknowledged before John Lewger)
May 3, 1638 #	Leonard Calvert, Esq.	John Medley ## & Robert Nichols ##	600 lb tob., first season striking next	32 (this day came—acknowledged before John Lewger)
May 30, 1638 #	Lt. Robert Evelin	Capt. George Evelin of St. Mary's	1400 lb tob., 52 lb beaver, 3 servants, possessory, until debt paid	34 (memo this day-- acknowledged before John Lewger)
May 30, 1638 #	Lt. Robert Evelin	Capt. George Evelin of St. Mary's	100 lb beaver, Plantation	34-35 (memo this day came—acknowledged before John Lewger)
August 4, 1642	Leonard Calvert, Esq.	Francis Gray	10,000 lb tob., execution judgement Feb. 1 next	118 (this day came—acknowledged before John Lewger)

August 14, 1642	Mr. [John] Lewger	Anthony Rawlins #	1250 lb tob., crop of tobacco in ground	116 (copy of recognizance—this day make over)
July 18, 1644 #	Leonard Calvert	Capt. Henry Fleete, merchant of Virginia	3463 lb tob., on demand after Dec. 10 next	283-84 (came before me—acknowledged before John Lewger)
March 1647/48 #	Thomas Stones, merchant of London (related to Capt. William Stone of Accomack)	Thomas Weston, haberdasher of London	300 lb sterling, 150 next Jan. 21, 150 following July 21	376-78 (recognizance in Latin)
July 10, 1648 #	Capt. [Thomas] Cornwathys & Mr. [Cuthbert] Fenwick Gent.	William Lewis	75 ¼ lb beaver & 1000 lb tob.	399 (acknowledged a judgment desired on record)
Oct. 15, 1649	Mr. Cuthbert Fenwick	Thomas Ashbrook	500 lb tob., limited execution to crop of tobacco	512 (acknowledge a judgment)
	AVERAGE DEBT	1946 lb. tob.		

Signed document.

Signed by mark.

Short form without levy part—just etc. after if not so do.