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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.<sup>1</sup> 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.<sup>2</sup> By 1636 Neale had patented 1500 acres on the seaboard side in Accomack County.<sup>3</sup> 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.<sup>4</sup> A few months later, Neale obtained 200 acres at King's Creek and in 1644 would obtain "Magotha Bay", both well located for trading.<sup>5</sup> Neale maintained a store to sell goods to

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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.<sup>6</sup> The Accomack County Court records contain numerous references to debts owed to him.<sup>7</sup> 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.<sup>8</sup> In 1636 Neale became a member of the local parish vestry and served a one-year term as the appointed Sheriff of Accomack County.<sup>9</sup> He would become an appointed commissioner of the Accomack County Court in 1639 and later an elected burgess for Accomack County.<sup>10</sup> 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*,<sup>11</sup> 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.<sup>12</sup> Littleton had come to the Eastern Shore of Virginia in 1635.<sup>13</sup> He had become an appointed commissioner of the Accomack County Court in 1637 and the appointed commander of the county in 1638.<sup>14</sup> He would become an appointed councilor advising the Governor in Jamestown in 1641.<sup>15</sup> Littleton would marry the daughter of socially prominent family, the Hammers.<sup>16</sup> He would patent 3500 acres in 1640 to add the 900 acres inherited by his wife.<sup>17</sup> When Littleton died in 1654, he was the most prominent person on the Eastern Shore of Virginia.<sup>18</sup>

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.<sup>19</sup> But he had the good fortune to marry widow Sanders, whose first husband had reached gentleman status.<sup>20</sup> By 1634 he was an appointed commissioner and shortly thereafter a parish vestryman.<sup>21</sup> With her plantation, which Sanders had leased in 1628 for ten years, came social position.<sup>22</sup> Burdett patented the plantation in 1638 and would acquire 1250 acres in 1639 and 300 acres in 1641.<sup>23</sup> He would become an elected Burgess for Accomack County by 1639, and a large landholder on the Eastern Shore before his death in 1643.<sup>24</sup>

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.<sup>25</sup> Taylor would also become a councilor and commissioner in June 1642, a Burgess in 1642-43, and sheriff of Accomack County in 1643.<sup>26</sup> 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.<sup>27</sup> 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,<sup>28</sup> Littleton and Burdett sued the sheriff in Accomack County Court to void the execution.<sup>29</sup> They figured to win. Under the common law they owned the pinnace, not Neale.<sup>30</sup> The mortgage was a sale to the secured

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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.<sup>31</sup>

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.<sup>32</sup> Not all legal jurisdictions follow this example. Roman law recognized the transaction without any filing.<sup>33</sup> The Napoleonic Code banned the transaction.<sup>34</sup>

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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.<sup>35</sup> In return for the loan, the lender receives a priority interest in the borrower's personalty.<sup>36</sup> 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.<sup>37</sup>

The traditional explanation of the Anglo-American notice filing requirement for the nonpossessory secured transaction deals with its potential to create a secret lien.<sup>38</sup> 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.<sup>39</sup> 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,<sup>40</sup> and non-bankruptcy law.<sup>41</sup> 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

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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,<sup>42</sup> 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.<sup>43</sup> 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.<sup>44</sup>

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.<sup>45</sup> Legislatures in the southern English-American colonies passed these statutes for Virginia in 1643,<sup>46</sup> South Carolina in 1698,<sup>47</sup> North Carolina in 1715,<sup>48</sup> Maryland in 1729,<sup>49</sup> Georgia in 1755,<sup>50</sup> and British West Florida in

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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.<sup>51</sup> Two other English-American colonial legislatures passed ineffective chattel mortgage acts, namely Maryland in 1642<sup>52</sup> and New York in 1774.<sup>53</sup> In contrast, the Lower Counties on the Delaware banned the transaction in 1740.<sup>54</sup>

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,<sup>55</sup> 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.

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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 pinnacle. 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.<sup>56</sup> The debt lawsuits, however, might tangentially touch a chattel mortgage.

### A. Debt Lawsuits

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

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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.<sup>58</sup> 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 judgment<sup>59</sup> referred to in the subsequent English land recording statutes as “judgments, statutes, and recognizances.”<sup>60</sup> 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.<sup>61</sup> 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.<sup>62</sup> These statutes established three types of collusive judgments, the recognizance, the statute merchant, and the statute staple.<sup>63</sup> The English-American colonies used the recognizance.<sup>64</sup> Creditors could enforce the statute merchant through debtor’s prison,<sup>65</sup> a feature that

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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.<sup>66</sup> 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.<sup>67</sup>

The recognizance statute provided the documentary form for the recognizance.<sup>68</sup> 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<sup>int</sup> univ<sup>si</sup> p<sup>entes</sup> me A.B. & D.C. armidū teneri & firmit<sup>r</sup> obligari Johi at [Syle=] in centum libris sterlynd solvend eidem Johi aut suo c<sup>to</sup> attorii hoc scriptum ostendii hered vel executoribz suis in tali festo &c. p<sup>x</sup> futur<sup>r</sup> post dai p<sup>senciū</sup>; et si defic<sup>o</sup> vel defic<sup>im</sup> in soluc<sup>ve</sup> debiti p<sup>dci</sup>, volo & concedo vel sic volum<sup>r</sup> & concedim<sup>r</sup> quod tunc currat sup me hered & executores nicos, vel sup non & quemlt nōm hered & executores nōos, pena in statuto stapule de debitis p m<sup>candisis</sup> 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[na]t[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.<sup>69</sup> Englishmen used the collusive judgment for all sorts of debts.<sup>70</sup> 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.<sup>71</sup>

Collusive judgments on personalty originally dated from the date of the writ of execution.<sup>72</sup> In contrast, the collusive judgment dated from the date of the judgment for land.<sup>73</sup> 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 execution<sup>74</sup> could lead to the loss of that piece of collateral for the delaying secured party.<sup>75</sup> 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.<sup>76</sup> 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.<sup>77</sup>

A recognizance contains language of an acknowledgment or confession of the debt in open court.<sup>78</sup> Under the English common law, a creditor could have the sheriff levy a judgment by selling assets only against personalty.<sup>79</sup> 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.<sup>80</sup> 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.<sup>81</sup>

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.<sup>82</sup> 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.<sup>83</sup> So the southern English-American colonies adopted their own collusive judgment statutes recognizable from their procedures for confessing the debt in court.<sup>84</sup>

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,<sup>85</sup> Maryland and Delaware did permit a sheriff's sale of the land.<sup>86</sup>

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.<sup>87</sup> 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”.<sup>88</sup> The specialty was a sealed document; the simple contract, an unsealed document.<sup>89</sup> For lawsuits involving the unsecured debt instruments the court clerks generally wrote “indebted to A by specialty”<sup>90</sup> or “indebted to B by [type of simple contract]”.<sup>91</sup>

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.<sup>92</sup>

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.<sup>93</sup> 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.<sup>94</sup> 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.<sup>95</sup> 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.<sup>96</sup>

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.<sup>97</sup> By the

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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., Claytor 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.<sup>98</sup> The English also had developed the use of personalty as collateral by the late sixteenth century.<sup>99</sup> Naturally, the technique of leaving the debtor in possession of the personalty would emerge early in the seventeenth century.<sup>100</sup>

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.<sup>101</sup> Others resemble the statutory form for an English recognizance, containing language binding the debtor to pay.<sup>102</sup> Unlike recognizances, however, most of these documents enumerate the collateral, although a few list the "whole estate".<sup>103</sup> 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.<sup>104</sup> 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.<sup>105</sup> These published provincial documents are not complete since some documents were sent overseas,<sup>106</sup> destroyed by fire,<sup>107</sup> or otherwise lost.<sup>108</sup> County records are even less accessible, generally only having a few transcribed or abstracted records in print.<sup>109</sup> Handwritten documents may yet be available.<sup>110</sup> These records suffer from tears, smudges, and illegibility such that many transcriptions contain lacunae.<sup>111</sup> Moreover, some clerks did not record all the events.<sup>112</sup>

#### A. Virginia

Virginia only had one central court and ten counties<sup>113</sup> 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.<sup>114</sup> 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.<sup>114</sup> 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.<sup>115</sup> Two other counties have court order books on microfilm.<sup>116</sup> The other four counties' surviving records start much later.<sup>117</sup> Virginia also has abstracted records for the three additional counties formed before 1651, namely Lancaster, Northumberland, and Westmoreland Counties in the 1650s.<sup>118</sup>

### 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.<sup>119</sup> 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.<sup>120</sup> 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,<sup>121</sup> 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.<sup>122</sup> 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,<sup>123</sup> 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.<sup>124</sup> Planters used tobacco as money.<sup>125</sup> 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.<sup>126</sup> Some contain information on the transaction. Some constitute renewals,<sup>127</sup> some create second liens,<sup>128</sup> some deal with purchase money security interests,<sup>129</sup> and some secure marriage settlements in deed of trust form,<sup>130</sup> bills of exchange,<sup>131</sup> construction contracts,<sup>132</sup> future delivery,<sup>133</sup> guarantees,<sup>134</sup> and education obligations.<sup>135</sup>

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.<sup>136</sup> 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.<sup>137</sup> Chart B1 lists information of the one

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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.<sup>138</sup> 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.<sup>139</sup>

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

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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 paid 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.<sup>140</sup> 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.<sup>141</sup> Use of the mortgage would allow a steeply discounted price on foreclosure.<sup>142</sup> 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.<sup>143</sup> 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.<sup>144</sup> Factors, who received their authority from powers of attorney filed with the local authorities, were paid a commission of ten percent.<sup>145</sup> 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.<sup>146</sup> 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.<sup>147</sup> 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.<sup>148</sup> 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.<sup>149</sup> 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.<sup>150</sup> 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.<sup>151</sup> Planters, especially for mixed cargos with indentured servants, would find ways to board the ships to barter tobacco for goods without obstruction.<sup>152</sup> 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.<sup>153</sup> If the tobacco crop was insufficient to purchase all the indentured servants and goods available, the overseas merchants extended credit.<sup>154</sup> 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.<sup>155</sup> The agents frequently represented more than one merchant and had authority in several counties.<sup>156</sup>

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

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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.<sup>157</sup> 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.<sup>158</sup> 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.<sup>159</sup> In 1672 the Assembly specified that statute of limitations for accounts was three-years for residents and five-years for non-residents.<sup>160</sup>

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.<sup>161</sup> This of course reduced their costs in comparison with English merchants, as did their lower freighting costs from smaller crews.<sup>162</sup> The Dutch generally provided cloth, liquor, both exempted from Dutch export customs, and African indentured servants.<sup>163</sup> 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.<sup>164</sup> 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.<sup>165</sup> English merchants residing in the Netherlands conducted the Dutch-Virginia trade, so the cargos on the Dutch ships were English cargos.<sup>166</sup> Records indicate that when the Dutch merchants sold goods on credit, they did so unsecured.<sup>167</sup> But some

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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.<sup>168</sup> 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.<sup>169</sup>

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.<sup>170</sup> These planters purchased their neighbors' tobacco crops in great quantity and shipped it overseas, commencing as a consortium in 1628 and continued individually thereafter.<sup>171</sup> The English merchants became commission merchants and bankers for these planters, who began to accumulate large deposits in England.<sup>172</sup> 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.<sup>173</sup> These planter-merchants sat as burgesses and councilors and filled the high offices.<sup>174</sup> The planter-merchants acquired lots of land through the headright system (receiving fifty acres for each indentured servant brought to America).<sup>175</sup> They also maintained stores to supply the needs of the other planters, mostly cloth garments.<sup>176</sup>

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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 Yeardeley 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.<sup>177</sup> Planter-merchants appreciated receiving the bills since they generally had dealings with the drawee-merchants in these other places.<sup>178</sup> 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.<sup>179</sup> 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.<sup>180</sup> 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.<sup>181</sup> 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.<sup>182</sup>

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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.<sup>183</sup> 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.<sup>184</sup> 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.<sup>185</sup> 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.<sup>186</sup> These private landowners, allowed to grow what they wanted, sought an immediate profit.<sup>187</sup> The records of one hundred survive from this era.<sup>188</sup> 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.<sup>189</sup> The second year's return cargo in 1621 consisted of 4932 pounds of tobacco providing a 35 % return on the investment.<sup>190</sup> The owners of this hundred intended to establish a tobacco plantation from the beginning.<sup>191</sup>

Tobacco planting commenced with John Rolfe's experimental crop of 1612, exported in 1613.<sup>192</sup> At the time, the Spanish Indies supplied most of the world's tobacco.<sup>193</sup> 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.<sup>194</sup> When Rolfe sent some tobacco leaf to England in 1614, it quickly became the colony's chief crop,

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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.<sup>195</sup> Although the London Company opposed tobacco as the cash crop, since James I despised smoking and the shareholders desired exotic crops with less competition,<sup>196</sup> during 1614 and 1615, Virginia's economy began to center on tobacco.<sup>197</sup> English factors encouraged tobacco under their mercantilist theory to reduce English bullion going to Spain for Spanish tobacco.<sup>198</sup> 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.<sup>199</sup> 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.<sup>200</sup>

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.<sup>201</sup> All a person needed to grow tobacco was to clear the land of trees and plant randomly between the stumps.<sup>202</sup> By 1616 several hundreds devoted most of their land to tobacco growing.<sup>203</sup> The rapid return on investment, taking only one year, spurred the growth.<sup>204</sup> Tobacco exports rose dramatically from 609 pounds in 1615 to 134,607 pounds in 1623.<sup>205</sup> 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.<sup>206</sup> 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.<sup>207</sup> New settlements formed to engage in tobacco production.<sup>208</sup> Land grants began a marked expansion after 1635 going from the 1000s of acres to 70,000s of acres.<sup>209</sup> These grants, granted under the headright system, signify a massive immigration of

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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.<sup>210</sup>

Of all the staple crops during the colonial era, tobacco suffered the most rapid price swings.<sup>211</sup> 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.<sup>212</sup> 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.<sup>213</sup> But a series of unproductive years could render it impossible for these planters to extricate themselves from debt.<sup>214</sup> Consequently, merchants selling goods to these Virginia planters would reduce the risk of the situation by selling at a lucrative rate.<sup>215</sup> To further insulate themselves from fluctuating tobacco prices, these merchants required payment in sterling.<sup>216</sup> 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.<sup>217</sup> 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.<sup>218</sup> 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.<sup>219</sup>

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

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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,<sup>220</sup> 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.<sup>221</sup> 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.<sup>222</sup> 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.<sup>223</sup> During this early period, Accomack County records reflect similar goings-on as in the rest of the Virginian province.<sup>224</sup> Lower Norfolk County also has a case of wrongful levy.<sup>225</sup> Liability for a wrongful levy

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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.<sup>226</sup> Planter-merchants also filled the fee-generating office of sheriff on a rotating basis.<sup>227</sup> 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,<sup>228</sup> provided for voiding secret mortgages.<sup>229</sup> 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.<sup>230</sup> This, coupled with the mandatory filing requirement, would require a grace period in which to file.<sup>231</sup> 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.<sup>232</sup> 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.<sup>233</sup> The success of tobacco as the staple crop after 1614 and the introduction of land ownership in 1616 led to that profit.<sup>234</sup> So an enterprising Englishman with a little cash to invest could build a substantial estate by exploiting the labor of indentured servants brought over.<sup>235</sup> Those Virginians that came after 1625 tended to replicate English society.<sup>236</sup> 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.<sup>237</sup> Most of this aristocracy came from the merchant class.<sup>238</sup> 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.<sup>239</sup> 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.<sup>240</sup> Last were the underclass of former indentured servants and failed immigrants.<sup>241</sup> But those who labored with their hands had the possibility of social mobility, rising through commerce, the church, or the military.<sup>242</sup> Most came from London and the Home Counties.<sup>243</sup>

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.<sup>244</sup> Company control of the colony, however, lapsed due to the fiscal stress caused by a war

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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.<sup>245</sup> The Crown intervened with the result of establishing a Royal Colony in 1627.<sup>246</sup> The status of the assembly was assured when Royal Governors continued to call it into session and Charles I approved such practices in 1639.<sup>247</sup> The councilors, the upper house, sat as the Quarter Court,<sup>248</sup> 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.<sup>249</sup> The Assembly, unlike Parliament, had authority to create counties, the seats of local government, and exercised that power beginning in 1634.<sup>250</sup> 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.<sup>251</sup>

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.<sup>252</sup> 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.<sup>253</sup> 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.<sup>254</sup> 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.<sup>255</sup> Berkeley's penchant to sharing authority allowed the local government to grow independent of his control.<sup>256</sup> In return, Berkeley expected these great men to support in external affairs and diversification of the economy.<sup>257</sup> Consequently, the assembly could easily pass laws that would benefit the

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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.<sup>258</sup> Records between 1671 and 1682 and in 1692 for the Grand Council and from 1700 for the Chancery exist in transcript form.<sup>259</sup> South Carolina did not institute county government until late in the eighteenth century,<sup>260</sup> 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.<sup>261</sup>

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.<sup>262</sup> The records also showed South Carolinians used specialties and simple contracts,<sup>263</sup> and even recorded some of them with the Secretary of the Province prior to the passage of South Carolina's chattel mortgage act.<sup>264</sup> South Carolinians also used mixed mortgages, with realty as well as personalty serving as collateral, during the South Carolinian pre-chattel mortgage act era.<sup>265</sup>

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.<sup>266</sup> 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.<sup>267</sup> 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.<sup>268</sup> The

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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.<sup>269</sup> Emigration from Barbados began when the consolidation of Barbadian sugar plantations forced them out.<sup>270</sup> The Carolina proprietors negotiated for their first settlers with three groups of Barbadians, all of whom settled near Charlestown in 1670.<sup>271</sup> These Barbadians were wealthy and aggressive, exercising disproportionate power, and sought self-profit.<sup>272</sup>

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.<sup>273</sup> The Barbadians favored shipping lumber and foodstuffs, such as corn, peas, and salt meat, both beef and pork, to their familiar West Indies.<sup>274</sup> 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.<sup>275</sup> 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.<sup>276</sup> 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.<sup>277</sup> A settler could earn 500 pounds sterling with twelve laborers and 2000 acres.<sup>278</sup> Profits from naval stores, however, depended on subsidies, which did not come until 1705.<sup>279</sup>

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.<sup>280</sup> Rice, another labor-intensive commodity, took skill to cultivate and prepare for market.<sup>281</sup> Rice cultivation required land that

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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.<sup>282</sup> This effort allowed only three to four acres per hand.<sup>283</sup> Rice preparation required pounding in a large wooden mortar to remove the inner husk.<sup>284</sup> Once the settlers mastered the technique, they began to bring more and more land under cultivation and imported thousands of slaves.<sup>285</sup> This staple crop required such a large slave labor force that by 1703 there were three slaves for every four free persons.<sup>286</sup> Purchase of this many slaves of course required liberal extension of credit.<sup>287</sup>

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.<sup>288</sup> Large planters provided this transportation for their neighbors, some of whom owned ships and stores.<sup>289</sup> 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.<sup>290</sup> These planter-merchants came to reside in Charlestown, which had all the courts, maintaining nearby countryseats on their plantations.<sup>291</sup>

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.<sup>292</sup> 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

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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.<sup>293</sup> 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.<sup>294</sup> In practice, the Grand Council proposed legislation and the Assembly accepted or rejected it.<sup>295</sup>

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.<sup>296</sup> 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.<sup>297</sup>

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.<sup>298</sup> 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.<sup>299</sup>

The resulting turmoil led to seven administrations in the 1680s and five more in the first five years of the 1690s.<sup>300</sup> 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.<sup>301</sup> The Goose Creek men passed legislation for their own economic benefit and

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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.<sup>302</sup> 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.<sup>303</sup> 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.<sup>304</sup> 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.<sup>305</sup> 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.<sup>306</sup> The Goose Creek men had broken the proprietors' power.<sup>307</sup> The Assembly now sat as a separate body, initiated legislation, and controlled its own membership.<sup>308</sup> Shortly one of the Goose Creek leaders, Robert Stevens,<sup>309</sup> would propose,<sup>310</sup> and the Assembly pass, South Carolina's chattel mortgage act of 1698.<sup>311</sup>

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.<sup>312</sup> During the seventeenth century, the Court of Chancery developed the equity of redemption, allowing the mortgagor to recover the property even after default.<sup>313</sup> By the late seventeenth

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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.<sup>314</sup> This meant that the mortgagor could create more than one mortgage and caused further legal problems such as the priority rule between them.<sup>315</sup> South Carolina opted for a priority rule of the first recorded.<sup>316</sup>

### C. North Carolina

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

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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.<sup>320</sup> North Carolina, however, divided these two counties into several precincts, each with their own court where parties ultimately had to file their chattel mortgages.<sup>321</sup> Of the seven precincts formed before 1715, four have had their minutes transcribed, and one abstracted,<sup>322</sup> but only Perquimans Court has records from the seventeenth century, while Currituck, and Craven Precinct Courts have records before 1730.<sup>323</sup>

### 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.<sup>324</sup>

The North Carolina records contain few chattel mortgages before the required filing act.<sup>325</sup> 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 defeisible 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.<sup>326</sup> The North Carolina records do contain orders to record certain documents, suggesting a separate recording book that subsequent clerks may have lost.<sup>327</sup> The description of these documents is not sufficient enough to determine whether the document included a security interest in personalty.<sup>328</sup> These records, however, contain numerous records of recognizances.<sup>329</sup>

North Carolinians had a custom of paying in commodities.<sup>330</sup> 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.<sup>331</sup>

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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 personalty. 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.<sup>332</sup> The tobacco depressions of the 1680s and 1690s convinced some North Carolinians to turn to pork production to supplement income.<sup>333</sup> The Crown viewed Virginia and Maryland as the tobacco colonies and North Carolina merely as a source of West Indian food supplies.<sup>334</sup> When North Carolinians used commodities as money in the 1710s, they spoke of pitch and tar, not tobacco as in Virginia in the 1640s.<sup>335</sup> 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.<sup>336</sup> 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.<sup>337</sup>

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.<sup>338</sup> 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.<sup>339</sup> 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,<sup>340</sup> 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.<sup>341</sup> As an extension of Tidewater Virginia, they came with the social and economic pattern of Virginia.<sup>342</sup> They created a mixture of plantations and small farms, concentrating on tobacco production.<sup>343</sup> Few had capital, most immigrating as indentured servants.<sup>344</sup> 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

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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.<sup>345</sup> To encourage settlement, like Virginia the proprietors adopted a head right system for Albemarle, granting sixty acres to every person bought over.<sup>346</sup>

The absence of ports, however, stifled development of their staple product in North Carolina.<sup>347</sup> Goods could come, and exports leave, by way of Virginia subject to crossing fees and embargos.<sup>348</sup> During the multi-decade tobacco depression, Virginia tried to curtail tobacco production through agreements with Maryland and Albemarle beginning in 1664.<sup>349</sup> These efforts had only sporadic success.<sup>350</sup> 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.<sup>351</sup> 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.<sup>352</sup>

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.<sup>353</sup> 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.<sup>354</sup> To expand a tobacco plantation to elite status required servants.<sup>355</sup> 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.<sup>356</sup> The population of slaves more than doubled between 1700 and 1710 to one-tenth of the population.<sup>357</sup>

Secondly, in 1707 the England and Scotland united, so that Scots merchants could trade in the English colonies.<sup>358</sup> 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,<sup>359</sup> evidenced in the pre-1716 recognizances. With the coming of legal trade, the second tobacco boom was well under way by the mid-1710s.<sup>360</sup> With the boom in tobacco, North Carolina saw the rise of its planter-merchants.<sup>361</sup>

In 1700 few North Carolinians had wealth or prospects for it.<sup>362</sup> Most lived on plantations of only 50 to 100 acres.<sup>363</sup> Few had the means to pay wages or maintain slaves or indentured servants.<sup>364</sup> They exported in small lots tobacco, corn, pork, hides, and skins all on one ship.<sup>365</sup> Pork and hides developed as exports to replace tobacco during the severe tobacco depressions of the 1680s and 1690s.<sup>366</sup> 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.<sup>367</sup> 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.<sup>368</sup> 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.<sup>369</sup>

### 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.<sup>370</sup> 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.<sup>371</sup> 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.<sup>372</sup> 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.<sup>373</sup> Clarendon County ceased in 1667.<sup>374</sup> The Albemarle Assembly only had authority to consent to laws proposed by the Governor.<sup>375</sup> Only a very few acts of the Albemarle Assembly and its successor the North Carolina Assembly before 1715 have survived.<sup>376</sup> Consequently, historians can only guess at the laws of North Carolina before the passage of its chattel mortgage act in 1715 from other records.<sup>377</sup>

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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.<sup>378</sup> 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.<sup>379</sup> 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.<sup>380</sup> Second, a number of the original settlers had become Quakers after George Fox's missionary trip through Albemarle in 1672.<sup>381</sup> These not-so-religious Quakers, most numerous in Pasquotnk and Perquimans Districts, would dominate the Anglicans in the anti-proprietary party.<sup>382</sup> 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.<sup>383</sup>

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,<sup>384</sup> by appointing customs officers that allowed the nonpayment of the penny duty per pound of tobacco not exported to England.<sup>385</sup> Enforcement of the duty by Thomas Miller, the President of the Council serving as governor and appointed as customs collector by the Crown,<sup>386</sup> 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.<sup>387</sup> The rebels elected a new Albemarle Assembly, tried Miller, and opposed the force sent from Virginia that successfully put down the rebellion.<sup>388</sup> In 1684 the proprietors sent a proprietor, Seth Sobel, as governor, who disregarded his instruction, accepted bribes, jailed settlers without trial, and seized plantations.<sup>389</sup> In 1689 the Albemarle Assembly put this governor on trial and banished him.<sup>390</sup>

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.<sup>391</sup> 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.<sup>392</sup> This reorganization also mandated proprietors or their deputies as the councilors, a procedure that lasted to the end of the proprietary period in 1729.<sup>393</sup> But as early as 1689, the proprietors had agreed to allow the Albemarle Assembly to initiate laws.<sup>394</sup> The 1691 reform mandated one Assembly for all of Carolina to which Albemarle County, along with three other counties from South Carolina, sent representatives.<sup>395</sup>

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.<sup>396</sup> The Carolina Governor began appointing deputy governors by 1694.<sup>397</sup> 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.<sup>398</sup> 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.<sup>399</sup> This meant Quaker control, which commenced with councilor appointments under Carolina Governor Archdale, a Quaker, and subsequent justice appointments in 1695.<sup>400</sup> 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.<sup>401</sup>

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.<sup>402</sup> Removed as councilors, justices, and burgesses for failure to take the oath, the Quakers obtained proprietary removal of the deputy governor.<sup>403</sup> But the new deputy governor, Thomas Cary, also enforced the Test Act.<sup>404</sup> A second appeal to the proprietors in 1707 produced appointments of Quakers as councilors.<sup>405</sup> The result produced two claimants to the deputy governorship, one selected by the old councilors, one by the Quaker councilors.<sup>406</sup> The Quakers gathered a mob and supplied a brigantine to support their governor.<sup>407</sup> 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.<sup>408</sup>

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.<sup>409</sup> The pacifism of the Quakers and the refusal of Virginia to send aid forced Governor Hyde to obtain the assistance of South Carolina.<sup>410</sup> 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.<sup>411</sup>

To finally establish a stable government, the proprietors formally split the two Carolinas, each with its own Governor early in 1712.<sup>412</sup> 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.<sup>413</sup> 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

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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.<sup>414</sup> 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.<sup>415</sup> The inability to mortgage land led to abandonment of farms during hard times.<sup>416</sup> They also prohibited slavery since charity colonists could not afford slaves and the presence of slaves might encourage their sloth.<sup>417</sup> The regulations of the Trusteeship retarded the province's economy and the population growth until their relaxation after King George's War in 1748.<sup>418</sup> 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.<sup>419</sup> Similarly, wine production failed since the weather was not right for European vines and the native grapes produced unpalatable wine.<sup>420</sup> There was little production of staple crops.<sup>421</sup>

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.<sup>422</sup> 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.<sup>423</sup> Water trade for English manufactured goods also came through Charles Town.<sup>424</sup> The Trustees instituted a Town Court in Savannah with three justices, but neglected to set up courts in Darien, Ebenezer, and Augusta.<sup>425</sup> Appeals went to the Trustees.<sup>426</sup> 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.<sup>427</sup>

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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.<sup>428</sup> 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.<sup>429</sup> And South Carolina planters owning land in Georgia had used their slaves to work Georgia lands.<sup>430</sup> 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.<sup>431</sup>

The Trusteeship disbanded and the royal province commenced in 1752.<sup>432</sup> The presence of slavery, unrestricted availability of land, and increased credit available to Georgians created an agricultural revolution between 1752 and 1760.<sup>433</sup> 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.<sup>434</sup> Planters brought slaves with them from South Carolina or the West Indies, or purchased them on credit extended by Charles Town merchants.<sup>435</sup> By 1754 planters had occupied most of the good rice land, and immigration slackened

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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). Nobel 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.<sup>436</sup> 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.<sup>437</sup> To become an assemblyman required ownership of 500 acres.<sup>438</sup> So the rice planters, eager to purchase additional slaves on credit, controlled the first assembly in 1755.<sup>439</sup> 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.<sup>440</sup> 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.<sup>441</sup> Although the conveyance book, started when Halbersham became Secretary in 1752,<sup>442</sup> comprises mostly realty conveyances, there are a few other types of recorded instruments.<sup>443</sup> The book contained no chattel mortgages other than in connection with real estate.<sup>444</sup> 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.<sup>445</sup> The aspiring Georgian

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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.<sup>446</sup> 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.<sup>447</sup>

## 2. British West Florida

British West Florida differed from the other southern provinces. British West Florida was a frontier province.<sup>448</sup> 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 Johson, 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.<sup>449</sup> 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.<sup>450</sup> Consequently, most of its leading citizens were government officeholders seeking wealth from official fees.<sup>451</sup> Fear of Indian attacks from a supposed 10,000 warriors made the citizens sensitive to protection provided by royal troops.<sup>452</sup> So the second largest class of leading citizens were military officials.<sup>453</sup> The only commerce that the province had involved the Indian trade for skins.<sup>454</sup> This business attracted English capital and speculators, resulting in merchants providing additional leading citizens.<sup>455</sup> Planters were a distinct minority.<sup>456</sup> 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.<sup>457</sup> Consequently, British West Florida did not develop a staple crop nor a powerful planter class,<sup>458</sup> 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.<sup>459</sup> The Governor also appointed the councilors, loyal to him.<sup>460</sup> Consequently, when disputes arose

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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.<sup>461</sup> 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.<sup>462</sup> They granted themselves large land grants, especially along the Mississippi.<sup>463</sup> These officeholders envisioned rice as the staple crop.<sup>464</sup> They brought in numerous slaves into the Mississippi Valley.<sup>465</sup> These officeholders obtained slaves from the firm of McGillivray and Struthers of Mobile, formerly of Augusta, Georgia.<sup>466</sup> 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.<sup>467</sup>

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,<sup>468</sup> 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 assembly<sup>469</sup> make reference to confessed judgments,<sup>470</sup> so British West Florida undoubtedly had recognizances. These statutes also refer to debt by specialty and simple contract.<sup>471</sup> Every statute of British West Florida generally had a counterpart in the Georgia statutes.<sup>472</sup>

#### 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.<sup>473</sup> Transcribed records exist for these three courts.<sup>474</sup> 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.<sup>475</sup> 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,<sup>476</sup> 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.<sup>477</sup> 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,<sup>478</sup> late in that tobacco boom, which ended in the early 1640s.<sup>479</sup> Lord Baltimore had structured his province under the manorial system, which lasted during the colony's first two decades.<sup>480</sup> 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.<sup>481</sup> These tenant planters lacked capital and did receive credit from their landlord's for tools, seed, and livestock.<sup>482</sup> Working only by their own hands, they could produce only 600 pounds of tobacco annually,<sup>483</sup> not the 1000 pounds of tobacco annually required to obtain servants and the resulting land under the head-right system.<sup>484</sup> This deprived state of the potential mid-level planters continued throughout the seventeenth century, although some man-

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(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.<sup>485</sup> 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.<sup>486</sup> 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.<sup>487</sup> Not until this time could speculating on the staple crop lead to riches for mid-level planters in Maryland.<sup>488</sup>

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.<sup>489</sup> 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.<sup>490</sup> In 1650, the assembly became representative, consisting of burgesses rather than all freemen in the colony.<sup>491</sup> 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.<sup>492</sup> Only during the fifteen-year period following the Glorious Revolution did the assembly establish itself as a power in provincial affairs.<sup>493</sup>

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

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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.<sup>494</sup> 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.<sup>495</sup> None grew more tobacco than their neighbor-customers.<sup>496</sup> Like their earlier Virginia counterparts, they became representatives or appointed officials from justices to councilors.<sup>497</sup> The return of the tobacco boom after 1715<sup>498</sup> augmented their ranks, again with those rising through merchandising or trading or the professions, such as Daniel Dulaney,<sup>499</sup> the lawyer who would propose the Maryland chattel mortgage act.<sup>500</sup> They used their business profits to acquire planter status through acquisition of plantations manned by slaves under overseers.<sup>501</sup>

## 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.<sup>502</sup> 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.<sup>503</sup> 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.<sup>504</sup> 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.<sup>505</sup> 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.<sup>506</sup>

The act apparently never had a period of effectiveness. The burgesses specified its continuance only to the next assembly, which began on September 5.<sup>507</sup> At that subsequent meeting with all the freemen, not just the burgesses, the freemen repealed all laws passed by the burgesses.<sup>508</sup> Their adopted acts contained one concerning levying on tobacco, but without any requirement to record mortgages.<sup>509</sup>

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.<sup>510</sup> The Maryland county filings resemble the Virginian filings for the

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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.<sup>511</sup> 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,<sup>512</sup> (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,<sup>513</sup> and (3) “plaintiff complains against defendant . . . hath pdust the bill and made the debt appear”<sup>514</sup> for the bill and “plaintiff complains that defendant is indebted to him upon a true and just accoumpt” followed with testimony for the account.<sup>515</sup>

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,<sup>516</sup> 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 statute<sup>517</sup> modified for Provincial Maryland substituting levying on land and goods for merchandizing of the writ of eligit.<sup>518</sup> 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 & twnty six 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",<sup>519</sup> when recording a recognizance.

Chart E1 lists the fifty-three filings of chattel mortgages before 1665 contained in these provincial and county transcripts.<sup>520</sup> 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.<sup>521</sup> 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.<sup>522</sup> Although many of the provincial and county filings resemble the form of a recognizance with the "by these presents" language and "bind",<sup>523</sup> 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.<sup>524</sup> 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.<sup>525</sup> Three other lawsuits involved foreclosure procedures, with one chattel mortgage debtor seeking to prevent foreclosure for partial payment and the

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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.<sup>526</sup> One chattel mortgage debtor sought a release from his mortgage.<sup>527</sup> The significant lawsuit detailed the priority rule for a recorded chattel mortgage against an unrecorded one.<sup>528</sup> 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.<sup>529</sup> Chart E2 contains the twenty-eight filings in lieu of lawsuits for recognizances before 1650.<sup>530</sup> 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.<sup>531</sup> 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.<sup>532</sup>

### 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.<sup>533</sup> But they lent unsecured,<sup>534</sup> 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.<sup>535</sup> In 1719, William Brewerton of Somerset County, Maryland, had two creditors.<sup>536</sup> Brewerton had granted a recognizance, a security device permitted under Maryland law,<sup>537</sup> 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.<sup>538</sup> 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.<sup>539</sup> In February 1718-19,<sup>540</sup> 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.<sup>541</sup> 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".<sup>542</sup> Adams declined since he had already sold that year's tobacco crop.<sup>543</sup> Adams told Brewerton to transfer his land to Caldwell.<sup>544</sup> Brewerton claimed he would rot in prison before he would let that Scotsman Caldwell have his land since Caldwell aimed to destroy Brewerton.<sup>545</sup>

When Adams failed to agree to pay Caldwell, Brewerton became concerned that Caldwell would sue him.<sup>546</sup> Adams advised Brewerton to follow his directions and stay out of the way of the sheriff.<sup>547</sup> Any delay would allow more time to pay the debt.<sup>548</sup> 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.<sup>549</sup> Adams concealed Brewerton for a time from the sheriff trying to compel his court appearance for an answer.<sup>550</sup> 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.<sup>551</sup> Adams served as security for Brewerton's appearance in both lawsuits.<sup>552</sup> When Brewerton heard rumors that Caldwell would seek execution under the lawsuits, Brewerton expressed to Adams his fear of losing his land.<sup>553</sup> Adams advised a sale to someone to avoid the execution.<sup>554</sup> 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.<sup>555</sup> Adams enrolled the deed with the Somerset County Court as required by law, but the clerk did not record file dates.<sup>556</sup> Adams never paid, although Brewerton once asked Adams for the tobacco.<sup>557</sup> Adams had preferred a sale to someone other than himself, but agreed to the deal due to his friendship with Brewerton.<sup>558</sup> 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.<sup>559</sup> 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.<sup>560</sup> Brewerton also carried his household goods to Adams with Adams's consent to prevent execution.<sup>561</sup> With the delivery, these pledges would not be secret.

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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.<sup>562</sup> The awarded damages and costs to Caldwell. Caldwell tried to get Adams to pay the debt.<sup>563</sup> In November of 1719, Adams tendered his security for damages and costs in all three suits.<sup>564</sup> Adams paid part of the Caldwell debt, namely 3640 pounds of tobacco.<sup>565</sup> Adams returned possession of the cattle to Brewerton in the Spring of 1719-20.<sup>566</sup> This had the effect of converting the pledge into a chattel mortgage under the trust deed.<sup>567</sup> 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.<sup>568</sup> For this 13,000-pounds-of-tobacco judgment Caldwell took out a writ of *eligit* despite Adams's promise to pay damages.<sup>569</sup> Adams and Brewerton continued their efforts to defeat the execution, with Adams setting up the deed and deed of trust.<sup>570</sup> The sheriff attempted to levy on a bed and silver cup at Adams's house, but Adams denied they belonged to Brewerton.<sup>571</sup> Adams was willing to turn the personalty over to the sheriff as his own property, but the sheriff declined.<sup>572</sup> 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.<sup>573</sup>

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.<sup>574</sup> Caldwell alleged Brewerton refused to pay the debts at the instigation of Adams.<sup>575</sup> On July 12, 1722, Adams, through his attorney William Gunning, denied the claim in a demurer.<sup>576</sup> 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

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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.<sup>577</sup> On February 19, 1722-23, Brewerton filed his answer, sworn before Benjamin Tasker, then the Sheriff of Somerset County.<sup>578</sup> On July 9, 1723, the Chancellor overruled Adams's demurer, requiring an answer, and fining Adams 600 pounds of tobacco for delay.<sup>579</sup> Adams answered on February 18, 1723-24, sworn before Benjamin Tasker, Sheriff.<sup>580</sup> Adams claimed Caldwell could have obtained his execution on Adams's security and denied any conspiracy with Brewerton to defeat the execution.<sup>581</sup> Caldwell obtained his decree on February 16, 1724, setting aside both deeds.<sup>582</sup>

On May 4, 1727, the Chancellor granted Adams's appeal, setting bond at 300 pounds sterling, made by Adams on May 5.<sup>583</sup> On July 11, 1727, the Chancery forwarded the records to the Court of Appeals for Adams' appeal.<sup>584</sup> The Court of Appeals met on July 11, 1727, with Adams represented by the son of Dulaney's friend and nemesis, Michael Macnemera,<sup>585</sup> and Caldwell represented by William Bedingham.<sup>586</sup> 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.<sup>587</sup> 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.<sup>588</sup> Caldwell could still go after Brewerton for recovery.<sup>589</sup>

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

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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.<sup>590</sup> The act applied to all secret conveyances, whether a mortgage or not.<sup>591</sup>

### B. Delaware

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

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.<sup>598</sup> When the Dutch captured the colony in 1655, they similarly hoped for riches from a tobacco trade or tobacco plantations.<sup>599</sup> By 1663 the staple crop was not tobacco, but wheat.<sup>600</sup> 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.<sup>601</sup> By 1681, New York had become dependent on the tobacco trade on the Delaware for customs.<sup>602</sup> 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.<sup>603</sup>

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.<sup>604</sup> Although dominated economically by Philadelphia traders, the Delaware counties, however, received a separate assembly in 1704.<sup>605</sup> The separation highlighted the political differences between a grain north and tobacco south.<sup>606</sup> 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.<sup>607</sup> Philadelphia also became the marketplace for slave acquisition and

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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.<sup>608</sup>

Merchants generally opposed security interest as hindering sales from their inventories in an era without the exception for good faith purchasers.<sup>609</sup> 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.<sup>610</sup> Consequently, when reacting to the secret sales problem of the sort exhibited in Maryland in 1729,<sup>611</sup> their reaction, similar to that of their successors in the nineteenth century,<sup>612</sup> was to ban the transaction in 1740.<sup>613</sup>

## 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.<sup>614</sup>

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.<sup>615</sup> 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.<sup>616</sup> 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.<sup>617</sup> 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

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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.<sup>618</sup> 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.<sup>619</sup>

#### 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.<sup>620</sup> 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

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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.<sup>621</sup> 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.

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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 Samuell 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 **<br>\$\$\$ |

|                                 |  |  |   |   |                                |
|---------------------------------|--|--|---|---|--------------------------------|
| 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/<br>AVERAGE DEBT<br>FOR ACCOMACK<br>COUNTY'S 22<br>CHATEL<br>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/<br>AVERAGE DEBT<br>FOR LOWER<br>NORFOLK<br>COUNTY'S 11<br>CHATTEL<br>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 Youscomicoe 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            | Richard Cole, 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 Wicocomooc                              | 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 record<sup>622</sup> 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.

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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.,<br>Burgess 1623 ** | 500a    | Gent. of Kiccoughtan, Ancient Planter, 500a Old<br>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,<br>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<br>Accomack Co.                                    | County Clerk Accomack<br>Co. 1640-46     | --      | Transported by George Menifrie merchant, assigned<br>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.<br>Samuell Chaundler, merchant of<br>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<br>Gent., exec of Dame Elizabeth Dale, 2000a Northampton Co. 1649<br>nib   | 163<br>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<br>Esq. 3700a Accomack Co. 1638<br>Esq. 4000a Mockjay Bay 1640   | 81<br>96<br>126                      |
|  | TOTAL/ AVERAGE<br>ACREAGE FOR<br>ACCOMACK<br>COUNTY'S 20<br>SECURED PARTIES   | 25,700a/<br>1285a |  |                                      |
| John Martin of Linhaven                | Burgess 1652 Lower Norfolk Co. **   | 3196a             | with Lancaster Lovett, 600a Linhaven Parish, Lower Norfolk Co. 1651<br>1400a Linhaven Parish, Lower Norfolk Co. 1654<br>268a Rappahannock Co. 1663<br>578a Linhaven Parish, Lower Norfolk Co. c. 1665<br>350a Lower Norfolk Co. 1663<br>nib<br>200a Lower Norfolk Co. 1647 | 220<br>299, 502<br>481<br>528<br>539 |
| George Mil of Linhaven                 |   | --                | nib  |                                      |
| William Shipp                          |   | 200a              | 200a Lower Norfolk Co. 1647  | 174                                  |
| George Spenlow                         |   | --                | Nib  |                                      |
| John Holmes                            |   | 200a              | 200a Elizabeth River, assigned to Jonathan Langworth 1638  | 99                                   |
| Capt. William Lucke of London          |   | --                | Nib  |                                      |
| Ens. Thomas Lambert                    | Burgess 1648, 1649, 1652, 1656 Lower Norfolk Co. ** Justice Lower Norfolk Co. | 850a              | 100a Elizabeth River 1635  | 22                                   |
|  |   |                   | 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<br>ACREAGE FOR<br>LOWER NORFOLK<br>COUNTY'S 10<br>SECURED PARTIES  | 8,086a/<br>809a |   |         |
| George Ludlow                      | Councilor 1642, Burgess<br>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<br>River | Councilor 1620, Burgess<br>1631, 1632, 1633, 1639,<br>1642, 1645, 1648,<br>Speaker 1648 Warwick<br>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<br>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                        |
|                 |   |       | the younger, Jr., merchant 500a York Co. 1646 assigned to Nicholas Brooke, Sr., Gent., who patents 1649 (p. 186) (p. 224—same)                                     | 167                       |
| Nicholas Brooke |   | 500a  | 100a Charles Riv. 1636   | 52                        |
|                 | Justice York Co.                          | 5975a | 300a Charles Riv. 1640   | 122                       |
| Steven Gill     |   |       | 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<br>with William Clapham, 250 a Rappa Riv. 1650<br>Mr. 126a York Co 1651<br>350a Hampton Parish, York Co. 1653<br>Nib<br>Transported by Capt. Christopher Calthroppe before<br>1636   | 189<br>196<br>218<br>237<br>39  |
| Thomas Burns<br>Christopher Copeland                  |  | --<br>--       | 1300a Charles River Co. 1639/40  | 121   |
| Capt. Nicholas Martiau                                | Burgess 1623, 1632,<br>1633, ** Justice York Co. | 1300a          |  |   |
| Anthony Stephens of York Parish                       |  | 4200a          | 500a Lancaster Co. 1654<br>850a Westmoreland Co. 1657<br>650a Mattapan Riv. 1658<br>with Thomas Stevens 1800a Rappahannock Riv.<br>1662  | 297<br>363<br>388<br>411  |
| Francis Finch<br>John Madison                         |  | 300a<br>3450a  | Gent. 400a Rappahannock Riv. 1662<br>with Dictoris Christmas 300a Finches Creek 1642<br>600a Gloucester Co. 1655<br>800a New Kent Co. 1657<br>300a New Kent Co. 1658<br>300a Westmoreland Co. 1658<br>320a New Kent Co. 1664<br>300 a New Kent Co. 1662<br>200 a New Kent Co. 1664<br>350a New Kent Co. 1666<br>280a Rappahannock Co. 1663 | 428<br>136<br>280<br>350<br>369<br>389<br>466<br>469<br>515<br>565<br>566 |
| Joseph Hill<br>John Barlow<br>Denis Stevens, merchant |  | --<br>--<br>-- | no grants, 3 transportees<br>no grants, 2 transportees<br>Nib  | 249, 393, 426<br>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<br>Transported by Charles Edmonds before 1658 | 206<br>386 |  |
|                                    | TOTAL/AVERAGE<br>ACREAGE FOR YORK<br>COUNTY'S 23<br>SECURED PARTIES | 50,071a/<br>2177a |  |            |  |
|                                    | TOTAL/AVERAGE   | 84,357a/<br>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 record<sup>623</sup> 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.

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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.              |   | 1850a         | 550a Accomack Co. c. 1640                         | 123  |
| Samuel Lucas, planter of Virginia            | SEE CHART A2, Justice   | 8200a         | 1300a Northampton Co. 1642                        | 135  |
| Ralph Wormely of York Co.                    | SEE CHART A2, Justice   | --            | Transported by Charles Harmer before 1635         | 28   |
| William Stevens of Northampton Co.           |   | 4845a         |   |      |
|  |   | 700a          | 700a Northampton Co. 1653                         | 412  |
|  | TOTAL AVERAGE<br>ACREAGE FOR<br>ACCOMACK COUNTY'S<br>18 DEBTORS | 17,645a/ 980a |   |      |

|  |   |             |  |          |
|--|---|-------------|--|----------|
| Christopher Burroughs, planter of Linhaven               | Burgess 1644, 1645, 1652<br>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<br>ACREAGE FOR LOWER<br>NORFOLK COUNTY'S 10<br>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<br>practitioner of Physicke 700a James City Co. 1638  | 129<br>94  |
| William Fellgate                                     | 1200a |  | Mr., of London merchant, dec'd 1650 land<br>1200a Chichomy Riv. to Mary Hey & her son Robert Hey, exors of William Fellgate, exor of John Fellgate 1654 | 215<br>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<br>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.<sup>624</sup> 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.<sup>625</sup>

#### 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.<sup>626</sup> Non-monetary debt and debt denoted in barrels of corn was not included in the average.

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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<br>+ | 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 Wortelge | 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<br>FOR ACCOMACK<br>COUNTY'S 37<br>RECOGNIZANCES |   |   |        |
|-----------------------|--------------------------------------|--|---|---|--------|
| July 6, 1640          | Thomas Bullock                       | Francis Land, for Nicholas<br>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<br>next Sat. else execution<br>if mech. on tender, if not<br>next crop else execution | 33 **  |
| Aug. 3, 1640 +        | John Dier                            | Richard Floide   | 200 lb tob.                                     | present crop, else<br>execution   | 36 **  |
| Sept. 8, 1640 +       | John Wright                          | Richard Owine  | 80 lb tob.                                      |   | 43 **  |
| Nov. 30, 1640 +       | Mary Browne, dau.<br>Nicholas Browne | John Holems  | 10 lb sterling                                  | ½ Jan. 1, ½ foll. Nov. 30<br>else execution   | 47 **  |
| Jan. 4, 1640 +        | John Webb                            | Gilbert Guy, dec.  | 1 bil corn, 1 pr hose & shoes                   | pd after Robert Smith's 90<br>lb tob. else execution  | 48 **  |
| Jan. 4, 1640 +        | Robert Hayes                         | Gilbert Guy, dec.  | 44 lb tob.                                      | Thomas Sayer's order pd<br>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<br>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<br>(Martins)          | Christopher Needham & Ellis<br>Browne, by atty                       | 230 lb tob. for goods lost on<br>Martine's boat | else execution  | 156 ** |
| Feb. 15, 1644/45<br>+ | John Yeats                           | Henry Watters  | 2 blis corn                                     | 10 days else execution  | 156 ** |
| Feb. 15, 1644/45<br>+ | Thomas Wright                        | Jesper Hoskins   | 510 lb tob.                                     | 10 days else execution  | 161 ** |
| Feb. 15, 1644/45<br>+ | 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<br>FOR LOWER NORFOLK<br>COUNTY'S 36<br>RECOGNIZANCES | 15,800 lb. tob./ 479 lb. tob. |  |              | 36 *** |
| Dec. 20, 1645   | Thomas Wilkinson                   | John Peade attorney for<br>Francis Browne                               | 348 lb tob.                   |  | w/i 5 days   | 39 *** |
| Feb. 2, 1645/46 | Henry Broke                        | William Todd authorizes<br>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 &<br>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<br>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,<br>assignee of George<br>Wescoombe | Robert Perry attorney for<br>Richard Milborne               | 500 lb tob.and one pair<br>rudder irons for a shallop | w/i 5 days | 83 *** |
|              |   | TOTAL AVERAGE DEBT<br>FOR YORK COUNTY'S 49<br>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 record<sup>627</sup> 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.

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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<br>Mr. 1000a Hungers Cr. 1635, Capt. 1637, Accomack Co. 1643 | 72<br>27, 59, 77 |
| James Peryn         |  | --            | 750a New Kent Co. 1663   | 480              |
| Florington Payne    |  | 150a          | land Northampton Co. 1645<br>150a Charles River assigned to Richard Lee 1642               | 165<br>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<br>ACREAGE FOR<br>ACCOMACK COUNTY'S<br>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 (Rabies) |  | --            | Mr. 500a Lower Norfolk Co. 1648  | 182              |
|                     |  |               | Nib  |                  |

|                               |  |       |   |  |  |
|-------------------------------|--|-------|---|--|--|
| Andrew Warner                 |  | --    | Nib   |  |  |
| John Martin                   | SEE CHART A2, Burgess                        | 3196a |   |  |  |
| Robert Morrine<br>(Martins)   |  | 280a  | 30a Archers Hope Cr 1632, 21 year lease   |  | 17-18  |
| John Yeats                    |  | 700a  | 250a Lower Norfolk Co. 1638 (Martyn)<br>300a Elizabeth City Co. 1636 (Yates)<br>150a Elizabeth River 1636 (Yates) |  | 98<br>38<br>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<br>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,<br>232, 262, 285,<br>310, 357, 514 |
| Mr. William Julian            |  | 750a  | Yeoman & Ancient Planter, 150a Elizabeth City 1624<br>600a Elizabeth City Co. 1636                                |  | 5<br>1636  |
| Mrs. (Henry) Seawell          | SEE CHART B3, spouse<br>Justice              | --    |   |  |  |
| Mr. Mathew Philips            |  | --    | no grant, 2 transportees  |  | 219,541  |
| Mrs. Sarah (John )<br>Gookins | Spouse Justice Lower Norfolk<br>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<br>100a to Thomas Keeling 1635, due unto Thomas Casson in<br>right of his wife Elizabeth relict of William Loughton<br>300a unspecified 1643 | 25  |
| Christopher Burrows |  | 904a          |  | 124 |
| Thomas Keeling      |  | 1000a         |  | 149 |
|                     | SEE CHART A3, Burgess  |               |  |     |
|                     |  | 904a          | 100a Elizabeth City Co. 1635   | 34  |
|                     |  | 1000a         | Ens. 200a Lower Norfolk Co. 1643   | 151 |
|                     |  |               | 700a Linhaven, Lower Norfolk Co. 1651  | 220 |
| Savill Gaskine      | SEE CHART A3   | 250a          |  |     |
| Capt. John Sibsey   | Councilor 1637, Burgess<br>1639 ** Justice Lower<br>Norfolk Co.                | 80a           | Capt. 80a Lower Norfolk co. 1649   | 179 |
| Mr. Robert Page     |  | 500a          | 500a Elizabeth River   | 55  |
| Christopher Needham |  | --            | nib  |     |
| Hugh Lee            | Burgess 1652<br>Northumberland Co. **  | 1876a         | 100a Northumberland Co. 1650   | 205 |
|                     |  |               | 288a Northumberland Co. 1654   | 242 |
|                     |  |               | 388a Northumberland Co.  | 319 |
|                     |  |               | Mr. 1100a Petomeck   | 351 |
| Arthur Browne       |  | --            | Transported by John Harvey before 1663   | 427 |
| Jeffrey Wright      |  | --            | Nib  |     |
| Thomas Bushrode     |  | --            | Nib  |     |
|                     | TOTAL / AVERAGE<br>ACREAGE FOR LOWER<br>NORFOLK COUNTY'S 32<br>SECURED PARTIES | 16,690a/ 522a |  |     |
|                     | See above, Accomack Co.  | 150a          |  |     |
| Florentine Payne    |  | 6820a         | 500a Potomeck Riv. c. 1650   | 201 |
| Thomas Wilkinson    |  |               | 320a Rappahannock Riv. c. 1653   | 240 |
|                     |  |               | 6000a Patomeck Riv. 1658   | 378 |
| Henry Broke         |  | 2178a         | Jr. merciant 500a York Co. to Nicholas Brooke 1646   | 167 |
|                     |  |               | 658a Northumberland Co. 1650   | 193 |
|                     |  |               | 1020a Westmoreland Co. 1662  | 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<br>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.<br>** | 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,<br>Secretary of State 1649-52,<br>Councilor 1651, Burgess<br>1647, 1651 York Co and<br>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.<br>Aug. 1655) |
| Nicholas Dale       |   | 75a                | 75a Charles River Co. 1638                      | 91, 190 (dec.<br>Mar. 1649) |
| Ralph Watson, clerk |   | --                 | Nib   |                             |
| William Pryor       | SEE CHART A2, Justice   | 2600a              |   |                             |
| George Wescombe     |   | --                 | Transported by William Pierce before 1649       | 185                         |
|                     | TOTAL/AVERAGE<br>ACREAGE FOR YORK<br>COUNTY'S 32 SECURED<br>PARTIES   | 61,467a/ 1921a     |   |                             |
|                     | TOTAL/AVERAGE<br>ACREAGE FOR YORK<br>COUNTY WITHOUT LEE +<br>THREE COUNTIES   | 48,571a/ 1518a     |   |                             |
|                     | TOTAL/AVERAGE ALL<br>THREE COUNTIES   | 104,957a/<br>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 record<sup>628</sup> 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.

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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 | --      |   |                           |
| Matthew 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<br>ACREAGE FOR<br>ACCOMACK<br>COUNTY'S 33<br>DEBTORS | 11.650a/ 353a |  |   |  |  |
| Francis Land             |   | 1290a         |  | 270a Linhaven, Lower Norfolk Co. 1649<br>1020a Lynhaven, Lower Norfolk Co. 1654 |  | 188<br>288, 489 (dec.<br>Mar. 1662)                  |
| Nicholas Write           |   | --            |  | nib   |  |  |
| William Nash             |   | --            |  | nib   |  |  |
| Richard Floide (Floyd)   |   | --            |  | no grants, 3 transportees   |  | 207, 265, 285  |
| Richard Owine<br>(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,<br>327, 458, 475,<br>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<br>400a Elizabeth River 1638<br>with William Jacob, 600a Lower Norfolk co. 1642 |  |  | 52<br>100<br>141 |
| Henry Seawell           | Justice Lower Norfolk Co.   | --           | 300a Lower Norfolk Co. 1643<br>Transported by Richard Young before 1636 (whole family)                    |  |  | 149<br>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<br>ACREAGE FOR<br>LOWER NORFOLK<br>COUNTY'S 35<br>DEBTORS                  | 8,540a/ 244a |   |  |  |                  |

|                      |                               |       |  |                                     |
|----------------------|-------------------------------|-------|--|-------------------------------------|
| Francis Browne       |                               | 2270a | 500a Northumberland Co. 1649<br>300a Lancaster Co. 1652<br>370a Rappahannock Co. 1657<br>1100a Rappahannock Co. 1658 | 186<br>272<br>362<br>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,<br>194, 205, 366 |
| Stephen Gill         | SEE CHART B2                  | 5975a |  |                                     |
| Charles Smith        | SEE CHART B2                  | --    | Nib  |                                     |
| Rice Maddox          |                               | 600a  | 300a assignee, assignor Lower Machotix River<br>300a assignee, assignor Northumberland Co.                           | 292<br>319                          |
| Robert Jones         |                               | --    | Can not identify #   |                                     |
| Dr. Henry Walton     |                               | --    | Transported by Dennis Connors before 1653  | 245                                 |
| Capt. William Brocas | Councilor 1637 York Co.<br>** | 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<br>1650  | 193                                 |
|                      |                               |       | Esq., 190a Lancaster Co. 1653  | 245                                 |
|                      |                               |       | to wife of Esq., 700a Lancaster Co. 1652   | 273                                 |
|                      |                               |       | 800a Lancaster Co. 1653 formerly granted to<br>wife  | 281                                 |
| Thomas Adams         |                               | 1803a | with Charles Ashton 300a Northumberland Co.<br>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<br>ACREAGE FOR YORK<br>COUNTY'S 32<br>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.<sup>629</sup> 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.

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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,<br>planter  | 7000 lbs of muscavado sugar,<br>payable in Barbados in May<br>1675, if not paid Godfrey to<br>take                       | Negro, plantation and all<br>appurtenances   | GC: 65 #  |
| Sept. 29, 1698/ Oct. 8,<br>1698     | Thomas Cary, Esq.,<br>Berkeley Co.                      | Sarah Barker,<br>Berkeley Co.  | 51 lb 5 sh., void if pay 205<br>pieces of eight in Jamaica by<br>Nov. 15 next or in<br>Charlestown before Jan. 1<br>next | 2 Negro men, 1 Negro woman   | 158 ##    |
| 28 Sept. 1698/ Oct. 26,<br>1698     | Robert Stevens,<br>Gent., of Berkeley<br>Co., mortgagee | Sarah Barker,<br>Berkeley Co.  | 40 lb.   | Mortgaged 2 Negroes, if one<br>dies cattle   | 161 ##    |
| Aug. 23, 1698/ Dec. 3,<br>1698      | James Williams,<br>chirurgion                           | John Millwood late<br>of Jamaica, now of<br>this province                  | 25 current money, void if pay<br>100 pieces of eight within 12<br>months after date                                      | 1 Negro man  | 163 ##    |
| Nov. 5, 1698/ Dec. 3,<br>1698       | Joseph Blake, Esq.                                      | John Millwood late<br>of Jamaica, now of<br>this province                  | 25 lb., void if pay 80 dollars<br>in pieces of eight within 6<br>months after date                                       | 1 Negro man  | 163 ##    |
| Jan. 2, 1698/99/ Jan. 2,<br>1698/99 | John Alexander of<br>Charles Town<br>merchant           | Ellenor Barlycorn of<br>Berkeley County,<br>widow                          | 30 lb., void if pay 30 lb<br>before Jan. 1 next  | 1 Negro man and 1 Negro<br>woman   | 164 ##    |
| Mar. 2, 1698/99/ Mar.<br>2, 1698/99 | Robert Stevens Gent.,<br>of Berkeley Co.                | Humphrey Torquett,<br>ship carpenter, of<br>Berkeley Co                    | 38 lb 10 sh current money,<br>deed of mortgage   | 2 Negro men  | 168 ##    |
| Mar. 19, 1699/00/ April<br>8, 1700  | Joseph Blake, Esq.,<br>Governor                         | Thomas Cary, Esq.<br>of Carolina &<br>Alexander parries of<br>Charles Town | 239 lb 19 sh 8 d, mortgage   | Lands, plantations, town lots,<br>cattle, 1/3 brigatine, pastures,<br>Negroes, Indians, horses, and<br>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.<sup>630</sup> 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.

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630. See *supra* notes 317-323 and accompanying text.

| Date made/date recorded           | Secured                    | Debtor         | Debt/ payment date                                       | Collateral   | Pate           |
|-----------------------------------|----------------------------|----------------|--|--|----------------|
| ordered recorded<br>Oct. 25, 1698 | Mr. William<br>Duckenfield | Henry Lisle    | 29 lb 8 sh 8 d<br>defeasible                             | cattle   | 236 Gen. Ct.*  |
| April 2, 1705/<br>March 1708      | Mr. Nicholas Tiner         | George Harkill | 16 lb 2 sh. 2 ¾ d,<br>defeasible, to secure<br>guarantee | 2 feather beds, furniture, 2 chests, 2 pewter<br>dishes, 1 pewter tankard, 2 pewter porringers,<br>1 iron pot, 1 brass kettle, 3 earthen plates, 1<br>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<br>Edward Hyde, Esq. *** by<br>Edward Moseley ** ++  | Christopher Dudley                  | 8 lb for horse  | 89 Gen. Ct. ##   |
| Mar. 31, 1713 | Thomas Peterson Esq. ++<br>factor to Thomas Bayfield and<br>New Pislvania Company by<br>Edward Bonwick and Edward<br>Moseley ** ++ attorneys | Emanuel Loew and William<br>Vaughan | 90 lb for sloop, 94 lb for<br>anchors, sails, rigging           | 91 Gen. Ct. ##   |
| Mar. 31, 1713 | Nathaniel Perkins, merchant<br>of Boston by Thomas<br>Snowden attorney   | Richard Burtenshell                 | 11 lb 5 sh by writing obligatory,<br>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<br>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<br>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.<br>Counc. @ (petition to recover<br>levied horse) |
| July 28, 1713 | Thomas Swann + by Thomas<br>Snowden attorney   | James McDaniel                      | 4 lb 6 sh 4 d   | 103 Gen. Ct. ##  |
| July 28, 1713 | Mary Lawson by Thomas<br>Snowden attorney  | John Butter                         | 2 bis pitch, 1 bl of tar  | 103 Gen. Ct. ##  |
| Oct. 27, 1713 | Henry Speller merchant by<br>Thomas Snowden attorney   | John Relfe                          | 12 lb by bill   | 107 Gen. Ct. ##  |
| Oct. 27, 1713 | Jacob Overmand, weaver<br>Pasotank   | George Scarborough                  | 1 lb 17 sh 6 d  | 109 Gen. Ct. ##  |
| Oct. 27, 1713 | Capt. John Robison by<br>Edward Bonwicke attorney  | Martin Francke                      | 24 lb 13 sh 4 d   | 109-10 Gen. Ct. ##   |
| Oct. 27, 1713 | John Hollum by Thomas<br>Snowden attorney  | Jonathan Bateman                    | 8 lb by warrant   | 110 Gen. Ct. ##  |
| Oct. 27, 1713 | John Porter +++ assignee of<br>Thomas Collings by Edward<br>Moseley ** ++ attorney   | Thomas Averitt                      | 20 lb   | 111 Gen. Ct. ##  |

|               |  |               |                             |                 |
|---------------|--|---------------|-----------------------------|-----------------|
| Oct. 27, 1713 | Mary Lawson exec by<br>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.<sup>631</sup> 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.<sup>632</sup> 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.

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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/<br>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/<br>Mar. 7, 1650/51                | Ralph Beane                             | John Shercliffe # & 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/<br>unrecorded, suit to<br>foreclose ##   | Capt. Cornwallis,<br>plaintiff          | Mrs. Katheren<br>Hebden, widow of<br>Thomas Hebden,<br>def. | 2500 lb tob.   | Cattle, equity defense<br>against levy of paid,<br>admitted only 402 lb<br>tob. Recessed to obtain<br>proof | 10: 198-99 (Deed of<br>mortgage dated May 26,<br>1643)                  |
| Nov. 29, 1652/<br>unrecorded, to void<br>execution ##   | Richard True,<br>plaintiff              | Thomas Warr &<br>Nathaniel Hunt                             | 5000 lb tob., for<br>sale of sloop, 1600<br>lb tob. levied by<br>Proprietor, def.        | Crop, no participation<br>in Warr & Hunt's<br>escape, crop granted to<br>True @@@                           | 10: 200-01 (mortgage)   |
| Nov. 25, 1652/<br>unrecorded, suit to<br>recover collateral ##  | John Dandy, def.                        | Francis Brooks,<br>plaintiff                                | 3000 lb tob., for<br>payment of debt to<br>Col. Nathaniel<br>Littleton                   | Cow, heifer, increase,<br>possessory, recessed to<br>obtain proof   | 10: 209 (mortgage dated<br>August 1649), 256 (plaintiff<br>showed paid) |
| Aug. 14, 1653   | John Medley &<br>John Thumbleby         | Henry Bishop #  | Unspecified  | Crop  | 10: 292 (for security bind,<br>deliver over)                            |
| Jan. 28, 1653   | Mr. Nicholas<br>Cawseene of<br>Maryland | Robert Holt, planter<br>of St. George's #                   | 5500 lb tob/ Nov.<br>10, 1654, 1655,<br>1656   | Plantation, house,<br>orchard, personal<br>estate   | 10: 31G (for security bind<br>over)                                     |
| Nov. 17, 1654,<br>unrecorded, in estate<br>settlement Ticknor v.<br>Zachary Wade,<br>adm. March 1, 1659 | Thomas Ticknor,<br>grocer of London     | Owen James of<br>Maryland                                   | 54 lb sterling for<br>diverse goods,<br>wares, and<br>commodities/<br>March 10 next      | Said goods and<br>commodities plus<br>plantations, servants,<br>cattle in Maryland                          | 41: 360-61 (for better security<br>bargain and sold, void if pay)       |
| Unrecorded, in<br>lawsuit of William<br>Boreman v. Francis<br>Brooks                                    | William Boreman                         | Edward Claxton  | Unspecified, lawsuit<br>to recover taking of<br>collateral by Francis<br>Brooks, granted | 1 hogshhead tobacco   | 41: 70 (for security of a debt)   |
| June 7, 1657/ Feb.<br>14, 1657/58   | Mrs. Jane Fenwick                       | Luke Barber   | 30 lb sterling/ June<br>30, 1658   | Mare and horse plus<br>increase   | 41: 28 (for better security,<br>bind over)                              |
| April 23, 1662/ Feb.<br>9, 1663   | George Bradshaw                         | Richard Wraith  | 25 lb sterling/ Nov.<br>20 next  | 1 man servant   | 49: 136   |
| Feb. 20, 1663/ 64   | John Biskoe and<br>Henry Pennington     | William Green, #<br>planter of St. Marys                    | 300 lb tob.  | Whole estate,<br>moveables &<br>immoveables, cattle,<br>servants, household<br>goods, 20 hogs               | 49: 162   |

|                                       |   |   |   |  |  |
|---------------------------------------|---|---|---|--|--|
| Feb. 12, 1651/52 /<br>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 com, 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 recognizance) |
| 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.