



Fig. 3. The yard-filling garden of Mr. and Mrs. Alvin Duench in Waterloo, Ontario, contains a profusion of flowers, herbs, and vegetables. (Photo by the author, 1982.)

the creation of full-scale “yard art” environments. In the 1970s Daniel Snyder began to decorate his Waterloo front yard with a bird-house, bird-bath, and windmill. He went on to add a large population of wooden animals of his own manufacture, including rabbits, foxes, horses, chickens, and birds.

In contrast to this public display is the environment created in Waterloo by Karl Hirzer in the last two

decades. The elaborate assembly includes a large windmill, an elegant castle and church, a complex stone fountain, and a neat longitudinal garden, all placed behind the house and enclosed within hedges, a true *hortus conclusus*, a little image of Paradise in the urbanized Regional Municipality of Waterloo.

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### “Now this Indenture Witnesseth...”: Some Comments on the Use of Chattel Mortgages in Material History Research<sup>1</sup>

John T. Regan was a barber. In June 1885 his barbering business in Charlottetown, Prince Edward Island, was not doing very well and he had accumulated a number of debts. One of these was to a local painter, Patrick Burke. Regan had no cash. He had no real estate on which he could get a mortgage and the banks were extremely loath

to loan small sums. He did, however, have the furnishings of his house and shop, apparently paid for, and this provided several possibilities. He could sell the goods outright or perhaps pawn them in hope of being able to redeem them during future prosperity. If he sold his barber tools there would be no future prosperity so he decided to

take a third option. He entered into an agreement with Burke which would leave the barber his furniture and tools and yet would secure the loan for the painter with adequate collateral. He agreed to register a chattel mortgage.<sup>2</sup>

The agreement between the barber and the painter, duly signed and witnessed before a lawyer, became document 4029 in the register of bills of sale in the county clerk's office and it now resides along with some 7,000 similar documents in the Public Archives of Prince Edward Island. Archives, record offices, and court houses elsewhere in the country have vaults, filing cabinets, and shelves filled with hundreds of thousands of similar documents.

As with many other types of legal documents, the sheer volume has been a serious bar to use by historians and other researchers. Part of the problem is the low evidentiary value of a single document and the difficulty of finding aggregate compilations of the information. However, if one takes the time to examine only a few of these documents it quickly becomes evident that chattel mortgages not only contain a high degree of information but that this information is not likely to be found in any other source. There are some similarities between chattel mortgages and probate inventories in this regard. Use of the latter type of document, besides aiding in the study of individuals, has resulted in the establishment of a new area of social history — that of wealth distribution within a community.<sup>3</sup>

Chattel mortgages, taken in aggregate, reveal another important aspect of community life — debt relationships. Besides the economic value of indicators of who owed what to whom and the changing level of debt with depression or prosperity, the social relationships existing as a result of those debts are detailed in chattel mortgages. Did farmers, as is often supposed, become enslaved to lawyers in town when crops failed? Did social status in the community have anything to do with the number of debtors one had control over? Was there a rural-urban split between debtors and creditors? One of the major advantages in using chattel mortgages in the study of such questions is that the economic floor level of those from whom such information is available is greatly lower than that found in other documentation. While mortgages on land provide some of the same indicators the amounts concerned are usually some hundreds of dollars and a large segment of society is excluded. Debt related to chattels is often recorded in amounts as low as \$25 and so is likely to include information from a much wider spectrum of society.

These same considerations are even more important when we consider the use of the documents in direct relationship with material history. Most sources of infor-

mation which have been developed over the last few years — photographs, probate inventories, manufacturers' catalogues — tend to overrepresent the upper levels of the income scale. We have very few photographs of the furnishings in the house of a poor fisherman or of the farm equipment of a non-prosperous farmer. Chattel mortgages, if their function and use is understood, may provide a key to the study of the material history of the farmers, labourers, small storekeepers, painters, and barbers, etc. who made up the majority of nineteenth-century Canadian society.

The chattel mortgage is, by and large, an American invention and to this day the use of the device is unusual in England.<sup>4</sup> Its utility was recognized in Upper Canada early in the 1800s and the first legislation in 1849 was aimed, not at creating a new procedure, but at preventing abuse by requiring registration before the courts and thereby creating a legal obligation. Before the end of the century similar legislation had been passed in all of the provinces and territories then making up the nation, but it was well into the twentieth century before Newfoundland, perhaps in deference to closer English ties, adopted the measure.<sup>5</sup>

The Prince Edward Island legislation was typical. The title and preamble of the act indicated that chattel mortgages were being used in the colony but not without some difficulty. "An Act for Preventing Fraud by Secret Bills of Sale of Personal Chattels" required the registration of such documents with the clerk of the county in which they were made. He was to keep an index which would be available to the public and which would prevent the mortgage of the same chattels to different persons. The legislation covered "Personal Chattels," defined as "horses, cattle, animals, goods, furniture, fixtures and other articles capable of complete transfer by delivery." Specifically excluded were shares and other securities and registered ships and vessels. In P.E.I. the latter restriction was circumvented by the mortgaging of all tools, supplies, and equipment, including vessels in the stocks.

The documents vary little from province to province, although with the passage of time the information tends to become less detailed as lawyers employed more broad categories to protect the lenders. After 1900, although the information continued to be recorded, the value to researchers rapidly diminished. At an earlier date, however, the parties to the agreement are clearly identified, both as to residence and occupation. There is often a recitation of the origin of the debt. The Regan mortgage, for example, started out as a bill for \$32.44 for goods sold and delivered. By the time Burke insisted that the debt be secured by some collateral, interest of \$2.50 had accumulated and to make the exercise more worthwhile Regan borrowed an additional \$2.16. The most frequent root of debt is an overdue, unsecured, promissory note.

In exchange for the loan, sale of goods, or extension of existing credit the lender received what amounted to a conditional legal title to whatever goods had been specified in the "schedule" which was part of the agreement. The condition was that if the debt was paid as specified in the agreement, ownership of the goods would revert to the debtor. If not, the creditor, after complying with notice provisions in the act, could collect the goods. During the course of the agreement the goods stayed in the care, control, and use of the debtor even though he was not technically the owner at the time. Some of the earlier agreements call for the delivery to the creditor of some minor part of the chattels (such as a single chair when all of the furniture of the house has been mortgaged) to symbolize the change in ownership.

While the main body of the agreement, with information about occupation, residence, rate of interest, terms, and origin of the debt will be of interest to social and economic historians, the most important part of the chattel mortgage for the study of material history is the "schedule."

These can vary in length from a single line to twenty or thirty pages. Sometimes there is a value affixed to each item in the list but ordinarily the debt was offset against the possessions as a group. As the terms of the agreement were usually set by the lender the value of the goods far exceeded the amount of the loan and provided extra incentive for repayment. As the intention was to set out just which goods could be seized, the schedules are exact, and in order to safeguard the funds advanced, they are detailed.

Generally they contain recitations and lists of all identifiable household furniture, tools, farm stock, and standing crops. John T. Regan swore that his house on Great George Street contained the following:

In attic	2 bedsteads, 2 mattresses, 6 chairs, 1 washstand, 1 mirror.
Upstairs	1 parlour set including chairs, tables, sofa, lounge &c., 1 piano, 1 bedroom set, including bedstead, bed clothing, chairs, tables, bureau, &c.
Downstairs	1 dresser, 1 lot of crockeryware and cutlery, 1 clock, 1 lamp, 2 tables, 1 dozen chairs, also the following articles: 3 dozen pictures, 3 stoves, 1 sewing machine, 1 chiffonier, lot of carpet and oilcloth, 1 bookcase and books.
In shop	1 barber's cabinet case, 3 barber's chairs (plush), lamps, razors, chandelier, stove and all other furniture goods and chattels in and about the said house, shop and premises.

Sometimes there is more detail, often less. Generally major items with a high unit value are described more exactly — "stove, new Atlantic Queen model," "one horse, colour red, called Frank" — and frequently there is a location given for the items listed which can be useful if there are several rooms or outbuildings on the premises.

Although the listings are primarily of household furnishings this is not always so. William Keizer, owner of the above-noted horse named Frank, was a fisherman and to secure a \$450 debt to Charlottetown ship chandler Archibald Kennedy he listed:

- 1 mackerel purse seine 115 fathoms long and 9 fathoms deep.
- 1 seine boat, 25 feet keel, colour red.
- 1 sail boat, 25 feet keel, called the "Rebecca," schooner rigged — with all her sails, rigging, tackle and gear.
- 1 fish house and fish stage built at Tracadie Harbour and now occupied by the Mortgagor.
- 1 bait mill.
- all other nets, lines, puncheons and barrels at the fish stage at Tracadie Harbour.

As Prince Edward Island was, and still is, an agricultural province the majority of the chattel mortgages involve farmers. When this is the case there is less detail concerning household furnishings and more information about farm stock and equipment. Part of the schedule for Benjamin Wright, a farmer and miller, shows the type of agricultural equipment and stock usually noted:

- 1 cow.
- 1 bay mare 4 years old.
- 1 single wagon.
- 1 jaunting sleigh.
- 1 covered wagon.
- 1 set gig harness.
- 1 wood sleigh.
- 1 plough.
- 1 set hames.
- 1 set cart harness.
- 1 riding saddle.

By the mid-1870s lenders began to accept standing crops in exchange for credit extended, often for the purchase of the seed for those very crops. The practice was extremely common but the documentation of the costs and expectation of yield gives significant information concerning farming practices during the period.

In the 1880s and 1890s the purchase of farm machinery from firms such as the Massey and McCormick companies was frequently backed by a chattel mortgage secured not only by the machinery purchased but by all other goods,

chattels, and crops of the purchaser. In the province of Ontario this form of purchase money security was also frequently utilized by breweries to guarantee their sales to taverns and hotels and the efficiency of company lawyers has resulted in unusually detailed listings of hotel furnishings.<sup>6</sup>

These detailed listings, while not infrequent, are not found in every mortgage and by 1900 are scarce. The majority of documents contain phrases such as "all household furnishings" or "all stock and equipment." There are, however, a sufficient number of detailed listings to make the collections a valuable source.

In order to appraise the usefulness of the mass of documentation a detailed study was made of chattel mortgages in Record Group 6 (Court Records) at the Public Archives of Prince Edward Island. Access to the material was through index volumes prepared by the court clerk at the time of filing the mortgages. The numbering was chronological with indexing by the name of the debtor.

Chattel mortgage legislation was first enacted in the province in 1860 but the records for only one of the three counties have survived, the others having been destroyed by fire and neglect. Seven thousand documents covering the period from 1860 to 1900 were transferred to the Public Archives in 1974 and have been sorted and arranged. Some 300 mortgages covering the years 1862 and 1885 were closely examined to ascertain the validity of the index prepared by the county clerk, the location and occupation of the borrowers and lenders, the value of the loan, the level of interest, and the amount of detail provided with regard to identification and extent of the goods used as security.

Preliminary results of the study indicate that additional sampling is needed in order to make statistically valid observations, but nevertheless some interesting trends seem to be emerging. Creditors and debtors are frequently from the same general occupation and income groups; tavern keepers tended to borrow from other tavern keepers, commission merchants from other commission merchants, tailors from other tailors, and farmers from other farmers. While this is still true in 1885, lawyers begin to be the lenders of some of the larger amounts, but the pattern of borrowing within the community rather than seeking funds in Charlottetown seems to be retained. In all the documents there were only two instances of borrowing on the strength of a chattel mortgage from a bank and both were instances where the debt was more than \$1,000. The average level of debt does not seem to have changed greatly from 1862 (£56 per borrower) to 1885 (\$206) but in order to make such figures more meaningful it will be necessary to account for economic factors such as inflation.

While information of the type noted above may be useful for social and economic historians, it is the final category of analysis which is the most important for material history. In the 300 chattel mortgages there were several significant "finds," including a complete listing of the typefaces and equipment for the *Examiner* newspaper, full inventories of the stock-in-trade of several rural merchants, a listing of the complete contents of a tailor shop, and detailed inventories of the contents of several houses. In all between 15 and 20 per cent of the schedules provided individually useful information which might be of interest to a material historian.<sup>7</sup>

How such information could be used depends on the needs of the researcher. In a study of a particular individual, shop, farm, or dwelling the indexes will reveal whether or not a schedule exists and if so the data can be injected directly into the study. More frequently it will be a question of establishing a typical or comparable grouping of goods and in such a case a number of examples from within the socio-economic, geographic area, or occupational group will be needed.

Other users will have an object-specific focus, an example of which would be to establish use and ownership patterns for Massey reapers, or for a determination of the nature of changes in rural heating and cooking equipment over a number of years.

Chattel mortgages have a great potential for use in material history and they are just one of a large number of legal records which lie undisturbed, gaining the animosity of records managers and archivists who measure the value of records not against their potential, but against their actual users. In the press for space, low value legal records are often the first to be destroyed. If they are not used now, or at least some interest shown in them, they may not be retained for future users.<sup>8</sup>

Finally, it should be noted that legal records, in spite of signatures, seals, and delivery, are only as good as their makers. John T. Regan's financial difficulties did not end with the making over to Patrick Burke of all his possessions. By the end of the month, John Hughes, a coal merchant, was pressing for payment of his account. On 24 June Regan solved that problem too, and the same day John Hughes registered a chattel mortgage on three dozen pictures, a chiffonier, a lot of crockeryware, and all the other goods, chattels, and belongings that Regan had mortgaged to Burke only two weeks earlier.

#### NOTES

1. Part of the research for this study was undertaken as the result of time made available during another National Museum of Man research project. I would like to thank Dr. Peter Rider for his indulgence in allowing this archival excursion.

2. With some minor differences not important to this study, chattel mortgages and bills of sale are the same. Generally, legislation refers to bills of sale but the important aspect of the device is the change of ownership from the debtor to the creditor as a result of the transaction.
3. Most of the work in this area has been the result of American research. For a review of publications in the area see Bruce C. Daniels, "Probate Court Inventories and Colonial American History: Historiography, Problems, and Results," *Histoire Sociale/Social History* no. 18 (November 1976): 387; also Alice Hanson Jones, "Estimating Wealth of the Living from a Probate Sample," *Journal of Interdisciplinary History* 18, no. 2 (Autumn 1982): 273.
4. The English equivalent is "hire-purchase" in which the ownership of the goods does not pass to the purchaser until completely paid for.
5. A contemporary treatise, discussing both common law and legislation is John A. Barron and A.H. O'Brien, *Chattel Mortgages and Bills of Sale* (Toronto: Law Journal Company, 1897). The subject is dealt with somewhat differently in the civil law code in the province of Quebec and is not discussed in this paper.
6. For example, Perth County chattel mortgage 7324 in RG 22, Ontario Archives, shows that the contents of the dining room of the Beemer House in the Village of Waterford contained "one wood stove and pipes and zinc, 5 pictures, 3 sets of blinds, 3 tables, 21 cain [*sic*] bottom chairs, 1 tray, 2 hanging lamps, one side board, 6 table covers, 2 dozen napkins, 18 goblets, 2 cruets [*sic*], 2 pickle dishes, 2 sugar bowls, 2 milk pitchers, 2 spoon holders, 16 glass salt sellers [*sic*], 22 tea spoons, 2 cheesedishes, 16 knives, 16 forks." This was just one of twenty-one rooms in the inventory.
7. This quantitative assessment is subjective. Actual value of the material will depend on the type of research being carried out.
8. In Ontario, for example, the holdings of the Archives are relatively small. Most surviving records are still in the registry offices and have been scheduled for destruction by the Department of Consumer and Corporate Affairs with a selection of the material being transferred to the Archives. The total known volume of this material is just under 11,000 cubic feet, so the problem for both the Archives and the registry offices can easily be seen.

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