Land and Law in Essex County.
Malden Township and the Abstract Index to Deeds*

by John CLARKE**

I

The purpose of this research note is to bring to the attention of students of Ontario land matters the existence and usefulness of a rich documentary source — the Abstract Index to Deeds. As yet little used,¹ this material has tremendous potential value for social and economic historians as well as geographers.

The origin of these documents lies in the legislation of 1865² which required the county registrars to abstract the detailed information contained in the older Registrars’ Copy Books and to prepare indices for each county. Originally deposited in the district and county registry offices, where a search fee can be required to consult them, the records, together with the more detailed Copy Books³ were microfilmed by the Genealogical Society of Latter Day Saints. A single copy containing the records for the whole province was deposited in the Public Archives of Ontario, Toronto. A researcher wishing to work on a particular part of the

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² An Act respecting Registrars, Registry Offices, and the Registration of Instruments Relating to Lands in Upper Canada received Royal Assent on 18 September 1865; Statutes of the Provinces of Canada, 29Vic. C24. The Act applied on and after 1 January 1866 and required all registrations recorded before that date to be included in the Abstract Index. Schedule E of the Act provided a model for the Abstracts; Table 1 fits the model.

³ As implied in the name, the Registrars’ Copy Books contain exact copies of all memorials and instruments.
county has a number of options. The first of these is to travel to the particular County Registry Office where the records have to be shared with the legal fraternity who are using them for contemporary title searches. A researcher requiring immediate access to these records for more than one county is better off consulting the records in Toronto rather than making separate trips to individual registry offices. This strategy is superior not only in terms of the cost of transportation and perhaps accommodation, but it circumvents the legal requirement of a one dollar fee for each search. For the reader wishing to consult a large number of entries, as a geographer interested in the spatial aspects of settlement must do, such costs are prohibitive. For example, the present author, as part of a larger project, is involved with some 3,000 property parcels. The reader will appreciate that a bill of $3,000 for the basic data would dampen the enthusiasm of all but the most ardent of us. Given enough time, however, the same data can be obtained from Utah for ten dollars per reel of microfilm. Thus, for $90 this same information is available for perusal in the peace of one’s study or office where, buffeted by coffee or other stimulants, one is assailed by the absolute quantity of information available. Most historical researchers, unless motivated by the immediate demands of government contract work, will exercise this third option.

Table 1 is an excerpt from the Abstract Index to Deeds. It lists the land transactions to 1852 on Lot 30 in the third concession of the Township of Malden, a township which has been chosen to outline the main characteristics of the data. Nine types of information are given; all but the first two are self-explanatory. The first, the instrument number, is a device to allow the Registrar to locate either the original document or, by noting the date of registration, to obtain the exact terms of the original instrument in the Copy Books. The ‘Instrument’ heading of Column 2 indicates the particular legal device or instrument used in a given transaction. In the excerpt chosen to be presented there are six different types of instruments, of which four (the patents, the indentures, mortgages, and the bargain and sales) occur most frequently (Table 2). These terms need to be defined clearly.

<table>
<thead>
<tr>
<th>Instrument No.</th>
<th>Instrument</th>
<th>Its Date</th>
<th>Date of Registry</th>
<th>Grantor</th>
<th>Grantee</th>
<th>Quantity of Lands</th>
<th>Consideration of money</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>A15</td>
<td>Patent</td>
<td>6 Mar 1798</td>
<td>5 May 1798</td>
<td>Crown</td>
<td>Mathew Elliot</td>
<td>All 200 acres</td>
<td>—</td>
<td>Lot No. 30</td>
</tr>
<tr>
<td>C115</td>
<td>B &amp; S</td>
<td>8 July 1811</td>
<td>9 July 1811</td>
<td>Mathew Elliot</td>
<td>James Rouse</td>
<td>100 acres</td>
<td>Not mentioned</td>
<td>S 1/2 of Lot 30</td>
</tr>
<tr>
<td>115</td>
<td>Mortgage</td>
<td>8 July 1811</td>
<td>9 July 1811</td>
<td>James Rouse</td>
<td>Mathew Elliot</td>
<td>100 acres</td>
<td>—</td>
<td>S 1/2 of Lot 30</td>
</tr>
<tr>
<td>D140</td>
<td>Mortgage</td>
<td>13 Mar 1819</td>
<td>1 Oct 1819</td>
<td>James Rouse</td>
<td>Robert Reynolds</td>
<td>100 acres</td>
<td>£140</td>
<td>S 1/2 of Lot 30</td>
</tr>
<tr>
<td>F44</td>
<td>B &amp; S</td>
<td>24 Sept 1822</td>
<td>8 Aug 1831</td>
<td>Mathew Elliot</td>
<td>Pierre Beniteau</td>
<td>100 acres</td>
<td>£37.10.0</td>
<td>N 1/2 of Lot 30</td>
</tr>
<tr>
<td>A244</td>
<td>B &amp; S</td>
<td>19 Jan 1840</td>
<td>20 Jan 1840</td>
<td>Jeanne Beniteau</td>
<td>Jean [ ] Beniteau</td>
<td>—</td>
<td>Natural love</td>
<td>See Description of Consideration</td>
</tr>
<tr>
<td>I 186</td>
<td>Will</td>
<td>22 Apr 1814</td>
<td>2 Sept 1843</td>
<td>Mathew Elliot</td>
<td>See Will</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>A119</td>
<td>Q.C.</td>
<td>26 Mar 1850</td>
<td>26 Mar 1850</td>
<td>Thomas Bain</td>
<td>Michael Malone</td>
<td>—</td>
<td>—</td>
<td>Lot No. 30</td>
</tr>
<tr>
<td>120</td>
<td>Will</td>
<td>5 Jan 1827</td>
<td>30 Mar 1850</td>
<td>Pierre Beniteau</td>
<td>See Will of</td>
<td>—</td>
<td>S/-</td>
<td>—</td>
</tr>
<tr>
<td>121</td>
<td>Q.C.</td>
<td>8 Mar 1850</td>
<td>30 Mar 1850</td>
<td>Clement Beniteau</td>
<td>John [ ] Beniteau</td>
<td>Among other lands</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>143</td>
<td>Q.C.</td>
<td>24 Apr 1850</td>
<td>20 Aug 1850</td>
<td>William I Little</td>
<td>Théodore</td>
<td>—</td>
<td>£20</td>
<td>Lot No. 30</td>
</tr>
<tr>
<td>144</td>
<td>Indenture</td>
<td>17 July 1850</td>
<td>20 Aug 1850</td>
<td>Théodore</td>
<td>Washington Little</td>
<td>Michael Malone</td>
<td>100 acres</td>
<td>£30.5.0</td>
</tr>
<tr>
<td>146</td>
<td>B &amp; S</td>
<td>8 Aug 1850</td>
<td>17 Sept 1850</td>
<td>James Rouse</td>
<td>John O'Connor</td>
<td>100 acres</td>
<td>£50</td>
<td>S 1/2 of Lot 30</td>
</tr>
<tr>
<td>176</td>
<td>B &amp; S</td>
<td>8 Mar 1851</td>
<td>8 Mar 1851</td>
<td>Thomas Bain</td>
<td>Michael Maloney</td>
<td>100 acres</td>
<td>£75</td>
<td>S 1/2 of Lot 30</td>
</tr>
</tbody>
</table>

Source: Public Archives of Ontario, Abstract Index to Deeds, Malden Township, f74
Deed

The term is a general one, meaning a document under seal, and includes specific instruments such as indentures or deeds of bargain and sale, and patents. It may also include a mortgage of real estate or a lease held for over 21 years. It is a conveyance of realty by a grantor whereby the title is transferred from one to another. It involves two or more individuals and in this respect the term Deed differs from the term Deed Poll in which only the party making it binds himself to it. In the case of Malden Township the only user of deeds was the Canada Company.

Patent

A patent is a grant of privilege and property made by the government. In Upper Canada the grantor was always the Crown and the patent was issued after the fulfilment of settlement duties and the payment of a fee. Patents were made both to individuals and to corporations, for example, the Canada Company. Money was never recorded for the transactions. The patentee had full legal title to the property patented, provided he paid his dues in taxation. If this did not happen the land was seized by a Sheriff’s Deed, Sheriff’s Sale, or simply by the Sheriff. This also applied to conveyances of land between individuals.

Table 2: Township of Malden — Frequency of Recording Particular Instruments, Money and Acreage*

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Number Recorded</th>
<th>Number Recorded with Money</th>
<th>Number Recorded with Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deed</td>
<td>17</td>
<td>17</td>
<td>17</td>
</tr>
<tr>
<td>Bargain and Sale</td>
<td>321</td>
<td>274</td>
<td>135</td>
</tr>
<tr>
<td>Indenture</td>
<td>106</td>
<td>88</td>
<td>81</td>
</tr>
<tr>
<td>Deed Poll</td>
<td>6</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Dower Right</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Mortgage</td>
<td>88</td>
<td>76</td>
<td>77</td>
</tr>
<tr>
<td>Assessment of Mortgage</td>
<td>16</td>
<td>6</td>
<td>7</td>
</tr>
<tr>
<td>Discharge of Mortgage</td>
<td>4</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Deed of Trust</td>
<td>5</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>Deed of Release</td>
<td>8</td>
<td>7</td>
<td>3</td>
</tr>
<tr>
<td>Lease</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Foreclosure</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Sheriff’s Deed</td>
<td>4</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Bond</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Deed of Gift</td>
<td>10</td>
<td>2</td>
<td>10</td>
</tr>
<tr>
<td>Deed of Confirmation</td>
<td>2</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Deed of Partition</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Agreement</td>
<td>3</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Power of Attorney</td>
<td>13</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Grant</td>
<td>3</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Quit Claim</td>
<td>14</td>
<td>11</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>624</td>
<td>500</td>
<td>349</td>
</tr>
</tbody>
</table>

*n.b. Since money is never recorded for patents and wills in the Abstracts, these instruments have not been included in the Table. There were 65 wills registered and 199 patents in Malden Township in the period up to 1832. Source: P.A.O., Abstract Index to Deeds, G. S., 936-940, Vol. A.
**Indenture**

An indenture is a deed to which two or more persons are parties, the edges of the deed being indented for purposes of identification and security. In this sense all instruments, with the exception of Deed Polls, are indentures. Both parties generally enter into reciprocal and corresponding grants or obligations towards each other. In some instances there may be a transfer of title without consideration, for example, in the case of a will. However, where, as in the case of Instrument 144 on Table 1, an instrument is listed as an Indenture (or Ind.) in the instrument column of the Abstracts, this represents a transfer of title between the two parties, for some consideration. There is one limitation in a transfer of this nature, and that is that the wife of the party of the first part retains her dower right. Dower is defined as that part of a deceased husband's estate that the law allows his widow for life. Few sought to assert this dower right in Essex County and, as Table 2 shows, none did in Malden Township. However, where the person acquiring the land sought to purchase the dower right, this was accomplished by paying a standard fee of five shillings to the wife of the "party of the first part".

**Bargain and Sale**

This is one method used to convey title to land, originally so that it could be done secretly. Conveyance of title is made with all rights and privileges, in return for monetary consideration or an equivalent in goods or mineral and timber rights. These are the most commonly recorded instruments in the Abstracts.

**Mortgage**

A mortgage is a deed for the conveyance of real or personal property by a debtor (mortgagor) to a creditor (mortgagee) as security for a money debt. In the Abstracts for Essex County, mortgages are recorded in the Instrument column as 'mortgage' or abbreviated to 'mort.' Occasionally, mortgages are recorded as indentures, although from the context, it is obvious that they are, in fact, mortgages. When this happens the term mort is added to the Comments Column. If, within a certain time, the debt is repaid, the mortgagee is obliged to reconvey the property. This action is recorded in one of three ways: as a D.M. or discharge of mortgage in the Instruments Column; as *disch.* in the Comments Column; or by drawing a line through the whole of the entry. Where a mortgagee transfers his responsibility to another individual, such action is recorded in the Instruments Column as an Assignment or Assignment of Mortgage (A.M.). Where common law mortgages were not used, property could be placed in the hands of one or more trustees to secure the repayment of a sum of money or the performance of some particular condition. This was accomplished with a Deed of Trust or Trust Deed, which though different in form from a mortgage had a similar effect. In this instance, instead of a D.M., a Deed of Release is executed by the trustees to reconvey the property to the grantor. If, on the other hand, the mortgagor defaults on his agreement, an instrument of foreclosure is used to ensure the land is transferred to the mortgagee. Foreclosure will also be used
where the instrument used was a bond. A bond would therefore appear
to be similar to a mortgage, the grantor putting his land as security
against the amount of money borrowed in the agreement.

Grant
This instrument appears to transfer title and to be similar in effect
to an indenture of bargain and sale.

Quit Claim
This is an instrument whereby one party gives up all his claims to the
land. Therefore it may be used to clarify an earlier property description
and thus reduce conflict between neighbours, or, indeed, it can be used to
settle accounts where a mortgagor has been unable to meet his obligations
and foreclosure is imminent.

Power of Attorney
This gives an individual power to act for another individual.

Other terms such as Will, Deed of Gift, Deed of Partition, Deed of
Confirmation and Lease need no explanation.

III
The reader approaching this section may well ask "by whom are the
Abstracts to be used and to what end?" While the writer can envisage
this material being useful to economists, historians, and geographers, only
the reader can answer these questions from his own perspective within
the traditions of his own discipline. The strategy here will therefore be
to comment briefly on the completeness of the data and their value to the
author, an historical geographer.

The documents are handwritten, and may therefore be illegible
in places, a common enough problem for the historian. As abstracts they
may not provide sufficient detail on a particular aspect of a transaction but,
of course, such detail can be obtained from the Copy Books. The data
appear to be consistently recorded with respect to the moneys involved
in a particular transaction, and fairly consistently recorded with respect to
the acreages involved. Most important for the geographer, the data can
be located in terms of the lot (or part of a lot) and concession system. Of
course, use of the documents requires familiarity with the meaning of the
instruments. While every attempt has been made to ensure that the

7 As is noted in Table 2, in Malden Township money was recorded in 80.1 percent
of the cases and the acreage in 55.9 percent. The latter is thought to be low by the standards
of other townships in Essex County, but if the reader is prepared to work with samples
rather than total populations, this figure is more than satisfactory. If not, recourse to the
Copy Books will allow the gaps to be filled.

8 W. F. Weaver, Crown Surveys in Ontario (Toronto: Department of Lands and
Forests, 1962); R. L. Gentilcore and K. Donkin, Land Surveys of Southern Ontario, Carto­
graphica No. 8 (Toronto: York University, 1973).
terms described above have been adequately defined, a complete awareness of all the legal nuances is hardly necessary to use the terms to decide, for example, who had title to a particular property at a particular date. In other words, the terms should be examined in the context of the question asked. With respect to the particular question asked here, the distinction between indenture and bargain and sale is unimportant since both instruments convey title. Again, if a particular entry does not contain enough information to make such a decision, its position in a succession of entries will usually clarify events.

What questions are being asked by this researcher? What was the spatial and temporal pattern of land acquisition in Malden Township and Essex County during the first half of the nineteenth century? The land patents hold the answer to this question since they indicate the date when a person, having fulfilled all the requirements specified by the Crown, received the title to his land. Figure 1 prompts a number of questions. What was the role of accessibility, physical environment, Crown and Clergy Reserves, and land speculators in the settlement process? These are continuing themes in the historical geography of Ontario and a number of studies have been directed towards their solution. The patent data on which several of these studies rest are recorded in the Patent Index or Domesday Books in Toronto and form part of the information in the Abstracts.

Who were the owners of property in Essex County in 1825 and 1852, years selected for cross-sectional examination because of the relative wealth of assessment and census returns? Figures 2 and 3, rapidly compiled from these sources, indicate the occupiers of each of the 103 lots of Malden. Figures 4 and 5, which indicate the owners of land at these two times, were constructed from the Abstracts and required considerably more time — Figures 6 and 7 can be used to gauge exactly how much. They illustrate the steps necessary to establish ownership on each of two properties, Lot 3 in the first concession and Lot 24 in the second. In the records these properties are closely intertwined with two others, the so-called Caldwell Grant between Lake Erie and Big Creek and the Bell Farm. The interrelationship between the documents and property parcels is seen to be complex. The problem of determining who owned these properties is

compounded by incomplete returns on acreage and by missing documents, so that the final solutions rest upon inspired guesswork. While many of the problems can be solved in ten or twenty minutes, it took ten hours to determine that there were twenty-five owners on the Caldwell property in 1852. Access to the Copy Books or original instruments might well have helped and this sort of action is possible when a study is limited to a small number of lots. Where, however, a large number of lots is being studied, financial and time considerations prevent this. The researcher working with a large number of properties must of necessity content himself with an unknown error. This is the case with the present writer who, unable to specify a statistical confidence level for his study of Essex County, is content that the accumulated effect of such error is slight.

Figures 8 and 9 show the results of this painstaking, detailed, and boring work. They show the correspondence between the Abstracts and the Assessment Rolls or Census. Where two documents agree we would seem to have identified owner-occupiers, where they disagree, probable tenancy, and where a property is owned but not assessed we would seem to have identified a new settler or perhaps a speculator.

A third area to which the Abstracts speak is the change in the size of holding through time, a theme recently investigated by Widdis. Where there differences in size of holding, and did this correspond to the different categories of persons described above? Did such differences reflect differing ethnic origins? Did they reflect environmental quality? It would seem that in Essex County there was marked subdivision of holdings beginning in the 1840s. Was this the response of an ever-increasing population in an area where prime agricultural land was limited in a period before the widespread adoption of tile drainage? Can it be related to the economic cycles of expansion and contraction, frequency of transfer (Figure 10), and the average price of land (Figure 11)? Such variables can be collected from the Abstracts for these purposes. Figure 10 compares the frequency of land transfer for Malden Township and Elizabethtown Township, located in the extreme southwest and east of the province. The rates were obviously different. Were there regional patterns? Much work is needed on this and other inter-related themes for which the Abstract Index to Deeds offers the necessary data. It is to be hoped that greater use will be made of them.

Figure 1

DATES OF LAND PATENTS

MALDEN TOWNSHIP
County of Essex

Scale of Miles
Figure 2

MAP OF THE ASSESSED OCCUPANTS
1825

MALDEN TOWNSHIP
County of Essex

Source: Assessment Roll for 1825
MAP OF OCCUPANTS
1851/52

Malden Township
County of Essex

Source: 1851/52 Agricultural Census
Figure 4

MAP OF LAND OWNERSHIP
1825

Not patented by 1825

Assigned to lot

Source: Abstract Index to Deeds, 1825
Figure 5

MAP OF LAND OWNERSHIP
1852

MALDEN TOWNSHIP
County of Essex

Source: Abstract Index to Deeds, 1852

Not patented by 1852
Assigned to lot from 1825 data and sequence

Scale of Miles

LAND AND LAW IN ESSEX COUNTY

487
Figure 6. Lot Three in the First Concession
Figure 7. LOT 24 IN THE SECOND CONCESSION
Figure 8

CORRESPONDENCE OF ABSTRACT INDEX TO DEEDS
WITH ASSESSMENT 1825

MALDEN TOWNSHIP
County of Essex

Assessment and A.I.D. sequence agree
Assessment name and A.I.D. owner disagree
Owned on A.I.D. but not counted on assessment
Not patented nor on assessment roll

0 Scale of Miles 1
Figure 9

CORRESPONDENCE OF ABSTRACT INDEX TO DEEDS
WITH CENSUS 1852

MALDEN TOWNSHIP
County of Essex

Census and A.I.D. sequence agree
Census name and A.I.D. owner disagree
Census name but prior to patent date
Owned on A.I.D. but not counted on census
Not patented nor on census

Scale of Miles 1

Detroit River
Lake Erie
FREQUENCY OF LAND TRANSFERS
Elizabethtown & Malden Townships

Source for Malden: Calculation by the author.

Figure 10

AVERAGE PRICE PER SALE
Malden Township

Source for Malden: Calculation by the author.

Figure 11