

The Land Records of Old Ontario, 1791–1867

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The records concerning land granting and ownership in old Ontario (1791–1867) are of varying quality. Those dealing with property before patenting are often episodic and incomplete, and are consequently ill-suited for systematic study. Those relating to property after patenting are far more comprehensive. For the latter, researchers have typically consulted the Abstract Indexes to Deeds, but these do not always contain all the information they promise. In such instances researchers might be better advised to consult the relatively little-known Copy Books.

Les documents sur la concession et la propriété des terres dans l'Ontario d'antan (1791–1867) n'ont pas tous la même qualité. Ceux portant sur la propriété avant concession sont fréquemment épisodiques et incomplets et se prêtent donc mal à une étude systématique. Ceux ayant trait à la propriété après concession sont beaucoup plus détaillés. Dans ce dernier cas, les chercheurs consultent habituellement les répertoires par lot des actes scellés, mais on n'y trouve pas toujours toute l'information promise. Les chercheurs feraient alors sans doute mieux de consulter les cahiers d'écritures, relativement peu connus.

LAND LOOMED LARGE in the mental landscape of Upper Canadians. Land was at “the basis of most family economies”; its availability affected

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marriage and birth rates.¹ Farmers had “a mania for amassing all of the land they could afford”.² Land became “the symbol and basis of the family’s prosperity”, its ownership signifying “independence” and “success”.³ Thus land “could stir passions; it was not merely a commodity.”⁴ Commodity it was, however: indeed “a lively commodity” that many, whether of the elite or not, bought and sold.⁵ As David Gagan observes in his study, *Mid-Victorian Peel County*, “access to land” formed “the great divide between the yeomanry and those below them in social and economic status”, just as it did in rural Britain or the United States.⁶ As “[t]he prerequisite for all other forms of social betterment”, Gagan argues, “the ownership of property is”, for the historian, “one of the most suitable measures of economic and social distinction.”⁷ Not surprisingly, then, historians and others have shown a decided interest in land holding, particularly in the last 20 years when the dictates of social history and the development of computer-assisted research have combined to translate interest into scholarship.

Unfortunately, land records are a jumble — at least in Ontario, with collection piled upon collection in daunting confusion. Fortunately, several

- 1 Chad Gaffield, “Children, Schooling, and Family Reproduction in Nineteenth-Century Ontario”, *Canadian Historical Review*, vol. 72, no. 2 (June 1991), p. 170; William L. Marr, “Family Size Limitation in Canada West, 1851: Some Historical Evidence”, *Canadian Papers in Rural History* (hereafter *CPRH*), vol. 7, edited by Donald H. Akenson (Gananoque, Ont.: Langdale Press, 1990), p. 284. The various volumes in this series are all edited by Donald Akenson and published in Gananoque by Langdale Press.
- 2 David P. Gagan, “The Indivisibility of Land: A Microanalysis of the System of Inheritance in Nineteenth-Century Ontario”, *Journal of Economic History*, vol. 36, no. 1 (March 1976), pp. 127–128.
- 3 Herbert J. Mays, “‘A Place to Stand’: Families, Land and Permanence in Toronto Gore Township, 1820–1890”, *Canadian Historical Association Historical Papers* (1980), p. 187; David Gagan, “‘The Prose of Life’: Literary Reflections of the Family, Individual Experience and Social Structure in Nineteenth-Century Canada”, *Journal of Social History*, vol. 9, no. 3 (Spring 1976), p. 369; Gordon Darroch and Lee Saltow, *Property and Inequality in Victorian Ontario: Structural Patterns and Cultural Communities in the 1871 Census* (Toronto: University of Toronto Press, 1994), p. 23.
- 4 S. J. R. Noel, *Patrons, Clients, Brokers: Ontario Society and Politics, 1791–1896* (Toronto: University of Toronto Press, 1990), pp. 10–11.
- 5 John C. Weaver, “While Equity Slumbered: Creditor Advantage, a Capitalist Land Market, and Upper Canada’s Missing Court”, *Osgoode Hall Law Journal*, vol. 28, no. 4 (Winter 1990), p. 906. For an example of elite interest in land, see J. K. Johnson, “Land Policy and the Upper Canadian Elite Reconsidered: The Canada Emigration Association, 1840–1841” in David Keane and Colin Read, eds., *Old Ontario: Essays in Honour of J. M. S. Careless* (Toronto: Dundurn Press, 1990), pp. 217–233.
- 6 David Gagan, *Hopeful Travellers: Families, Land and Social Change in Mid-Victorian Peel County, Canada West* (Toronto: University of Toronto Press, 1981), p. 99. In Peel under 50% of householders were freeholders in 1850 and 1860, though this had risen to over 66% by 1870. In the United States, Gagan notes, citing Lee Soltow’s *Men and Wealth in the United States, 1850–1870* (New Haven: Yale University Press, 1975), “approximately two-fifths of the adult (free) male population were property owners.” *Hopeful Travellers*, p. 99.
- 7 Gagan, *Hopeful Travellers*, pp. 148, 99.

helpful guides, published as well as unpublished, exist. Notable among the latter are various finding aids and W. R. Wightman's lengthy report on "Land Records" in the Landon Project Papers, housed in the University of Western Ontario's Regional History Collection.⁸ The Landon Project, which died a premature death from an inability to raise major funding, was designed to illustrate how systematic history could and should be pursued. Focused in its short life on southwestern Ontario, the project was to use scholarship centring on this portion of the province to illustrate general principles. Hence, while Wightman's report can be read with much profit by anyone utilizing old Ontario's land records, those working on the western peninsula will find it the most illuminating. The report is particularly detailed in its inventory of the maze of material relating to properties before "patenting" (the granting of full legal title). The published guides to the land records, though extremely useful, are more narrow in scope than Wightman's report, dealing with collections relating to patented property, especially the Abstract Indexes to Deeds. The published material includes R. W. Widdis's article, "Tracing Property Ownership in Nineteenth-Century Ontario: A Guide to Archival Sources";⁹ A. David McFall's and Jean McFall's pamphlet, *Land Records in Ontario Registry Offices*;¹⁰ John Clarke's research note, "Land and Law in Essex County: Malden Township and the Abstract Index to Deeds";¹¹ and John S. Hagopian's piece, "The Use of Land Registry Offices for Historical Research".¹² Hence good signposts do exist to guide the researcher interested in the ownership of property in old Ontario. Still, a more general "road map" suggesting the possibilities and drawbacks of some paths, indicating a new shortcut, and pointing to a largely neglected route should prove beneficial.¹³

8 University of Western Ontario, Weldon Library, Regional History Collection (hereafter UWO), Landon Project Papers, Box 5674, W. R. Wightman, "Land Records — Second Draft", January 4, 1977. I am grateful to Professor John Clarke of Carleton University's Geography Department for drawing my colleague's work to my attention.

9 R. W. Widdis, "Tracing Property Ownership in Nineteenth-Century Ontario: A Guide to Archival Sources", *CPRH*, vol. 2 (1980), pp. 83–102.

10 A. David McFall and Jean McFall, *Land Records in Ontario Registry Offices* (Toronto: Ontario Genealogical Society, 1984). The Genealogical Society, in association with the Archives of Ontario and the Ministry of Consumer and Commercial Relations, has subsequently published a new guide. See Carolyn Gray, John Jung, and Richard W. Ramsey, *A Guide to Ontario Land Registry Records* (Toronto: Ontario Genealogical Society, 1994).

11 John Clarke, "Land and Law in Essex County: Malden Township and the Abstract Index to Deeds", *Histoire sociale/Social History*, vol. 11, no. 22 (November 1978), pp. 475–493.

12 John S. Hagopian, "The Use of Land Registry Offices for Historical Research", *Ontario History*, vol. 87, no. 1 (March 1995), pp. 77–86. Another published source discussing the documentary collections available is John Mezaks, "Crown Grants in the Home District: The System and the Existing Records", *Families*, vol. 14, no. 4 (Fall 1975), pp. 126–134. Neither the Hagopian nor Mezaks articles, unlike the others cited, has much to say about the *Abstract Indexes to Deeds*.

13 I am interested here in those records that relate to property ownership. To that end, I intend to discuss neither the 1851 and 1861 agricultural censuses nor the pre-Confederation assessments rolls, which,

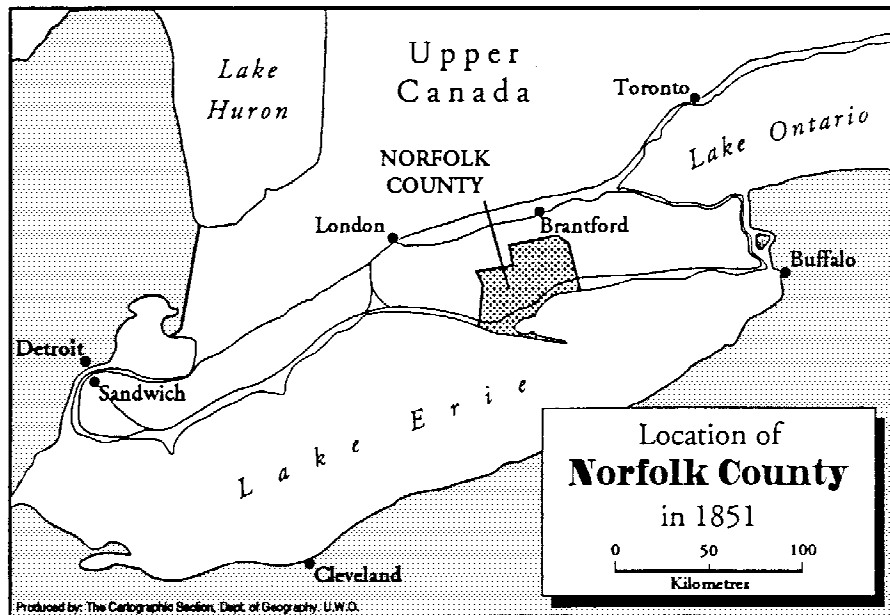


Figure 1 Produced by the Cartographic Section, Department of Geography, University of Western Ontario

I have used land records in my previous research on the rebellion in western Upper Canada¹⁴ and am now embarked upon a project involving land holding in Norfolk County between 1792 and 1851. (For Norfolk, see Figure 1.) The latter work has made me increasingly aware of the limitations of some sources and the opportunities presented by others. For instance, I am collecting biographical information about individuals and their circumstances on arrival in the province. As many genealogists and some historians have long known, the petitions to the land committee of the Executive Council of the province are particularly rewarding. The originals are in the National Archives of Canada (RG1 L3) and have been dispersed across Ontario on microfilm to various repositories. Until 1826 the province had a system of free grants, and applicants found it expedient to establish their deserving characters, often reviewing their economic and family circumstances, as well as their services, if any, to the crown. Thus the petitions

like gazeteers, directories, and most maps, do not distinguish between property owned and property rented. This is not to deny their significance as sources, just to make the point that they are imperfect guides to property ownership. In conjunction with information about property ownership, they do allow one to chart renting, which, the literature suggests, was on the increase over the period.

14 See Colin Read, *The Rising in Western Upper Canada: The Duncombe Revolt and After* (Toronto: University of Toronto Press, 1982).

are especially useful for biographical purposes. The decisions of the committee were typically recorded on the back of the petitions and noted as well in the committee's land books (RG1 L1), which are also on microfilm and widely available.

If the Executive Council granted land, the grantee might have to complete a number of settlement duties, though these were evidently not much enforced in Norfolk, nor indeed in most of Upper Canada, in the first few decades covered by this study.¹⁵ Ordinary grantees, except for Loyalist and military claimants, had to pay a wide range of fees, designed to cover the province's land granting costs. Substantial and often revised upwards, these helped deter the securing of land patents — final legal titles.¹⁶ Many grantees found that "location tickets" gave them sufficient security of land tenure to delay paying their patent fees, for years in many instances. This was particularly true of land speculators. Unfortunately, the records detailing the history of lots before patenting are incomplete — surprisingly so, as Wightman observes.¹⁷ The Crown Lands Township Papers in the Archives of Ontario (RGI C-IV), which contain all the material in the Crown Lands records on property before patenting, are organized by lot and concession for each of Ontario's townships. In some areas they are evidently a rich source of information on pre-patented property, but this is less true of Norfolk and the other counties, Brant, Oxford, and Middlesex, where I have worked.¹⁸ Here the documentation on isolated lots can be rewarding, but overall it is distressingly episodic.¹⁹

15 Settlement duties were not generally enforced in Upper Canada until 1818. Lillian Gates, *Land Policies of Upper Canada* (Toronto: University of Toronto Press, 1968), pp. 125–126. See her explication of the situation with respect to Loyalist grants and settlement duties, pp. 131–140. Gates notes (p. 332, n. 35) that the Archives of Ontario has five volumes of settlement duty papers and that these cover the years from 1800 to 1818, when settlement duties were enforced haphazardly. She also observes that just a few date from after August 1803.

16 The fees were revised upwards until generally discontinued in 1826. They varied according to the amount of land granted. To use the common 200-acre grant as an example: the fees thereon were established at £3 4s 2d in 1795, raised to £8 4s 1d — plus incidentals — in 1804, and reset at £16 17s 6d in 1819. George C. Patterson, *Land Settlement in Upper Canada*, Sixteenth Report of the Department of Archives for the Province of Ontario (Toronto: Clarkson W. James, King's Printer, 1921), pp. 54, 101, 130, 131, 134, 141. (Patterson describes the complicated process of actually getting a grant on page 70.)

17 UWO, Wightman, "Land Records", p. 35. Wightman has an excellent discussion of the records available for unpatented property on pp. 25–51. Here I use the term "pre-patented" or "unpatented" property as a convenient way of identifying land (other than rentals) which had been purchased or acquired but not yet patented, recognizing that there is an oxymoronic character to the terminology. In the strictest sense property did not exist until it was patented.

18 Akenson found them informative for Leeds and Lansdowne Township in the eastern part of the province. Donald Harman Akenson, *The Irish in Ontario: A Study in Rural History* (Montreal and Kingston: McGill-Queen's University Press, 1987), p. 55, n. 13. The Township Papers and the records of the land committee of the Executive Council do contain information on the leasing of reserve lands and on various other matters such as mis-surveys.

19 Marianne McLean produces a map of early settlement in three Glengarry townships in the eastern-

Of more use than the Township Papers for systematic study is the Land Record Index, which was not in existence when Wightman produced his report. Compiled by the Archives of Ontario and consisting of 326,742 microfiche entries of grants which led to patents, it allows the researcher to take a shortcut through much of the material Wightman describes. The entries are drawn from the Crown Lands Papers, the files of Peter Robinson (an early colonizer in the eastern part of the province and later Commissioner of Crown Land), and the records of the Canada Company, a private concern which assumed control of almost two and a half million acres across the province in 1826.²⁰ While this is a valuable index and provides the most comprehensive source available on pre-patented property, a significant number of errors have been made in its transcription, at least for Norfolk. It must be used with care. Unhappily, the index provides no information on prices paid; for this, one must look elsewhere. To compound misfortune with misery, such data is scattered through various sources and is far from complete. As Wightman delicately puts it, “the general situation regarding the availability of Crown Land sales records is most unfortunate.”²¹

At least two other collections of pre-patent records are worthy of note: the Talbot maps and the records of the Heir and Devisee Commission. (The first is of significance for my current work, the second is not.²²) In the latter case, the province established two Heir and Devisee commissions to deal with claims to lots that were settled before the patenting system was introduced in 1795. Just a handful of settlers were in Norfolk then; hence the commissions’ work is of little relevance for that county.²³ For counties settled earlier, however, it can be vital.

Thomas Talbot (1770–1853) was an irascible and eccentric Irish nobleman with good English connections who secured the right to settle all, or part of, 29 townships, two Norfolk ones — Houghton and Middleton — among them. In the latter, Talbot was to settle the lots along the Talbot Road, which, winding from Niagara on the east to the Detroit River on the

most part of the province and includes a list of pre-patent sources used for the map. Marianne McLean, *The People of Glengarry: Highlanders in Transition, 1745–1820* (Montreal and Kingston: McGill-Queen’s University Press, 1991), p. 171.

20 Gerald M. Craig, *Upper Canada: The Formative Years, 1784–1841* (Toronto: McClelland & Stewart, 1963), p. 136.

21 UWO, Wightman, “Land Records”, p. 45.

22 John Clarke’s “Mapping the Lands Supervised by Colonel the Honourable Thomas Talbot in the Western District of Upper Canada, 1811–1849”, *Canadian Cartographer*, vol. 8, no. 1 (June 1971), pp. 8–18, examines the utility of the maps for research, particularly for the westernmost part of Upper Canada.

23 On the two commissions, see Lillian F. Gates, “The Heir and Devisee Commission of Upper Canada, 1797–1805”, *Canadian Historical Review*, vol. 38, no. 1 (March 1957), pp. 21–36; H. Pearson Gundy, “The Family Compact at Work: The Second Heir and Devisee Commission of Upper Canada, 1805–1841”, *Ontario History*, vol. 66, no. 3 (September 1974), pp. 129–146; John Mezaks, “Records of the Heir and Devisee Commissions”, *Families*, vol. 16, no. 4 (Fall 1977), pp. 199–206.

west, cut through the two townships.²⁴ Talbot enforced his own settlement duties, borrowed from Yonge Street, north of Toronto.²⁵ More importantly, he had his own record-keeping device for non-patented property. This took the form of a series of maps, showing the lots and concessions of each township. Settlers who had occupied property, but not patented it, he recorded on the map in pencil. If he had cause to be displeased with them, he simply “rubbed them out”. They lost their lands accordingly. The Talbot maps, available at the Regional Room of the University of Western Ontario, the Archives of Ontario, and the provincial Ministry of Natural Resources, thus provide a guide, albeit an imperfect one, to the early Talbot settlers.

On balance, the extent to which one can determine the holding of unpatented property is limited. Fortunately, once land was patented, its subsequent history can be charted with considerable confidence.²⁶ The patent system was prescribed in 1795, and thereafter each county opened a registry office to record land transactions.²⁷ This represented a considerable advance on the situation in England, where in the mid-1790s only Yorkshire and Middlesex had registers.²⁸ While the Crown Lands Office in York, the capital of Upper Canada, kept lists of patents issued, so too did the registry

24 Alan George Brunger, “A Spatial Analysis of Individual Settlement in Southern London District, Upper Canada, 1800–1836 (Ph.D. thesis, University of Western Ontario, 1973), examines the settlement of Houghton and Middleton. Brunger argues that in eastern Middleton, at least, the Talbot Road seems not to have had much effect on settlement (p. 104).

25 Gates, *Land Policies*, pp. 127–128.

26 Considerable variation existed across the province in the rates of land patenting. For example, almost 100% of the lots in Elizabethtown, along the St. Lawrence, were patented between 1790 and 1841. Widdis, “Tracing Property Ownership”, p. 95. In contrast, only 66.9% of Montague Township, in the third tier of townships back from the river, had been patented by 1850. Glenn J. Lockwood, “Irish Immigrants and the ‘Critical Years’ in Eastern Ontario: The Case of Montague Township, 1821–1881”, *CPRH*, vol. 4 (1984), p. 177, n.8. Similarly, while 78.3% of Norfolk had been patented by 1851, the extremes in the county were considerable. Just 33.2% of Houghton had been patented but 96.1% of Woodhouse had. Three notable studies which examine patenting across entire districts are Leo A. Johnson, “Land Policy, Population Growth and Social Structure in the Home District, 1793–1851”, *Ontario History*, vol. 63, no. 1 (March 1971), pp. 41–60; Leo A. Johnson, “The Settlement of [the] Western District, 1749–1850” in F. H. Armstrong, H. A. Stevenson, and J. D. Wilson, eds., *Aspects of Nineteenth-Century Ontario: Essays Presented to James J. Talman* (Toronto: University of Toronto Press, 1974), pp. 19–36; John Clarke, “Aspects of Land Acquisition in Essex County, Ontario, 1790–1900”, *Histoire sociale/Social History*, vol. 11, no. 21 (May 1978), pp. 98–119.

27 Two sources cite the implementation of the act as 1797. Archives of Ontario (hereafter AO), RG61, Property Rights Registration Records, Inventory no. 61, Land Registry Office Records (unpaginated); Shirley C. Spragge, “The History of the Land Record Copy Books” in McFall and McFall, *Land Records*, p. 11. The act seems to have been implemented before then, however, with the Norfolk registrar, for instance, being appointed in 1796. Frederick H. Armstrong provides the dates of appointment of all the registrars in *Handbook of Upper Canadian Chronology* (Toronto: Dundurn Press, revised ed., 1985), pp. 154–158. Confusingly, the appointment of the registrar of Essex and Kent counties seems to have occurred in September 1794 (pp. 155, 156).

28 McFall and McFall, *Land Records*, p. 2.

offices. Two such compilations, one from the records of the Archives of Ontario and the other from those of the county registry office, have been published for Norfolk.²⁹ Most counties have not been so favoured, obliging interested researchers to turn directly to the archival material for information on patents.

The detailed records the registrars kept became the basis of the Abstract Indexes to Deeds, first established in 1865.³⁰ Set up on city, town, and township basis, these provide for each lot the date of patenting; the days, both actual and registered, of all subsequent transactions (whether bargain and sale, mortgage, bequest, for instance, but not rentals as such); the names of the principals; and the actual acreages involved.³¹ The Abstract Indexes do commonly provide a space for the Registrar to add any comments of particular interest and to enter under the heading "Consideration or Amount of Mortgage" the amount of money, if any, involved in a transaction. However, in the Abstract Indexes for Norfolk up to 1851 and in those for Middlesex, Brant, and Elgin counties up to 1838, which I have used previously, the latter information is virtually non-existent. Indeed, the "Consideration" column does not appear in the Elgin indexes. In Norfolk, Registrar F. L. Walsh or his assistants only systematically cited prices for new transactions. Circumstances were far better in Malden Township on the Detroit frontier. There John Clarke found that 500 of the 624 transactions he examined (dating from 1790 to 1850) in the Abstract Indexes did specify prices. Some of the other 124 cases might not have involved a price anyway, a possible instance being the transfer of lands between family members for "natural love and affection".³² More disappointing was the fact that he found acreages recorded in just 349 of the 624 cases.³³ A check of the original documents in the registry office revealed that the missing informa-

29 William R. Yeager, ed., *Early Norfolk County Land Patents, 1795–1883 (In Two Parts)* (Simcoe: Norfolk Historical Society, 1981).

30 Three sources that explain both the use of the Abstract Indexes and the most common terms found therein are Clarke, "Land and Law in Essex County"; Widdis, "Tracing Property Ownership"; and McFall and McFall, *Land Records*.

31 As Widdis notes, a considerable lag often occurred between the date an instrument was concluded and the date it was registered. Widdis, "Tracing Property Ownership", p. 90. I have chosen the former date as the one to chart, for, as Widdis points out, it "indicates for all practical purposes the actual transfer of property". The Archives of Ontario holds microfilm copies of the Abstract Indexes to Deeds for some Ontario locales, but not all. The original Abstract Indexes are still in the registry offices. AO, RG61, Property Registration Records, Inventory no. 61, Land Registry Office Records (unpaginated).

32 My experience is that, while family members might not charge other family members the market price, they did typically charge something. Donald Akenson found that the Loyalists he studied in Leeds and Lansdowne Township, in fact, obliged their children to pay market prices. Akenson, *The Irish in Ontario*, p. 64. Bruce Elliott discovered that the same was true of the Tipperary Protestants he followed. Bruce S. Elliott, *Irish Migrants in the Canadas: A New Approach* (Montreal and Kingston: McGill-Queen's University Press, 1988), p. 236.

33 Clarke, "Land and Law in Essex County", p. 478.

tion was not generally available there either.³⁴ Nonetheless the lacunae in Clarke's Essex data did not escape the notice of Edward C. Gray and Barry E. Prentice, who, when examining land sales in Kent and Wellington counties in the nineteenth century, avoided the Abstracts. Instead, they turned to the "individual title deed[s]" and were far more successful than Clarke in securing acreages and prices.³⁵ Since the Essex Abstract Indexes reflect quite faithfully the available data, the Essex case does not suggest that researchers need to go beyond the Abstract Indexes to secure acreages and prices. Yet the Norfolk situation, where prices seldom appear in the Abstract Indexes before 1866, does suggest the wisdom of proceeding beyond the Abstract Indexes. (In pursuing Loyalist grants in 19 counties — Middlesex, Elgin, Oxford, Wellington, Carleton, Lambton, Kent, Lanark, Dufferin, Peterborough, Wentworth, Ontario, Essex, Haldimand, Leeds, Grey, Simcoe, Durham, and York — I have been able to find some prices, at least, in the Abstract Indexes of the latter 14.) Clearly, researchers need to examine the Abstract Indexes of the locales they are researching to see whether or not they contain the information they should. If they do not, then researchers would be well advised to turn to other sources, as Gray and Prentice did. Following the latter's path, securing individual deeds from the registry office or even from private individuals can take one on a long and frustrating journey, however. Anyone contemplating this route would be better advised to turn to the Copy Books, or so the Norfolk situation suggests.³⁶

The Copy Books, whose history has been briefly described by Shirley Spragge, are registers providing abstracts, or even full copies, of the documents involving legal title to patented property and are the foundation of the Abstract Indexes.³⁷ From the inception of the registry offices until the 1840s the Copy Books were kept on a county-wide basis; thereafter, they were organized by townships, cities, towns, and villages.³⁸ In 1866 General Registers were begun for wills, powers of attorney, and the like.³⁹ After 1865 the Copy Books were to contain the texts of documents in full; before

34 Private communication.

35 Edward C. Gray and Barry E. Prentice, "Exploring the Price of Farm Land in Two Ontario Localities since Letters Patenting", *CPRH*, vol. 4 (1984), pp. 226–239 (quotation is from p. 237). See pp. 236–237 for their comments on Clarke's missing data.

36 At first the Copy Books were called Memorial Copy Books; later they were renamed Instrument Copy Books. AO, RG61, Property Rights Registration Records, Inventory no. 61, Land Registry Office Records (unpaginated). This inventory, too, defines the terms found in the Copy Books and the Abstract Indexes.

37 Spragge, "The History of the Land Record Copy Books", pp. 11–13.

38 Spragge reports that in 1846 legislation was passed establishing "separate registers for each township, city, town and village". *Ibid.*, p. 11. Spragge's assertion is consonant with the information given in AO, RG61, Inventory no. 61, Property Rights Registration Records (unpaginated). In Norfolk, however, individual Copy Books for the townships were begun on January 8, 1840, and for the town of Simcoe and the village of Port Dover on September 4, 1850.

39 Spragge, "The History of the Land Record Copy Books", p. 11.

that they could be shortened, though it seems the Norfolk entries seldom were. For one thing these do not bear out Spragge's comment that the Copy Books' memorials often omit prices.⁴⁰ The records of the Collver clan, among the data I have collated for the years from 1792 to 1851 on various Norfolk families, can serve as a case study. The Collvers produced 41 property owners, who bought and sold 22,098.47 patented acres in Norfolk over the years examined. The Copy Books reveal the prices involved in the purchase and sale of 21,424.57 of those acres. Two hundred of the remaining 673.86 acres changed hands in an unrecorded transaction.⁴¹ The last 473.86 acres involved five separate transactions and constitute just 2.1 per cent of all the patented acres bought and sold by the Collvers, providing an acceptable shortfall in the run of price data.⁴² A check of the original documents in the Norfolk registry office revealed that the prices are missing from them as well.⁴³ The entries in the Copy Books are transcribed accurately. The Norfolk Copy Books evidently supply all the price data available, and they do the same with acreages. Unlike Clarke's Essex documents, all the memorials on the Collvers' transactions specify the latter.⁴⁴

40 *Ibid.*

41 In 1809 Jabez Collver, the son of Jabez, sold the 200 acres of lot 12, concession 5, Townsend, which had been patented the previous year to Benjamin Corby. Though no legal records remain of the transaction, Jabez must have bought it from Corby, or acquired it in some other fashion, in the intervening year. Not until January 1, 1851, did "documents affecting patented land" have to be registered to be "valid in determining title". AO, RG61, Inventory no. 61, Property Rights Registration Records (unpaginated). Hence one does come across instances, typically in the very early years of the province, where it is clear that transactions must have occurred but went unregistered. Fortunately, these, as the isolated Collver case suggests, were relatively rare. More commonly, people delayed a while — in some instances a decade or more — before registering their transactions and paying the fees involved.

42 See Eva Brook Donly Museum, Simcoe, Ontario, Norfolk Historical Society Archives (hereafter NHS), Copy Book 1, pp. 6–7, memorial 3; Copy Book 2, pp. 209–210, memorial 334; Copy Book 4, pp. 248–249, memorial 913; Copy Book 6, p. 446, memorial 1702; Copy Book 102, pp. 209–210, memorial 7739. Of course, the Collver case may not be entirely typical. My impression is that for Norfolk their case is at the lower end of the missing price data scale. In most instances where information is missing it is for the very early years, the 1790s and the first few years of the 1800s, though this is not uniformly so with the Collvers. It may be that Shirley Spragge, in working on the Loyalists of Augusta Township, 1784–1820, also found that price information was often omitted from those memorials in the Copy Books dealing with the early years, leading her to assume that this would be the case across the years around the province. But this is mere speculation on my part. Spragge's excellent doctoral thesis is entitled "Organising the Wilderness: A Study of Loyalist Settlement, Augusta Township, Grenville County, 1784–1820" (Ph.D. dissertation, Queen's University, 1986).

43 More precisely, I checked the registry office's microfilm copies of the original documents, since the office has sent all of its pre-Confederation originals to the Archives of Ontario. To my knowledge, no index exists for these documents; a researcher must know both the city, town, or township involved as well as the memorial number of the document sought.

44 My impression is that the Norfolk Abstract Indexes also faithfully reproduce the acreages, whereas they virtually ignore prices before 1866.

While the Copy Books are a superior source, unfortunately not all researchers will have easy access to those they want. Many registry offices, having had their Copy Books microfilmed, have sent their originals to the Archives of Ontario. Others still hold theirs, waiting for the filming to be done.⁴⁵ The Archives of Ontario, in turn, has sent some of the Copy Books thus acquired off again, to local archives “able to house and service them”.⁴⁶ Unhappily, the Archives does not itself provide access to those for which it has been unable to find suitable homes.⁴⁷ Hence researchers may well need to consult the Copy Books they wish to examine, whether the originals or those on microfilm, at local registry offices.⁴⁸ Unfortunately, these offices are not designed to accommodate such a clientele. Not only are staffs busy serving the legal community, but they must extract fees from those using the records, though those engaged in historical research can obtain a waiver of such fees.⁴⁹ On balance, where microfilm copies exist, researchers wishing to use them extensively might find it worthwhile to purchase their own. These can be acquired either from the Ontario government’s Micrographic Centre in Hamilton or from the Genealogical Society of the Church of Jesus Christ of Latter-Day Saints. Fortunately for those interested in Norfolk, that county’s Copy Books are now at the archives of the Norfolk Historical Society in the Eva Brook Donly Museum in Simcoe. Rather than the originals, researchers are encouraged to use the microfilm copies available there.

Not all the indexes for all the Copy Books have survived, though those for Norfolk have.⁵⁰ These indexes are rather crude: the names of grantors and grantees are grouped under the appropriate letter; within those entries names are arranged not in alphabetical order, however, but in the order of their appearance within the Copy Book. To take a relatively modest example, Jabez Collver is listed four different times under C in the index for Copy Book 1 of Norfolk.⁵¹

45 Spragge, “The History of the Land Record Copy Books”, p. 12. Spragge’s report on the Copy Books was published in 1984. Unfortunately, the microfilming of the Copy Books is still not completed.

46 Spragge, “The History of the Land Record Copy Books”, p. 11.

47 *Ibid.*, p. 12. The archivist of Ontario confirms that this is still so.

48 Appendix II of Gray, Jung, and Ramsey, *A Guide to Ontario Land Registry Records*, pp. 37–40, lists the repositories of the Copy Books of the various counties.

49 The “standard fee” for consulting an Abstract Index was, as of 1993, \$5.00. Gray, Jung, and Ramsey, *A Guide to Ontario Land Registry Records*, p. 41.

50 Spragge notes that at times the Copy Book indexes appear in small, separate volumes, and that some of these are missing. Spragge, “The History of the Land Record Copy Books”, p. 11. The index for the first Norfolk Copy Book is not bound with the Copy Book itself. Fortunately, it has survived. All of the other indexes form part of the Copy Books. For some municipalities the Abstract Indexes have themselves been indexed for names.

51 Two points are worthy of note. The first ten Copy Books were originally given not numerals but letters; what is now known as Copy Book 1 was originally Copy Book A. Secondly, the indexes for Copy Books 1 and 2 for Norfolk are unusual in that they consist of two separate volumes, one for

As for the memorials in the Copy Books, they are far more time-consuming to use than the corresponding entries in the Abstract Indexes, ranging as they do from half a page to several pages in length. If a researcher were dealing, as Clarke was, with reasonably regular information in the Abstract Indexes and was unwilling to plough through the Copy Books, he or she could consult the Abstract Indexes first for the desired information on all transactions — lot and concession numbers, price, and acreage, for instance — and, using the memorial numbers recorded there, check the Copy Books for any missing data. I began with the Copy Books, however, knowing that the Abstract Indexes for Norfolk lack the price data for the years I am canvassing.⁵² I am also interested in other aspects of the memorials in the copy books. For intra-family transactions they sometimes specify the relationships involved, especially that of father-son, and they typically cite the occupations of buyers and sellers, though that ambiguous and not especially helpful term, “yeoman”, abounds. One further aspect of the Copy Books makes them invaluable for reconstructing the ownership of property: they contain testaments.

Though property within families often changed hands before wills were probated,⁵³ and wills can thus be imperfect guides to the tracing of property transfers, they are nonetheless essential for tracing most transfers. Ontario historians have, until recently, been reluctant to use them.⁵⁴ As has been noted elsewhere, wills in Upper Canada were comparatively common; the law of primogeniture, which applied to those dying intestate, ensured that.⁵⁵ Imported to Upper Canada from Britain, the law was unsuited to

grantors and one for grantees. Thereafter the two categories appear together in the indexes. In the twin indexes for Copy Book 1 Jabez is listed three times as a grantor and once as a grantee.

52 I do find it necessary on occasion, though, to consult the Abstract Indexes to verify information or to hunt for clues as to what happened to various pieces of property.

53 Gagan's work has been criticized for not taking this into account. Gaffield, “Children, Schooling, and Family Reproduction”, p. 184. Bruce Elliott observes that in various parts of the province “the majority of wills appear never to have been probated, but were registered as deeds to record the transfer of real property”, in *Irish Migrants*, p. 336.

54 Gaffield, “Children, Schooling, and Family Reproduction”, p. 182. Bruce Elliott provides an excellent discussion of the use of wills in “Sources of Bias in Nineteenth-Century Ontario Wills”, *Histoire sociale/Social History*, vol. 18, no. 35 (May 1985), pp. 125–132. He notes that they have not been used as much in historical research in Ontario as they have in England or the United States. One of the earliest studies utilizing wills is David P. Gagan's “The Indivisibility of Land”. He also has an extended discussion of inheritance in *Hopeful Travellers*, pp. 50–58. Another early use of wills was that by Herbert Mays in his article of Toronto Gore, “‘A Place to Stand’”, pp. 205–207. The most recent Ontario study based on wills of which I am aware is Liveo Di Matteo and Peter George, “Canadian Wealth Inequality and the Late Nineteenth Century: A Study of Wentworth County, Ontario, 1872–1902”, *Canadian Historical Review*, vol. 62, no. 4 (December 1992), pp. 453–483. Marjorie Cohen provides a discussion of the ways in which Ontario farm women were disadvantaged by the wills of male relatives in *Women's Work, Markets, and Economic Development in Nineteenth-Century Ontario* (Toronto: University of Toronto Press, 1988), pp. 48–58, 159–162, 201–202, n. 65.

55 Elliott, *Irish Migrants*, p. 210. Legislation ending primogeniture was passed in 1851.

local conditions, as farmers sought either to leave all of their male children land, or, as Bruce Elliott suggests, to resort to ultimogeniture — the leaving of the family farm to the last-born.⁵⁶ Since they could do neither if they died intestate, they tended to make wills. Of the 16 adult male Collvers known to be resident in Norfolk who died during the years of my study, nine left wills.⁵⁷ Two notable exceptions were founders of their families in Norfolk — Jabez and Timothy Collver — but both had passed their lands, via sale, on to family members before their deaths. In two further instances the courts issued letters of administration allowing the sale of the estates of the deceased.⁵⁸ Three other Collvers, property owners all, disappeared without leaving testamentary material of any kind behind them.⁵⁹

The court records involved in dealing with estates are in a somewhat confused state, certainly for the London District, which originally comprised Norfolk as well as Oxford and Middlesex counties. Two courts governing estates were established in Upper Canada. The first was the Probate Court, 1793–1859, which was the court of record in cases in which the deceased owned “goods to the value of £5, in two or more ... districts”.⁶⁰ None of the Collvers fell under its purview. The other and decidedly more active court was the Surrogate Court, which, for London, was established along with the District in 1800. Its records for the district for the years from 1800 to 1839 are currently held, in part, in the Regional Collection of the Weldon Library of the University of Western Ontario.⁶¹ The remainder for the

56 Elliott, *Irish Migrants*, p. 198.

57 I am not absolutely certain that Joseph Collver, who settled his family in Norfolk before the War of 1812, died there. Unusually little is known about him. I have included him here as one of the 16, however. The nine who left wills were Nesbitt, a son of Timothy (Timothy, along with Jabez, Jonas, and Joseph, was one of the four founding fathers of the Collvers in Norfolk); Aaron and Gabriel, sons of Jabez; Darius, David, Jabez B., Jabez L., and Moses, grandsons of Jabez; and William, son of Joseph. The Collver percentage (56.3%) of will making is generally consistent with Elliott’s findings for his population in March Township in eastern Ontario between 1838 and 1900. There 76 of 166 male heads of families (45.8%) who died in the township left wills. Both percentages compare favourably with that for eighteenth-century Hingham, Massachusetts. Elliott, “Sources of Bias”, pp. 127–128. Not all Upper Canadian scholars, though, are happy with the number of wills available to them. Shirley Sprague notes that she had just 19 wills from the 60 persistent families she studied in Augusta in “Organizing the Wilderness”, p. 34.

58 Ebenezer, son of Timothy, and John III, grandson of Jabez.

59 John, son of Jabez, and two Timothys, both grandsons of Jabez.

60 Legislation quoted in AO, RG22, Court Records, vol. 1, Finding Aid, pp. xiv–xv. This court evidently also dealt with appeals emanating from the Surrogate Courts. Elliott notes that the court was like the Prerogative Courts of Canterbury in England and of Armagh in Ireland. Elliott, *Irish Migrants*, p. 336.

61 See Guy St-Denis, “The London District Surrogate Court Registry, 1800–39”, *Families*, vol. 26, no. 4 (Fall 1987), pp. 213–219. The Surrogate Court registers were arranged on a district basis until 1850, when they were reorganized by county. The registers contain the grants of probate and administration. These registers were not standardized until 1858. The estate files contain the documentation. AO, RG21, Court Records Finding Aid, vol. 1, pp. xv–xvi.

years of my study are in Record Group 21 at the Archives of Ontario, which happily also contains microfilm of the court files at Western. Unfortunately, the microfilming of the originals held in the Archives was done in exceedingly slapdash fashion, and the files, often filmed out of sequence, are frequently illegible. Hence it is doubly fortunate that the Copy Books also contain copies of the wills, in whole or in part, and I have found, for example, no will for the Collvers in the court records that does not appear in the Copy Books (distressingly, I have for three other subjects).⁶² Conversely, in the case of the Collvers I have come across one written will in the Copy Books that does not appear in the court records.⁶³ It clearly was never probated.

Researchers interested in the detailed history of estates should proceed beyond the Copy Books to the court records, such as they are, for these do at times contain various items of interest, notably letters of administration and inventories. The latter are not as frequent as one might hope. Unlike colonial America, Upper Canada did not make these mandatory.⁶⁴ Except

62 The missing wills are those of John Secord of Burford, Peter Secord of Charlotteville, and William Powell of Windham. I located their wills in UWO, The London District Surrogate Court Registry, files 40, 66, and 252 respectively. The wills of Powell and Peter Secord would seem to be missing from the Norfolk Copy Books because they did not transmit ownership of property, though Powell disposed of an interest in a rental property. I surmise that an oversight explains the failure of John Secord's will to find its way into the Norfolk Copy Books. Secord did not live in Norfolk, residing instead in neighbouring Oxford. His will may thus have escaped the notice of Norfolk's registrar. While the Norfolk Copy Books do not contain the above three wills (assuming that I have not just missed them), they do have the other 69 I have turned up thus far in the course of my research.

63 That of William, son of Joseph. See Elliott, "Sources of Bias", pp. 126–127, for a detailed account of where he located the wills of March Township. Of 84 that he found, 35 were uncovered only through the Land Registry records. Obviously, the court records contain a much better representation of the Collvers' wills. My most remarkable find in the Copy Books is a will "Nuncupative", in which Peter Teeple swore in 1817 before Gabriel Collver, son of Jabez, that, on his deathbed in 1801, William B. Hilton "Raised on his Elbow and Clasped his hands together and said looking towards Mrs. Hilton — ['] Mamma Mamma all is yours [.] I give it all to you ['] and said No more." John Stone, another witness, remembered hearing exactly the same words issue from Hilton's lips. NHS, Copy Book 4, pp. 251–252, memorial 915. Teeple and Stone were evidently prompted to this recollection by the appearance of John Hilton, Mrs. Hilton's stepson, who was in the province from the United States. John had, in any case, been discouraged from claiming his father's property by the pronouncement from Samuel Ryerse, Surrogate Court judge, that, to acquire it, he had to take the oath of allegiance and become a subject of Great Britain. To which Hilton, who obviously did not share the principles of his father, who had fought for Britain in the Revolution, replied, "he would not do it for all the land in Canada". NHS, Copy Book 4, Affidavit of Samuel Ryerse, February 20, 1812. Catherine Shepard has published *Surrogate Court Records at the Archives of Ontario: A Genealogical Research Guide* (Toronto: Ontario Genealogical Society, 1984). Wills were to be recorded in a general register at the land registry office, but these registers were not always established. AO, RG21, Court Records Finding Aid, vol. 1, p. xviii.

64 Bruce C. Daniels, "Probate Court Inventories and Colonial American History: Historiography, Problems and Results", *Histoire sociale/Social History*, vol. 9, no. 18 (November 1976), p. 387. Daniels notes (p. 388) that the law was not honoured uniformly. As he observes, the pioneering work on the American probate court inventories is Robert E. Brown's controversial *Middle-Class Democracy and Revolution in Massachusetts* (Ithaca, N.Y.: Cornell University Press, 1955).

Rhode Island, the New England colonies inventoried all wealth, including real property. The Middle and Southern Colonies excluded the latter.⁶⁵ The inventories I have seen did likewise. In the case of the Collvers I have come across just three inventories, one where a will exists, and two where letters of administration do.⁶⁶

In any event, if one is interested in the devolution of property, one normally need look only at the Copy Books, or so those of Norfolk suggest. Frequently they contain the entire wills (at least those for Norfolk customarily do); at times they excerpt just those sections relating to the disposition of real property within Norfolk.

The various land records of Ontario for the years from 1792 to 1851 are thus in varying shape and of varying utility. Those for unpatented property are in poor repair; those for patented property, in good order. For the latter, researchers have typically used the Abstract Indexes to Deeds because they provide information in readily digestible form. While Clarke's data on prices from the Essex Abstract Indexes are incomplete, they are still good — vastly better than one could generate from the Norfolk Abstract Indexes for the same period. For Norfolk the much longer, and hence more difficult to use, Copy Books furnish far more price information for the pre-Confederation period than do the Abstract Indexes. As indicated earlier, the Abstract Indexes for Essex contain most or all of the data they should. Those for Norfolk do not. This suggests, rather disconcertingly, that in important particulars supposedly standardized records may well vary from county to county across the province. In any case, for Norfolk and doubtless many other counties, the Copy Books are the best and most convenient source for prices, just as they are for testaments devolving property.

65 Daniels, "Probate Court Inventories", p. 393.

66 The will exists in the case of David, grandson of Jabez. In the cases of Ebenezer, son of Timothy, and John, grandson of Jabez, there are letters of administration.