

Mortgages and the English peasantry c.1250-c.1350¹

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Mortgages and other transactions in which loans were secured on land were widespread throughout the medieval European countryside. Such transactions could allow agriculturalists to access significant amounts of capital. However, I argue in this paper that mortgages or equivalent instruments were less common among peasants in England in this period than they were in other parts of Western Europe. This is a feature that demands explanation, as does its larger implication that medieval capital markets were comparatively underdeveloped in England.

An essential first step is to establish the basic categories of English peasant land. Broadly speaking, such land fell into two categories in this period. The first was freehold land, the tenure of which was protected by the royal courts. Freehold land was conveyed by charter from one party to another, with minimal reference to landlord authority. The other category is customary land, my focus here. Customary land was servile or villein land, held by unfree tenants and technically the possession of the landlord. Customary land could only be conveyed from person A to person B in the landlord's court, the manor court. Possession of customary land could only be granted by the lord.

The following entry, taken from the records of the court of the manor of Heacham (Norfolk) and dated November 1317, is a typical example of the mortgage discussed here:

¹ NB this is a work in progress and lacks proper footnotes. Comments welcome to cdb23@cam.ac.uk.

Memorandum that Geoffrey Gosse and his wife Cecilia came into full court and pledged [*invadiaverunt*] to Peter Coubel 3 ½ rods of land for a term of five years, for 10 shillings sterling which they received from the same Peter as a loan; the condition being that if the aforesaid Geoffrey and Cecilia fully pay the said 10 shillings at the end of the aforesaid five years then the aforesaid land shall revert to the aforesaid Geoffrey and Cecilia; but if at the end of the aforesaid five years the aforesaid Geoffrey and Cecilia fail to pay in whole or in part, then the aforesaid land shall remain to the aforesaid Peter and his heirs in perpetuity, without contradiction of any person. [*in margin:*] Memorandum. [fine] 6 pence.²

This records a transaction in customary land between two village parties. The land moves from a mortgagor/borrower, to a mortgagee/creditor, with conditions about what will happen to the land if payment is or is not effected. The fine paid reflects the fact that this transaction required the permission of the landlord in order to be valid. Presumably, too, the fact that the instrument was registered in this way meant that it could be enforced in future if necessary, or disputes about it be more easily resolved, but this is an issue on which we have relatively little information.

This is a written contract. In its form and provisions it is a ‘classic’ medieval mortgage. A key characteristic of the medieval mortgage is that the creditor would take the revenues from the land during the term as his interest. It is not explicitly stated in this example (or others collected for this paper) that that should happen, but it seems likely. Here, the borrowers had to pay the full principal (10s.) back at the end of the term, so there is no indication that the revenues would be used to pay off the principal (as they were in a *vifgage*). Some of the other transactions discussed differed from this in their

² Norfolk Record Office [hereafter NRO], Le Strange DA8. A rod is ¼ acre or 0.6 hectares.

form and provisions. But their essential purpose was in all cases the same. All recorded the transfer of the possession of a piece of real property (if not its ownership or title) from debtor to creditor in exchange for an advanced sum, with conditions relating to future payments. The purpose of each transaction was to secure a debt.

Such 'classic' mortgage contracts are encountered in many different medieval European contexts. Examples are known from at least the early 11th century onwards in regions like Normandy and Flanders.³ In many of the best documented examples the lender was a monastery, and the borrower a financially embarrassed knight. But the laity lent and borrowed on mortgages also. And not just the social elites, but a wide spectrum of society including peasants, was involved.

In the medieval English peasant context, however, mortgages of customary land like this are rare. Historians who have studied land transactions in manorial court rolls have discussed relatively few conditional transfers connected to credit of this kind. This is especially true of the period before the Black Death, my focus here; in the fifteenth century such mortgages are somewhat more common.⁴ Court rolls of the pre-plague period of course supply many thousands of examples of *post-mortem* and *inter-vivos* transfers of customary land, and temporary leases of customary land from peasant tenant to sub-tenant, all of which are testimony to the active market in customary land of the thirteenth and fourteenth centuries, which has been extensively studied. But very few of them take the form of conditional transfers explicitly connected with credit. So, this entry is something one very rarely encounters in the court rolls.

³ Van Werveke, 'Le mort-gage'; Lewis, 'Mortgages'. Schofield, 'Peasants and contract', for a recent discussion; Briggs, *Credit and village society*, and references therein. For further examples of the increasing incidence of mortgages of customary land in the fifteenth century, see Mate, 'East Sussex land market', 60, 65.

In the case of customary land we can be fairly confident in dismissing the possibility that many such instruments were created but are not recorded. Mortgages were conveyances of (at least) possession, and all conveyances of customary land had to be performed in the manor court and enrolled in its records. A fine had to be paid for any such conveyance. Individuals who sought to pledge customary land outside the manor court, or tried to pledge it secretly by charter, would have been likely to find themselves punished and to have their attempted transactions deemed invalid. In the court rolls of Heacham, two entries of the year 1316 order the seizure into the lord's possession of two pieces of land each of which had been gaged without lord's licence some 18 years earlier.⁵ Similarly, an entry dated 1344 in the court rolls of the manor of Horsham St Faith, near Norwich, records the case of a man (John Crombe) who had tried to convey one rod ($\frac{1}{4}$ acre) of customary meadowland by charter to a citizen of Norwich (called Edmund Cosyn), almost certainly as security for a loan. The transfer was deemed invalid and Cosyn was forced to return the acre of meadow to the landlord.⁶

In fact, when one looks at the sum of evidence for the mortgaging of English peasant land, or the broader pledging of such land as security for debts, there is little solid evidence for the practice. Elsewhere I have looked at the possibility that the standard leases of land from peasant tenant to subtenant (distinct from the full blown mortgage like cited above) may have functioned as security for credit. In theory, a peasant borrower could have leased part of his land for a year or two in exchange for a loan, with the loan being repaid in whole or in part out of the proceeds of the leased land. There seems to be

⁵ NRO, Le Strange DA7. The heirs of the mortgagee appear to be in at least partial possession of these lands.

⁶ NRO, NRS 12475. The inference that the initial transfer was intended as security is based on the fact that the entry recording the seizure of the land is accompanied by an acknowledgement of a debt (a 'recognizance') of 10s. owed by Crombe to Cosyn.

little evidence to support the idea that this is in fact what was going on in most cases.⁷

Apart from the fact that no explicit reference to such an arrangement is made, this finding is also encouraged by the timing of, and parties too, such leases. I have also made a preliminary investigation of mortgages (by charter) of freehold peasant land. Those, too, seem rare, at least to judge by the numerical survival of mortgage and related defeasance deeds among the larger corpus of peasant freehold charters from this period.⁸

Thus the evidence on the employment of real property as collateral is part of larger view of medieval rural credit England which sees it as a system based largely on oral, unregistered transactions in which personal pledges, rather than landholdings, were the main security or guarantee of repayment for a creditor.⁹ The information about this credit market comes from manor court litigation about unpaid debts, most of which were contracted orally. Such a world of largely oral, unsecured credit contrasts with the situation in other parts of continental Europe at the same period. For the rural people of the Low Countries, northern and southern France, Catalonia, Valencia and northern and central Italy, written credit instruments were much more common than was the case in England, as was the use of instruments which allowed credit to be secured on land, such as the mortgage itself, or the *rente* (known variously in different regions as *renten*, *rentes constituées*, or *censal* etc.).¹⁰ In the *rente* contract, a 'lender' bought an annuity drawn on property of the 'borrower'. It does not appear to have existed in English rural society. A similar device was used in England in the thirteenth century by Jewish lenders – the 'fee rent'. But this Jewish instrument was formally banned in 1269, and had little impact on

⁷ Briggs, *Credit and village society*.

⁸ Briggs, 'Credit and the freehold land market'.

⁹ For the importance of personal pledges or sureties in a system of oral credit, see Briggs and Koyama, 'Pledging'.

¹⁰ For exploration of these contrasts, see Briggs, *Credit and village society*.

rural society.¹¹ Across Europe in general, the *rente* seems to have replaced the mortgage because the former avoided the charge of usury to which the latter was subject.¹² A turning point in the church's prohibition of the mortgage was the council of Tours (1163) at which Pope Alexander III banned clergy from creating mortgages. Later rulings extended the same ban to the laity. However, observers agree that the mortgage did not necessarily disappear, and that mortgage and *rente* coexisted across Europe between the thirteenth and fifteenth centuries. Mortgage and *rente* can be regarded as functionally equivalent forms which were used by the full social range of rural people. Like the mortgage, the *rente* offered security to a lender because the property on which the *rente* was charged could be seized in case of default.¹³

What is the potential significance of this contrast between England and the Continent in the use of the mortgage and its equivalents? If a peasant could offer land as security, then a creditor might offer a bigger loan over a longer term than where there was no collateral. If holders of customary land did not use this property to secure credit – thereby realizing the value of that property – then this could have had a negative effect on access to capital and levels of investment and welfare. This question of the ability of poor people to exploit their assets has been called the 'de Soto problem', in reference to the influential ideas of Peruvian economist Hernando de Soto.¹⁴ To solve the 'de Soto problem' it is not enough for poor borrowers to be in de facto possession of assets (e.g.

¹¹ Richardson, *English Jewry*, 102-6.

¹² Mainly because the lender could not *demand* that principal be redeemed.

¹³ For mortgages in Italy in this period, see Gaulin and Menant, 'Crédit rural et endettement paysan', 44-5; for the Empire, see H-G. Gilomen, 'L'endettement paysan', 120-1; for France, see Duby, *Rural economy*, 254-7. For the equivalence of mortgages and *rentes*, see for example Brennan, 'Peasants and debt', 177, and Van Werveke, 'Le mort-gage', 164. A similar view is present in Van Bochove et al., 'Real estate and financial markets', a paper that has done a great deal to stimulate the present investigation.

¹⁴ De Soto, *Mystery of Capital*; Zijlenderdijn et al., 'Small is beautiful'; Besley et al., 'Incentives'; see also Bogart and Richardson, 'Making property productive'.

real property). They need to be able to prove their exclusive rights to these assets through legally recognized registration and enforcement systems. If the perceived contrast between England and the Continent in the use of mortgages and their equivalents suggested by existing research is supported by a fuller investigation, one possible interpretation of this would be that medieval England achieved much less success in solving the ‘de Soto problem’ than certain areas of Continental Europe did in the same period.

My first aim here is to ask whether it is true that mortgages of customary land were equally rare everywhere in England, in this case in eastern England between c.1250 and 1350. A systematic search for mortgages across space has not been previously attempted. If there were some locations where mortgages were a little more evident and numerous than others, why might this have been? My second aim is to look at the larger question of why mortgages of customary land are generally so rare in this period, and to suggest hypotheses. My final concern is the question of the implications of the rarity of mortgages for the impact and importance of rural capital markets in England in this period.

A wider search for mortgages

An ongoing research project entitled ‘Private law and medieval village society’ has studied the rolls of manor courts in two groups of five counties, and ‘eastern’ and a ‘western’ group.¹⁵ The project focuses on litigation in manor courts, namely the ‘personal

¹⁵ Funded by Arts & Humanities Research Council 2006-09, Ref. AH/D502713/1. The principal investigators were Professors Richard Smith and Phillipp Schofield. The eastern counties: Norfolk, Suffolk,

actions' of debt, detinue, trespass, and broken covenant. We have sampled the records of the courts of over different 100 manors to find the most revealing cases which allow us to reconstruct a manorial law of contract. A by-product of this project was the collection of mortgages of peasant land from court rolls, searched for and extracted simultaneously along with the revealing litigation entries from among the very diverse recorded business of the medieval manor court. (I use 'mortgage' to mean any form of conditional transfer of land made in exchange for a sum of money. In a few instances, the transaction calls itself a mortgage.) This paper is restricted to the 44 'eastern manors' (see Map 1).¹⁶ As noted, mortgages and other conditional transfers are unusual and stand out from the normal run of court roll entries. It would be hard to miss even isolated examples, and certainly not a cluster of them.

This search confirms what previous research had already suggested, which is that mortgages are simply not there in the rolls of most manor courts. Map 1 shows the 44 'eastern manors' from which extractions of entries were made for the project. The markers on the map show the location of a manor with the start date of its surviving series of manor court rolls. The large circles represent manors where at least one mortgage of customary land has been found. The small squares mean 'mortgages absent'. It should be noted that while all the surviving rolls have been trawled in most cases, in some they have not, because some of the rolls are unfit, or we did not have time to go through the whole series and maintain the coverage of sufficient manors that we wanted. However, it is clear that some extensive court roll series do not feature any mortgages at

Cambridgeshire, Lincolnshire, and Essex; Western Counties: Staffordshire, Shropshire, Worcestershire, Herefordshire, and Gloucestershire.

¹⁶ The mortgages, as conditional transfers of land, do not fall within the project's main remit which is litigation in private disputes, but they were collected because of their connection to the issue of peasant debt.

all: Oakington, Littleport, Balsham in Cambridgeshire, for example, or places like Fornham in Suffolk, or Great Waltham and High Easter, Essex.

It is, however, possible to find some mortgages (Table 1). There are nine manors out of the 44 searched which throw up at least one example. Usually just one or two are found. However, there are two manors which stand out as exceptional when it comes to mortgages of customary land. These are East Hanningfield (Essex), a manor at this time of the Hastings earls of Pembroke, and Heacham (Norfolk), a manor of Lewes Priory, Sussex. At East Hanningfield, the surviving court rolls start quite late (1331) and there are not many court rolls (i.e. court sessions with records surviving) between that date and our chosen end-date of 1350. But there are 8 mortgages. At Heacham, in just a 12-year period, 22 conditional transfers of customary property are made. And there are also 4 transfers of rights to standing crops, such as hemp or rye. In these arrangements, if the debt is not repaid, the creditor is granted the right to keep the crop or crops. These are exceptional written contracts. Overall, the two manors give the impression that mortgages and conditional transfers of tenant land were a routine part of court business.¹⁷ Both courts use unusual vocabulary in recording these transactions, such as the verbs for pledging land (*inpignoravit* and *invadiauit*).

Why were mortgages routine at Heacham and East Hanningfield and rare almost everywhere else? There are a number of possible reasons for this. It could be that specific individuals had particular knowledge or experience of these instruments from elsewhere and popularised their use locally. The transactions did not all involve distinct persons. Eight of the 26 transactions at Heacham involved one Geoffrey Gosse as

¹⁷ Some of the surviving Heacham rolls are still to be searched, and when this is done, further mortgages may be unearthed.

mortgagor/debtor, and he appears in the rolls more generally as a prolific debtor and player in the land market, and not necessarily a poor or marginal man in manorial society. If such a person had a penchant for the use of mortgages then this could explain their popularity locally.

Table 1. Manors where at least one mortgage identified.

<i>Manor</i>	<i>Years searched</i>	<i>No. mortgages</i>
Bressingham, Norf.	1309-22	1
Coltishall, Norf.	1275-1350	1
East Beckham, Norf.	1273-1345	2
East Hanningfield, Essex	1331-50	8
Gressenhall, Norf.	1273-1350 (select yrs)	1
Heacham, Norf.	1315-27	22+ 4 gages of standing crop
Horsham St Faith, Norf.	1265-72, 1275-90, 1309-27	1
Ingatestone, Essex	1279-1347	1
Redgrave, Suff.	1260-73, 1340-49	1

Another hypothesis concerning the concentration of mortgages in these two locations concerns the geography of peasant customary landholding across eastern England, as well as the degree of seigniorial control over the size and structure of such peasant holdings, and traffic in those holdings. It is well known that in midland England customary holdings at this date are relatively likely to be preserved in standard units, such as virgates of around 30 acres, and that the splitting up of such units for exchange tended to be prohibited either explicitly or implicitly by seigniorial authorities. In East Anglia proper, by contrast, and in Norfolk, Suffolk, and Essex in particular, many studies show the fragmentation of standard holdings into small parcels by c.1300, and reveal a relatively light seigniorial touch when it comes to the traffic in customary land, or even the seigniorial encouragement of such traffic.

If one wanted to mortgage land to raise credit, one would not necessarily wish to pledge one's entire holding (virgate, half virgate etc.). Anyone who did so, and then defaulted on the loan, ran the risk of losing the holding permanently. Also, it would have made no sense to transfer an entire holding to a creditor on a conditional basis. This would leave the debtor out of possession and thus with no income from which to repay the principal debt. However, if one were within a manorial regime in which it was permitted to break off a small portion of a larger holding to sell or, in this case, mortgage, then this might have been a more attractive option. One factor, therefore, that may have been conducive to the development of the mortgage, is a high degree of fragmentation of unfree holdings and a minimal seigniorial restriction on fragmentation.

Looking at map 1, it is noticeable that the manors on which mortgages have been found are generally towards the east of the region. There are no such manors west of the Wash. All but one of the nine manors with mortgages are in Norfolk or Essex, apart from Redgrave, Suffolk which is on the Norfolk border and is the classic example of the manor with an intensive land market and fragmented holdings.¹⁸ There are no examples in Cambridgeshire, West Suffolk, or Lincolnshire. Cambridgeshire court rolls have been studied particularly closely and I have yet to find an example of a mortgage of customary land from this county.¹⁹

If one considers more closely the two manors in which mortgages of customary land were unusually common – East Hanningfield and Heacham – one finds that they display characteristic features of East Anglian customary landholding: no obvious

¹⁸ Smith, 'Families and their land'.

¹⁹ For similar results from a search for mortgages in the court rolls of Wisbech, Cambridgeshire, see Parkin, 'Courts and the community:', 214-18.

standard holdings; ample smallholdings; and no obvious restriction on the movement in small parcels of land that probably represent a portion of an individual's entire holding.

At East Hanningfield,²⁰ the holdings transferred *inter-vivos*, or made vacant on the death of a tenant, come in a variety of shapes and sizes. None is referred to by a term for a standard holding, such as 'virgate'. There are holdings expressed in numbers of 'ware [?war] acres' (*akerwar*'), in numbers of 'day works' of land (*daywercas*), or simply in terms of acres and rods of unspecified 'land'.²¹ There is to be sure a hint of there being standard holdings of 'ware acres', as holdings of 5 and 15 'ware acres' seem to come up quite regularly. Interestingly, the mortgages themselves tend not to tell one what category of land is involved in the transaction. The only mortgage that does so involves the pledging of 'two ware acres within a certain croft'. In general, the land pledged in mortgages is in the form of relatively small parcels or units: a croft; 3 rods of meadow; nine acres, and so on.

At Heacham, there is an even greater impression of the presence of a classic 'East Anglian' customary landholding regime. There are very high numbers of fines paid for licences to transfer 'ad opus' very small parcels of customary land. Some of these are tiny: in c.1315, for example, there is a surrender and admission *ad opus* to a plot given as 14 feet x 8 feet. There are also a lot of reports of people making sales without licence, and also temporary demises (sublettings) of customary land. There was a great deal of scope for dispute about who had title to which portion of customary land, as one would expect where traffic was so intense. The landholdings of individuals at death could be very small. For example, in a court held December 1322 one John Skule was reported as

²⁰ These statements are based on the court rolls up to 1350.

²¹ Two charters in the Essex Record Office convey 'day works' of land at East Hanningfield, late thirteenth century: ERO, D/Day T2/9; D/Day T2/11.

holding 3 ½ rods from the lord at death, paying a heriot (servile death duty) of 6d. The amounts mortgaged are also small: a few acres or rods. Of the mortgages in acres and rods, the smallest at Heacham in this period is a half of one rod.

There are a number of potential reasons why mortgages ‘caught on’ as a form of land transfer in a few manors but not others. One potentially significant consideration, however, is the nature of the prevailing regime of customary landholding. From the point of view of mortgagors/borrowers, it made most sense to be able to pledge a small portion of a larger holding. At Heacham especially, but also at East Hanningfield, there seems to have been a situation of fragmented customary holdings in which this was a possibility. By contrast, further west, for example in Cambridgeshire, the standard holding was more common, for example on the manors of Crowland Abbey, or the Ely bishopric. To all intents and purposes, many parts of Cambridgeshire formed part of a ‘midland’ customary landholding system based on standard holdings and comparatively close seigniorial control of the land market.²² It is therefore perhaps not surprising that mortgages of customary land cannot be traced there. Of course, there are manors in Norfolk and Suffolk which display all the characteristics of an ‘East Anglian’ system, but little in the way of mortgage activity in customary land.²³ The presence of an appropriate regime of peasant landholding was perhaps a necessary if not sufficient condition for this. However, I would predict that if further evidence borrowing on mortgages of customary land is to be found, it is likely to be in the counties of Norfolk, Suffolk, and Essex.

No systematic search for mortgages has been made in the court rolls of the ‘western manors’ studied in the above-mentioned research project. However, one such

²² Briggs, *Credit and Village Society*.

²³ Hevingham, Norfolk, is perhaps a good example of such a manor.

manor, that of Alrewas in Staffordshire, has been found to feature an exceptional number of mortgages of tenant land in its records, and in this it looks rather like Heacham and Hanningfield. The Alrewas rolls covering the years 1327-49 yield some 41 mortgages.²⁴ It is notable that these rolls also show the wider peasant land market to have been characterized by transfers of small portions of larger holdings, in the East Anglian fashion. It is also worth remarking that Alrewas manor was of ‘ancient demesne’ status, that is, it had been held as part of the royal demesne at the time of the Norman conquest. The unfree tenants on such manors held by relatively privileged tenurial terms, and it is possible that this was in some way a further factor which encouraged the practice of mortgaging.²⁵

Why were mortgages rare overall?

We now return to the question of why mortgages, or forms of conditional transfer of customary land in general, are rare in manorial court rolls. Here, it is frustratingly difficult to move beyond speculation. But it may be that the details of the examples from East Hanningfield and Heacham can help. There are perhaps three particularly obvious explanations for the rarity of mortgages to consider: their potentially usurious character; the weakness of the property rights over the mortgaged land; and the unattractiveness to borrowers of the terms of mortgages.

(i) usury

²⁴ Staffordshire Record Office D(W)0/3/8-35.

²⁵ The Alrewas mortgages have not yet been analyzed in detail but a close examination of their subtly varying provisions will no doubt help shed light on questions raised in this preliminary survey.

Medieval canon lawyers regarded the kind of mortgage arrangement with which this paper is concerned as an infringement of the church's law against usury, what they called a form of 'cloaked usury'.²⁶ (Of course it is only an assumption that the mortgagee in our examples drew the revenues from the land during the term, but this seems highly likely.) As noted, church councils banned mortgages in which the income from the pledged land was not deducted from the principal sum loaned. In England, church courts concerned themselves with prosecutions of usury in which the accused party had been involved in mortgage lending.²⁷ Did peasant creditors avoid the creation and enrolment of formal mortgages because they feared prosecution for usury in the church courts?

This is possible in principle, but more work is needed to shed greater light on this idea. For example, one would need to investigate the frequency with which usury prosecutions involving mortgages took place in ecclesiastical courts, and also to check the exact type of transactions that were deemed reprehensible. We should also remember that manor courts in this period had the power to deal with breaches of the usury ban, and occasionally did so. There have been no instances found of complaint against conditional transfers on the grounds that they were usurious. Just one of the East Anglian mortgages traced was made in favour of a cleric, in a transaction of six acres pledged in 1341 to Richard the Rector of East Hanningfield by William Atte Heg, for a loan of 60 shillings. Such clerics might be thought especially susceptible to accusations of usury arising from such arrangements.

²⁶ See e.g. McLaughlin, 'Teaching of the canonists'; Haren, *Sin and society*. The rente arrangement in continental Europe was ultimately acceptable to the church's views on usury.

²⁷ Helmholz, 'Usury'.

Also, if usury was a widespread concern, this would be another reason to expect the adoption of the rente device in an English agrarian setting, which does not appear to have happened.

(ii) property rights

Holders of villein or customary land did not enjoy exclusive or absolute property rights over their land. Title remained with the landlord, a fact that was reflected in the fines for seigniorial permission for any transfer of such land to a third party. Is it possible that the minimal use of customary real property to secure credit flowed from the fact that borrowers did not properly 'own' the land to a degree satisfactory to all parties?

Seigniorial permission was required to secure a valid pledge of customary land in exchange for credit, and to create a transaction in which the future title to the land might shift to a different person. This is reflected in the fines paid for the enrolment of the mortgage. At East Hanningfield, this requirement for seigniorial permission was made explicit by the form of several of the mortgages, which begin 'such and such a person *by lord's licence* has pledged [*inpignoravit*] etc.'. At Heacham it is also stated that the pledging of the mortgaged land was made *in plena curia*, i.e. in full court, again stressing that this was all done publicly and with the knowledge of the lord's officials. If a lord effectively needed to be asked permission to validate a conditional transfer, this raises the possibility that in some manors that permission was not forthcoming, leading to the non-

employment of mortgages by tenants. Sadly, though, not much evidence has been found thus far in the court rolls to either support or refute this possibility.²⁸

Probably of more importance was the attitude of the creditor/mortgagee. Would such a person want to take on, at least potentially, customary land that did not carry exclusive property rights? Would a pledge of a customary acre constitute effective security for a lender, given that in theory the lord at any stage could evict a holder—including a mortgagee – and take the holding back into his possession? We have very little information from the court rolls concerning the property rights of mortgagees in conditionally pledged customary land, which is in itself no doubt a reflection of the rarity of mortgages of this kind of land.²⁹ Would a mortgagee really wish to foreclose on land over which he would not have exclusive rights; would he even have doubts about being able to sell it again?

There is also the argument that a freeman creditor might not want to take permanent possession of land carrying unfree services. To investigate this, one would need to undertake a close examination of the personal status of all the mortgagees in the transactions identified. This is work in progress.³⁰ What one can say at this stage is that the two most important mortgagees at East Hanningfield, in terms of the number of transactions, were John de Chetwode and William Chaynel, and that these men were both villeins. They are near the top of a list of 56 customary tenants swearing fealty at the first court of Agnes, countess of Pembroke, in early 1349. This evidence at least suggests that

²⁸ It has to be asked however, what incentive lords would have to object to conditional transfers, if they were informed of and approved of the identity of the transferee.

²⁹ A related and equally obscure issue concerns the mortgagee's rights in the land during the term of the mortgage. If he had limited protection against ejection by a third party during the term, then this would have acted as a further disincentive to take land on mortgage.

³⁰ This is a laborious task which requires one to trawl the court rolls looking for information about all the relevant parties.

it would be unwise to assume that the lenders/mortgagees were coming often from outside the villein tenant community.³¹

(iii) Was the mortgage disadvantageous to borrower/mortgagor?

In many of the examples reviewed for this paper, the terms of the mortgage must have looked strict from the point of view of the borrower. A specific day at the end of the term was set for the payment. If that term was not met, and if default was made either ‘in whole or in part’, then the land would be lost to the creditor and his heirs for ever. Even if a person paid all the debt apart from one penny he could lose his land in perpetuity! We know that foreclosure did happen; in one Heacham example we find an addition to the original court roll entry, in which a debtor came into court and renounced to the creditor any claim he had in land mortgaged some two years earlier.³² With such penalties, it is perhaps not surprising that many borrowers did not take the risk. Alternatively, a person looking to raise cash might just as easily have sold the land, if he thought his chances of repaying the mortgage were slight anyway.³³

However, it should be mentioned that while most of the mortgages examined provided for this strict form of foreclosure, they did not all do so. Several arrangements set the condition that if the debt was not repaid by the specified term, then the land should instead stay with the creditor until the debt was satisfied, rather than the land being lost in

³¹ It might be relevant here that mortgages of freehold land do not seem to have been any more common among the peasantry than the mortgages of customary land – at least going by impressions of the survival of the relevant charters. At least, this is an issue or comparison that is worth further investigation.

³² Heacham entry 7072.

³³ In the medieval freehold mortgage it is also the case that the arrangement favoured the mortgagee in the period before the development in later centuries of the ‘equity of redemption’: Baker, *Introduction to English Legal History*, 355-6.

perpetuity. That way, you could get your land back. There are also other interesting variants on the basic form. In one Hanningfield example, the mortgagor (Richard Henry) granted to the mortgagee (Roger le Hore) his two messuages for a ten year term in return for 40s.. Then Roger immediately demised these properties back to Richard for the same term, with provision that Richard should pay him 4s per annum, at four feasts of the year. If Richard missed one of these payments, Roger should then have the right to re-enter the properties during the term. The aim here seems to have been to allow the borrower to enjoy possession of his properties, perhaps because they included his main dwelling place. The arrangement seems also to have done away with any element of interest payment or usury, as ten years at 4s. per year would have equalled exactly the 40s advanced in the first place.³⁴ The exact rationale of this particular transaction remains somewhat obscure. But this and the other variations on the ‘classical’ mortgage among the examples collected for this paper are reminders that conditional transfers were flexible, could be shaped by negotiation between the parties, and did not always need to be based on outright loss of the pledged land in the case of non-payment.

A final possible reason for the rarity of mortgages is that they involved a prohibitively high rate of interest. Much guesswork is required in any attempt to calculate the gain which accrued to the lender in a transaction of this type. One may use the example cited at the start of this paper to illustrate what sort of estimates can be made. If we assume that the pledged land was cropped for four of the five years, that it yielded wheat at 10 bushels per acre, and that the grain was sold for around 5s per quarter, then the pledged land is unlikely to have generated much less than 20-25s for the creditor (Coubel) during the loan term. Even if Coubel had costs to bear in cultivating the land,

³⁴ East Hanningfield 299.

this would still represent a healthy profit on the 10s. invested, and a significant burden for the debtors.

Did the scarcity of the mortgage have a negative impact on the rural credit market?

An initial area to focus on here is the fact that the mortgaging of land allowed the borrower access to a loan in cash. In the generality of credit (mostly oral, unsecured) revealed by manorial debt litigation, loans of cash were quite rare. On average, in the debt litigation data only about five per cent of debts expressed in money are expressly described as resulting from unpaid loans. Much more common than the cash loan was sales credit, in particular debts outstanding from the sale of commodities with a deferred payment. A loan of cash was a potentially much more powerful form in which to receive credit as it gave greater flexibility to the borrower.

It should also be noted that the average size of the debts revealed by manorial debt litigation was quite small. The median debt in the records of five fourteenth-century courts was about 3 shillings. Debts over 20s. in value were rare, never really composing more than about five per cent of all debts where the value of the debt is given. The same data suggest that well over half of all debts were 5s or below in value.³⁵ The mortgage debts collected for this paper provide a marked contrast to this (Table 2). There are 32 legible loans in the mortgages from Hanningfield and Heacham. They range from 4s to 13 marks sterling (£8 13s 4d). But only five of the 32 legible mortgage debts were in the sub-10s. bracket. And 16 of those 32 debts were in fact sums of 20s. or above. Thus it looks as if those willing to mortgage their lands could gain access to much larger

³⁵ Briggs, *Credit and Village society*, table 2.5.

quantities of credit than those engaged in the more usual oral, unsecured transactions. This is an important factor to bear in mind when one assesses the impact of the rarity of mortgage lending.

Table 2. The size of mortgage debts at East Hanningfield and Heacham

<i>Total debts</i>	<i>Debts in col. A >19s 11d</i>	<i>Debts in col. A > 39s 11d</i>
32	16	9

On the other side of the equation, one should not lose sight of the fact that even in places where there is no evidence of mortgage based lending, rural credit markets developed and prospered in the early fourteenth century. At Littleport in Cambridgeshire, for example, some 530 debt cases were initiated in the manor court between 1316 and 1327, a total of disputed unpaid debts which represented a much larger total of credit relationships. Largely oral credit transactions were arranged with the use of personal sureties, or pledges, who pledged themselves to guarantee the repayment of the debt in the event of the default of the principal debtor. In the manor court, debts could be recovered from a principal debtor or a pledge through seizure of the movable property of the borrower or his pledge. Even where real estate was not offered as collateral, it was possible for creditors to gain some confidence that they were protected from risk in the event of default by a borrower.³⁶

Conclusion

³⁶ Briggs, *Credit and Village Society*; Briggs and Koyama, 'Pledging'.

The lending of money on the basis of mortgages was potentially important. A mortgage allowed a landholding peasant to tap the value of his property and to gain access to capital which could be used for a variety of investment purposes, such as expanding livestock and landholdings. But the research presented here confirms that in England in the early fourteenth century, the use of real estate to secure credit seems to have been relatively unusual, not least by comparison with other parts of Western Europe in the middle ages.³⁷ When it comes to explaining the rarity of the use of customary land as collateral, it is probably too simplistic to claim that this was due solely to the impact of the servile tenure of such land, and the restricted property rights that implied. There is little doubt that seigniorial influences over the customary landholding regime, especially on the issue of fragmentation of standard holdings, made the use of customary mortgages easier in some places than others. Yet at the same time, some customary tenants in some locations did mortgage their lands. There is no explicit evidence that lords banned their customary tenants from mortgaging their holdings. It is possible that some creditors were put off taking customary land as collateral because of its unfree connotations, or because of fears of arbitrary eviction, but this is largely speculation. After all, we must remember that the rarity of peasant mortgaging was not a feature restricted to the customary sector – there has yet to be convincing evidence brought forward to show that the freehold mortgage was at all popular in peasant circles.

The character of property rights in a more general sense may be key to understanding the rarity of English peasant mortgages, however. It is possible that there was a general lack of clarity surrounding the rights of the respective parties in these

³⁷ And perhaps even by comparison with other parts of the British Isles: one function of the Welsh *prid* or gage of land was as security for credit: Smith, 'The gage and the land market'.

contracts. For example, creditors probably lacked certainty about the nature of their title to the pledged land should it be challenged during the loan term, while debtors probably lacked certainty about their ability to re-enter the property if a mortgage was repaid but the creditor refused to yield possession. The comparatively undeveloped nature of the most common forms of mortgage contracts and the law surrounding them appears to have posed a good deal of uncertainty and risk in this period, and this may have discouraged their use. These are hypotheses that particularly demand closer study.

Finally, the relative absence of lending on mortgages may have reduced the quantity of capital that could potentially have been loaned to peasants, but this did not prevent the emergence of lively credit markets in many localities.

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