

**“Conversing with each other, among other things of the sale of houses”:
Buying and Selling Real Property in New Amsterdam¹
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As I did in New York City last October, I want to thank the Hendricks Manuscript Award Committee for selecting my dissertation for the 2001 award. Also, I would again like to express my appreciation to Dr. Andrew Hendricks for establishing the prize to advance the history of New Netherland.

It is an honor to have this opportunity to present some of my research, which concerns the institution of real property in seventeenth-century New Amsterdam. About a year ago, when I defended my work at Temple University, one of the members of the examining committee was in the process of buying a house near Philadelphia. She commented on the similarities between her real estate transfer and the much older conveyances that she encountered in the pages of my dissertation. The committee agreed that the procedures used to transfer property in the seventeenth-century Dutch colony had many modern elements. Sitting there that day, discussing real estate in New Amsterdam with the members of my committee, I was reminded of Andries Jochemsen, who was accused of unlawful tapping (serving liquor) in 1663, when, in fact, he and his friends merely “sat together conversing with each other, among other things of the sale of houses.”² Unfortunately, the details of their conversation were not recorded, but today I would like to converse with you about the Dutch traditions of land ownership and transfer that established the institution of real property in New Netherland.

“Property,” Hugo Grotius wrote “means that something is called ours”. In this simple definition, the seventeenth-century Dutch jurist included immovable property, such as houses, lands, and all the “Things attached to the earth or fixed to houses”. Ownership was acquired by the consent of a former owner, who gave the property either as a gift or inheritance, or he conveyed it by direct contract of sale or exchange.³ It is the latter form, transfer by sale or exchange, that I will be discussing today.

Simple agreement between parties did not make a person a proprietor, nor did it secure a title. Unlike movable property, land, by its very nature, could not be passed from hand to hand, nor could it be physically delivered. Historically, conveyance is surrounded by symbolic acts, of measuring, witnessing, and recording, so that all interested parties were acquainted publicly with the fact that a new occupant was established as the rightful owner of the ground. Old Dutch and Germanic customs varied in space and time, but generally demanded the presence of witnesses to

1. The information in this paper is taken from the first chapter of my dissertation, “‘A little land . . . to sow some seeds’: Real Property, Custom, and Law in the Community of New Amsterdam” (Ph.D. diss., Temple University, 2001).

2. Berthold Fernow, ed., *The Records of New Amsterdam from 1653 to 1674 Anno Domini*, 7 vols. (1897; reprint, Baltimore: Genealogical Publishing, 1976), 4:254 (hereafter cited as *RNA*).

3. Hugo Grotius (Huig de Groot), *The Jurisprudence of Holland*, 2 vols., trans. Robert W. Lee (1926; reprint of 2d ed., Aalen, Germany: Scientia Verlag, 1977), 1:2-3, 64-65, 92-95.

make a transfer legal. As writing was introduced, some agreements became written instruments and each party received a copy. Occasionally, magistrates were present as witnesses and added their seals to such documents, which eventually led to their registration with local judges.⁴

During the Middle Ages, the custom of transferring land before local magistrates, called *schepenen/schepens*, became almost universal in the Netherlands. Concerning conveyance before schepens, the laws of Middelburg date to 1217 and Delft to 1246.⁵ Some formalities used in the transfer of land were made obligatory by several edicts of Emperor Charles V in the sixteenth century. For example, the *Placaat* or edict of 1529 compelled those who sold or mortgaged their real property to appear before the schepens of the place where the property was situated. The Political Ordinance of 1580 directed the secretaries of the local courts to record all transactions in a land-books or registers. The purpose of the edicts and of the earlier local by-laws was to prevent careless transfers, to protect third-party claims, and to hamper recurrent sale to different buyers. Noncompliance with the various steps rendered the transactions invalid. A legal transfer, however, endowed a landowner with certain *erfaenhangige gerechtigeden*, or land rights, that were specifically associated with immovable property and protected by Dutch law. These included the right of possession, the right of use and enjoyment, the right of alienation, or selling at one's own discretion, and the right to devise the property to the next generation. Although the imperial laws did not introduce anything revolutionary or new, they did regulate the ancient customs of the country. This system of conveyance was called *overdracht* or transfer.⁶

Given the precise laws associated with real property in the Netherlands, it is not surprising to find that the West India Company complied with the sixteenth-century decrees, thereby, establishing for New Netherland a uniformity of procedures proven to be effective in the homeland. In the regulations and instructions of 1624 and 1625, the local administrator of the colony, Willem Verhulst, and his council were directed to distribute land to new settlers and to allocate it "according to the size of their families and their industry". If they opted to return to the homeland, planted fields and houses could be traded or sold to the remaining colonists. The company's secretary, was directed to keep a "public register" and to enter therein all "wills, marriage settlements, contracts, and other instruments upon which any one might base a claim to title or mortgage of real estate". Documents were executed before and signed by two witnesses.

4. J. W. Wessels, *History of the Roman-Dutch Law* (Grahamstown, Cape of Good Hope, 1908), 490-496, 599-601.

5. Wessels, *History of Roman-Dutch Law*, 490-501, 599-601.

6. Grotius, *Jurisprudence of Holland*, trans. Lee, 1:92-97, 222-23. *Groot Placaet-Boek*, 2 vols., ('s-Graven-Hage, Netherlands, 1658-64), 1:338-39, 373-74. Wessels, *History of Roman-Dutch Law*, 496-97, 600-602. Robert W. Lee, *An Introduction to Roman-Dutch Law*, 5th ed. (1915; Oxford, 1953), 121-22, 139-40, 139 n. 3.

As in the Netherlands, failure to comply with any of the proceedings voided the instruments, as well as “the enjoyment of any right or claim that might be based on them”.⁷

Before any of this could take place, land was first bought directly from the native inhabitants by the West India Company’s representatives or the company supervised transfers elsewhere, for Dutch policy recognized the Native Americans’ immediate right of possession to the soil. “Absolute possession of land in perpetuity for exclusive use,” Wim Klooster notes, “was not part of the vocabulary of northeastern woodland Indians.” Land “belonged to the tribe or clan as a community resource for the use of all its members,” and was not bought or sold. The West India Company followed Dutch tradition and bought the land, claimed the rights attached to it, gave payment in return, and signed an agreement before witnesses. Notwithstanding, “[t]ransactions that the Dutch considered final were regarded by the Algonkians as partial payment for temporary use. “As the white population spread, the Indians often insisted upon further payment.”⁸

With the proper conveyance in hand, company officials allotted land to settlers and by 1638 awarded formal *grond-brieven*, or land patents, bestowing on the patentee all the *erfaenhangige gerechtigheden*, or land rights, enjoyed in the homeland. They were issued upon petition to the provincial authorities as representatives of the Lords Directors of the West India Company. In return, the company required an oath of fealty, to uphold the laws of the Dutch Republic and to honor company policies. Neglecting to improve the land, or failing to pay tithes and taxes, could incur forfeiture.⁹

In 1653, with the incorporation of the City of New Amsterdam, real estate transfers for all land under the city’s jurisdiction became the concern of her schepens, although the form of government granted by the company made no specific mention of this duty. The municipal court, therefore, formally petitioned the directors in Amsterdam to grant them the authorization “to very the execution of deeds an conveyances of houses and lots within this City, the fee

7. Arnold J. F. van Laer, trans. and ed., *Documents Relating to New Netherland, 1624-1626 in the Henry E. Huntington Library* (San Marino, CA, 1924), 6, 9, 14, 17, 114, 117.

8. Clarence White Rife, “Land Tenure in New Netherland,” in *Essays in Colonial History Presented to Charles McLean Andrews by his Students* (1931; reprint Freeport, NY: Books for Libraries Press, 1966), 48. Wim Klooster, *The Dutch in the Americas. 1600-1800* (Providence, 1997), 53. Michael Kammen, *Colonial New York: A History* (New York, 1975), 18-19.

9. The “free men” of New Netherland petitioned the provincial court and requested that it grant them *grond-brieven* on 24 June 1638. Edmund B. O’Callaghan and Berthold Fernow, eds. and trans. *Documents Relative to the Colonial History of the State of New-York*, 15 vols. (Albany, 1856-87), 14:9-10, 1:114; Arnold J. F. van Laer, trans., *Council Minutes, 1638-1649*, Vol. 4, New York Historical Manuscripts: Dutch, eds. Kenneth Scott and Kenn Stryker-Rodda (Baltimore, 1974), 16; and Edmund B. O’Callaghan, *Laws and Ordinances of New Netherland, 1638-1674* (Albany, 1868), 16, 325-27. Fernow, ed., *RNA*, 1:36, 2:301-303. Rife, “Land Tenure,” 47. Many of New Netherland’s patents can be found in Charles T. Gehring, trans. and ed., *Volumes GG, HH & II. Land Papers*, New York Historical Manuscripts: Dutch (Baltimore, 1980).

simple of which is sold, as well as of mortgages according to the custom of the city of Amsterdam.” The provincial government retained the power to patent new lands and to re-patent lots that had been unimproved and confiscated. By 1655, the city collected a straight fee of one beaver or eight guilders for every executed deed. The fee was divided as follows: three guilders for the seal; one-and-a-half guilders for two schepens who signed the deed; and three-and-a-half guilders for the clerk.¹⁰

Such costs were but part of the overall expenses incurred when obtaining property. By Dutch law, all legal documents, including those required for land transfers, were executed by official notaries, secretaries, or clerks. In the colony, there was a shortage of such individuals and, therefore, we see several ordinances (1638, 1640, 1646, and 1650) concerning the proper procedure for recording written documents.¹¹ In 1658, some inhabitants complained of the “excessively large fees” charged by licensed scribes brought on by their “covetousness and avarice”, or so it was believed. The provincial government responded by regulating all such functionaries and their fees and bound them to an annual oath to uphold the duties of office. The ordinance reminded those who were competent, to keep “a regular Record or Journal.” They were ordered “to serve the poor and indigent . . . as an alms, Gratis and for God’s sake”. The charges for those who could afford to pay give some indication of the costs to obtain patents and deeds. To illustrate, a petition, for a grant of land presented to the provincial court, cost 2 1/2 guilders. An additional per-page fee of about one guilder was added to all documents that exceeded two to three pages. Leases, deeds, and contracts cost 1 1/2 guilders and a copy, one guilder. Papers sealed with the scrivener’s own “signet” carried an extra charge of six stuivers. Clients received written statements of the fees, which could not include “drinking treats, nor any other extraordinary presents, gifts, or *douceurs*.”¹²

“Drinking treats,” mentioned in the 1658 ordinance, undoubtedly added a festive atmosphere, to the solemnity, of concluding, signing, sealing, and recording agreements made between parties. For example, in 1642, Hendrick Jansen and Willem Adriaensen finalized the sale, of a garden, dwelling, and brew house in New Amsterdam for twenty-five hundred guilders.

10. Hans Bontemantel, “Form of Government in New Netherland A[nn]o 1653,” trans. Arnold J. F. van Laer, in I. N. Phelps Stokes, *The Iconography of Manhattan Island, 1498-1909*, 6 vols. (1915-28; reprint New York, 1967), 4:133-36. For the petition and reply see Fernow, ed., *RNA*, 1:144-47, 218-19. For the fee, see O’Callaghan, trans., *Laws and Ordinances*, 189.

11. Van Laer, trans., *Council Minutes*, eds. Scott and Stryker-Rodda, 4:21, 88, 322; O’Callaghan, trans., *Laws and Ordinances*, 24, 59, 108-109, 114; Fernow, ed., *RNA*, 1:15.

12. Fernow, ed., *RNA*, 2:315-18. O’Callaghan, trans., *Laws and Ordinances*, 329-33. A *douceur*, was a tip or gratuity. Johannes Nevius, Dirck van Schelluyne, Mattheus de Vos, and Pelgrom Clock took the required oath eleven days after the ordinance was published. Edmond B. O’Callaghan, ed., *Calendar of Dutch Historical Manuscripts in the Office of the Secretary of State, Albany, N. Y. 1630-1664* (1865; reprint, Ridgewood, NJ: Gregg Press, 1968), 191.

Hendrick van Dyck and Wolphert Gerritsen were likewise present as invited witnesses, as was Cornelis van Tienhoven, the company's secretary, who recorded the transaction. Jansen, the seller, offered to contribute "twenty-five guilders for drink on the bargain . . . without charging any part thereof to the purchaser."¹³

The sale of a Manhattan house and plantation in 1640 occurred under quite different circumstances. When Maryn Adriaensen wanted to convey his property to Hendrick Pietersen, Pietersen claimed he was drunk at the sale and had no knowledge of the purchase. The court ordered him to confirm his statement and prove that he had cancelled the sale within twenty-four hours. If he could not deliver the evidence, the purchase would stand. Dutch law maintained that drunkards could not bind themselves: or rather, those who through drunkenness had lost their understanding. But since lack of understanding through drunkenness was difficult to prove, sales that took place at drinking parties were considered void if the buyer or seller repudiated the sale within twenty-four hours. In the New Amsterdam case, two witnesses declared on Pietersen's behalf, saying that he was drunk at the sale, but so was Adriaensen. Indeed, "the entire company were [*sic*] not very sober." The court did not hold Pietersen to the sale, but it did order him to lease Adriaensen's property for six years. The record does not mention whether Pietersen cancelled within twenty-four hours, which is perhaps the reason that he was ordered to lease the property.¹⁴

Despite the merriment witnessed on some occasions, the laws of obligations, just as the laws of property, were well defined in the Netherlands. A contract was usually made between two parties, either of whom could be represented by letters, messengers, or agents. It was consensual and enforceable, as long as it was "freely entered upon by competent persons for an object, physically possible and legally permissible." It was considered complete when the parties agreed to a price. As long as a sale remained incomplete, either party could withdraw from the agreement without incurring any loss, except any earnest money, if such had been given.¹⁵

Anyone could bind him- or herself, except drunkards (as we have seen), minors, insolvent debtors, and married women, unless they had their husbands' tacit or oral consent.¹⁶ New Amsterdam's contracts demonstrate the innovative ways colonial buyers found to pay for their real property. They also reflect the complexity of the New Netherland's monetary situation and

13. Arnold J. F. van Laer, trans., *Register of the Provincial Secretary, 1638-1660*, 3 vols., New York Historical Manuscripts: Dutch, eds. Kenneth Scott and Kenn Stryker-Rodda (Baltimore, 1974), 2:88-89.

14. Van Laer, trans., *Council Minutes*, eds. Scott and Stryker-Rodda, 4:73, 85; *ibid.*, *Provincial Secretary*, eds. Scott and Stryker-Rodda, 1:278-79. Grotius, *Jurisprudence of Holland*, trans. Lee, 1:358-59.

15. Grotius, *Jurisprudence of Holland*, trans. Lee, 1:302-303, 366-67. The quotation is in Lee, *Roman-Dutch Law*, 223.

16. Grotius, *Jurisprudence of Holland*, trans. Lee, 1:28-33, 296-97.

the diversity of media available for exchange. Most transactions required guilders in “current pay,” such as beaver skins or sewant (wampum). Some contracts stipulated the Dutch currency, of the homeland. Some specified a combination of currency and commodities. To illustrate, Jan Schryver, a tavernkeeper, sold a lot on the Beaver Canal in 1662 to Paulus van der Beeck for twenty-five hundred “pieces of good, merchantable, hickory firewood, to be delivered” within one year on the beach in New Amsterdam. Two cows were the first installment due on Jan Martyn’s property on the strand of the North River and the Beaver Street in 1655. Two additional payments of two hundred guilders each were due over the next two years from the grantee Lodowyck Pos.¹⁷

Rarely were colonial grantees required to pay the entire purchase price on the day that contracts were signed. Provisions in the contract often stipulated an installment schedule with a down payment of a specified sum and the remainder due in equal amounts at yearly intervals. Sometimes interest was charged on the remaining sum. The vendor determined the day a deed would be delivered, which occurred upon receipt of the first installment or after other or all payments were made. To secure future payments, the buyer would, on occasion, mortgage the property, for anyone who possessed property also had the right to mortgage it. A mortgage, or *hypotheek*, on real property was executed and registered before the court where the property was situated. If it was burdened with several mortgages, the oldest was preferred.¹⁸

In the sale of real property, Dutch law was specific as to risks, liabilities, and profits, which fell to the buyer once an agreement was final, even if delivery had not yet been made. Custom, however, entrusted a seller with its safekeeping and, if he failed, he was liable to make compensation.¹⁹ New Amsterdam’s grantees, at times, demanded assurances from grantors that properties would be delivered in the condition that they were bought. Such contracts reflect the intrinsic dangers, of life, in a small, isolated, seventeenth-century outpost; especially the hazards of wooden houses with open fires, poorly built chimneys, and thatched roofs. To cite an instance, in the autumn of 1646, Arnoldus van Hardenbergh paid the carpenter Pieter Wolphersen van Couwenhoven sixteen hundred guilders for a house and lot near the Here Gracht. The contract contained several provisions: Van Couwenhoven, the seller, and his

17. For the Schryver/van der Beeck transfer see O’Callaghan, trans., *Register of LaChaire*, eds. Scott and Stryker-Rodda, 152. The Martyn/Pos transfer is found in Fernow, ed., *RNA*, 2:99; New York County, Deeds, Liber (1654-62, microfiche; translations from original Dutch), 257-58; New York State Archive, Secretary of State, Land Records, #12943, “Letters patent, 1664-1990,” (microfilm roll 1, Vols. 1-4, and roll 2, Vols. 5-6), 2:109.

18. Grotius, *Jurisprudence of Holland*, trans. Lee, 1:280-83, 286-89, 366-67. For an example of a contract with an installment schedule and interest charges see Van Laer, trans., *Provincial Secretary*, eds. Scott and Stryker-Rodda, 3:391-92. For mortgages see Dennis J. Maika, “Commerce and Community: Manhattan Merchants in the Seventeenth Century” (Ph.D. diss., New York University, 1995), 255-57.

19. Grotius, *Jurisprudence of Holland*, trans. Lee, 1:368-71. See also Wessels, *History of Roman-Dutch Law*, 602-603.

household could remain in the house until the following May. Before delivery, he agreed to “tongue and groove the garret at his own expense”. He would erect a partition “through the front part of the house . . . with two small dors [*sic*] . . . and in the back room a bedstead.” The last provision states the risks and liabilities: “if it happen, which God Almighty forbid, that during the time . . . Wolphersen remains in [the] house . . . there should occur any accident of fire through the carelessness of any of his household, boarders or himself personally, . . . [he] remains bound to repair the damage, be it great or small.”²⁰

To conclude, in 1663, when Andries Jochemsen and his friends conversed on the sale of houses, they may also have discussed payments and installments, mortgages and creditors, profits, risks, and losses; besides, of course, the specific pieces of property for sale at the time. Alienation or selling at one’s own discretion was an important right associated with land ownership. The procedures of transfer, or *overdracht*, were developed over centuries of land occupation in the Netherlands. Some were well established by the Middle Ages. Important elements included the presence of witnesses, an appearance before schepens, and a regular system of registration. Provincial authorities in New Netherland did their best to establish the available forms in the colony. Undoubtedly, the colonial landscape was not as orderly and organized as that of the homeland and the official secretaries and notaries, so important for legal and commercial administration, were scarce in New Netherland’s extended region. Most inhabitants generally followed the procedures of land transfer. Contracting parties expected agreements to be honored, as Dutch law required. Grantees found a variety of media to pay for their acquisitions. Payment was often scheduled in annual installments and mortgages secured the payments. All such actions point to the Trans-Atlantic transfer of a traditionally Dutch institution to address the needs of settlers on America’s eastern shore. Certainly, the traditions of home served to standardize the management and allotment of an unfamiliar landscape.

20. Van Laer, trans., *Provincial Secretary*, eds., Scott and Stryker-Rodda, 2:363-64.