

DEPOSITIONS, HOUSEHOLD SPACE AND OWNERSHIP IN COLONIAL NEW SOUTH WALES

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ABSTRACT

An examination of the language used in courts and legal documents shows that in colonial Sydney “things” were central to managing relationships and much of life was commoditised, particularly the housing market. The society was transitory, people moved constantly from house to house. Entangled with illiteracy, this created a particular power structure where paper became symbolic and a group of ex-convict clerks controlled as much of the society as they could. Indigenous people also participated in this logic of settlement.

In 1812 Sarah Wells, Sydney shopkeeper and publican went to the New South Wales Civil Court to dispute half a horse. The other half of the horse had been traded and the new owner would “neither pay rent nor give occasional use” of the horse to Mrs Wells.¹ This description introduces us both to the commercialisation of so many aspects of life in colonial New South Wales and the kinds of conflict generated. Early colonial New South Wales was a place apart from the kinship and community networks that provided much of the workforce in English cities and things such as beds, tea sets, parts of gardens, animals and paper took on new meanings.² Colonial conditions would create an emphasis on personal ownership, ritualised exchange and careful and eccentric valuing and conflicts over such valuing provided the motor of the extreme litigiousness already recognised in the colony’s court history.³ Arjun Appadurai argues that in all societies commodities travel through “regimes of value” and have their own social life. In societies at war,

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1 Petition of Sarah Wells, Court of Civil Jurisdiction, Causes, 13, 5/2283, NSW State Archives (NSWSA).

2 Lynne H Lees “Patterns of Lower Class Life: Slum Communities in Nineteenth Century London” in Stephen Thernstrom and Richard Sennett (eds) *Nineteenth Century Cities, Essays in the New Urban History*, (Yale University Press, 1969) at 359–377; and Robert Glen *Urban Workers in the Early Industrial Revolution* (Croom Helm, London, 1984) at 20–21.

3 Paula Jane Byrne *Criminal Law and Colonial Subject* (Cambridge, Melbourne, 1993) and B Kercher, *An Unruly Child* (Allen and Unwin, Sydney, 1995).

under stress or undergoing rapid change, particular objects become charged with symbolic meanings and are thus transformed.⁴ Like Sarah Well's division of a horse, responses to rapid change need not be logical. Peter Geschiere has drawn attention to the emergence of constant re-interpretations and shifts of meaning as localised responses to modernisation.⁵ Hans Medick has noted the flurry of consumption that came with access to cash reckoning. People scurried to obtain luxury goods rather than household essentials.⁶ Through analysis of the language of early colonial court records this paper explains the cultural logic behind lower class litigation and in doing so answers the Australian economic historian Sid Butlin's request for more research into the social relations surrounding money in the colony.⁷

The initial documents produced by popular court use are depositions. These are difficult kinds of records and they require a distinctive methodology. While they do show how cases emerged, they do not indicate what actually happened at all. However, David Vaissey's idea of "incidentals" in court records considers asides and locating terms used automatically by persons giving evidence before a court. This gives us a way of looking more widely into what kind of culture gave rise to litigious societies.⁸ Arja Nurmi and Minna Devala's historical linguistic analysis of the letters and diaries of the late 18th century provides tools for approaching language in a systematic way, by examining how often and in what contexts words are used.⁹ In this sense, court records become "talk exchanges" where records can show the self-positioning of the speaker in relation to the objects and spaces he or she names. In early New South Wales, the 1812 book of criminal cases heard by the Police Magistrate of Sydney, D'Arcy Wentworth, is most fruitful for language analysis.¹⁰ The "incidentals" we can find are words describing house, household and ownership. It is also possible to pursue such language into records of property transactions from 1810 to 1824.

In 1810, Sydney's population consisted of 6,158 non-Aboriginal people. This had declined in 1815 to 5,475 and increased, mainly due to convict ships, to

4 Arjun Appadurai (ed) *The Social Life of Things* (Cambridge University Press, New York, 1988) "Introduction" at 46; and Karen E Richman *Migration and Voodoo* (University Press of Florida, Florida, 2005) at 212.

5 Peter Geschiere "Globalization and the Power of Indeterminate Meaning: Witchcraft and Spirit Cults in Africa and East Asia" in Birgit Meyer and Peter Geschiere (eds) *Globalization and Identity: Dialectics of flow and closure* (Blackwell, Oxford, 1999) 211.

6 Hans Medick "The Proto-Industrial Family: The Structural Function of Household and Family during the Transition from Peasant Society to Industrial Capitalism" (1976) *Social History* 1–3.

7 Sid J Butlin *Foundations of the Australian Monetary System* (Sydney University Press, Sydney, 1968) at 26.

8 David Vaissey "Court Records and the Social History of Seventeenth Century England" (1976) 1(1) (Spring) *History Workshop Journal* 185.

9 Arja Nurmi and Minna Devala (eds) *The Language of Daily Life in England* (John Benjamin Publishing Co, Amsterdam, 2004).

10 *Police Magistrates Bench Book 1812 [PMB]*, Spencer 154, Mitchell Library (ML) Sydney.

12,079 by 1820. These figures derive from the Australian economic historian, TA Coglean's research, and Noel Butlin stresses their inconclusiveness.¹¹ The number of persons in the colony who had come free to the colony in 1810 was 694 and in 1820 the number was 2,100. Most of these free persons would have been military men and women. The Aboriginal population was not counted but contemporaries describe an increase of Aboriginal people living in Sydney from 1792. These were not only the traditional owners, today referred to as Gadigal/Wangal, but also Aboriginal people from other areas of country.¹²

Australian historians have not considered the language early 19th-century colonising people used to describe the space they found themselves in or the things they used. Alan Atkinson wrote of households and family in the period before 1810 and found it hard to describe any family as living at one address for a number of years, but he did not explore the implications of transitory lives for the colonists.¹³ Grace Karskens' vivid histories rely on anecdote to build up a picture of the small Rocks area of Sydney and on archaeological research, which was far more hesitant in its conclusions.¹⁴ Both Karskens and Atkinson represent a stable, comfortable, spacious Sydney of nuclear families and gardens. However, considering the *language* used by colonial people to describe their relationship to property gives a wider perspective of the town of Sydney and, through analysis of that language, we can examine the kinds of power relations that existed and incorporated the use of law.

The first part of this paper is concerned with objects appearing in court records and the way they were spoken of. The second section follows such valuing into the houses of the colony and examines what people understood

11 Noel G Butlin *Forming a Colonial Economy* (Cambridge, Melbourne, 1994) at 53.

12 The increase in the Aboriginal population was noted by Joseph Arnold, ships surgeon, in his journal of two separate voyages to New South Wales A1263 ML. "Country" refers to a network of dreaming sites whose care is in the hands of one group of Aboriginal people: Nigel Parbury *Survival* (Ministry of Aboriginal Affairs, Sydney, 1988) at 14.

13 Alan Atkinson "Sydney's First Householders" in Graeme Aplin (ed) *A Difficult Infant, Sydney before Macquarie* (University of New South Wales Press, Sydney, 1988) at 78.

14 GE Karskens *Cumberland/Gloucester St Site, The Rocks: Archaeological Investigation Report Volume 2 New Perspectives from the Rocks (Main Report)* (Godden Mackay Logan Pty Ltd, Sydney, 1999); Grace Karskens, *The Rocks, Life in Early Sydney* (Melbourne University Press, Melbourne, 1997) at 7–8; in recent work, Grace Karskens and Richard Waterhouse emphasise the word householder, a government term, and argue that "householders" wanted to protect their homes in their opposition to Governor Bligh in 1808: Grace Karskens and Richard Waterhouse "'too sacred to be taken away', Property, Liberty, Tyranny and the Rum Rebellion" (2010) 12 *Journal of Australian Colonial History* 1. Alan Atkinson had previously investigated these "householders" and found that they were mainly officers who were involved in the insurrection against Bligh and this information appeared at the Inquiry into the rebellion where they argued that "no householder in Sydney was safe": A Atkinson "The Little Revolution in New South Wales 1808" (1990) 12(1) *International History Review* 65 at 71. In all of this work there is no analysis of those who were not involved in the military or, for our purposes, actual householders and how long they stayed in houses and no attention is given to who used the term "householder" and why. Their argument is concerned more with rhetoric.

by the division of property in a house and around a house. The third section follows such language into reckoning and literacy in the shops and public houses of the colony. The fourth section examines the power brokers created by such a system of valuing, many of whom were clerks of the courts. The next section examines Indigenous Sydney and its involvement in valuing and the curious set of ritualised relationships that characterised the colony.

I. BENCH WORDS

The *Police Magistrate's Bench Book* record was compiled by three ex-convict clerks, Laurence Daveron, George Chartres and George Jubb, and was constructed from notes taken when people had made their way to the Police Office or were taken there by constables or soldiers. Some entries have no legal point to them, one mimics an Irish woman attempting to give evidence about an assault – “treats of violence” – and we hear her accent 200 years later.¹⁵ Examination of incidental language illuminates several objects of the early colony.

A. Hats

Hats were used for carrying money and property. Illustrations from the period show convicts working and persons in the street all wearing hats with tall crowns.¹⁶ To realise that these hats were used to carry property shifts a 21st century perspective on the colony into the realm of early 19th century usage and value. Mary Harlow and Marie Louise Nosch explain an ethnographic approach to clothing:¹⁷

The study of clothing is to a large degree the study of the moving body in space. It concerns the relationship of the garment to the body and of the individual body to the social body.

We expect hats to be part of costume or clothing, but in the early 19th century they were also objects that contained property. In the *Bench Book*, money, notes, shirts, cups and meat are recorded as carried in hats. A Lascar sailor carried his money in his turban. This property was hidden from view, it gave the male body a streamlined appearance and it indicates a transfer of goods and money that was also hidden.

15 “Ann Anson”, *PMB*, above n 10, at 19 May 1812.

16 Major J Taylor *The Town of Sydney in New South Wales* (London 1823) aquatint, 15 5/8 inch x 22 7/8 inch, ML.

17 Mary Harlow and Marie Louise Nosch *Greek and Roman Textiles and Dress, An interdisciplinary Approach* (Oxbrow, Haverton, 2014).

B. Pockets

“Pockets” are mentioned in the *Bench Book*, particularly in the case of women. These were two pouches of embroidered cotton tied on a string around the waist and accessed through a slit in the side of a dress.¹⁸ Though intricately embroidered, they were hidden from sight under the folds of a dress. One was meant to take pockets out of the house and not “forget” them, and property found in pockets was deemed to belong to their owner. Money and notes were carried in pockets, though they were large enough to contain a “property belonging to a soldier”.¹⁹ The association of these embroidered pockets with women and women’s involvement in the transfer of money, also hidden from view, is apparent in the records of the Bench. Convict servant women, free women, all had pockets.

C. Bundles

Men and women walking about with property tied up in a “bundle” were also mentioned. The handkerchief was a large square of cloth. The *Dictionary of Needlework* describes a Bandana Handkerchief:²⁰

Indian washing silk handkerchiefs, having white or coloured spots or diamonds on a red, yellow, blue or dark ground. They were a yard square and were plain and twilled, and kept their colours to the last.

Bundles before the Bench contained clothing, shoes and tea. Travellers from the Hawkesbury and Parramatta carried them, as did persons moving between houses and convicts walking between lodgings. Contemporary prints show these bundles tied to a stick, though sticks are not mentioned in the *Bench Book*. Placing bundles on a “table” or a “window sill” in a public house was spoken of.

D. Clothes

The officer Edward Close created illustrations of an Aboriginal man and woman in Sydney in this period.²¹ They both have minimal clothing and what they do wear is decorative and indicative of status. An armband on the upper arm of the woman indicated she was married, Close tells us. If we consider the colonists with the same ethnographic curiosity, we see this concealment

18 “Pocket, 18th Century, Bath Costume Museum, Bath, UK” in G Marsh *18th Century Embroidery Techniques* (Guild of Master Craftsman Publications, Lewes, 2007).

19 “Mary Longfield” *PMB*, above n 10, at 12 January 1812.

20 Sophia Caulfield and Blanche Saward *The Dictionary of Needlework, An Encyclopaedia* (2nd edition 1885, Blaketon, Exeter, 1989) at 241.

21 Edward C Close, Sketches, PXB 115 ML.

of money and articles inside articles of clothing. Moveable wealth was carried close to the person. It was a culture of hiding things and the referent was money.

Clothing is elaborately described before the Bench. We know from the historian Jane Elliot's research that women, both convict and free, described in detail the prints they and others owned and men described the waistcoats they wore, some elaborately embroidered.²² English historiography of clothing has moved away from the idea of imitation of the elite to a notion of an independent aesthetic,²³ though Jane Elliot's arguments involving clothing as an assertion of independence by convicts still holds. In the 1812 bench records, "Duck" clothing, the word used for government-distributed clothing, is described in the 1812 bench records as "warm" and so distributed clothing also had value, rather than being an insignia of a transported person. In 1820–1821 the clothes distributed to the convicts in Hyde Park Barracks were highly sought after and smuggled out of the barracks to be traded in the town.²⁴

Clothing was also money and rapidly and easily exchanged.²⁵ What decorates the person was also the accumulation of representations of money.

In a manner similar to clothes, spirits were used or accumulated. When spirits appeared before the Bench it was in the context of drinking in public houses, where purchase is carefully measured, and also as an article of exchange where it was carefully accounted for by the people trading. The emphasis was on the reckoning. Alexander Laraine sold two shirts, one waistcoat and one silk handkerchief to Mary Thompson for "ten shillings in Currant (sic) Bills and one Bottle of rum".²⁶ Trading in such a way involved conversation and agreement and this social side of dealing was as important as the transaction itself. Clothing represented money.²⁷ This was the first aspect of space that appeared before the Bench, one of the body and how it was perceived.

The Bench also dealt with personhood, in that it blurred convict and free in its entries. This is not to say that everyone was effectively free. Rather, there was a policing structure that did not clearly distinguish convict status.²⁸ That women were independent economic actors is an important strand in colonial historiography.²⁹ Before the 1812 Bench women were "owners" of houses and shops and represented themselves as such, but there is more to

22 Jane Elliot "Was There a Convict Dandy? Convict Consumer Interests in Sydney, 1788–1815" (1995) 26(104) *Australian Historical Studies* 373.

23 John Styles *The Dress of the People* (Yale University Press, New Haven, 2007).

24 Paula Jane Byrne "Social Space in a Port Town" (1992) 30 *Push From the Bush* 10.

25 The original research is to be found in Byrne, above n 3, at 86.

26 "Mary Thompson" PMB, above n 10, at 30 January 1812.

27 Byrne, above n 3, at 85.

28 At 154–160.

29 M Perrot *A Tolerable Good Success* (Allen and Unwin, Sydney, 1983); and K Alford *Production or Reproduction, An Economic History of Women in Australia 1788–1850* (Melbourne University Press, Melbourne, 1984).

their existence than economic success. The people who appeared before the Bench as prosecutors and victims also delineated their living and sleeping places and these indicate far less stable living conditions than success allows.

E. Beds

The word “bed” or “bed ticken” appears in the *Police Magistrate’s Bench Book*. The *Dictionary of Needlework* describes ticking as “a strong material made both in linen and cotton, for the purposes of making mattresses, feather beds pillows or bolsters”. It was sewn into the shape of a sack, the wrong side being rubbed with beeswax, and the sack filled with feathers.³⁰ Bed ticks were reported before the Bench as being carried around the streets; if someone left their lodging they would return for their bedding. Before 1819, according to the Bigge Inquiry, male convicts had to find lodgings in the town of Sydney and they paid for these lodgings either with rations or with some earnings from their work after hours. Female convicts lodged with people who claimed to be related to them in some way.³¹

Bed ticks were described before the Bench as being put onto a bedstead, the base of which was described as Hessian or sacking. What is found under the bed tick or between it and the bed or in the blankets was deemed to be the property of the person who slept there. This is so in cases of goods stolen, as well as in cases where property is found. This is apparent throughout the period.³² The locating of property in the bed rather than other parts of a house and the bed being a locus of ownership suggests continuity with London lodging houses described by Amanda Vickery and Joanne McEwan,³³ as well as the shipboard habits of the months before arrival. In the colony there does seem to be a sense of ownership of beds, both in the sense of the ticken being carried from residence to residence and in the sense of people giving up “their” beds for someone else. In the Bench record bedding always included a pair of sheets and blankets.

It is difficult to discover the derivation of this interest in beds, in a place to sleep and in coverings. In poorer London houses of the early 19th century the Irish slept in the hallways and on the staircase,³⁴ perhaps with bedding. London, according to Dickens, had persons of “no fixed abode” who he said “creep about with beds”.³⁵ In Newgate gaol, prisoners who obtained

30 Caulfield, above n 17, at 19.

31 “Evidence of Francis Oakes” *Bigge Inquiry Bonwick Transcripts* 1 ML at 301.

32 Byrne, above n 3.

33 A Vickery “An Englishman’s Home is His Castle? Thresholds, Boundaries and Privacies in the Eighteenth Century London House” *Past and Present* (2008) 199(1) 147; see also Joanne McEwan “The Lodging Exchange, Space, Authority and Knowledge in Eighteenth Century London” in Joanne McEwan and Pamela Sharpe (eds) *Accommodating Poverty* (Palgrave Macmillan, London, 2011) 50–64.

34 Charles Dickens *Sketches By Boz* (Chapman and Hall, London, 1903) at 184.

35 Jeremy Tambling *Going Astray, Dickens and London* (Pearson, Harlow, 2009) at 24.

favours were the only ones to sleep on a bedstead.³⁶ The interest in beds may also derive from shipboard hammocks and bedding that convicts after the Third Fleet brought up to be aired. Francis Oakes was specifically asked by Commissioner Bigge in 1819 about the bedding of female convicts in the Female Factory at Parramatta, indicating bedding held particular significance for the administration. Oakes told Bigge that some of the women claimed to have lost their bedding on arrival, from which we can deduce they brought bedding into the colony from the ship.³⁷ Whatever its derivation, the bed is a locus of ownership in the house. Houses of persons who were only slightly wealthy have beds with “hangings” and “counterpains”,³⁸ so beds were dressed as much as people. It may well have been that property accumulation in the colony began from the possession of a bed, but it also suggests transitoriness and a continuation of shipboard life and the importance of the bed as a symbol of ownership of space.

F. Boxes

The 1812 Bench Book refers to the “box”. Female convicts carried their property in a box and property designated as theirs would be kept in the box. This habit seems to be carried on after a ticket was obtained, in service and in lodging and even house ownership.³⁹ 1812 does not give us many boxes to examine. They contain clothing in this year, though a man’s box contains writing paper – two sheets of it – soap, fruit and a handkerchief. The box is similar to the bed in that property inside it is deemed to belong to its owner; it is also something that may be moved from place to place and does not appear to be at all discarded when a dwelling is obtained. So, it is another indication of transitory behaviour. It is not the “sewing box” of early 19th century novels but perhaps is closest to the trunks used in travel in England.

It is apparent from the *Bench Book* that lower class people in the colony had an involvement in an economy where objects such as beds, boxes, pockets and hats were the locus of ownership, yet objects worn or owned also were quickly exchangeable in a system of representations of money. This is the world they describe to the Bench. And this world is to be found again in the records of the same bench for 1820–1821.⁴⁰

The hiding of money and the limiting of personal space to a bed tick suggests limited living spaces despite contemporary illustrations showing a spacious town.

36 At 206.

37 “Evidence of Oakes”, above n 31.

38 “Hangings” *Register of Assignments* 915, A3612, ML; “Counterpains” 392, A 3611, ML.

39 Paula J Byrne “A Colonial Female Economy: Sydney, Australia” (1999) 24(3) *Social History* 287.

40 Police Magistrate’s Bench Book 1820–1821, Spencer 54 ML.

II. THE WORD “HOUSE”

People before the 1812 Bench also described how they related to the built environment. The words “my house” were used by convict and free, these terms being used 61 times out of 141 mentions of houses in the *Bench Book*. Convict and free used a possessive term in relation to a house. Women particularly were likely to use the words “my own house” and were liable to throw male property out of their house or remove property from a man’s house.⁴¹ The ownership of a house is important to mention and the distinction between those who owned and who did not was clearly made. This supports the argument that house ownership was one means of obtaining status, both economic and social in the colony.⁴²

If we look further than the *Bench Book* into the realm of government lists, we find elaboration of what the house meant in the colony. Later records support the *Bench Book*’s indication of transitory living. That the “owner” of the house might indeed be a lessor themselves is suggested by the later rental records of 1822 where, of 589 houses surveyed by constables, 57 per cent of houses were leased.⁴³ George Howe, Sarah Wills and Thomas Clarkson were major purchasers of numbers of houses in 1812. Earlier, Andrew Thompson and D’Arcy Wentworth obtained numbers of houses. Mary Weir was described by a constable in 1814 as having numbers of houses, living in one in Clarence Street, and assisting girls who wanted to leave the Factory in others.⁴⁴ Leasing was common among the elite in Sydney; those houses belonging to Government officials were leased by the Government, mainly at £100 a year.⁴⁵ So when people said “my house” before the Bench, they may have meant they were the principal lessor, the nominal owner.

Even if people did own houses there is considerable indication that they did not mean to stay in them for long periods. The records of house transferral survive in the *Register of Assignments and other Legal Documents* held initially by the Commissariat and, after 1810, by the Judge Advocate. These records were produced by the clerk copying into a volume the notes of agreements, indentures and so on brought to him by agents, clerks or ordinary members of the public so that they could have evidence of the transactions they had been involved in. The recordings had been made compulsory by Judge Advocate Ellis Bent and Governor Macquarie. Volumes were taken up to the Judge Advocate’s Office in 1810 and long lines of people retrospectively brought or quickly wrote up their agreements dating from about 1806. The backlog of entries did not really settle down until mid-1811. The misuse of legal terms, the absence sometimes of crucial details – such as the amount of money involved or the person who was buying property – attest to the informal

41 PMB, above n 10: “Catherine Mundy” 29 April 1812 and “Peter Walsh” at 12 May 1812.

42 Byrne, above n 39.

43 Sydney Allotments Index SZ 465–6 Maps, NSWSA.

44 Mary Weir, 23 May 1814 *Judge Advocate’s Bench (JAB)* S2775 NSWSA.

45 D’Arcy Wentworth *Police Accounts*, D1, ML.

production of these documents. They were important documents in civil cases, particularly after 1810, when the Judge Advocate required evidence of any kind of agreement brought before him in order that he might proceed to a case. The copying clerks required payment and so not all agreements survive, however those that did provide considerable insight into the management of property.

A. House Transferral

Houses and parts of houses were exchanged or lost when a debt failed to be paid. For 1812, there were 123 records concerning selling or borrowing on houses in the town of Sydney. Foveaux had opened up the eastern part of the town to private ownership and so one could own a house “in” Hyde Park as well as “along” the Rocks or “on” the Brickfields. These records come from all parts of the town, most notably Pitt and George Street, and this compares to the participation of women in the house trade from 1810 to 1815, where most activity was centred on the southern part of the town.⁴⁶ 1812 was a depression year and we see the effects of this early in 1813, where more houses were used to borrow money and were transferred on the basis of debts not being paid. Nevertheless, the pattern of house transferral appears from 1810 until the volumes end in 1824. When Catherine Johnson of the Hawkesbury assigned her house on the Rocks to George Howe for a loan of £51 in 1811, her assignment reads: “formerly the property of Thomas Massey next of Martha Simmons and now the property of Catherine Johnson”.⁴⁷

There is no more graphic an illustration of the transferability of houses than the 1822 notebook of the clerk P Cavanaugh which entailed “descriptions of various premises in Sydney and rent due on them”.⁴⁸ This was the “quit rent” or government charge on houses in Sydney. The rents were determined from the year 1810 and were collected in person by W Cavanaugh and Mr Fisher. The money was handed to Mr Fisher, who then turned and placed the whole sum with Cavanaugh. It was a ritualised transaction and due note of it was made in Cavanaugh’s notebook. The clerks charged the inhabitant of the house regardless if they were owner or occupier. At Mary Skinner’s, Fisher took possession of a mare and sold it after keeping it “five days in possession”, in order to obtain the rent of £8.2.0 for the 12 years from 1810 to 1822. William Thorn, a police constable, was “allowed time by consent of W Cavanaugh until Thorn receives his salary from the Police Fund”. One rent was paid “in shares by five persons”. Out of 117 houses visited, 76 of them were no longer in the possession of the original grant holder.

46 Byrne, above n 39.

47 *Register of Assignments*, 917, A3612 ML

48 P Cavanaugh *Notebook*, A1263 ML.

B. Splitting up the House

What is also shown in records of house transferral is a splitting up of what looks like in pictorial records and mapping, one property. When a person bought a house, that did not mean they had bought the land around it at all; it was possible to buy a skilling or skillern (the back part of a house), a garden or an outhouse. All of these had to be clearly listed. The garden was perhaps rented to one person, the skilling to another, an outhouse to someone else. There were layers and levels of ownership. John Murphy, stone mason gave:⁴⁹

Daughter Bridget Murphy daughter to me by Eleanor
Murphy two skillings situate in Cambridge Street on the
Rocks with the appurtenances belonging to said skillings.

A house in Phillip Street was sold separately from the workshop that adjoined it; the former having been previously sold.⁵⁰ When Patrick Purcell transferred his house, he had to make clear that the transfer also involved the land in front of the house and the land at the back of the house.⁵¹ *A Bargain and Sale of September 15 1813* reads:⁵²

All and singular a part and parts of a Dwelling House
called No. 27 situated between the burial ground and
a premises called the rookery the lower end of York St
Sydney, namely one room and one skilling so situate
belonging and appertaining unto the said Dwelling
House message or tenement together with a regular and
fair allotment of garden ground thereunto belonging.

John Carroll sold a house and garden, 8 Clarence St, to Enoch Kinsella on the condition Kinsella built “a Shingled, weatherboarded and brick nogged house of the dimensions of 13 feet by 10 on part of the garden”.⁵³ Elizabeth Starling transferred the garden ground at the back of her residence to Michael Robinson.⁵⁴ William Burbridge transferred a skilling at 44 Pitt St to Elizabeth Wood and, in 1811, Ester Spencer transferred half her garden in Elizabeth Street to William Smith.⁵⁵ It is in such a context of awareness of ownership that George Jubb was able to say that he saw someone stealing peaches from tree branches that were overhanging a garden belonging to someone he

49 *Register of Assignments*, 832, A3612 ML.

50 At 1084.

51 At 772.

52 At 1084.

53 At 907.

54 *Register of Assignments*, 710, A3611 ML.

55 At 795; 491 A3610 ML.

knew.⁵⁶ In the *Bench Book*, we also find reference to an “apartment” or room of a house designated as separately owned.⁵⁷

All of these separate components could be used as collateral for borrowing money and would be lost if the borrower could not find the means to pay, hence Mary McDonough promised she “hath not done any deed or thing whatsoever to encumber” the house in Hunter Street she sold to John Gandell.⁵⁸ The length of time given to pay appears quite short, usually only three months, and the loss of the house was recorded as a transfer, indicating prior debt perhaps. For 1812, these lending activities were carried on by merchants, such as Thomas Clarkson and Matthew Kearns, and established publicans such as William Gandry, Sarah Wills and George Howe, so dealing in debt and property was one aspect of their business. James John Grant sold his house in Chapple Row to Mary Ann Close “with the consent of John Palmer esq who has a claim on his house and premises”.⁵⁹ The average price of a small house in Sydney was £30.

Alongside clearly demarcated places of ownership that were quite small, the housing market was volatile and people were transitory. When we look at who lived in houses, we find an even more divided space.

C. Inside Houses

Houses often contained more than one family or one locus of ownership. This is indicated by the earliest list of residents of individual houses available: these are the records of 670 households surveyed by constables in 1822–1824, after the building of Hyde Park Convict Barracks in 1819. Only 28 per cent of these contained simply one nuclear family, 118 households involved adults sharing and in 121 other houses lodgers shared with families, widows or single persons.⁶⁰ Before the building of the barracks, the number of houses containing lodgers would have been much higher as convicts lodged in the town of Sydney, rent being obtained through their earnings for their work after hours or their rations. “After hours” work and its economy were part of the convict system. Female convicts lodged with relatives or persons claiming to be relatives. Both male and female were able to obtain houses, either by gift, in the case of women, or purchase.

Male lodgers in London were often kin to householders.⁶¹ This was not possible in New South Wales. The 1812 Bench records have a number of people described as lodgers and also describe the “loft” – part of a house under the roof – where people could sleep or property could be stored. The

56 *PMB*, above n 10: “George Jubb” 6 January 1812; and “John Johnstone” 12 January 1812.

57 “Catherine Fitzgerald” *PMB*, above n 10, 9 January 1812.

58 *Register of Assignments*, 847, A3611 ML.

59 At 796.

60 Byrne, above n 3, at 69.

61 Peter Laslett *Household and Family in Past Times* (Cambridge University Press, Cambridge, 1972) at 45.

actual relation of lodgers to the house renters or owners is difficult to discover. Elizabeth White of Castlereagh St explained her relationship to her lodger:⁶²

... after William Craig left the employ of Mr Nichols to the time of his having obtained his ticket of leave he occasionally resided at her place in Castlereagh St particularly on Fridays Saturdays and Sundays and since obtaining his ticket has wholly resided there.

This implies a slow process of ingratiation. It is also another hint that, although exchange of houses and objects was constant and rapid, there was a formal method of engaging in agreement.

Lodgers included soldiers as well as convicts and free persons. There are cases of lodgers presenting householders with clothes or presumed stolen property as gifts. It was sometimes suggested that women pay for their lodgings by acting as prostitutes, something that was suggested to the young Hannah Field, who appears not to have made it back to the Hawkesbury from whence she came.⁶³ None of this precludes affection or fondness, though if families moved so often, so too did their lodgers. It is not clear if they moved with them. London lodgers and renters moved just as quickly. Charles Dickens' family moved their accommodation five times in five years between 1817 and 1823, before splitting up on Dickens' father's bankruptcy. Charles went into lodgings by himself in Camden Town with relatives and within a year moved to other lodgings at Southwark. Lodgings were usually let by the week in London.⁶⁴ In its division of buildings into smaller sections, its lodgers and its sensitivity to property, Sydney resembles London. Even though its look is spacious, each yard, each animal therein was owned or rented. Houses were sold from under tenants or sublet in a constant acquisitive property market.

D. Around the Outside of the House

When land or property was transferred with a house, we gain a glimpse of what yards contained: oven and stockyard in Sussex Street in January 1812, "growing crops" at 40 Cambridge Street on the Rocks in June 1812, a separate house and a mare in foal at 15 York St. The outbuildings might also be "offices", as sold by Mary Gotham to George Jubb in 1811. These sub sections of property, as we have seen, were also traded. The 1812 *Bench Book* refers to workshops and these appear in the *Register of Assignments* as something sold or referred to separately from the house. The separation of workshop from house is something recognised as part of industrialisation and the records for later years suggest that, in Sydney, the workshops were not

62 "William Craig" *PMB*, above n 10, 15 August 1812.

63 "Mary Bryan" *PMB*, above n 10, 19 March 1812.

64 Tambling above n 35.

near the house of the tradesman at all but some streets away.⁶⁵ Garry Campion excavated residences of outworkers in the East Midlands in England from the 1780s and found this separation of workshop and house, where the workshop was owned by a major tradesman and built separately in the yards of houses. Campion writes this was part of the erratic transition that was the industrial revolution.⁶⁶ In the colony this process was initiated by the exchange of houses and property around them, so the housing market spurs the shift. The house joined other objects, clothes and spirits in rapid exchange as a representation of money. This detracts from the notion of the house as primarily for the maintenance of family life. The house market in Sydney, then, was also a spur to industrialisation and a contributor to instability.

E. Work and House Use

The Sydney *Police Magistrate's Bench Book* also gives some indication of methods of organising work. The repair and building of an axletree for a cart went through two levels of contractors, one of them being a convict who worked in his spare hours and who had a workshop.⁶⁷ Some traders were labour brokers. John Bolger contracted and subcontracted in order to build Ellis Bent's house and at his own house carried on multiple trades; he was a miller, a wheelwright, a builder and the owner of a public house.⁶⁸ However skilled convicts were, they still participated in this sub-contracting, this trade in labour value after hours. This is commodification of labour and it happened in the colony because of the need to measure, quantify and value work "after hours".⁶⁹

F. House Space and the Meaning of the Tea Set

People had multiple professions and houses had multiple uses. Houses described before the 1812 Bench consisted of two rooms. The second, behind the first was referred to as the "Bed Room" – two separate words. However, the space does not appear to be regarded as separate in purpose from the front room. When people came to visit or drink, they inhabited both rooms equally,

65 The following establishments are separated from the owner's house Blacksmiths shop in *Register of Assignments* 1093, A3612: "Grist Post Mill", 1274, A3612; and "Brew House" 1025, A3612, ML.

66 Garry Campion "People, process, power and place an archaeology of control: East Midlands Outworking 1820–1900", in Marilyn Palmer and Peter Neaverson (eds) *From Industrial Revolution to Consumer Revolution TICCH Congress Transactions* (Association for Industrial Architecture, Telford, 2001).

67 "Robert Darby", *PMB*, above n 10, 24 January 1812.

68 "John Bolger", *PMB*, above n 10, 4 July 1812; and *Register of Assignments*, 752 753 A3611 ML.

69 Byrne, above n 3, at 22.

dancing and drinking in both parts of the house.⁷⁰ In her study of Cherokee use of European style houses in Georgia in the early 19th century Jennifer Elliott found Cherokee making no distinction between rooms designated for different purposes by Europeans. Cherokee visitors moved freely through the whole house.⁷¹ The free use of the house in New South Wales by the lower classes incorporates the public house into the house, any house having the capacity to sell spirits illegally. It also distinguishes colonial houses of the lower classes in the colony from London lodging houses.⁷² In the colony, the house could become a commercial enterprise, even illegally, and the trade in houses and parts of houses was trading in this ability. So, there was a sharper relationship to capital in the colony than in London. The whole house was open to use and exchange. Again, this was due to the absence of kin ties.

The clerk and publican William Fleming's 1812 list of household contents contained:⁷³

One Bed Stead, curtains, mattress and blankets, one
sofa and cover, three tables, nine chairs, 2 tea trays a
Breakfast set of gilt china, 2 trunks, one dressing table,
one Port folio, 5 goats.

These household contents introduce us to the physical culture of the public house. The three tables and nine chairs are essential to the public house and, I would suggest, also, the gilt china tea set. Due to the influence of archaeology on early colonial historians, tea cups have been important objects. When cups are mentioned in the *Police Magistrate's Bench Book* as being on Margaret Lynch's mantelpiece in the Bed Room, they were out on display.⁷⁴ Work on archaeological investigations of colonial tableware has associated the tea sets with gentility. Grace Karskens associates them with respectability and consumerism and a reasonable standard of living, though Jane Lydon is more cautious arguing "without comparable assemblages, claims regarding the comparative standards of living and free lifestyles must

70 "The house of Margaret Lynch Cumberland St" 17 February 1812; "the house of Bryan Egan, 19 March 1812"; "Pullen's at Brickfield Hill", 17 January 1812 in *PMB*, above n 10; "Mrs Roberts" 20 October 1810, "Gandle's the Butchers" 19 December 1810, "Ann Taylor" 5 August 1815 in *JAB* S2771-5 NSWSA.

71 Jennifer Elliott "Ga-Ne-Tli-Yu-s-Di (Change) in the Cherokee Nation: The Vann and Ridge Houses in Northwest Georgia" (2011) 18(1) *Buildings and Landscapes: Journal of the Vernacular Architecture* 43.

72 John Styles "Lodging at the Old Bailey: Lodgings and their Furnishings in Eighteenth Century London" in John Styles and Amanda Vickery (eds) *Gender, Taste and Material Culture in Britain and North America 1700-1830* (Yale University Press, New Haven, 2006).

73 William Fleming 744 A3612, ML.

74 "Margaret Lynch" 17 February 1812 *PMB*, above n 10.

remain hypothetical”.⁷⁵ Early colonial tea sets were distinctive in that they contained China ware, something specific to the colony. This does not mean that the poor in England did not own ceramics or tea sets,⁷⁶ but that people in the colony were willing to source them from wherever they could in order to have them. Tea sets are part of display in a place that had customers, and in London a tea set in a shop was part of the welcoming social atmosphere shops had wished to convey from the 17th century.⁷⁷ The gaudiness of the gin shop was complained of in the 19th century.⁷⁸ In a similar manner, all the houses on the Rocks were suspected of selling spirits. The tea set in the colony could have been a signifier of a public house or a shop, something that has not been considered by historians or archaeologists in Australia. If every house could be a public house then a tea set was part of the image of a shop and this item of household goods was highly sought after.

G. The Public House

In language before the Bench, public houses were not separated from houses. In the 1812 *Police Magistrate's Bench Book*, the distinction people made between a house and a public house was unclear, and persons before the Bench referred to public houses by the name of the owner: “Bryan Egan’s house”, “Cassidy’s”, “Mullock the publican”, “Jubb’s”. The elaborate names of public houses, such as “Speed the Plough” were not used in everyday speech. It is also apparent from the lists of the Colonial Secretary and its later indexing that the clerks mentioned at the beginning of this paper, Lawrence Daveron, George Chartres and George Jubb had public houses as well as carrying on the duties of clerks.⁷⁹ William Fleming, largely responsible for the *Register of Assignments*, also had a public house. When we look at the lists of witnesses to legal documents copied into the Register, we find that clerks, who were also publicans, as well as publicans themselves, were witnesses to the documents and perhaps wrote them up as well if the clients were illiterate. These services were charged for.

When people sought to buy or lease a house, or part of a house, they were buying into the possibility of having a public house and this would mean that

75 *Cumberland/Gloucester St Site*, above n 14; Karskens, above n 14; Susan Lawrence writes: “symbolically embedded in crockery is the deeply felt longing for order and domestic predictability” in Susan Lawrence *Dolly's Creek, An Archaeology of a Victorian Goldfields Community* (Melbourne University Press, Melbourne, 2000) at 134; and Jane Lydon “Archaeology in the Rocks, Sydney 1979–1993 from Old Sydney Gaol to Mrs Lewis’ Boarding House” (1993) 11 *Australian Historical Archaeology* 33 at 33–36.

76 For England, see Chris Thomas *Life and Death in London's East End, 2000 Years of Spitalfields*, (Museum of London, London, 2004) at 91.

77 Claire Walsh “Shops, Shopping and the Art of Decision Making in Eighteenth Century England”, in Styles and Vickery, above n 72, at 151–154.

78 Dickens, above n 34, at 84.

79 Colonial Secretary Fiche Index, Family History, ML.

they not only could enter into a trading relationship but that they could use it to enter an economy of trading in representations of money. Public houses operated as the centre of the Sydney economy, in that people accrued debt, bought and sold property and undertook commercial transactions in them. It is also clear that, as David Kent has shown with London,⁸⁰ publicans lent money and that such lending was part of the purpose of a public house. In New South Wales, the records of the Civil Court in 1812 do attest to publicans claiming “money lent”,⁸¹ as well as goods and services provided, although this does not appear nearly as often as the non-payment of promissory notes to these publicans. In the case of Edward Lamb and Enoch Kinsella, a very faded promissory note was produced in a case involving money lent.⁸² How much the Promissory note took the place of lending is difficult to ascertain simply from the records of a court, yet money lent on the value of a house or its contents or a growing crop appears in the *Register of Assignments*, indicating a colonial need for sureties that may not have been present in England, where all shopping involved a credit relationship, even charging to neighbour’s accounts.⁸³

The high risk involved in being a publican in the colony of New South Wales can be shown by the documents involving William Fleming, clerk and publican. He had borrowed on his household contents from Thomas Clarkson to obtain £35, lost all of them, and then borrowed again on 32 Phillip Street for £72 from Thomas Rose, lost this in 1813 to Rose, and we find him in 1816 lodging at the house of another clerk Patrick McMahon and sharing a bed with him.⁸⁴ The centrality of the public houses to the economy meant that they were an important circuit in a society where everything was exchangeable.

H. Shops

When we consider shops a more modern picture emerges. Sarah Wells was described as having a “shop” and this term was used by five other persons

80 D Kent “Small Businessmen and their Credit Transactions in Early Nineteenth Century Britain” (1994) 36(2) *Business History* 46.

81 *Patrick D’Arcy v William L Jackson*, Court of Civil Jurisdiction Case Papers Unheard, 3, 5/2292 NSWSA; *Mary Mason v Mary Daniel* Court of Civil Jurisdiction Case Papers Unheard, 21, 5/2292 NSWSA; *Antill and Moore (Andrew Thompson) v Joshua Morley*, Court of Civil Jurisdiction Causes, 124–140, 2, NSWSA 5/2283 NSWSA; *Francis Wood v William Tucker*, Court of Civil Jurisdiction, Case Papers, July August 1812, 2, 5/2293 NSWSA; and *Laurence May v Patrick Portland* 30, 5/2293 NSWSA.

82 In Civil Court 5/2293 to July 1812 Publicans bring 24 cases involving non-payment of a Promissory note, 11 involving “goods and services rendered” and seven involving money lent. Edward Lamb and Enoch Kinsella, 5/2283 Causes 25–48, 14, 47 NSWSA.

83 E Hartigan O’Connor “Collaborative Consumption and the Politics of Choice in early American Port Cities” in Styles and Vickery, above n 70, at 125–127.

84 744 A3611, 807 A3611, 1116 A3612, ML; “Inquest into the death of Patrick McMahon” *Colonial Secretary Papers* Reel 6031 NSWSA.

who appeared before the Bench. Charles Thompson described himself as a “shopkeeper”; “the shop of Mr Crook” appeared in another case. In a significant difference, the word shop does not blur with house as does public house. Sarah Wells also had a glass display case in her shop. Of “shopkeepers” who appear in the *Bench Book*, Sarah Wells was the only one who served spirits in a glass. “Public houses” before the bench served spirits by measure, in a pint or quart pot, and payment was called for when leaving the public house. There were disputes over how much was drunk by individuals.

Three persons use the word “premises”, though this was used for “house” in one case and Simeon Lord’s “warehouse” appears. The term “shop” does seem to separate commercial from private life in Sydney and Claire Walsh, in new research, has shown shops in London had been separate spaces from the house well before the 18th century.⁸⁵ So these shops existed alongside public houses and they also sold spirits. On the surface they seem the same but the language difference indicates another dynamic, perhaps originating from England, where the shop was commercially separate.

III. “PRIVATE BUSINESS” AND RITUALS OF EXCHANGE

We do not find the word “private” in any context relating to the house or household space before the Bench and, as stated previously, people seem to use both rooms in a two-room house in socialising. The word “private” appears in one important context in the colony and that is in the description “private business”, used in the context of secrecy. Samuel Terry, despite having a reasonable size of public house with a “parlour” still retired to the store room to discuss “private business” with a settler from Windsor.⁸⁶ Ellis Bent informed the Governor “some private business obliges me to go to Parramatta”.⁸⁷ William J Speed, clerk to Simeon Lord, stated in a letter to the Civil Court that Governor Macquarie “never has in any instance interfered in my private engagements”.⁸⁸ Matthew Everingham, Windsor publican, had a “private partnership” with Garnham Blaxcell, merchant.⁸⁹ The language of private business seems formal and ritualised. Since it governs the entire Sydney economy, coming to agreement in a public house over the sale of a shirt, borrowing money using a house, skilling, garden or growing crop as collateral, the words people use in describing the processes of private business are crucial to examine.

85 Walsh, n 77, at 154.

86 “Inquest of Patrick McMahon”, above n 84.

87 “Ellis Bent to Lachlan Macquarie”, 24 June 1812, 4/1727, Reel 2043 NSWSA at 251.

88 *Speed v Blaxcell* Letter 22 July 1812, Court of Civil Jurisdiction Causes 1812, 110–122, 4, 5/2292 NSWSA.

89 “Memorial of Defendant” *Blaxcell v Everingham* 6 July 1812 Court of Civil Jurisdiction Causes, 110–122, 11, 5/2292 NSWSA.

Commercial life was practiced in the colony through store receipts, promissory notes referencing “sterling” or “currency” and small amounts of coins. These have been discussed in detail by Sid Butlin, who explains that so many kinds of currency existed because the initial planners of the colony perceived no need for money.⁹⁰ The records of the Civil Court contain two kinds of files, the first concerning cases that did not come to court, that is they were resolved otherwise, and the second involving cases heard before the Court. Both are incomplete for this period but the latter do involve some conversations about debt and money and the former give some idea of the extent of credit relations. How people conceived of “private business” and the incidental language they used in relation to exchange and ownership becomes apparent in these records.

Stafford Lett, publican, brought his servant, Robert Firth, before the Police Bench in 1812 because he discovered suddenly that the servant could read. Lett’s wife was about to send Firth to another publican, Absalom West, with some promissory notes telling him to demand sterling money, when this was discovered. Firth had been in Lett’s employment for 12 months and Lett said he “never knew he could read and write” and Stafford Lett could not; he signed his deposition with an “X”.⁹¹ The different status of literacy in a colony where money was in the form of promissory notes is thus illustrated. Lett did not know how much Firth knew about his business dealings and so there is a link between illiteracy and secrecy. This was not any kind of criminal act but in Lett’s view, it was, and so he went to the Bench to make a complaint.

Literacy cannot be assumed from the ability to sign one’s name, so the *Bench Book* can only be examined for those who signed with an X, a clear indicator of illiteracy. Ninety-one persons who gave evidence before the 1812 Bench signed with an X, while 107 signed with their name. The illiterate were divided equally between convict and free. What is notable is the illiteracy of those who ran a shop: Maria Foster, Elizabeth Norris, Ann Taylor, Elizabeth Moirs and publicans Stafford Lett, Mary Bryan and Elizabeth Cassidy were illiterate. Five soldiers of the 73rd sign with an X, so literacy does not clearly connect to status. Illiteracy must have been dealt with in a manner that did not necessarily penalise an illiterate person from running a business. “Private business” possibly resulted from a need for secrecy to avoid being defrauded, but it may have also resulted from the knotted and complex webs of credit and debt surrounding an economy without a proper currency.

This colonial dynamic of private business depended on who held the strings of credit and debt and the military or civil officer could easily be brought down by a creditor.⁹² This is not egalitarianism or equality, but the

90 Sid Butlin, above n 7.

91 “Robert Firth” *PMB*, above n 10, 24 April 1812.

92 Both Judge Advocates, Ellis Bent and his predecessor were impoverished by their money dealings in the colony. Bent’s wife Eliza left the colony with nothing. The officer John Birch lost his sanity over speculation: Paula Jane Byrne (ed) *Judge Advocate Ellis Bent: Letters and Diaries 1810–1811* (Desert Pea Press, Annandale, Australia, 2012).

formation of new hierarchies based on the owing of money. Several clerks seem to hold considerable power in this arena.

IV. BROKERS

Stafford Lett's demand for sterling, English money, indicates how much sterling was valued ahead of colonial currency in 1812. If West had been unable to pay, he could have been brought before the Civil Court and the case may well have been brought, not by Lett himself, but by an agent. The agent would pursue the case and keep a certain amount as his fees. Agents, then, had a considerable interest in pursuing debt cases and this is where we discover the new colonial hierarchy. When we look to the agents listed in the Civil Court cases brought, we find the same group of publicans/clerks apparent in the *Register of Assignments*: George Crossley, William Fleming, George Jubb, Patrick McMahon, George Chartres and Edward Eagar. The crossover in professions as government representatives and publicans meant there was a class of brokers who held the strings of credit and debt in Sydney. So, in a society where personal space was quite small and subject to the anxieties of debt, there was a group of people who had obtained power.

Fees charged for witnessing agreements were a source of income. The clerk/publican could offer to be an agent and pursue debts, out of which he received a proportion, or act in the Civil Court. These clerks/publicans emphasised the regulations of the court. George Chartres and George Crossley argued over the time the Deputy Provost Marshall opened his doors in order that both, working for different clients, could make a claim on the goods of Matthew Everingham.⁹³ These were the literate members of the business community and their literacy and court awareness enhanced the power they already had.

Hawkesbury farms were crucial to the world of Sydney business. Many small farmers were indebted to Sydney publicans and lost their farms, growing crops and houses to them. The flow of debt came from small farmers and traders to Sydney publicans and from these publicans to merchants such as David Bevan and Henry Kable. Bevan, through his clerk, George Wright, and Henry Kable through his agent, William Gandry, were responsible for a great deal of the Civil Court's time in 1812. This means that these people at the top of the debt chain were likely to use the courts and carry through with debt cases rather than come to arrangements. Agents gained a percentage of recovered debt and so debt was enthusiastically pursued. This was private business also, as layers and layers of ownership and debt had to be carefully managed.

Causes before the Civil Court give us insight into the extremely knotted realm of private business. Letters and petitions that survive give us its rituals.

93 *Blaxcell v Everingham*, above n 89.

George Crossley in *Mulhall vs Johnson* explained, on behalf of Johnson, a transaction involving one half of a sloop called *The Speedwell*:⁹⁴

The plaintiff Mulhall then produced the Defendant's bond and he received from George Dowling £70 sterling and paid it to the Plaintiff which money she accepted and delivered the Bond and the Bond was burnt (All this in the presence of Dowling in the house).

The burning of the bond represented the giving up of the sloop. The difficulty in transferring this ritualised agreement with its crucial witness to a paper record is demonstrated in Crossley's next statement:

The same day the Plaintiff and Defendant agreed about the purchase of her half of the sloop in her right for £146 and the Register being much mutilated was previously left in the office to be renewed and the defendant at her request went to the Secretary's office to have the new register made in his own name when Mr Robinson said that could not be done but by a consent or order in writing from the Plaintiff for that purpose.

The Register of sales was too mutilated for the information to be entered, this was referring to the *Register of Assignments*, and Crossley seems to be vague here in his language, perhaps deliberately.

Part of the £70 sterling was paid by a note to Jane Muckell for £46. She explained in her "Prayer" to the Court how she came to be before the Court to answer for £46 sterling rather than currency and her Prayer gives us the steps by which business was enacted:

There has been a transaction last April – Namely in the year 1811 Between Archibald McKellup and William Johnston respecting the purchase of one half of the sloop *Speedwell* – which is sold by public auction by Mr Gandry for £146 one half to be paid in sterling the other half Colonial Currency that in words was the condition of the sale £73 sterling and £27 currency paid into the hands of Mr Gandry the Auctioneer whose receipt was given – and a memorandum drawn for the remaining balance namely £46 which was due on the current part of the payment at six months date – the payment of which has been tendered – three or four times Particularly to Mr Abbott when a message was sent that he held a

94 *Case Papers* Court of Civil Jurisdiction, 141–174, 1, 5/2233 NSWSA.

sterling note of £46 – the debt was acknowledged to be paid in currency and that long before the Memorandum became due which was rejected and sterling demanded ... I do not mean to deny the purchase of the half boat nor the sum due or the balance in current coin or Bills of the Colony But totally and entirely declare and protest against any note of hand given by me for any sterling amount whatever. I pray the interference of the Court and hope it will non-suit Thomas Abbott in this action.⁹⁵

Nobody had mentioned sterling when she wrote out her note, but her note was presented for a sterling debt and she had to go to court. There are four stages to this transaction, the first was an auction, the second the obtaining of a receipt, the third involved many attempts to pay Mr Abbott in currency, possibly by one of Jane Muckell's servants, and the fourth the demand for sterling quickly sent to Court.

Jane Muckell, Archibald McKellup's partner, also named Jane Muckle in colonial records, dictated this "prayer" herself as she was illiterate. She was also a publican. The amount of calculation that transactions involved and the need for agreement at each point is apparent and yet she was able to operate quite well as a trader. Edward Lamb and Joseph Nettleton, who employed George Chartres as their agent, showed both how illiteracy was dealt with in public houses and how complex agreements could be. In a memorial to the Civil Court in 1812, they explained how they had rented a farm from John Boulton and William Ezzy:

... together with a dwelling house, offices and appurtenances, 25 Acres plantation measure be the same more or less as also two paddocks a short distance from the farm adjacent to Mr Cartwright's together with 14 head of horned cattle.

They had agreed that Boulton and Ezzy could take from time to time "some males from the cattle" but they came and took the whole 14 head. The reason for such cattle removal was explained by Lamb and Nettleton, through George Chartres. Essentially, Ezzy and Boulton had wanted a licence to sell spiritous liquors in Sydney and they had obtained the money from Lamb and Nettleton for the fees in exchange for the lease of the farm. The publican's licence was vested in Lamb and Nettleton's name as "another appendage to the farm":

Boulton and Ezzy having been refused a licence for their new establishment in Sydney and consequently

95 *Case Papers* Court of Civil Jurisdiction, 124–140, 7, 5/2233 NSWSA.

feeling much disappointment in their intended speculations therein wherefor the present subterfuge was made use of. That it is alleged by said Boulton and Ezzy that part of the said contract comprised and contained an engagement that Memorialists should give satisfactory security to the amount of £500 each for strict performance of said agreement and as security for cattle and that the same was never carried into effect, but the Memorialists charge that the only agreement ever entered into is the agreement before mentioned.

Lamb and Nettleton produced the agreement. Boulton argued he signed it in “a state of inebriety, not sensible of having entered into so unguarded an agreement”. Charles Thompson said that Boulton was not drunk, that he signed his own name and also William Ezzy’s name. He claimed “Ezzy not knowing how to write authorised said Boulton was to sign his name”. Charles Thompson could not read himself and his evidence claims the Agreement “was plainly and audibly read”.⁹⁶ This reading out of the agreement gives an insight into the conduct of agreements in the colony where so many signed with an X. Public houses were where agreements were read out. This is another aspect of ritualised business and the incorporation of increasingly important paper records into ritualised negotiation.

V. THE POWER OF CLERKS

Private business could, however, incorporate the activities of government because many clerks were publicans. When George Chartres, as agent to Robert Campbell, wished to seize the property of Matthew Everingham at Windsor he “accidentally” ran into Patrick McMahon Principal Clerk to the Provost Marshall in the street. Patrick McMahon:⁹⁷

At the time Richard Ridge being the Bailiff to the Provost Marshall for the district of Windsor, being supposed to be in Sydney on business said Chartres asked deponent if he would have any objection to be specially appointed and accompany him to Windsor aforesaid on business, deponent said not whereupon William Charles Wentworth esq the Acting Provost Marshall gave a warrant which directed deponent empowering him to seize goods and chattels of [Richard Woodbury].

96 *Case papers*, Court of Civil Jurisdiction, 176 - 200, 18–29 NSWSA 5/2283.

97 *Case Papers*, Court of Civil Jurisdiction, 206–245, 20, 5/2283 NSWSA.

In “accidentally” running into McMahon and organising his temporary position, Chartres successfully circumvented George Crossley from also making claim to Everingham’s property. George Chartres was verbally attacked by Matthew Everingham’s son in law at the auction of this property, he:⁹⁸

Made use of the most violent abuse and threatening language to George Chartres calling him ... amongst others the name scoundrel, thief, rascal and so forth and adding that if George Chartres would attempt to bid or become a purchaser at the Sale then about to take place he would be ill-treated for that, as Plaintiff’s agent he had no right to purchase any of the property under seizure.

This threat to Chartres shows the immense power of the government-connected agent, the clerk/publican, as well as recognition of their misconduct. In opposition to such activity, the Windsor settlers had what they termed “talk”. Everyone was “talking about” the behaviour of creditors in this case.

Patrick McMahon would later be killed in Samuel Terry’s public house in 1816 in a case that gives an idea of the dangers surrounding paper records in the colony. He was killed in what was described as “a friendly fight, a game of punches”. Samuel Terry, Sydney publican, purchased a farm from Thomas Hobby and “one James Badgery was concerned with regard to the purchase money”:⁹⁹

Mr McMahon came there in the forenoon in company with Mr Thomas Wheeler whose farm I also purchased, they sat down together in company with Mr Hobby and Mr Badgery and they all partook of dinner except Wheeler, prior to dinner they were drinking examinant’s wine together and after dinner Mr Badgery and I having some private business together retired to the storeroom.

Patrick McMahon became involved in an alleged parley, or agreed upon fight, and died after either falling or being kicked in the stomach. Later in the night, McMahon’s wife and her friend, Mary Brown, came looking for him and, just before they took him home, Mary Brown noticed Mrs Terry go through a jacket which McMahon had taken off to fight. Mr Wheeler asked Mr Terry to give him a paper that was in the pocket book, Mr Terry refused. These articles, the pocket book and the paper in it were denied by everyone else present. Mary Brown hints at much more than a simple play fight, there was something on that paper that everybody wanted.

“Papers” did receive renewed emphasis from the Civil Court under Ellis Bent, but they had always been important. John Larr, Agent to Ann Jackson,

98 *Case Papers* Court of Civil Jurisdiction, 124–140, 7, 5/2233 NSWSA

99 *Inquest into the death of Patrick McMahon* Colonial Secretary Papers 6031 NSWSA.

was brought to the Civil Court in 1807 to answer if he had already taken payment for a debt Jackson was suing for. The case reads:¹⁰⁰

By the Court – Were you left agent or attorney for Ann Jackson to verify this or any other money on her account?

Answer – I understand a paper to that effect was left in the hands of my wife, but I never read or was able to read it.

George Chartres was brought before the Judge Advocate's Bench in 1811 and charged by publican Edward Quinn with "criminal conversation" with Quinn's wife and receiving "papers of value . . . relative to certain houses of the said Edward". He was bound to keep the Peace.¹⁰¹

If people are unable to read, "a paper" becomes symbolic, something other than itself, and this is where the orderly progress of commerce is drawn into ritual, into the social life of the public house and its complexity. If one looks at this realm with the distanced eyes of an ethnographer one sees an elaborate culture around money and exchange. Aboriginal people were not isolated from this.

VI. THE INDIGENOUS CONTEXT

All transactions and secrecy occurred inside Indigenous geopolitical space, some of which may be deduced from the records of administrators,¹⁰² and perhaps with more risk of inaccuracy, from those officers who set out to write about Indigenous people.¹⁰³ The language of the *Police Magistrate's Bench Book* refers to the "wilderness" and to the "wasteland" on the outskirts of Sydney, emphasising the settled town. It also refers to "black" men, a term used to describe Lascar sailors, Africans and servants from India as well as Indigenous people and so this word, "blacks", is a global one. It is difficult to tell where Marmadilly, a "black man"¹⁰⁴ needing a translator came from. Indigenous people before the Bench described as "natives" were incorporated into the working world of Sydney as were "blacks" in piecemeal or as permanent employees. Harry "a native" is asked to transport a prisoner from the North Shore to the town by boat, and when no-one will help move a

100 Jackson and Ramsay, 1807, CY1097 ML.

101 "George Chartres" 5 October 1811 in *JAB* NSWSA.

102 Aboriginal people suing for peace in 1809 is noted by Colonial Secretary Finucane in Ann-Maree Whitaker (ed) *Distracted Settlement: NSW after Bligh: from the Journal of Lieutenant James Finucane 1808–1810* (Miegunya Press, Melbourne, 1978) at 87; Ellis Bent describes a deputation to his court in 1810 by Bennelong and others in Byrne, above n 92, at 150.

103 D Collins *An Account of the English Colony of New South Wales* (T Cadell Jun and W Davies, London, 1798).

104 *PMB*, above n 10, 29 January 1812.

still, John Jones “asked the natives” to do it.¹⁰⁵ The way of seeing “blacks” in Sydney, though other towns may have been different, is very much in keeping with the ports the English travelled through and it incorporates Indigenous people on those terms.

That paper was also thought to be important to Indigenous people and that they understood it as crucial to the non-Indigenous society is apparent in their obtaining and carrying of letters to settlers from Foveaux in 1809 protecting them from violence.¹⁰⁶ So in the sense of managing work and documents, Indigenous people are drawn into the realm of private business. When the soldier’s wife, Mary Wild, writes about Aboriginal people trading fish in the streets of Sydney, she remarks that they gave a large number of fish for one loaf of bread.¹⁰⁷ This is indicative of an Indigenous regime of value which is very difficult to investigate in Sydney but is entirely apparent in all anthropological work on Indigenous people in different regions of the North of Australia. How exchange and money is thought of is not uniform at all, but this work gives us some idea of how different Indigenous readings of money can be.¹⁰⁸

That Indigenous people were also given military uniforms for their assistance in attacks on other Indigenous people is made apparent to us from the records of D’Arcy Wentworth’s Police Notebooks, where the Buffs were paid by the Governor for uniforms distributed to specific Aboriginal people after the aggression of 1816.¹⁰⁹ The exact regime of value these military coats entered into is, like bread and fish, impossible to guess. Uniforms were given as rewards in all English colonies and they became part of caricature as it was thought amusing that non-military persons wore them.¹¹⁰ So these uniforms were weighted with meaning on the English side – it does not automatically follow that they had the same value for the Indigenous people who wore them.

VII. CONCLUSION

Central to every port were high rentals, high costs of living and housing uncertainty.¹¹¹ It is the commoditisation of every aspect of life in the town of Sydney, the splitting up of houses, gardens, skillings for rent and resale and the openness of this system to many to try and make a fortune that marks the colony. Yet the business world was also ritualised, agreements formally read

105 *PMB*, above n 10, 1 April 1812 and 22 August 1812.

106 Whittaker, above n 102, at 87.

107 Byrne, above n 24, at 10.

108 See Heather McDonald *Blood, Bones and Spirit: Aboriginal Christianity in an East Kimberley Town* (Melbourne University Press, 2001, Melbourne) at 173.

109 D’Arcy Wentworth *D’Arcy Wentworth’s Police Reports and Accounts*, 1/411 D1 ML.

110 A Taylor *American Colonies* (Allen Lane, New York, 2001) at 213.

111 Byrne, above n 92.

out and marked with an X. “Private business” in the early Macquarie period was largely under the control of clerk-publicans who used the term esquire to describe themselves. Even when they were unable to practice in the courts after 1813, when their ex-convict status became of urgent interest to England and, therefore, New South Wales, they still operated as agents, as advisors, as speculators and their handwriting appears in Causes and Defences.¹¹²

This was the world behind litigation and the constant appearances before the courts by people whose complaints were deemed trivial.¹¹³ In short, there was money to be made on all of the documents leading to the court appearance and so there was considerable interest by a small group of brokers in not only dispute but in gaining property as a result of court disputes. One can see how such a way of spatial organisation with its agreements and its hiding of money, its “private business”, would channel itself into the legal system, providing the fuel for law. The climate of the colony can only be described as one of anxiety because so many aspects of day to day life were uncertain, from obtaining a bed to keeping a house away from creditors. Borrowing was complex, being literate gave one a suspicious amount of power. Paper assumed symbolic importance for those who could not read and all exchange, particularly “private business”, was intensely ritualised.

112 “Evidence before JT Bigge” *Historical Records of Australia* IV, I at 755.

113 “Judge Advocate Ellis Bent to Jeffery Hart Bent, 9 March 1810” in Byrne (ed), above n 92, at 142–3.

