

**Women in Court: The Property Rights of
Brides, Heiresses and Widows in Thirteenth-
Century England**

Sheng-Yen Lu

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Study
University of London
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Declaration of Authorship

I, Shengyen Lu, declare that the research presented in this thesis is entirely my own work carried out for the degree of Doctor of Philosophy at the Institute of Historical Research and has not been submitted in any previous application for a higher degree.

Signed:

Date:

Abstract

The research targets women in court – those who were frequently recorded in legal documents managing or protecting their property rights. The main concern is the change and development of the legal status and property rights of women, namely *hereditas* (inheritance), *maritagium* (marriage portion) and *dos* (dower) from the end of the twelfth century to the thirteenth century in England, and how they strove for their rights in court. While the thirteenth century is significant in England for the crucial development of the common law, the evolving common law also enacted a few prominent pieces of legislation which had huge impacts for women's property rights. A number of important questions should be addressed at this point - How did women strive for their rights and what difficulties did they encounter in court? What strategies and claims did they and their representatives use in court in order to cope with the new regulations? Also, in a rather primitive age, what was the gap between the law and practice?

While recent scholarship has paid more attention to medieval English women's property rights, very few works compare the differences between inheritance, *maritagium* and dower and the dynamics between them in thirteenth-century England, which is the focus of this research. Through case studies, I will examine women's experiences of pursuing their property rights in court in order to elucidate the effects which the legislation brought, and what difficulties they might have encountered in court. The research uses case studies of women's experiences not merely covering noblewomen but also wider groups of women in society, and by looking at court cases I aim to create a more comprehensive picture of medieval women's property rights. More importantly, despite the focus in this research on women, it is impossible to discuss women without either putting them into the context of family or involving their menfolk; therefore, the research will not only discuss women's participation in court but also the reactions of and dynamics among their family members when it came to property rights.

Chapter 1 and Chapter 2 consist of the introduction, and historiography methodology respectively. Chapter 3 will primarily examine heiresses. Unlike the male heir, who, according to custom, inherited the whole of the father's inheritance (primogeniture), most daughters inherited by means of an equal division of the property. The equal division of inheritance between daughters makes the cooperation and conflict

between them worthy of discussion, and this will be one of the focuses of this chapter. Through examining the dynamics between co-heiresses and their family members, this chapter will also explore the difficulties heiresses encountered when claiming their inheritance.

Chapter 4 discusses *maritagium*. This chapter will show that claiming a certain amount of land as *maritagium* was a strategy often used by both plaintiff and defendant. However, the strategy as such would be of more benefit to women in courts. Next, Claire de Trafford's idea of 'maritagium as women's land' will be challenged, since *maritagia* in most cases served as families' property. This study suggests that, *maritagium* was easily disposed of during the marriage, rather than a woman being able to keep it intact for it to descend to her children; and the idea of 'maritagium being women's land' could be misleading, because there was no social consciousness to suggest that *maritagia* should be passed on to women's daughters as their *maritagia*.

In Chapter 5 this study will reach the final stages of women's lives – widowhood. Although the common law stipulated that widows were entitled to either a nominated dower, or one third of their late husbands' property, claiming their dower in court, in fact, was a difficult task for widows to accomplish. These rights were reluctantly documented in law, thus offering no guarantee that they would be received, unconditionally, when they survived their husbands. This chapter will also show that dower was as much 'family's business' as 'women's business'. The early development of jointure will be briefly examined as well because it not only concerned women's dower. Finally, the rights of the most powerful group of women, widowed heiresses, will be looked at. Through case studies, I hope to offer a glimpse of how capable, influential, but vulnerable widowed heiresses could be.

This study will conclude by comparing the property rights of heiresses, brides and widows. Dower might have been the only property that a woman could have sole control over, but the significance of inheritance and *maritagium* should not be underestimated. I shall clarify their position by exploring the differences and similarities between *hereditas*, *maritagium* and *dos* as the common law developed.

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Abbreviations

AALT	Anglo-American Legal Tradition (Documents from Medieval and Early Modern England from the National Archives in London)
<i>Bracton</i>	Henry de Bracton, <i>Bracton On the Laws and Customs of England</i> , ed. G. E. Woodbine, trans. And rev. Sameul E. Thorne, 4 vols. (Cambridge, Mass., 1968-77)
<i>Britton</i>	<i>Britton</i> , ed. Francis Morgan Nicholas, 2 vols. (1865; Reprint, Holms Beach, Fla., 1983)
<i>CIPM</i>	Calendar of Inquisitions Post Mortem (British History Online)
CP 40	Plea Rolls, Court of Common Pleas
<i>CR</i>	Close Rolls
<i>CRR</i>	Curia Regis Rolls
<i>Glanvill</i>	<i>The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill</i> , ed. G. D. Hall (London, 1965)
JUST 1	Plea Rolls, Court of the Justices Itinerant (Eyre Rolls, Assize Rolls, etc)
OED	Oxford Dictionary Online.
ODNB	Oxford Dictionary of National Bibliography Online
TNA	The National Archives
VCH	Victoria County History Online

Chapter One: Introduction

The 15th of June 2015 marked eight hundred years since the sealing of the 1215 Magna Carta by King John. The unpopular king was forced to agree to Magna Carta at Runnymede by rebellious barons in 1215. The document was significant because it constituted a rudimentary kind of English constitution, setting out various rights of various classes and, in particular, delineating the jurisdiction of the king himself. The 1215 Magna Carta named thirty-four clauses pertaining to men but only three clauses relating to women are mentioned.¹ As historian David Carpenter points out, the limited part women played in public affairs in particular reflects the inequalities between men and women.² Thus, the only three Magna Carta chapters that related to women - Chapters 7, 8, and 54 – protected the rights which most concerned medieval English women, namely *maritagium*, inheritance and dower. Developing upon recent scholarship, which mainly sheds light on the subordinate status of women in the Middle Ages, this study seeks to explore the issue of women's rights regarding their property in thirteenth-century England.³

1.1 Research topic

My research concerns women in court, in particular those who were frequently recorded in legal documents in cases that involved managing or protecting their property rights. The main concern of this thesis will be the changes to, and development of, both their legal status and their rights to (i) *hereditas* (inheritance), (ii) *maritagium* (marriage portion) and (iii) *dos* (dower), and the evolution of laws from the end of the twelfth century to the thirteenth century.⁴ Common law, known as 'case law', has no fixed form because it is based on precedents; hence any case that becomes a precedent is legally binding for any future similar cases. However, in thirteenth-century England,

¹ Although Magna Carta was first agreed by King John in 1215, it was annulled soon afterwards. In this thesis I will consistently use Magna Carta 1225, which was reissued by Henry III, and combined the original Chapter 7 and Chapter 8 in the version of Magna Carta 1217 into a single Chapter 8.

² 'Politics,' accessed on 20 July 2015, http://www.huffingtonpost.co.uk/frances-scott/magna-carta_b_7583406.html?utm_hp_ref=tw.

³ While there are many exceptional scholars working on medieval women, there is not space to list all of them here. I will just mention a few to whom I refer most in this research: Barbara A. Hanawalt, Henrietta Leyser, Janet Senderowitz Loengard, Kathleen Hapgood Thompson, Linda E. Mitchell, Louise J. Wilkinson, Claire de Trafford and Sue Sheridan Walker.

⁴ I will give a detailed introduction to these three property rights later on in this chapter.

there were no references for legal practitioners to refer to, which meant there was relatively less pressure to follow them. As a consequence, people could fight court cases with greater flexibility, since a case might have been affected by a newly-made statute, legal practitioners' claim or local customs. The common law system was originated in England, and met a turning point in 1066, when William the Conqueror ushered in the Norman reign of Britain. It did not undergo another significant revolution until the reign of Henry II at the end of the twelfth century, which had a profound impact on the common law. The next section will explain why this study focuses on the thirteenth century.

The thirteenth century has been chosen for the following reasons. Firstly, the thirteenth century is regarded as a crucial period for the development of the common law by historians. In 1176, Henry II launched a significant itinerant system of justice that entailed collecting different local customs in England in order to consolidate scattered local customs into a common rule of law that could be applied to the whole country.⁵ Secondly, it is when the English legal profession started to significantly develop. Whilst the new royal court - the Common Bench – had been developing at Westminster during Henry II's reign, it came under the control of a small group of professional, full time royal judges.⁶ More importantly, by the end of the thirteenth century, professional lawyers were recognised as men who not only had professional skills, but were also essential components in litigation. Henceforth, the royal courts became national courts, run by a small core of long-serving royal justices, who observed national laws and local customs. As a result, a nascent legal treatise emerged - Glanvill's *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvill vocatur* (*The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill*).⁷ Furthermore, the courts now kept written records, not only of final judgments, but also of the various stages in litigation. These records have contributed not only to this study, but also to general legal history, since they allow historians to trace the timeline of litigation proceedings and examine how the common law developed from an inchoate state into its modern counterpart.⁸ Most importantly for our

⁵ Paul Brand, *The Making of the Common Law* (London: Hambledon Press, 1992), 80-84.

⁶ For the details of the development of the English legal profession, see Brand, *The Making of the Common Law*, 1-20.

⁷ *Glanvill* and *Bracton* are the first two English common law treatises. A more comprehensive description of them will be discussed in the next chapter.

⁸ Paul Brand, *The Origins of the English Legal Profession* (Oxford: Blackwell, 1992), 14-18.

study, certain statutes of great significance relating to women's property rights were enacted during the thirteenth century, such as the 1225 Magna Carta and the 1285 Statute of Westminster II. Thus, the thirteenth century was highly significant, not only in legal history, but also for the subject of this research, namely, women's inheritance, *maritagia* and dower.

This study has limited its remit to the study of the class of women who possessed property, that is, freewomen or the wives of freemen. Because of the comparatively greater power, they were able to own and dispose of their property. More importantly, they were people who could afford to sue in courts, having their cases documented, and left their mark on the historical record. Unfree villeins, on the other hand, did not have the same rights as freemen and freewomen.⁹ As a case in point, villeins were not allowed to sue in the king's courts, although they could in the manorial courts, which meant there was a need for maintaining separate records. Villeins are discussed at some points in the research in order to make the women's property rights arguments more comprehensive, but they are not the main focus.

With regard to what 'property' means in the context of this study, it will be limited to 'estates or land-like things' rather than 'immovable goods and chattels'; for the transactions concerning the latter were less likely to be recorded,¹⁰ and neither were as well documented as estates. For example, a London husband might have preferred a dowry in real estate because the transfer of real property was recorded in the city records.¹¹ The significance of estates could be inferred in the form of inheritance, *maritagium* and dower, which, at least before the fourteenth century, often consisted of land rather than money. Furthermore, all the chattels women brought to a marriage passed to their husbands, which made it difficult to examine how wives disposed of movable goods.¹² Although women could own property via acquisition and purchase,

⁹ Villeins worked for the lord on his land and were bound to meet a set of customary expectations, such as providing three days of work on the lord's land per week. They had to plough and harrow the lord's land, or collect firewood or nuts. In return for their service, they could use some of the lord's land by paying rent, but essentially everything villeins produced belonged to their lords. See Christopher Dyer, *Standards of Living in the Later Middle Ages: Social Change in England c.1200-1520* (Cambridge: Cambridge University Press, 1989), 216-223.

¹⁰ Transactions relating to chattels are seen more often in manorial court rolls. Most of them related to 'heriot', a customary fine of a villein's best beast, or most valuable chattel, which his heir had to submit to the lord upon the villein's death.

¹¹ Barbara A. Hanawalt, *The Wealth of Wives: Women, Law, and Economy in Late Medieval London* (Oxford: Oxford University Press, 2007), 60.

¹² Judith M. Bennett, *Women in the Medieval English Countryside: Gender and Households in Brigstock before the Plague* (New York, Oxford: Oxford University Press, 1987), 109-111.

this research will exclude those methods of obtaining property, since the nature of *dos*, *hereditas* and *maritagium* was either inheritance or gift.

1.2 The classification of people and the categories of tenures in thirteenth-century England

As discussed, due to the focus on women in this study we necessarily exclude women from certain classes. Aside from ‘free’ and ‘unfree’, there were further subcategories to describe a person’s status. If we perceive medieval society as a pyramid, where the highest and most influential sit at the top and the poorest sit the bottom, we have a good understanding of the time. The king, naturally, sat on the top. Right after the king were the men of higher status, including earls, counts, barons and knights. The majority of the population, sitting on the lower social rung, was made up of free and unfree peasantry.¹³ Freeman might be different kinds of tenant, but the unfree, as John Hudson points out in *The Oxford History of the Laws of England Volume II 871-1216*, were far from homogenous and it is hard to describe them in simple terms. Usually ‘villein’ was used to describe one’s unfree status, but it can also be used to refer to anyone whose rank is below knight. Whilst, by the Angevin period (c. 1154-1216), unfree status was better defined, the law defining villeinage was subjected to constant change.¹⁴

Apart from one’s legal status, different kinds of landholding were crucial to defining a person’s obligations and his relationship with his lord. As with people’s statuses, there were free and unfree tenements. The latter was villeinage, which will not be investigated in this thesis. The former, however, consisted of numerous different kinds of tenures as follows: (i) knight service (knight service could be fulfilled by a monetary payment called scutage, charged per knight’s fee in lieu of service);¹⁵ (ii) socage, free farm and serjeanty. These three tenures required money payments and a variety of personal services to the lords. Socage was the most common residual tenure in medieval England, involving payment in money and produce; a fee farm, however, was a tenure which was held heritably and allowed the tenants the opportunity to collect revenue in

¹³ John Hudson, *The Oxford History of the Laws of England*, vol. 2 (Oxford: Oxford University Press, 2012), 750-751. The other group which is not discussed in this thesis is the clergy. Because they are not the focus of this research, they have been excluded.

¹⁴ *Ibid.*, 752-753.

¹⁵ *Ibid.*, 632-633.

return for a fixed rent. The most salient feature of fee farms, which differentiated them from socage, was wardship. In fee farms, the wardship might have gone up to the lord but in socage, it went to the family;¹⁶ serjeanty, which overlapped socage and fee farms in many ways, distinguished itself by the service of rendering a form of personal service to the king. Serjeanty did not develop as a particular form of tenure until the last decade of the twelfth century, and it was likely caused by royal administrative action¹⁷

Other regional tenures also existed in medieval England, such as gavelkind. Gavelkind was mostly found in Kent and was characterised by partible inheritance and its custom of dower and curtesy.¹⁸ There was also burgage, which refers to a town in a formerly ancient borough held by the king or the lord. It was, in effect, a kind of town socage. However, boroughs distinguished themselves from towns by having the right of sending members to Parliament.¹⁹

1.2 Being a woman in medieval England

Medieval women are rarely discussed without mentioning the family; likewise, they are more often referred to in terms of their affiliation to men – their husbands and male family members.²⁰ Their subordinate status is often apparent in many ways; their representation in court being just one. Only widows and heiresses were eligible to be present at court as *'femmes sole'*, whilst married women had to be accompanied by their husbands or sons and present themselves as *'femmes covert'*. *'Femmes sole'* were 'unmarried women, divorced women, widows or women who could execute legal rights independently, especially in relation to their right to own property or carry on a business', while *'femmes covert'* applied to all other women who were legally subordinated to their husbands, who 'covered' them in such a way they lived like shadows.²¹ The following questions arise:

¹⁶ *Ibid.*, 634.

¹⁷ *Ibid.*

¹⁸ *Ibid.*, 635.

¹⁹ Robert Maugham, *Outlines of the Law of Real Property* (London, 1842), 38.

²⁰ It is inevitable that men are always involved when we discuss medieval women, due to their inferior status in society. Two cases in point are Henrietta Leyser, *Medieval Women: A Social History of Women in England, 450-1500* (London: Phoenix Giant, 1996) and Hanawalt, *The Wealth of Wives*. Both hinge upon or start with the roles women played during their lives – as daughter, as mother, as wife and as widow. Women had different identities, and all of them related to family and men.

²¹ Although scholars frequently use *femme sole* and *femme covert* to describe a medieval woman's legal status, the terms did not emerge until the sixteenth century. See 'OED,' accessed on 5 June 2018, <http://0-www.oed.com.catalogue.libraries.london.ac.uk/view/Entry/69167?redirectedFrom=femme+sole#eid>

- (i) How did such a relationship affect a woman's life?
- (ii) Once married, would each partner remain the owner of their respective properties?
- (iii) Post-marriage, did their respective properties belong to him or her, or was it theirs, in the sense of dual ownership?²²

When a suit was brought forward in relation to the wife's land, the couple was regarded as a 'unity'. If the disputed land belonged to the wife, the husband could not appear in court without the wife being present, and neither could the wife be present without the husband. However, when the property in question was recognised as belonging to the husband, the husband could be heard without his wife being present. In theory, therefore, the husband was the guardian of his wife. According to Maitland and Pollock, this guardianship was often abused, which meant that a wife could become fully subject to her husband's power.²³ So, in terms of the general notion of 'unity' in law, how did a conjugal couple dispose of their property in practice?

With regards to the land a wife held in fee, her husband had a right to enjoy the land and also held a power of alienation²⁴ without her concurrence during the marriage. On the contrary, the wife could not legally alienate her land without her husband's consent since her land would be under the control of her husband.²⁵ If they had produced a child, the husband could enjoy the curtesy, a tenure by which a husband, after his wife's death, held certain kinds of property that she had inherited.²⁶ If the land belonged to her husband, she, as a widow, could only enjoy one-third of the land under the name of dower after her husband's death. Dower could be classified into two different types – nominated dower and reasonable dower.²⁷ The former referred to the land 'a free man gives to his wife at the church door at the time of his marriage',²⁸ that is, the husband

²² This interesting and practical question is addressed by Frederick Pollock and Frederic W. Maitland, *The History of English Law before the Time of Edward I*, 2 vols. (Cambridge: Cambridge University Press, 1968), vol. 2, 400-409.

²³ Pollock and Maitland, *The History of English Law before the Time of Edward I*, vol. 2, 400-409.

²⁴ Alienation includes the granting and selling of land, as well as other legal actions.

²⁵ Pollock and Maitland, *The History of English Law before the Time of Edward I*, vol. 2, 403-404.

²⁶ Hudson, *The Oxford History of the Laws of England*, vol. 2, 804-805.

²⁷ Reasonable dower refers to one-third of a husband's property. The details will be discussed in the later part of this thesis.

²⁸ Ranulf de Glanville, *Tractatus de Legibus et Consuetudinibus Regni Angliae qui Glanvilla Vocatur. The Treatise on the Laws and Customs of the Realm of England, Commonly Called Glanvill*, ed. and trans. G. D. G Hall (London: Nelson, 1965), 58-59.

assigned a specific land as her dower to his wife when they married. The latter indicated one-third of the husband's land, under the right bestowed by common law.

Although the legal status and property rights of women were well described in *Glanvill* (c. 1190), and *Bracton* (c. 1210 – c. 1268), as was previously mentioned, thirteenth-century law was constantly changing due to new statutes and charters. In *Glanvill*, for instance, the share of dower is that which a widow should have based on the day she married. Conversely, the 1225 Magna Carta defined the dower share as one-third of her husband's property, which he held as of fee on the day of his death, or any time during the marriage.²⁹ Also, both the Statute of Merton (1236) and the Statute of Westminster II (1285) placed new regulations on widows and heiresses. For instance, the Statute of Westminster II (1285) included a chapter concerning 'resceit', enabling a wife to recover her inheritance or dower if her husband lost it. What influence did this clause have on women's property rights? The development of these regulations in relation to heiresses and widows needs more attention, as it helps to explain how women's property rights changed from the twelfth to the thirteenth century. Three important issues need be addressed at this point: (i) what difficulties women faced in the courts and (ii) what strategies and claims did women's representatives use in court in order to respond to the new regulations?

In order to address these issues, it is necessary to understand the notion of being a woman in medieval England. Whilst women played subordinate roles in society, nevertheless their roles in family life made them as important as men - as inferred from their frequent presence in court with regards to property. As a means of transmitting property, during early medieval times in Anglo-Saxon England, women, ironically, were seen to be a piece of property themselves, which is reflected in the practice of 'bride purchase'. One of the laws of Æthelberht, king of Wessex, states that, 'If a man buys a maiden, the bargain shall stand, if there is no dishonesty'.³⁰ Nevertheless, some historians disagree with the notion of 'bride purchase'. F. Mezger, for instance, translated that particular law as, 'if one makes a marriage agreement with regard to a virgin, be it agreed through exchange of the gift to the bride, if it (the transaction) is

²⁹ Janet Senderowitz Loengard, 'Rationabilis Dos: Magna Carta and the Widows' "Fair Share" in the Earlier Thirteenth Century,' in *Wife and Widow in Medieval England*, ed. Sue Sheridan Walker. (Ann Arbor, MI: University of Michigan Press, 1993), 60-79. See also *Glanvill*, 58; *Bracton*, 265.

³⁰ Æthelberht, 77. See Conor McCarthy, *Marriage in Medieval England: Law, Literature and Practice* (Woodbridge: Boydell and Brewer, 2004), 52.

without fraud'. Further, Mezger argues that there was no cultural concept of 'bride purchase' in Germanic tribes.³¹ While the issue is still subject to debate, one thing is certain: the significance of women has never been overlooked, and this became more evident after a woman entered marriage. As far as noble families and families with estates were concerned, marriage signified a redistribution of property, and was regarded as a good opportunity to establish, accumulate or strengthen a family's wealth. Hence it is not unreasonable that a family might wish to consider what benefits a marriage would bring to them financially, rather than how it might benefit the bride. Nevertheless, for those at the bottom of society, i.e. villeins and the poor, marriage would not necessarily bring financial benefits.

The marriage of women was regarded as a transaction not only because money was involved, but also due to patriarchal value. In Western Europe these values are arguably a cultural hang-over from Roman times. The Romans recognised two kinds of marriage, (i) *in manu*, where the bride was transferred from the authority of her father to that of her husband via marriage, and (ii) *sine manu*, where the bride did not fall under the authority of the husband, but remained in the guardianship of her father until he died, or following the birth of a third child.³² According to historian Conor McCarthy, the latter became the norm after the 2nd century A.D. Both kinds of marriage foreshadowed the contemporary perception of medieval women; in that no matter what transpired, women would always be subjected to the authority of men.³³ This begs the question – was such a perception of women still evident in medieval England?

1.4 Thirteenth-Century English women

As mentioned, thirteenth-century England was significant in many ways. Politically speaking, both the First and Second Barons' Wars had a profound impact on society. As far as women's property rights were concerned, the First Barons' War, which culminated in the issue of Magna Carta in 1215, led to a more generous right to claim dower, inheritance and *maritagium*. The 1215 Magna Carta also had a transformative effect on women's property rights. Before 1215, widows would offer money to the king for the right to stay single, gain access to their lands and for the wardship of their

³¹ F. Mezger, 'Did the Institution of Marriage by Purchase Exist in Old German law?' *Speculum*, 18 (1943), 369-371.

³² McCarthy, *Marriage in Medieval England*, 52-53.

³³ *Ibid.*

children.³⁴ However, after the 1215 Magna Carta, widows no longer had to pay a fine in order to secure their inheritances, *maritagia* and dowers. Moreover, Magna Carta (1217 and later issues) also expanded upon a widow's dower rights by stipulating that her dower should consist of one-third of the land her late husband seised at any time during the marriage. This was a more generous dower than offered in the twelfth century – i.e. one third of the land her late husband held at the time of the marriage.³⁵ Furthermore, with the rule of equitable inheritance between heiresses that was established in the mid-twelfth century, daughters in thirteenth-century England were aware that they had a right to a reasonable share of their father's inheritance, whether married or not.³⁶ It led to an unpleasant consequence for the lords because they lost their discretionary power to give the land to one sister and her husband if they favoured them.

The Second Barons' War (c. 1264 – 1267) did not have an immediate impact on women's property rights, but it would. When the Provisions of Oxford were established in 1258, a group of barons led by Simon de Montfort forced Henry III to accept a new form of government. The most well-known legacy of the Provisions of Oxford was that it placed the king under the authority of a Council of Fifteen, to be chosen by twenty-four men – twelve nominees of the king, and twelve nominees of the reformers. The Council would be held regularly, three times a year. However, Chapter 27 of the Petition of Barons (1258), an unpublished transcript drawn up before the Provisions of Oxford in 1258, mentioned the concern about the alienation of land granted in *maritagium* after the death of the husband where there was no issue of marriage; that is, the grantors were reluctant to see women alienate their *maritagia* when they had no issue.³⁷ The law did not have this rule officially written down until the Statute of Westminster II in 1285.

Apart from political developments, demography in medieval England is also worth our attention. As Mark Bailey suggests in 'Population and Economic Resources', the population in England kept growing between 1100 and 1300, and it culminated in

³⁴ David Carpenter, *Magna Carta* (London: Penguin Books, 2015), 105.

³⁵ Mavis E. Mate, *Women in Medieval English Society* (Cambridge: Cambridge University Press, 1999), 23.

³⁶ *Ibid.* I will discuss the rule of female inheritance in detail in chapter 3.

³⁷ I am greatly indebted to Dr Paul Brand for discussion of the Petition of Barons. The translation of the manuscript has not been published yet. I shall discuss the Provisions of Oxford in detail in Chapter 4. For the Second Barons' War and its background, see Michael T. Clanchy, *England and Its Rulers 1066-1307*, 4th edition (Oxford: Wiley Blackwell, 2014), 267-276.

almost six million people in 1300.³⁸ Only the nobility and some peasants from the upper ranks held their land in freehold; most peasants held their land in customary or copyhold, which made them unable to defend their right to land in the king's courts. They had to use manorial courts instead.³⁹ How, then, did it affect women's property rights? To take one example, if a villein's widow went to the king's court to demand her dower, she would be rejected because of her late husband's villein status.⁴⁰

With regards to the economy, it was mainly built on agriculture. The most important product was grain, including wheat, rye, barley, peas, beans, vetches and oats. As I shall demonstrate later in chapter 5, many widows quitclaimed their dower to have different grain and basic commodities in return, including wheat, rye, barley and clothes.⁴¹ Wool, the chief cash crop in medieval England, was of great quality and hence very much sought after throughout Europe. With the population rise in the twelfth and thirteenth centuries, not only the production of grain expanded perhaps twofold, but also the price of commodities increased. Isabel de Forz (c. 1237-1293), Countess of Devon and Countess of Aumale, for instance, exploited her tenants by increasing the rent because of a growing demand of pasture and arable land. The population growth also contributed to the expansion of commercial opportunities.⁴²

The English economy became more robust in the twelfth and thirteenth centuries, which led to a growth in the number of towns. These towns acquired their own trading privileges and legal rights, such as London, and these legal rights inevitably affected women's property rights.⁴³ For instance, widows of London citizens were 'free' of the city and could carry on their husbands' trades. Moreover, they could also have apprentices and be members of the guilds.⁴⁴ Furthermore, a London widow could remain in the house where her husband had been living when he died until she remarried or passed away. This custom was much more generous than the common law, which

³⁸ Mark Bailey, 'Population and Economic Resources,' in *An Illustrated History of Late Medieval England*, ed. Christopher Given-Wilson (Manchester: Manchester University Press, 1996), 42-43.

³⁹ *Ibid.*, 41.

⁴⁰ There is a detailed discussion in chapter 5 of this thesis.

⁴¹ See sections 5.9.1 and 5.9.4 in chapter 6.

⁴² Bailey, 'Population and Economic Resources,' 44-45.

⁴³ *Ibid.*, 47.

⁴⁴ Barbara A. Hanawalt, 'Remarriage as an Option for Urban and Rural Widows in Late Medieval England,' in Sheridan Walker, *Wife and Widow in Medieval England*, 141-164.

only gave widows forty days for the occupation of the ‘principal mansion’.⁴⁵ Another good example is Lincoln. In Lincoln, if a widow’s late husband held his land by burgage tenure, she was customarily entitled to half of his property in dower on his death. However, according to Lincoln’s custom, she could not claim the dower from the inheritance which had been alienated by her husband out of necessity.⁴⁶

1.5 Dower

In recent times, the role of medieval women has attracted vigorous attention from historians.⁴⁷ With regards to property rights, dower appears to have impacted medieval women the most. Dower, a life interest to a widow, did not pass to her heirs but to her husband’s heirs, although it gave her, as a widow, sole control over her property. Sue Sheridan Walker calls dower ‘women’s business’ and emphasises its significance because, in all major civil pleas, it required a woman to be the plaintiff, hence, only widows could launch dower suits.⁴⁸ However, it would be quite wrong to presume that dower was not men’s business also. In fact, on the contrary, dower had everything to do with men. For one thing, dower was dependent on men; no husband meant no dower. It eventually would and should descend to the heir of the widow’s husband, but a delay in receiving the whole inheritance often resulted in resentment towards the widow on the part of the heir.⁴⁹ Many legal cases reveal widows appearing at court against their disgruntled children, who were reluctant to assign their mothers’ dower. In terms of this study, dower is considered to be both ‘women’s business’ and ‘family interests’ (see chapter 5).

Indeed, dower constituted the major reason for women going to court. However, it was not the only property right a thirteenth-century woman was entitled to. At various stages she might be an heiress, a landholder, or a widow, which meant her control over the property could be executed not only through dower, but also via her inheritance or

⁴⁵ Caroline M. Barron, ‘Introduction: The Widow’s World in Later Medieval London,’ in *Medieval London Widows, 1300-1500*, ed. Caroline M. Barron and Anne F. Sutton (London, Rio Grande: The Hambledon Press, 1994), xvii.

⁴⁶ Louise J. Wilkinson, *Women in Thirteenth-Century Lincolnshire* (Woodbridge: Boydell Press, 2007), 95.

⁴⁷ See footnote 3.

⁴⁸ Sue Sheridan Walker, ‘Litigation as Personal Quest: Suing for Dower in the Royal Courts, circa 1270-1350,’ in Sheridan Walker, *Wife and Widow in Medieval England*, 81-108.

⁴⁹ One of the best illustrations of disgruntled heirs can be seen in Linda E. Mitchell, *Portraits of Medieval Women: Family, Marriage, and Social Relationships in Thirteenth-Century England 1225-1350* (New York: Palgrave Macmillan, 2003), 169-185.

maritagium. Maud de Braose (c. 1224-1301), one of the most important and wealthy noble heiresses in the country was a case in point. Her family held a great deal of land in the Welsh Marches. She not only received some land as *maritagium* at Tetbury, but also held one-quarter of one-third of both the barony of Miles of Gloucester and the lordship of Radnor as her inheritance. After her husband's death, she became a widowed heiress and spent years in dilatory litigation over dower against her son, Roger.⁵⁰ Maud went through all the mentioned entitlements and received the most important three property rights a woman could have obtained over a lifetime, even though, over time, her identity and status may well have changed and her roles overlapped. Although a noblewoman, like Maud, would usually have possessed a considerable amount of land when entering marriage, even if she had not been an heiress, she would have received some land as *maritagium* for her upcoming marriage.

1.6 *Maritagium*

Maritagium was another important source of women's property. According to *Glanvill*, *maritagium* meant 'property given with a woman to her husband'. Every free man who had land could give a certain part of his land to his daughters.⁵¹ Although *maritagium* was meant to be distributed to a bride's heirs, rather than to be owned by her, it could be added to the property of the groom, and also to that of the groom's family. *Maritagium* was the object of lawsuits; however, over time it changed its form. As Payling points out, it had evolved from 'heritable estates' to 'money portions', indicating a father may have thought that distributing a portion of money instead of land to his daughter would be better for the bride's natal family, especially if he had other, non-inheriting, daughters.⁵² Nevertheless, 'marriage portion' in the form of cash did not become prevalent until the fourteenth century, and in thirteenth-century England most brides received their *maritagia* in land. Therefore, in this section of the present study, landed *maritagium* will be the topic mainly discussed, rather than the later development of 'jointures'.

⁵⁰ Maud de Braose will be discussed again in chapter 5. Mitchell, *Portraits of Medieval Women*, 169-185.

⁵¹ *Glanvill*, 69.

⁵² Simon J. Payling, 'The Politics of Family: Late Medieval Marriage Contracts', in *The McFarlane Legacy: Studies in Late Medieval Politics and Society*, ed. Richard H. Britnell and Anthony J. Pollard (Stroud, New York: Sutton and St. Martin's Press, 1995), 21-47.

As with dower, some scholars believe *maritagium* to have functioned as ‘women’s land’ in that it was property assigned to a newly-wed couple by the bride’s male relatives – usually her father – in the knowledge that the bride would have sole control over it after her husband’s death. This view is borne out by some records, which show that land passed only to daughters in the form of *maritagium*.⁵³ However, in this study I will challenge this concept by arguing that *maritagium* was not so much ‘women’s land’ as ‘family land.’

While every woman could have her *maritagium* on her marriage, not all women could become heiresses. Most heiresses usually held some pieces of land as inheritance, while the daughters of nobles, or of landed gentry, often inherited a considerable estate. Nevertheless, all heiresses were subject to wardship until they were married. At this point, their inheritances would be affected by both family and feudal interests. For instance, the crown usually owned the wardships of noble heiresses of nobles, thus playing a patronal role in their marriages.⁵⁴

The custom of female inheritance changed significantly between the eleventh and the thirteenth centuries. Authorities on the subject, such as S. F. C. Milsom and J. C. Holt, opined that, prior to 1130, should a father have no son and several daughters, only one daughter could inherit. However, after 1130, *Statutum Decretum* declared that all the daughters were entitled to inherit.⁵⁵ *Glanvill* also clearly stated that, ‘If a man leaves several daughters, then the inheritance will clearly be divided between them whether their father was a knight or a sokeman, but saving the chief message to the eldest daughter on the conditions set out above’.⁵⁶

The following questions arise here: (i) if a daughter received *maritagium* when she married, would she also be entitled to a share of the inheritance? (ii) if so, would she be expected to put her *maritagium* back ‘into the pot’ with the rest of the inheritance so it

⁵³ Claire de Trafford, ‘The Contract of Marriage: The *Maritagium* from the Eleventh to the Thirteenth Century’ (PhD dissertation, University of Leeds, 1999), 243-245.

⁵⁴ James C. Holt, *Colonial England, 1066-1215* (London, Rio Grande: The Hambledon Press, 1997), 250.

⁵⁵ S. F. C. Milsom, ‘Inheritance by Women in the Twelfth and Early Thirteenth Centuries,’ in *On the Laws and Customs of England: Essays in Honour of Samuel E. Thorne*, ed. Morris S. Arnold and others (Chapel Hill, NC: University of North Carolina Press, 1981), 231-260; Holt, *Colonial England, 1066-1215*, 246-269.

⁵⁶ Although the chief message would be inherited only by the eldest daughter, she had to compensate the remaining daughters in other forms, for example in cash with the same value as their shares of the chief message. *Glanvill*, 76.

could be divided equally – a process called ‘hotchpot’?⁵⁷ and (iii) should she simply keep her dowry and make no claim to the inheritance?⁵⁸

The relationship between inheritance and *maritagium* has been the subject of wide and often heated debate and it is only one of the many disputes that partible inheritance caused.⁵⁹ As Holt points out, when several daughters became co-heiresses, female succession became a source of dispute.⁶⁰ In order to further explore female succession, this study will go on to examine examples of disputes between co-heiresses, the dynamics these disputes created, the attitude of the common law towards such conflicts, and how the heiresses fought for their shares in the courts.

1.7 Jointure

Another important development concerning women’s property rights was ‘jointure’, which became widely adopted from the second half of the thirteenth century into the fourteenth century onwards. Jointure was a joint tenancy in survivorship between a landholder and his wife. The husband would grant his lands to trustees, who would later help to grant the lands back to him and his wife, jointly. Although jointure was intended to provide security for a wife after her husband’s death, wives, in fact, faced more difficulty in inheriting the property.⁶¹ Given-Wilson indicates that by the fourteenth century, although most marriage contracts granted the wife a joint share in part of her husband’s land (in itself partly an indication of the importance of the wife), it was still troublesome to inherit property.⁶² However, since jointure did not become dominant until the fourteenth century, this study will not discuss it further. It is important to state that some cases relating to jointure will be discussed in the chapter 5, since jointure

⁵⁷ The practice of ‘hotchpot’ can be dated back as early as the twelfth century in England. See Susan M. Johns, *Noblewomen, Aristocracy and Power in the Twelfth-Century Anglo-Norman Realm* (Manchester: Manchester University Press, 2003). For more details, see chapter 2 of this thesis.

⁵⁸ Scott L. Waugh, *The Lordship of England: Royal Wardships and Marriages in English Society and Politics, 1217-1327* (Princeton, NJ: Princeton University Press, 1988), 24.

⁵⁹ The relationship between *maritagium* and inheritance has been discussed in detail in Joseph Biancalana, *The Fee Tail and the Common Recovery in Medieval England: 1176-1502* (Cambridge: Cambridge University Press, 2001); and Milsom, ‘Inheritance by Women in The Twelfth and Early Thirteenth Centuries,’ 231-260. I will also discuss this in chapter 4.

⁶⁰ Holt, *Colonial England, 1066-1215*, 249.

⁶¹ Christopher Given-Wilson, *The English Nobility in the Late Middle Ages: The Fourteenth-Century Political Community* (London: Routledge, 1996), 139.

⁶² *Ibid.*

evolved from both *maritagium* and dower, therefore it is necessary to discuss the early development of jointure.

1.8 Women's business or family business?

This study concerns how women fought for, and managed, their property rights through the legal mechanisms provided under the nascent legal branch of common law. It also queries how, between the gap of law and reality, between theory and practice, women tackled the many societal hindrances thrown their way in order to achieve the best possible outcome? Most importantly, how did courts embody the legislation?

I believe it would be doing a disservice if this study only addressed women without putting them in the context of family life and their relationships with men. As mentioned earlier, medieval women were a subordinate group whose lives centred on their husbands, children, and families. Therefore, in order to reconstruct a comprehensive picture of medieval women and their property rights, the study will emphasise the dynamics between women and their families, since women not only went to court to serve their own agendas, but also to protect their families' interests.

Sue Sheridan Walker asserted that dower was women's business in 'Litigation as Personal Quest: Suing for Dower in the Royal Court, circa 1270-1350',⁶³ in tandem with Claire de Trafford, who wrote that *maritagium* was 'women's land' in her 'Share and Share Alike? The Marriage Portion, Inheritance, and Family Politics'.⁶⁴ I wish to add another idea to academia on dower and *maritagium* – that they were as much 'family business' as 'women's business.'

⁶³ Walker, 'Litigation as Personal Quest,' 81-108.

⁶⁴ Claire de Trafford, 'Share and Share Alike? The Marriage Portion, Inheritance, and Family Politics,' in *Studies on Medieval and Early Modern Women: Pawns or Players?* ed. Christine Meek and Catherine Lawless (Dublin: Four Courts Press, 2003), 36-48.

Chapter Two: Historiography and Methodology

The emphasis of this thesis is on women's property rights, but a number of aspects will be discussed in order to paint a more comprehensive picture of the lives of medieval women. Women's property rights are interwoven with contemporary legal, societal and historical knowledge and these will need to be discussed in tandem. Therefore, I will divide the historiography into two sections: (i) works on medieval English women and (ii) works on the history of common law. I will conclude with the Methodology.

2.1.1 Historiography of medieval English women

The history of medieval women is one of the fastest growing fields of scholarship. Janet Loengard's 'Legal History and the Medieval Englishwoman: A Fragmented View' serves as the perfect beginner's text on medieval women. Published in 1986, this article not only provides an overview of the historiography of medieval Englishwomen until 1986 but also points out that, although much work has been done, the view of medieval Englishwomen is still fragmented and there is much to be unearthed.⁶⁵

Loengard indicated that whilst some historians in the nineteenth and twentieth centuries were interested in the history women's legal rights, they put more emphasis on institutional history or the history of legal principles, more often discussing statutes and treatises, i.e. what the law should be, rather than what the law was in practice.⁶⁶ Between 1970 and the 1980s, historians began to narrow and define their topics and most of them were not published in law reviews or the journals of legal history. Women's legal history remained concerned with their property rights, inheritance, criminal law and women, female perpetrators, and more importantly, the law of marriage.⁶⁷ As Loengard suggested, when discussing medieval England, it was impossible to separate the study of marriage from women's rights or liability because marriage touched on every aspect of medieval women's life.⁶⁸

Despite all this, there were, still, some fields that required historians' attention. For instance, as Loengard pointed out, we know very little about women's commercial

⁶⁵ Janet Senderowitz Loengard, 'Legal History and the Medieval Englishwoman: A Fragmented View,' *Law and History Review*, 4.1 (Spring, 1986): 161-178.

⁶⁶ *Ibid.*, 163.

⁶⁷ *Ibid.*, 166-170

⁶⁸ *Ibid.*, 168.

activities, and it would be worth knowing how medieval women engaged in transactions and used the legal system to protect their assets.⁶⁹ Although Loengard recognised that more work concerning medieval women's legal history is being done, she considered every article akin to a piece in a mosaic, in that each of them discussed a different definitive topic that required some assemblage in order to have a coherent picture of the relationship between medieval women and law.⁷⁰

Loengard further updated her findings on the history of English women's legal history in her revised 1990 version of 'Legal History and the Medieval English Woman Revisited: Some New Directions', offering expansions on her previous article.⁷¹ She noticed that women's legal history seemed to have been subsumed into family history. On that basis, she positively noted that whilst there were more social historians using legal documents and therefore touching upon legal issues, a social historian's focus was always different to a legal historian's.⁷² Furthermore, the tendency to link women's legal history to the history of the family is not necessary productive because it discourages some legal research. Furthermore, Loengard believed that if the legal history of women was to continue being studied by social historians, rather than legal historians, it may change the nature of women's legal history.⁷³ Her opinions were not intended to prohibit study, but rather acted as a caution.⁷⁴

Another earlier book, published in 1980, also provided a clear outlook on the historiography of women before the 1980s. *The Women of England: From Anglo-Saxon Times to the Present: Interpretive Bibliographical Essays* is representative of this academic movement in women's history. Kathleen Casey's 'Women in Norman and Plantagenet England' and Ruth Kittel's 'Women under the Law in Medieval England' provide a brief historiography of medieval English women.⁷⁵ Like Loengard, Casey believed there were still many important, but neglected, questions requiring historians' attention, especially in the field of economic life. In particular, she emphasised the

⁶⁹ *Ibid.*, 171.

⁷⁰ *Ibid.*, 172.

⁷¹ Janet Senderowitz Loengard, 'Legal History and the Medieval Englishwoman Revisited: Some New Directions', in *Medieval Women and the Sources of Medieval History*, ed. Joel T. Rosenthal (Athens, GA: University of Georgia Press, 1990), 210-236.

⁷² *Ibid.*, 220-221.

⁷³ *Ibid.*, 225-226.

⁷⁴ *Ibid.*, 226.

⁷⁵ Kathleen Casey, 'Women in Norman and Plantagenet England,' in *The Women of England: From Anglo-Saxon Times to the Present*, ed. Barbara Kanner (London: Mansell, 1980), 83-123.

reciprocal relationships between the marriage bond and the production of food, which played a crucial role in the ‘conjunction of women’s lives and politics in the English middle ages.’⁷⁶ She was convincing in her view that women’s high visibility in medieval economic life alongside their subordinate status in common law, literature and theology, was an incongruity, which is why the history of medieval English women needs further attention.⁷⁷ The dearth of studies may well be because of a perceived paucity of primary sources, but historians in the field were fortunate, in that medieval legal proceedings were so well documented that they actually gave good insights into social structures, economies, levels of mobility and tenure from a female perspective. Kittel also stressed the usefulness of medieval legal records and encouraged younger researchers to work on ‘women in action’ by studying legal manuscripts.⁷⁸ However, her book was published in 1980, since when later works on medieval women’s history have flourished and diverged, thus creating a wider variety of texts for historians to study.

Apart from the overview of the historiography of medieval women’s legal history, there are, of course, some significant works relating to this study that should be introduced. I will start from wardship, which happened in a woman’s younger age, move to her role as wife, and conclude with her widowhood.

Before a woman was married, she was considered an unmarried daughter. Wardship occurred when an inheritance fell on a minor, and a guardian was required in order to manage the minor’s inheritance. A male heir stayed in wardship until he reached his majority, but an heiress remained in wardship until she married.⁷⁹ Therefore, wardship concerned women considerably.

Scott L. Waugh gives an illuminating picture concerning royal wardship in his book, *The Lordship of England - Royal Wardships and Marriages in English Society and Politics 1217-1327*, by examining the reciprocal relationship between royal wardships and families, especially upper class families. He firstly explains the nature of wardship, i.e., when an inheritance fell on a minor, a guardian was needed to manage the inheritance. Guardians used royal wardships either to arrange marriages, to reward their clients, or to supplement their income by leasing or selling their wardship rights to

⁷⁶ *Ibid.*, 87-88.

⁷⁷ *Ibid.*

⁷⁸ Ruth Kittel, ‘Women Under the Law in Medieval England,’ in *Ibid.*, 124-137.

⁷⁹ Hudson, *The Oxford History of the Laws of England*, vol. 2, 805-807.

others. However, as Waugh points out, ‘Politics, law and literature all reveal their misgivings about the power of lords over minors and argue that kin should be consulted about guardianship and marriage’.⁸⁰

Misgivings about wardship fed into popular culture. For instance, one version of the romance of Havelok the Dane tells the story of how an unscrupulous guardian disinherited the heir. The romance centres on the inherent tension between an aristocratic hope for a smooth inheritance of land, the proper marriage of heirs and the fears about the future wellbeing of the minor.⁸¹ The law clearly did not favour kin as guardians, which is reflected in Henry I’s Coronation Charter, which stated flatly that no one, including kin, who claimed an inheritance should be given custody of a minor. The idea was also echoed later in *Glanvill*.⁸²

In practice, however, the king did grant some wardships to widows and kin, although the practice seems to have gradually declined. According to Waugh’s calculation in *Rotuli de Dominabus*, a document which records the status and estates of widows and wards who held land directly from the Crown in the late twelfth century, out of 82 grants 76 involved wards, of which widows obtained 13 grants (15.9%), other kin received 12 (14.6), strangers received 39 (47.6%) and the Crown successfully held custody of 18 (21.9%). After 1217, despite widows representing more than a tenth of all the recipients of wardships, their grants constituted only about seven percent of the total.⁸³

Due to the fear of allowing blood relatives to obtain wardships, wardships were only granted to two groups of people. Firstly, the grant could be to the parents of the ward’s marriage partner. When the king acquired custody of heirs who had been betrothed, but were not married when their parents had died, he usually honoured the arrangement and turned the children over to the custody of their potential in-laws to complete the marriage. Secondly, though more rarely, wardships of co-heiresses or their descendants would be given to the elder co-heiress or her husband. However, such a

⁸⁰ Waugh, *The Lordship of England*, 194.

⁸¹ *Ibid.*, 195.

⁸² *Ibid.*, 196.

⁸³ *Ibid.*, 196-197. According to Susan M. Johns, *Rotuli de Dominabus* was the record which Henry III used to pin down widows and wards, and therefore tried to enforce royal lordship. Wives and widows were defined as a homogeneous group who shared similar status, although they were separated by economic categories. They were also regarded as separate social groups. Johns, *Noblewomen, Aristocracy and Power*, 186-187. For the Introduction of *Rotuli de Dominabus*, see *Rotuli de Dominabus et Pueris et Puellis de XII Comitatus* (London: Pipe Roll Society, 1913), xvii-xxvii.

grant could be problematic for younger co-heiresses, who were often likely to be put into nunneries, or failed to receive their share of an inheritance.⁸⁴

Waugh argues that not every guardian was interested in arranging marriage for their ward. Some guardians simply sold the wardship to someone with a greater interest in marrying the ward. Since wardship was treated as ‘movable property’, guardians also sold, leased, bequeathed, or used wardships as collateral for loans. With the rising demand for land during the thirteenth century, money could easily be raised by leasing lands held in wardship. Since wardships and marriages were much sought after, their price could increase remarkably as they changed hands. Waugh concludes that, although at first glance a royal grant of wardship and marriage seemed to favour a small, politically significant group, royal wardships were essential to build relationships and cooperation among landholding families. In essence, those who received grants were generally satisfied with the king’s assignment because they were potentially highly profitable.⁸⁵

In his essay, ‘A Few Home Truths: The Medieval Mother as Guardian in Romance and Law’, Noël James Menuge also discusses guardianship in her investigation into two legal treatises – the *Très ancien coutumier* (1200-1300) and *Bracton* (mid-thirteenth century) – and the romances of *Beues of Hamtoun* (1300) and William of Palerne (1351-61).⁸⁶ In her essay, she explains why contemporary lawyers and the authors of romances hated the idea of birth mothers as guardians. The Pipe Rolls, Fine Rolls and the Patent Rolls all offer a number of examples of mothers paying to receive the body or the lands of the ward from the overlord or other guardian.⁸⁷ Similarly, the *Très ancien coutumier* declared that a mother was not an appropriate guardian for her children once her husband was dead, because of the chance that the mother might remarry in widowhood and, under her new husband’s authority, disown the children from her first marriage. This text delivers an important message – the mother as

⁸⁴ For example, in 1299 the escheator south of the Trent sold the wardship of the two daughters and coheirs of Walter de Gouiz to John Latimer, who married one of the girls. The other died unmarried in 1310. There was no partition of inheritance between the girls and no homage had been done. Latimer was evidently keeping the land for himself. Waugh, *The Lordship of England*, 198.

⁸⁵ *Ibid.*, 226-229.

⁸⁶ Noël James Menuge, ‘A Few Home Truths: The Medieval Mother as Guardian in Romance and Law,’ in *Medieval Women and the Law*, ed. Noël James Menuge (Woodbridge: Boydell Press, 2000), 77-104.

⁸⁷ *Ibid.*, 79-80.

guardian is a menace to patriarchy.⁸⁸ In the romance, *Beues of Hamtoun*, the mother tried to kill her son from the first marriage for the benefits of the son from the second marriage.⁸⁹

This sentiment, expressed in romantic fiction, echoes legal treatises. Ironically, though, despite the hostility towards women in both legal treatises and romances, the mother was often the most proper candidate for *de facto* guardianship.⁹⁰ Nevertheless, both romances and legal treatises reveal deep patriarchal anxiety. The legal treatise silenced a widow, because she was able to speak and the dead father could not. Therefore, in order to speak for the dead father, the law spoke for him against the mother. However, in reality, the court appears to have been more liberal, and more reasonable, by admitting mothers as guardians, and liberating her from the dictatorship of the law.⁹¹

Once women married, they were liberated from their wardships, becoming wives, and all of their property was subjugated to the control of their husbands. Numerous articles discuss how married women administered their own properties with limited power. Rowena E. Archer, discusses how women as landholders managed their land in “‘How Ladies ...who Live on their Manors Ought to Manage their Households and Estates’’: Women as Landholders and Administrators in the Later Middle Ages.’ The quotation in this title is from Christine de Pisan, a late medieval Italian author who wrote two important works on how women should manage their properties during their husbands’ absence. De Pisan pointed out that when barons, knights, squires and gentlemen travelled to and fought in wars, their wives should be wise and sound administrators, managing their affairs well.⁹² She also implied that women were less distracted by political and military concerns, which enabled them to devote more of their time than their men to property management. Echoing de Pisan, Archer demonstrated how noble-women dealt with property by examining some of their situations; she used Elizabeth Talbot, Duchess of Norfolk, Joan de Geneville, Countess of March, and Elizabeth Berkeley, Countess of Warwick, as examples.⁹³ All in all,

⁸⁸ *Ibid.*, 82-84.

⁸⁹ *Ibid.*, 85-86.

⁹⁰ *Ibid.*, 99-100

⁹¹ *Ibid.*, 103.

⁹² Rowena E. Archer, “‘How Ladies ... who Live on their Manors Ought to Manage their Households and Estates’’: Women as Landholders and Administrators in the Later Middle Ages,’ in *Woman is a Worthy Wight: Women in English Society c.1200-1500*, ed. P. Jeremy P. Goldberg (Wolfboro Falls, NH: Alan Sutton Publishing, 1992), 151.

⁹³ *Ibid.*, 153-158.

Archer believed that the long absences of their lords gave these wives opportunities to establish rapport with their councillors, to preside over meetings and to devote themselves more fully to property management.⁹⁴

An article published in 1963 by Michael M. Sheehan titled 'The Influence of Canon Law on the Property Rights of Married Women in England', sheds some light on how women's property rights were dealt with in canon law, which, as a totally different system from common law, played a significant role during the Middle Ages. While widows and unmarried women could make valid wills, married women could not. According to the common law, married women were forbidden from making a will, because their property passed to their husbands. Only when they obtained their husbands' permission could they make a valid will. However, canon law gave the wife the power to bequeath, implying that woman had the right to dispose of their property, and those who impeded them from doing it would be *ipso facto* excommunicated. However, such protection bestowed by canon law failed to function effectively after the fifteenth century, when married women fully lost the ability to dispose of their property by will.⁹⁵

Similarly, Richard H. Helmholz also discusses how women lost their ability to make wills in 'Married Women's Wills in Later Medieval England'.⁹⁶ He found that although married women may once have possessed testamentary capacity, by the fifteenth century they had lost it. He concluded that the change may have grown out of the evolution of testamentary freedom for married men and the rise of the 'use', by which women were the beneficiaries of real and personal property, rather than the owners. Under a medieval use, a woman only held the beneficial interest in land or chattels, therefore she was unlikely to make a will to dispose of the interests.⁹⁷

Regarding women's social roles, Henerietta Leyser's *Medieval Women: A Social History of Women in England 450-1500* explores the different roles women played from womb to tomb through a thousand years of English history.⁹⁸ Starting from the Anglo-Saxon period up to the fifteenth century, she investigated their lives from various angles,

⁹⁴ *Ibid.*, 169.

⁹⁵ Michael M. Sheehan, 'The Influence of Canon Law on the Property Rights of Married Women in England,' *Mediaeval Studies*, 25 (1963), 109-124.

⁹⁶ Richard H. Helmholz, 'Married Women's Wills in Later Medieval England,' in Sheridan Walker, *Wife and Widow in Medieval England*, 165-182.

⁹⁷ *Ibid.*

⁹⁸ Leyser, *Medieval Women*.

examining archaeology, law, literature, family, work, and spirituality. The book not only provides extensive knowledge of what a medieval woman's life was like for both peasants and aristocrats, but it also offers a spectrum of their roles: as daughters, wives, mothers, widows and workers.⁹⁹

Equally profound is *Wife and Widow in Medieval England*, edited by Sue Sheridan Walker. This book reconstructs important aspects of what being a woman meant between the twelfth and the fifteenth centuries. As the title suggests, it focuses on the two identities of women – wife and widow – which are related, but opposite, states. Firstly, a woman cannot be a wife and a widow at the same time, although she could possibly have been widowed and remarried. Secondly, the term 'wife' corresponds to the legal description of *femme covert*, in which her legal existence was 'covered' by her husband. Thirdly, widows enjoyed an equivalent status to men known as *femme sole*. Hence, while a bereaved woman may have been vulnerable, she had full legal power and was thus at her most powerful.¹⁰⁰

Jennifer C. Ward collects an abundance of primary sources related to noblewomen, including charters and letters, and discusses marriage, family, land, lordship and household matters in *Women of the English Nobility and Gentry 1066-1500*.¹⁰¹ She also investigates their lives in *English Noblewomen in the Later Middle Ages*, in which she not only shows how noblewomen, especially wives of knights and gentry, managed their families and households, but also their involvement in late medieval politics and the Church. In particular, she also stresses the unique status of widows in these areas. As mentioned earlier, because wives and daughters were regarded as affiliations to men, widows were able to be in charge of their lands unless they remarried, which is why, Ward argues, many medieval noblewomen chose to remain widows. Whilst, in her book, she used wills and letters, Ward reminds us not to take their words as a literal reflection of the authors' thoughts and feelings because they may have been written under duress of their husbands. Most significantly, Ward offers a clear picture of how English noblewomen from the mid thirteenth to the mid fifteenth centuries administered their households during their husbands' absences, by citing the documents relating to

⁹⁹ *Ibid.*

¹⁰⁰ Sheridan Walker, *Wife and Widow in Medieval England*, 3.

¹⁰¹ Jennifer C. Ward, *Women of the English Nobility and Gentry 1066-1500* (Harlow: Longman, 1992).

Eleanor de Montfort (c. 1216-1275) and Elizabeth, Countess of Hereford (c. 1282-1316).¹⁰²

The last group of work I am about to discuss concerns widows. Sue Sheridan Walker's edited collection, *Wife and Widow in Medieval England*, explores the multi-faceted lives of widows. For instance, in 'Fifteenth-Century Widows and Widowhood, Bereavement, Reintegration, and Life Choices', Joel Rosenthal analyses the emotive process by which widows, recovering from grief, rebuilt their lives and reintegrated themselves into their community, often through remarrying. While manorial and legal records often presented the sad tale of the dispossessed and the impoverished, urban materials argue more strongly for independence and involvement in civic and economic life by widows.¹⁰³

Studies of widows often discuss remarriage because it was an issue that most widows faced after the death of a husband. Barbara A. Hanawalt, in her essay 'Remarriage as an Option for Urban and Rural Widows in Late Medieval England', asserted that the remarriage of widows undermined patriarchal authority.¹⁰⁴ London-based widows appeared to have different capabilities to what was being proposed in common law. For instance, if the couple had no children, the widow was entitled to one-half of the estate; however, her position might be more tenuous because dower arrangements constituted a contract between the two parties, and the dower might have dwindled.¹⁰⁵ At the same time, though, the husband might have enriched the initial dower with further bequests in his will, because widows in London were often well endowed with rents and property. In addition, the widows of London citizens were free of the city and could carry on their husbands' trades, and they could also have apprentices and be members of guilds. Whereas, for widows in the countryside, local conditions played a significant role in remarriage. For instance, in villages that enjoyed better economic conditions, it undercut the marriage market for widows, because men had a number of options and did not need dower lands. This appears to have been the

¹⁰² *Ibid.*, 7.

¹⁰³ Joel T. Rosenthal, 'Fifteenth-Century Widows and Widowhood, Bereavement, Reintegration, and Life Choices,' in *Ibid.*, 33-58.

¹⁰⁴ Barbara A. Hanawalt, 'Remarriage as an Option for Urban and Rural Widows in Late Medieval England,' in *Ibid.*, 141.

¹⁰⁵ *Ibid.*, 144-146.

case in Northamptonshire in the fourteenth century. In Brigstock, it seems that only one out of every thirteen widows married for a second time.¹⁰⁶

As mentioned above, the remarriage of widows has been widely studied, since numerous researchers are working in the field. Two significant scholars, J. Z. Titow and Jack R. Ravensdale, have produced different views on the subject. Titow describes the marriage pattern in late-thirteenth-century Winchester estates as a ‘marriage fugue’, in that a general scarcity of land and, consequently, of food, meant that people had to resort to dire straits to survive. On manors that had no vacant land, young men sought older widows as marriage partners. They, in turn, would seek younger wives after the widow died, and those young wives, in turn, would marry a younger man, and so on. During this period of ‘land hunger’ lords encouraged widows to remarry, since they would collect money from marriage fines.¹⁰⁷ Ravensdale, however, notes that in the century following the Black Death, the marriage market for widows collapsed, since the population drastically reduced. Furthermore, wages were high, and land was vacant. Consequently, a young man who chose to remain on the land might easily inherit either his family’s land or that of a relative.¹⁰⁸

Similarly, Lori A. Gates’ ‘Widows, Property, and Remarriage: Lessons from Glastonbury’s Deverill Manors’, contends that villein widows’ remarriages did not always occur as a result of land hunger – a theory that had also been put forward by Jack Ravensdale – and that remarriage instead involved multiple factors related to an individual widow’s situation and to manorial socio-economic structures. She further argues that once the assumption of a direct connection between community land availability and widow remarriage is abandoned, widows with property could be recognised as another separate subject, since certain elements did not directly relate to the availability of land for new tenants. For instance, the availability of labour, village industries, social hierarchy, dependents in the household, and age at widowhood became less indirect, and more primary, influences on widows with property.¹⁰⁹

¹⁰⁶ *Ibid.*, 146-147.

¹⁰⁷ J. Z. Titow, ‘Some Differences Between Manors and their Effects on the Condition of the Peasant in the Thirteenth Century,’ *Agricultural History Review*, 10 (1962), 1-13.

¹⁰⁸ J. R. Ravensdale, ‘Population Changes and the Transfer of Customary Lands on a Cambridgeshire Manor in the Fourteenth Century,’ in *Law, Kinship, and Life-cycle*, ed. Richard Smith (Cambridge: Cambridge University Press, 1984), 197-225.

¹⁰⁹ Lori A. Gates, ‘Widows, Property, and Remarriage: Lessons from Glastonbury’s Deverill Manors,’ *Albion*, 28.1 (1996), 19-35.

There were numerous rich dowagers in thirteenth-century England, some of whom are discussed by Linda E. Mitchell in *Portraits of Medieval Women: Family, Marriage, and Politics in England 1225-1330*. This book is another significant work that discusses the participation in family affairs and politics of some medieval noblewomen, such as Margaret de Quency (1206-1266) and her daughter Maud de Lacy (1223-1289) by exploring their interactions with family, marriage and community.¹¹⁰ Using their biographies, Mitchell reveals insights into their relationships with co-heiresses, mothers, daughters, widows and heirs. She also highlights the widowhoods of several other prominent noble women during the period, which provide fascinating examples of how they ran their households and also managed their own properties. As the title suggests, Mitchell also explores the relationships between certain noble widows and their profound influence on politics.¹¹¹

This thesis, although it focuses only on women's property rights in thirteenth-century England, is built on a wider background of social, political and economic development drawn from the works listed above, and would not have been accomplished without using these works' knowledge. Wardship, as Waugh and Menuge point out, posed a threat to heiresses because their guardians could profit from selling the wardships or easily disinherit them. Numerous cases, which I will discuss in chapter 3, show that heiresses accused their guardians of disinheriting them by putting them into nunneries.

Although this thesis does not touch on women's ability to make wills because it focuses on estates, and women's wills more often dealt with chattels and movable goods, Sheehan and Helmholz's works both provide a window on how women gradually lost their right to make wills, and reflect women's difficulties in disposing their own goods. Similarly, the issue of remarriage is left out by this thesis, but it is also significant to not only social but also economic history. Gates, Ravensdale and Titow all try to provide a rationale for widows' remarriages, and therefore build a model to explain the remarriage pattern. This thesis, however, will touch on only a small part of the aftermath of remarriage, i.e., how remarriage affected the relationship between a widow and an heir.

¹¹⁰ Mitchell, *Portraits of Medieval Women*.

¹¹¹ *Ibid.*

There are two works in particular to which this thesis is indebted: Ward's *Women of the English Nobility and Gentry 1066-1500* and Mitchell's *Portraits of Medieval Women*. The former is a compilation of abundant primary sources related to women's property, such as personal charters concerning the grant of *maritagium* or the division of inheritance between noble co-heiresses, and these primary sources are frequently consulted in this thesis.¹¹² Mitchell's *Portraits of Medieval Women* sheds some light on numerous famous thirteen-century dowagers and heiresses, to which I refer often, especially with regards to the frustrating relationship between Maud de Braose and her son Roger, and the proceeding of dower litigation between them.¹¹³

As mentioned, this thesis focuses on a rather narrow topic, and could not possibly cover all aspects of medieval women's property rights. However, with the knowledge of the mentioned works, women's experiences as daughters, wives and widows can be well illustrated in social, economic and legal history.

2.1.2 Historiography of common law

In order to analyse and examine women's experiences in court, we cannot ignore works on the common law in medieval England, since this study has been dependent on both its development and legal mechanisms. Written by Frederick Pollock and Frederic. W. Maitland, *The History of English Law before the Times of Edward I* was published in 1898, but it is still regarded as the authority on common law history.¹¹⁴ The two authors not only describe how the common law developed from Anglo-Saxon to Anglo-Norman times, but they also fuelled later debates.¹¹⁵ With regards to this study, their text is important as it covers the classification of people, tenures of land, jurisdictions of local and royal courts, criminal and private law and legal procedures. In spite of later criticisms from historians, it is still regarded as the historical cornerstone of the English legal system.

¹¹² A case in point, a grant of *maritagium* from Hawise, Countess of Gloucester, in *Women of the English Nobility and Gentry*, is examined in this thesis, p.126.

¹¹³ Mitchell, *Portraits of Medieval Women*, 169-185. For detailed discussion of Maud de Braose and her son Roger, see chapter 5.

¹¹⁴ Pollock and Maitland, *The History of English Law before the Time of Edward I*.

¹¹⁵ Pollock and Maitland's opinions on several aspects of common law triggered vehement arguments among legal historians. For example, Henry G. Richardson and George O. Sayles, two English historians who contributed greatly to our understanding of medieval English medieval law courts and parliament, often disagree with their arguments. Pollock and Maitland were also working many years ago, when access to more detailed sources was either difficult or impossible, and consequently many of their conclusions are contested by modern scholars.

Maitland and Pollock, and several other extraordinary legal historians, have all researched the English common law system. These include: *The Governance of Mediaeval England from the Conquest to Magna Carta*, by H. G. Richardson;¹¹⁶ *The Historical Foundation of the Common Law*, by S. F. C. Milsom,¹¹⁷ *The Making of English Law: King Alfred to the Twelfth Century, vol. 1. Legislation and its Limits*, by Patrick Wormald,¹¹⁸ and *Law, Marriage and Society in the Later Middle Ages: Arguments about Marriages in Five Courts*, by Charles Donahue.¹¹⁹ All these authors have contributed to a comprehensive picture of the legal system in the twelfth century and later Middle Ages. Alongside the mentioned works, there are more significant works that add to our understanding of English legal history. Unfortunately, I have been unable to include all these scholars' works in this thesis; therefore, I will mention briefly the books and essays that are relevant to this research.

In *The Formation of English Common Law*, John Hudson examines the emergence of common law. Some elements came from Anglo-Saxon England, some were brought by the Conquest in 1066, and some were the result of the interaction between the king and his subjects. A wide variety of subjects are discussed in this book, including the court framework, as well as people's status and how the law related to them. It also includes work on criminal law, landholding, the forest, urban and ecclesiastical law, and even legal learning.¹²⁰ In *The Oxford History of the Laws of England Volume II 871-1216*, Hudson further paints a comprehensive picture of the development of the common law, spanning three centuries from the late Anglo-Saxon period to the end of King's John's reign. Divided into three parts – namely England in the late Anglo-Saxon period, Anglo-Norman and Angevin – Hudson not only discusses how common law evolved but also illustrates the economy, the classification of people, different tenures, and their relationship with law. This book also contains basic knowledge of how different courts practised, various different procedures for launching litigation and some particular statutes regarding certain groups of people, such as the clergy and the

¹¹⁶ H. G. Richardson, *The Governance of Mediaeval England from the Conquest to Magna Carta* (Edinburgh: Edinburgh University Press, 1963).

¹¹⁷ S. F. C. Milsom, *Historical Foundations of the Common Law* (London: Butterworths, 1969).

¹¹⁸ Patrick Wormald, *The Making of English Law: King Alfred to the Twelfth Century*, vol. 1 (Oxford: Blackwell Publishers, 2007).

¹¹⁹ Charles Donahue, *Law, Marriage, and Society in the Later Middle Ages: Arguments about Marriage in Five Courts* (Cambridge, MA: Harvard University Press, 2008), 636.

¹²⁰ John Hudson, *The Formation of the English Common Law* (London, New York: Longman, 1996).

Jews.¹²¹ Both *The Oxford History of the Laws of England Volume II 871-1216* and *The Formation of English Common Law* make important contributions to legal history by illustrating the common law's evolution and providing deeper knowledge of legal and social subjects, which this thesis unpacks.

As explained earlier, the thirteenth century was notable for many reasons, but mainly for its leap forward in the common law system¹²² by way of the increasing power of the central royal courts, which were of considerable importance, not only in terms of governance, but also for their effect on people's lives. But how did these royal courts develop and function exactly?

Paul Brand's *The Making of the Common Law* provides a clear picture of the origins of the English common law and especially its development during the thirteenth century. In his book, Brand credits Henry II for forging the common law from its primitive state to a more sophisticated legal system, mainly consisting of national royal courts.¹²³ More importantly, he argues that the new royal courts were more distinguishable from the existing courts than most scholars believed. His theory is that the king created these courts deliberately to consolidate the scattered local courts to form a single royal court and to bring as much litigation as possible under his jurisdiction. Brand points out several major changes in Henry II's time. Firstly, court sessions were now held regularly as part of a countrywide visitation of judges, as opposed to the irregular and unplanned sessions that took place under Henry I. Secondly, presiding judges were appointed by the king to make judgments, while the officials who ran the general eyre during the reign of Henry I only presided over the courts and did not make judgments. Brand argued strongly that Henry II had a huge impact on the English common law, contrary to some scholars' views,¹²⁴ not least because full litigation records were kept, but also because the courts could only hear litigation specifically authorised by the king.¹²⁵ Thus, a process of integrating pre-existing local courts into a new nationwide

¹²¹ Hudson, *The Oxford History of the Laws of England*, vol. 2.

¹²² Lady Stenton described the legal reform during the reign of Henry II as 'The Angevin Leap Forward'. Doris M. Stenton, *English Justice between the Norman Conquest and the Great Charter, 1066-1215* (Philadelphia, PA: Allen & Unwin, 1965), 26.

¹²³ Brand, *The Making of the Common Law*, 82-86.

¹²⁴ For instance, Stroud F. C. Milsom believes that Henry II and his advisers did great things to the common law, but they did not reach out beyond their own world. Milsom, *Legal Framework of English Feudalism*, 3; Brand, *The Making of the Common Law*, 101.

¹²⁵ Brand, *The Making of the Common Law*, 100-102.

legal system commenced. Brand believes that had it not been for Henry II initiating these deliberate changes, a national common law would not have emerged.¹²⁶

The origins of the Common Bench, the most significant royal court for civil litigation hearings, give the impression of it being a muddled legal system – possibly due to the different theories propounded by a variety of scholars who often disagreed with each other. The nineteenth-century historian William Stubbs (1825-1901) had posited that the Common Bench originated in 1178 when Henry II appointed three laymen and two clerks from his household to hear and report complaints from the country. However, this view was debunked by Maitland, who argued that the judges, who used to travel with the king, failed to create a permanent court system and it was only during the absence of Henry II and Richard I that the tribunal became settled at Westminster. Maitland's view did not go unchallenged, though. For instance, Sayles and Richardson were convinced that the Common Bench grew as a branch of the Exchequer, after a growing number of litigation matters heard by it meant a distinction was required to be created between its financial and judicial work.¹²⁷

Despite this confused beginning, more recent views offer a much clearer explanation of the origins of the Common Bench. For instance, Paul Brand and Ralph V. Turner both agree that it grew from the Exchequer. Turner, who researches the personnel of both the Exchequer and the Bench, concluded that the Common Bench grew from the Exchequer in the late 1190s, and that two different aspects had resulted from the process – specialization and professionalization.¹²⁸ Brand, who concurs with this view, points out that during the reign of Henry I, the Exchequer might have heard ordinary litigation, although not regularly. Only after 1179 was it ascertained that ordinary litigation cases were no longer heard at the Exchequer but in the new royal court, i.e., the Common Bench.¹²⁹

In terms of legal mechanisms, an early article by S. J. Bailey in 1944, describes the use of warranty in thirteenth-century England. A warranty of land makes a person liable

¹²⁶ In addition to this chapter, the book also contains other essays concerning the legal system in medieval England, including the development of English legal professions and the legal mechanisms such as distraint and formedon. Brand also discusses the Irish common law, as it was affected profoundly under English common law. Brand, *The Making of the Common Law*, 77-102.

¹²⁷ Ralph V. Turner, 'The Origins of Common Pleas and King's Bench,' *The American Journal of Legal History*, 21.3 (1977), 238-241.

¹²⁸ *Ibid.*, 254.

¹²⁹ Also, by the mid-1160s ordinary litigation was heard in a royal court at Westminster. Brand, *The Making of the Common Law*, 77-102.

for the defence of his or her tenants' land against all men. Warranty could be seen frequently in land litigation, including dower;¹³⁰ therefore it is necessary to understand how warranty operated in court.

The law of warranty profoundly influenced English land law. Bailey traced the bounds of the law of warranty and how it was applied in thirteenth-century land litigation. Starting with the clauses and language often used in warranty, either explicit or implicit, and moving on to the operation and the scope of a warranty, the author uses several pages to discuss *escambium* (exchange). *Escambium* meant that when a warrantor failed in his defence of his tenant, he should provide another piece of land, which was of the same value as the land lost. However, as Bailey suggests, the scope of the obligation to warranty was not as wide as might be supposed. For instance, the land for *escambium* was only obtainable from the warrantor's land; moreover, in the case of an heir warranting his ancestor, only the land that descended to the heir could be made available for *escambium*. Bailey also points out that the law of warranty frequently became a strong weapon for litigants who wished to delay the litigation process for as long as possible, especially when unscrupulous lawyers combined this tactic with procedural rules such as *essoins*¹³¹ and defaults in order to hold up the process.¹³²

While some scholars have been making efforts to study the history of common law, others concentrate on marriage – with which most canon law concerned – in England. Charles Donahue studied marriage litigation in the Archbishopial court of York (1300-1500), and the episcopal courts of Ely (1374-1381), Paris (1384-1387), Cambrai (1438-1453) and Brussels (1448-1459). Although all five episcopal courts were applying the canon law of marriage, there were, in point of fact, substantial differences both in the types of cases the courts heard and the results they recorded, due to the differences in local customs and legal practices. Donahue found that couples in England had more freedom to make their own matches than their counterparts on the Continent. For instance, daughters in England were prone to marry men according to their own fancy without consulting their parents, while in France, young women always had a choice of

¹³⁰ Bailey even points out that the warranty of dower was the most frequent form of warranty in thirteenth-century England. See S. J Bailey, 'Warranties of Lands in the Thirteenth Century,' *The Cambridge Law Journal*, 8.3 (1944), 274-299.

¹³¹ *Essoin* is an excuse for non-appearance in court in medieval English law.

¹³² Bailey, 'Warranties of Lands in the Thirteenth Century,' 274-299

remaining celibate.¹³³ Donahue also argued that when it came to marriage law, women's voices did get heard. Canon law gave women equality with men, and they were aware of this fact. In the fourteenth century, the courts of York and Ely both show a high proportion of female plaintiffs, which was regarded as sufficient evidence of female agency by Donahue.¹³⁴

Two other works touching on medieval marriage are Frederik Pedersen's *Marriage Disputes in Medieval England* and Conor McCarthy's *Marriage in Medieval England: Law, Literature and Practice*.¹³⁵ The former illustrates a variety of marriage disputes, including the validity of marriage, marital violence, the question of consent, sexual relations within marriage, and property issues.¹³⁶ Likewise, the latter's discussion hinges upon marriage. McCarthy discusses how marriage was represented in medieval English legal and literary texts.¹³⁷

Although marriage and canon law concern this thesis peripherally, admittedly the three property rights discussed here were interwoven with marriage. It was marriage that brought husbands' interests to the lords and posed a potential threat to the heiresses' inheritance; it was marriage that made women lose control of their own property; it was marriage, a valid one, that bestowed on a woman her dower right. Medieval women's property rights are remarkably related to marriage, and remarriage. As mentioned, the emphasis of this thesis will be put on women's experiences of pursuing their property rights in court, and will only touch on the validity of marriage when discussing the dower right in chapter 5. Nonetheless, the works addressed above all provide a clear illustration of medieval marriage in England.

The above works inform our understanding of the evolution of the common law and the operation of the courts. In particular, *The Oxford History of the Laws of England, Volume II 871-1216* provides details of the proceeding of land pleas, the jurisdictions of different courts, and the relationship between them, for instance how litigation transferred between these courts.¹³⁸ Brand and Turner put much more emphasis on the

¹³³ Donahue, *Law, Marriage, and Society in the Later Middle Ages*, 636.

¹³⁴ *Ibid.*, 638. Agency is an individual's capacity to act on his or her own free will. In contrast, structure refers to the influences which determine or limit an individual's free will.

¹³⁵ Frederik Pedersen, *Marriage Disputes in Medieval England* (London: Hambledon, 2000); McCarthy, *Marriage in Medieval England*.

¹³⁶ Pedersen, *Marriage Disputes in Medieval England*.

¹³⁷ McCarthy, *Marriage in Medieval England*.

¹³⁸ Hudson, *The Oxford History of the Laws of England*, vol. 2, 569-573.

development of the Common Bench and the King's Bench, articulating how these two significant royal courts evolved and their important impact on common law. All in all, these works provide a basic understanding of the court frameworks, which enables this thesis to paint a clear picture when discussing women bringing their suits in court in practice.

The works listed above are only a very few of the brilliant studies of medieval women and the common law, and doubtlessly, there will be more extraordinary works from scholars. This literature review presents a non-exhaustive overview of the many scholars both past and present who have contributed to the field, and I am indebted to their research. From my analysis of the available literature it seems that there is a dearth of work comparing *dos*, *maritagium*, and *hereditas* in the context of medieval English women. Likewise, there is very little examining these three components of common law, together with a woman's individual experiences in courts.

2.2 Primary sources

Different kinds of primary sources have been investigated in this study, including legal treatises, statutes, legal records, private documents, and administrative records, which I will introduce in groups, as follows.

2.2.1 Legal treatises

Two basic, but towering, legal treatises existed in thirteenth-century England, namely Glanvill's *Tractatus de Legibus et Consuetudinibus Regni Anglie*, commonly known as *Glanvill (The Treatise on the Laws and Customs of the Realm of England)*, and Bracton's *De Legibus et Consuetudinibus Angliae (On the Laws and Customs of England)*.¹³⁹ These two important sources for the common law, written in the twelfth and thirteenth centuries, influenced the establishment of the customs of England. As the chief justiciar of England during the reign of Henry II, Ranulf de Glanvill was believed to be the author of the above-mentioned *Tractatus*, which clarified legal process by introducing writs and restating the common customs of England. *Glanvill*, which was the first detailed exposition of English common law, is considered to be the

¹³⁹ Henry de Bracton, *De Legibus et Consuetudinibus Angliae*, ed. George E. Woodbine, rev. and trans. Samuel E. Thorne, 4 vols. (Cambridge, MA: Harvard University Press, 1968-77).

‘book of authority’.¹⁴⁰ *Glanvill*’s influence is clearly visible in *Bracton* as it widely cited *Glanvill*. Carrying on from *Glanvill* to become one of the most ambitious legal works in the country, it provided case studies of common law in the king’s courts by focusing on property and criminal law.¹⁴¹ Hence, its detailed illustration of cases helps historians to paint a vivid portrait of how people worked alongside the laws.

We will also consult the notable contemporary legal text, *Britton*. Written in ‘law French’, this book was completed during Edward I’s reign, under his command. The authorship is uncertain, but as Simon E. Baldwin suggests in the ‘Introduction’ to *Britton: An English Translation with Notes*, the author might have been one of the justices of an inquisitorial tribunal instituted by Edward I.¹⁴² Similar to other legal treatises, *Britton* illustrated how the different courts worked, people’s status and their property, and remedies for wrongdoings. Regarding women’s property rights, *Britton* explained the procedure of dower, and discussed the inheritance and actions by heirs and coparceners. *Britton* also featured its endeavour to support royal prerogatives.¹⁴³ Moreover, it was the first law book written in a language commonly understood by people who took part in court proceedings.¹⁴⁴

2.2.2 Statutes and charters

In combination with *Glanvill* and *Bracton*, other books of authority on the common law, and several prominent statutes, will be examined. These include the Coronation Charter of Henry I (c. 1100), the 1225 Magna Carta,¹⁴⁵ the Statute of Merton of 1236, the Statute of Westminster I of 1275, the Statute of Gloucester of 1278 and the Statute of Westminster II of 1285. These will act as watersheds in this study in order to show how they affected women’s property rights. The Coronation Charter of Henry I will be given particular prominence in that it signified a new era in governance. Not only is it the first surviving English coronation charter, but it also stipulated widows’ property

¹⁴⁰ Sarah Tullis, ‘Glanvill after Glanvill: tThe Afterlife of a Medieval Legal Treatise,’ in *Laws, Lawyers and Texts: Studies in Medieval Legal History in Honour of Paul Brand*, ed. Susanne Jenks, Jonathan Rose and Christopher Whittick (Leiden: Brill, 2012), 327-360.

¹⁴¹ Like Ranulf de Glanvill, Henry de Bracton was regarded as a supervisor or a reviser of the work rather than a sole author, according to recent argument.

¹⁴² *Britton*, ed. and trans. Nichols, Francis Morgan (Washington, D. C.: J. Byrne Co., 1901), ix.

¹⁴³ *Ibid.*, xiv-xv

¹⁴⁴ *Ibid.*, xix.

¹⁴⁵ The translation of Magna Carta and extensive discussion of the interplay between Magna Carta and medieval England can be observed in David Carpenter’s *Magna Carta*.

rights and their freedom to remarry.¹⁴⁶ Furthermore, it was regarded as a predecessor of Magna Carta because it restricted the rights of the monarch.¹⁴⁷ The issue of any statutes and charters from the Coronation Charter of Henry I to the Statute of Westminster II should be viewed in their political and social context.

The above provisions and statutes are of great significance because they dictated the development of women's property rights, even though women were not the only group these laws concerned. Although this legislation originally concerned the interests of the crown and noblemen, it was applied to all women in general and was not only limited to noblewomen.

2.2.2.1 The circulation and learning of statutes and legal treatises

A question arises here of how these statutes circulated and, more importantly, how people learnt the contents of the statutes in order to follow them. The engrossments of the 1217 Magna Carta, for instance, started to be sent to sheriffs in 1218, who were ordered to read them in their county courts. After that, an order to read the 1217 Magna Carta was made in 1225, 1255, and 1265. In 1297, the 1225 Magna Carta was sent to every cathedral, with the instruction that it be read in front of the people twice a year. By 1300, the sheriffs were made to read the Charter four times a year before the people in county courts.¹⁴⁸ Apparently, the proclamations were thought to raise awareness of the charters' contents. However, Carpenter doubts that the Charter's complex details could have really been understood by people. He posits that some might have listened with full attention, but some might just as easily have gone to the ale house. He further points out that in order to get the details across, the actual texts became crucial. When Carpenter mentions that the engrossments and confirmations of different versions of the Charter were available in cathedrals, he implies that the populace had sufficient literacy to read the copies placed on public display.¹⁴⁹ However, the majority of people in England were illiterate, rendering the altogether altruistic service somewhat redundant. It therefore fell to the clergy to teach people about the contents of the Charter.

¹⁴⁶ The details of the *Coronation Charter* of Henry I will be examined in chapter 5.

¹⁴⁷ Henry B. Tunis, 'The Coronation Charter of 1100: A Postponement of Decision: What Did Not Happen in Henry I's Reign,' *Journal of Medieval History*, 4.2 (1978), 125-144.

¹⁴⁸ Carpenter, *Magna Carta*, 430-431.

¹⁴⁹ *Ibid.*, 431.

The efforts the Church made in order to publicise the Charter are thoroughly discussed by Felicity G. Hill in ‘Magna Carta, Canon Law and Pastoral Care: Excommunication and the Church’s Publication of the Charter’.¹⁵⁰ Hill points out that the Church not only read the Charter aloud frequently, in the vernacular, in parish churches throughout England, but also decreed the automatic sentence of excommunication for anyone who infringed its laws and rules. Every Christian in England had to know not only the principles of the Charter but also the details of every clause.¹⁵¹ Hill stresses that the Church’s efforts to disseminate the Charter were not only because it secured the liberties and many crucial rights of the church, but also because the excommunication endangered one’s soul, so it was the clergy’s duty to see that their parishioners did not incur automatic excommunication. To be excommunicated for disobeying Magna Carta implied that Magna Carta was not just a political concern but a crucial part of parish life. Since the Bible says that priests should care for their flocks, the clergy would have interpreted this as taking good care of their parishioners, including preventing them from infringing Magna Carta.¹⁵² The publication of Magna Carta by the Church, and its teaching of it to parishioners, enabled peasants and those from lower classes in society to learn the Charter, and brought awareness of the Charter to all levels of the society.¹⁵³ The threat of excommunication, and the dissemination of the Charter by the Church, should be viewed as part and parcel of thirteenth-century pastoral care.¹⁵⁴

It made good practical sense for the government to make the Charter as widely available as possible. The more people who knew about it, the easier it would be to implement on a widespread legal, social and cultural level. Legal treatises, however, had a quite different fate for they were mostly only read and learned by people of the legal profession. For instance, there are only thirty-eight copies of the manuscript of *Glanvill* known to exist; most of them were made before the fourteenth century, and the last updated version dates from the early fourteenth century. *Glanvill* was first printed in 1554 and, surprisingly, was still being cited in court as late as 1992.¹⁵⁵ Sarah

¹⁵⁰ Felicity G. Hill, ‘Magna Carta, Canon Law and Pastoral Care: Excommunication and the Church’s Publication of the Charter,’ *Historical Research*, 89.246 (2016), 636-650.

¹⁵¹ *Ibid.*, 636.

¹⁵² *Ibid.*, 642.

¹⁵³ *Ibid.*, 650.

¹⁵⁴ *Ibid.*

¹⁵⁵ Tullis, ‘*Glanvill* after *Glanvill*,’ 327-328.

Tullis examines in ‘*Glanvill After Glanvill: The Afterlife of a Medieval Legal Treatise*’ how and why *Glanvill* was used after the thirteenth century. Looking at the later uses of *Glanvill* in early modern England and Colonial America she points out that whilst the first printing of the treatise was out of an interest among antiquarian book dealers, it did have the bizarre effect of making the treatise increasingly read and cited by lawyers.¹⁵⁶

Tullis argued that both legal and political uses of *Glanvill* in sixteenth and seventeenth-century England were anachronistic because it was utilising archaic laws in a contemporary political context.¹⁵⁷ *Glanvill* was not the only legal treatise that was removed from its rightful historicity. *Bracton* suffered the same fate and was cited more often than *Glanvill*.¹⁵⁸ The first move to return *Glanvill* to its rightful historical context was taken up by Stuart historians, such as John Selden, who argued that it had no place in legal arguments and as such should constitute a historical context in its own right. In conclusion, Tullis believes that the various uses of *Glanvill* in law, politics and history evidence a rich afterlife for the text, with its status ranging from simple ornament to political weapon and then to the framework of historical understanding.¹⁵⁹

Both legal treatises and statutes dictate what laws should be like; however, they do not reflect the practice of law as accurately as court records do. Medieval English legal documents are surprisingly well preserved, and they provide the historians with ample sources to explore what sorts of lives people lived. As mentioned earlier, the thirteenth century is significant in legal history because of the birth of the common law, and because the courts became more sophisticated in order to accord with the new form of government. Therefore, by their very preservation, the written records of the courts in the thirteenth century give us a glimpse into the dynamics of society, in particular for women. These can be seen in three very different types of court records: the ecclesiastical, the manorial and the royal.

¹⁵⁶ *Ibid.*, 337-339.

¹⁵⁷ *Ibid.*, 341-344.

¹⁵⁸ *Ibid.*, 346.

¹⁵⁹ *Ibid.*, 356.

2.2.3 Court records

The court records examined in this thesis are those from the king's court, that is, the records from ecclesiastical courts are excluded. However, it should be borne in mind that the church courts were, in effect, as important as secular law courts because they had jurisdiction over all Christians in England, which was almost everyone except for those sentenced to excommunication. Church courts dealt with issues relating to religious matters, including marriage, divorce and adultery, which impinged considerably on women's property rights.¹⁶⁰ For example, the Canterbury Synod of 1213-1214 forbade clandestine marriage and ordered a public form for marriage.¹⁶¹ If a woman's marriage was adjudged void or illegitimate by a church court, then she would not be admitted to her dower share in common law.¹⁶²

Secular law courts consisted of the king's courts, county courts, hundred courts, the sheriffs' tourns and lords' courts.¹⁶³ However, not all people had access to the same courts; for instance, villeins were not allowed to bring land pleas to the king's courts, as we shall see in the detailed discussion in chapter 5 of this thesis, nor could they act as jurors.¹⁶⁴ Manorial court records, which are rich in local customs, focused on relationships between villeins and lords and concerned issues such as payment of rents and the performance of services owed. Although women appeared frequently in manorial court records, they do not reveal much about them. Only two areas of manorial records concerned women: marriage and inheritance. When a villein was planning to

¹⁶⁰ A consistent theory of what made a marriage did not emerge until the twelfth century, when the Church turned marriage from a civic contract to a sacrament. The basis of marriage is the consent of the couple, and the marriage should be celebrated in church, although clandestine marriage was still legitimate. This theory of marriage was finally accepted into the law of the Church by Pope Alexander III (c. 1159-81). Leyser, *Medieval Women*, 106-107. A few important synodal statutes concerning marriage in the thirteenth century are as follows: (i) 1 Canterbury 55 (1213 X 1214): ordering that the betrothal should be held in public, in front of witnesses who could give their testimony if the betrothal was questioned. *Councils and Synods with Other Documents Relating to the English Church*, vol. 2, ed. F. M. Powicke and C. R. Cheney (London: Oxford University Press, 1964), I, 34-35; (ii) 1 Salisbury 83 (1217 X 1219): requiring the presence of a priest at betrothals. *Ibid.*, 87. (iii) 1 Salisbury I 84 (1217 X 1219): regulating the correct form of marriage. Mutual consent should be expressed in words, in the present tense. *Ibid.*, 87-88; (iv) 2 Salisbury 23 (1238 X 1244): ordering the church priest to interrogate the persons contracting whether they give their consent without any coercion. *Ibid.*, 375-376; (iv) 2 Salisbury 23 (1238 X 1244): accepting clandestine marriages if they were tolerated with permission. *Ibid.*, 375. See also McCarthy, *Marriage in Medieval England*, 19-50.

¹⁶¹ Pedersen, *Marriage Disputes in Medieval England*, 7; 1 Canterbury 55 (1213 X 1214). *Councils and Synods with Other Documents relating to the English Church*, ed. Powicke and Cheney, vol. 2, I, 34-35.

¹⁶² The detailed discussion of this is in the later part of this thesis. Richard H. Helmholz, *Marriage Litigation in Medieval England* (London: Cambridge University Press, 1974), 1-2.

¹⁶³ Hudson, *The Oxford History of the Laws of England*, vol. 2, 537-573.

¹⁶⁴ *Ibid.*, 754.

marry off his daughter, he had to pay a certain amount of money, known as merchet, to his lord.¹⁶⁵ However, manorial court records were kept as simple as possible, thus the insights into women at that level of society are rather thin. Their illuminating reports mostly concerned mens' activities.¹⁶⁶

On the other hand, with their jurisdiction over almost the whole of England, the royal court records were comparatively well documented, hence they offer much more detail about the women appearing before them. By combining all three forms of court records, it is possible to gain a comprehensive picture covering every social class. However, as Ruth Kittle suggests, these records are too weighty for them to be deciphered within a single scholar's lifetime.¹⁶⁷ Therefore, this study will only focus on women attending the royal courts with regards to their property rights, hence both ecclesiastical and manorial court records will not be considered.

Different court records relating to women's property rights will be investigated in this study. This will comprise primarily the following court records: the Curia Regis Rolls, Plea Rolls (CP 40s), Feet of Fines, and The Year Books. Among these records, CP 40s are the only ones that have not been published, but they exist in manuscript form and will be referred to later in this chapter. Before introducing the various court records, and explaining their purpose and why they are so significant to this study, it is necessary to briefly to discuss the development of the common law.

2.2.3.1 The development of the royal courts

Medieval English courts, consisting of itinerant justices, the Exchequer, the Common Bench and the King's Bench, can be dated back to the *curia regis*, having been introduced by Norman kings. Although the *curia regis* was the highest judicial institution in the kingdom, it was anything but professional because it was not uncommon for the king's household officers to act as judges. Likewise, there was no sign to indicate that it convened on a regular basis. Under Henry I, however, its members were sent on circuits to hear cases in the counties, while, at the same time, its officers were involved in other governmental tasks. Sessions were still not held regularly and neither do they appear to have been planned. The pivotal moment came

¹⁶⁵ Mark Bailey, *The Decline of Serfdom in Late Medieval England* (Woodbridge: The Boydell Press, 2014), 37-38.

¹⁶⁶ Bennett, *Women in the Medieval Countryside*, 20-21.

¹⁶⁷ Kittel, 'Women under the Law in Medieval England 1066-1486,' 124-137.

in 1176 under Henry II when countrywide judicial visitations were made by itinerant justices. To enable this, the king divided the country into six circuits, each to be visited regularly by a group consisting of three justices.¹⁶⁸

After 1176, the general eyre (circuit) became a regular part of the English legal system. However, 'general eyre' is considered a modern term, coined by William C. Bolland. Contemporaries at the Chancery described these visiting sessions as 'eyre of the justice for the common pleas' or 'for all pleas'. The reason to use the term 'general eyre' is to distinguish itinerant justices from those with more limited power, including to hear special civil or crown pleas, to conduct fiscal enquiries, or to hold forest eyres.¹⁶⁹

The justices sent by the king were instructed to make judgments in cases instead of simply presiding over them, thereby taking control of law on behalf of the king. Thus sessions of the general eyre were regarded as sessions of the king's court. This departure was highly significant as it became central to the development of the common law – the immediate consequences of which were: (i) that judgments of the general eyre no longer depended on local customs, but followed more universal principles established by the king's justices; and (ii) the common law was applied uniformly in all different counties.¹⁷⁰

With the application of a more consistent and nationwide set of laws, the number of cases heard in the king's court increased and the formerly inchoate institution changed into a more professional one. Notably, it was now referred to as the Common Bench. As mentioned previously, recent scholarship believes that the Common Bench emerged out of the Exchequer.¹⁷¹ Paul Brand states that during the reign of Henry I the Exchequer did not hear ordinary litigation regularly, and there is some evidence to suggest that, by the late 1170s, ordinary civil litigation cases were heard at Westminster. Some doubt remains, therefore, regarding who was hearing civil litigation. Undoubtedly, by 1190, a royal court was sitting at Westminster hearing litigation, so might this have been the Exchequer? Paul Brand's view is that the Exchequer might have been hearing common pleas by the mid-1160s, but this can be refuted by surviving final concords from the 1170s that reveal that civil pleas were being heard regularly at

¹⁶⁸ Brand, *The Making of the Common Law*, 83-86.

¹⁶⁹ David Crook, *Records of the General Eyre Public Record Office Handbook* (London: HMSO, 1982), 1.

¹⁷⁰ But they were ordered to leave cases that were too difficult to the king. See Brand, *The Making of the Common Law*, 83-86.

¹⁷¹ Turner, 'The Origins of Common Bench and King's Bench,' 238-254.

Westminster in the king's court, which was referred to as 'the king's court at Westminster'.¹⁷² After 1179, however, most final concords do not refer to the Exchequer (*ad Scaccarium*), and from this point onwards, the continuous sessions of the Common Bench (the king's court) allowed it to steadily develop a judicial function. Most importantly, the courts had already begun to keep written records of cases, which enabled them to function efficiently, and at the same time leave an abundance of primary sources for historians to understand how the common law developed.¹⁷³

Another prominent development emanated from the king's court – the King's Bench. Although it was officially named by Henry III (c. 1207-1272), it was originally developed during the earlier monarchy of King John (c. 1166-1216).¹⁷⁴ During his reign, King John had created his own court and had supervised any business he was interested in by removing particular cases from the Common Bench to be heard in his court, an action that led to Chapter 17 in the 1215 Magna Carta – 'Common pleas shall not follow our court, but shall be held in some fixed place'.¹⁷⁵

When Henry III ascended the throne, the King's Bench was not as powerful or established as the Common Bench, mainly hearing only trivial and miscellaneous cases because, in its early stage, it only functioned between terms set by the Common Bench, or when it had adjourned for an eyre. However, by 1236, the King's Bench showed signs of strengthening, due both to its correcting of procedural mistakes made by the Common Bench and by its taking cases awaiting hearing by the Common Bench or assize commissioners.¹⁷⁶

A frequently asked question regarding the two royal courts, is that of what distinguishes the Common Bench and the King's Bench. Most scholars agree that there was no noticeable difference between them. For instance, G. O. Sayles was of the view that a case would be heard at the King's Bench if it lay within the king's interests; while Alan Harding states that if it related to property rights and needed formal, unhurried procedure, a case would be directed to the Common Bench.¹⁷⁷ Litigants could always

¹⁷² Brand, *The Making of the Common Law*, 87-89.

¹⁷³ *Ibid.*, 89-93.

¹⁷⁴ Turner, 'The Origins of Common Bench and King's Bench,' 245-250.

¹⁷⁵ *English Historical Documents*, vol. 3, ed. David C. Douglas and Harry Rothwell (London: Eyre and Spottiswoode, 1975), 319. See Alan Harding, *The Law Courts of Medieval England* (London: George Allen & Unwin; New York: Barnes and Noble, 1973), 76.

¹⁷⁶ Turner, 'The Origins of Common Bench and King's Bench,' 250-251.

¹⁷⁷ Harding, *The Law Courts of Medieval England*, 77-78.

pay fines in order to have their cases transferred to the King's Bench.¹⁷⁸ Maybe the best clarification of the relationship between the Common Bench and the King's Bench, prior to 1323, when all criminal cases were confirmed to be channelled to the King's Bench, is that suggested by G. O. Sayles: 'inasmuch as private parties might decide to settle disagreements in the King's Bench, it was a court of common pleas as much as the Common Bench.'¹⁷⁹

The twenty published volumes of Curia Regis Rolls – a series of English government documents dating from 1196 to 1250 – include the cases of both the King's Bench and the Common Bench.¹⁸⁰ Not only do these volumes illustrate the lives of many individual litigants, but they contain numerous cases that relate to women's property. However, it should be noted that any litigation recorded in the Curia Regis Rolls was heard in the king's courts. Consequently, the volumes do not cover everyone's experiences, since, as was mentioned in the Introduction, villeins were not entitled to hearings in the king's courts, so they had to turn to their lords' court for litigation. There were some exceptions to this rule, however, since some villeins did actually appear in the king's courts. For instance, if a villein held free land, he was regarded as a 'free' man. However, if a free man held a villein tenure, he would be considered to be a villein, hence he was not allowed access to the king's courts.¹⁸¹

Alongside the Curia Regis Rolls, the Year Books, written in Latin or Anglo-Norman, recorded any pleas set before the Common Bench. Importantly, these contained details of the litigants' arguments and assertions. Because Curia Regis Rolls mainly only contained the litigants' names, the objects of dispute and the arguments of both parties were not always recorded; whereas the Year Books are rich in detail, even including the arguments of the legal practitioners and the judges' verdicts. They also contain anonymous notes about the proceedings, which show how legal doctrines and concepts of common law developed over the period. Another major difference between Curia

¹⁷⁸ Turner, 'The Origins of Common Bench and King's Bench', 238-254.

¹⁷⁹ *Selected Cases in the Court of King's Bench under Edward II*, ed. George O. Sayles, vol. 4 (London: Selden Society, 1957), xxxii-xxxiii. See also Turner, 'The Origins of Common Bench and King's Bench', 238-254.

¹⁸⁰ But cases brought before 1250 that did not close until 1272 are recorded as well. The earliest surviving Plea Rolls from one of the king's courts dates to 1194, but it is highly possible that from 1176 the justices started keeping full Plea Rolls record. See Brand, *Making of the Common Law*, 87-93.

¹⁸¹ Villein tenure means that villeins held land through service to their lords. It could be held by free men, but the danger was that they would be regarded as villeins. In contrast, if a villein held free land he could be regarded as a free man.

Regis Rolls and the Year Books is that the latter recorded the names of the serjeants,¹⁸² the judges, and legal practitioners, which gives us a clearer picture of the development of the legal professions.

Common Pleas Rolls, unlike Curia Regis Rolls and the Year Books, are in manuscript form and written in highly abbreviated Latin. The publication of Curia Regis Rolls stopped in 1250 when the Common Pleas rolls took over, covering the years from 1273 to 1874. They have never been published and are preserved in The National Archives at Kew, London. Catalogued as ‘CP 40’, each roll covers one of four legal terms in the year – Michaelmas, Hilary, Easter and Trinity. Each term consisted of between 5,000 to 10,000 cases. Cases heard in the Common Bench were launched by an original writ from Chancery, and observed four main categories of jurisdiction: (i) ‘real actions’ to assert a title to land; (ii) ‘personal actions’ including actions of account, covenant and debt over 40s; (iii) mixed real and personal actions, such as *ejectio firmae* (the ejection from lands held for a term of years); and (iv) cases shared with the King’s Bench, including actions brought on breach of royal statute and trespass, or together with other ordinary cases in which either the king had a special interest, or the litigants had paid the fines to have them heard by the King’s Bench.¹⁸³

The entries in the Common Pleas Rolls contain the names of plaintiffs and defendants, the details of the conflicts, the places where the disputes occurred, the litigants’ arguments and the judgments. The rolls show that most cases were likely to be adjourned to a later date as they were unlikely to be resolved in one day, and sometimes cases were extended for much longer, occasionally several years.¹⁸⁴ Like the Curia Regis Rolls, the Common Pleas Rolls were written in Latin; however, the Curia Regis Rolls are published versions of the original rolls, so not only are they well transcribed, they also contain the notes written by the editors. In contrast, CP 40 are records of legal cases that were written up on parchment rolls. Each roll is made up of a large number of individual rotuli or rolls, and single sheets of parchment are used on both sides and filed together at the top in order to make up the whole unit.¹⁸⁵ They are

¹⁸² A member of a superior group of barristers, from whom the judges of the common law were chosen. The position was abolished in 1880. See ‘OED,’ accessed on 14 July 2018, <http://0-www.oed.com.catalogue.libraries.london.ac.uk/view/Entry/176417?redirectedFrom=serjeant#eid>

¹⁸³ ‘BHO,’ last accessed on 3 April 2018, <https://www.british-history.ac.uk/no-series/common-pleas/1399-1500/introducing-common-pleas>

¹⁸⁴ ‘BHO,’ last accessed on 28 March 2018, <http://www.british-history.ac.uk/no-series/common-pleas/1399-1500/introducing-common-pleas>

¹⁸⁵ ‘TNA,’ last accessed on 3 April 2018, <https://discovery.nationalarchives.gov.uk/details/r/C5417>

also untranslated manuscripts, written in highly abbreviated Latin, and they do not have indexes.

These deficiencies make it difficult to follow cases from beginning to end. Also, litigants often settled disputes out of the courts, hence the rolls are littered with sudden disappearances from the official record. The entries do not include what was actually said, word for word, by the litigants and serjeants, but many of them do contain important arguments and information, which offer insights into how people used legal mechanisms in order to establish their rights. More interestingly, a large proportion of the rolls show plaintiffs trying to ensure appearances over numerous entries, from summoning warrantors to defaults and essoins.¹⁸⁶ Despite the difficulties of consulting the CP 40s, they have served as a principle source in this study, because they not only record individuals' experiences but they also show the process of litigation. Most cases proceeded slowly, and some were even maddeningly slow, which doubtlessly affected both the plaintiffs' and the defendants' strategies.

The digitisation of CP 40s has revolutionised access to the rolls for researchers. Publicly accessible from the Anglo American Legal Tradition (AALT) website, they have opened up the vast majority of medieval English court records to researchers and the public alike.¹⁸⁷ For this study, all the cases from the CP 40s have been accessed from the AALT; hence the image number of the case will act as a substitute for the membrane number of the roll in the footnotes.

Another significant source are feet of fines, which date from 1195 onwards. A fine (*finis* or *finalis concordia*) was a device already in use during the time of Henry II. It denoted an agreement between the parties to end legal action,¹⁸⁸ that is, if the litigants decided to reach an agreement they would have the final concords in court, which survived in the form of feet of fines. Feet of fines can be divided into the following two groups – one was made in eyre, the other was made in the Bench (either the Court of Common Pleas or the King's Bench).¹⁸⁹ Feet of fines can also be used to help date eyres because the opening phrase usually gives the exact time and date. The opening line reads: 'this is the final concord made in the king's court at [place] on [date] in [regnal

¹⁸⁶ *Ibid.*

¹⁸⁷ 'Anglo-American Legal Tradition,' last accessed on 10 March 2018, <http://aalt.law.uh.edu/>

¹⁸⁸ *Calendar of Kent Feet of Fines, to the End of Henry III's Reign*, ed. Irene J. Churchill, Ralph Griffin Ralph and F. W. Hardman (Ashford: Kent Archaeological Society, 1956), xiii.

¹⁸⁹ Crook, *Records of the General Eyre*, 8.

year] before [names] justices and others of the king's barons and faithful there present.¹⁹⁰

After a final concord to all suits and contentions was reached, neither party could withdraw from it. If either party did not follow the obligations written into the fine, the other party would need to apply to the sheriff to have the transgressing party appear before the king's justices.¹⁹¹ The final concords would be written out three times on a single sheet of parchment, two copies side by side and one copy across the bottom (i.e., at the foot) of the sheet, separated by an indented, or wavy, line. Each party kept one copy and the other, known as 'the foot of the fine', was held as a central record of the conveyance, or other dispute, by the Treasury. A single piece of parchment was used in order to protect against fraud or forgery, for only the genuine copies would fit together. Feet of fines provide historians not only with the final concords, but record the agreed sum of money. However, by the fourteenth century, this not only constituted the actual price, but it was used as a guide price to the value of property on the open market.¹⁹² The research in this study has revealed not only how women arrived at agreements with their counterparties by applying available legal mechanisms, but it allows us to explore the conveyance of inheritance, *maritagium* and dower.

This thesis is in large part built on the court records because most of them record the significant arguments of female litigants and their opponents, although not all of them record exactly what the litigants said. It is with women's experiences that I am concerned, so the cases presented are those that either have as much detailed argument as possible or centrally concern property rights. For example, in the CP 40s, many dower cases are only written down in a few sentences, indicating simply the names of the litigants, the quantity of land and where the land was located, and usually end with one simple sentence saying that one of the parties rendered the land to another. The cases do not as such show the defence women had in court, therefore they have not been presented in this thesis.

¹⁹⁰ *Ibid.*, 9.

¹⁹¹ *Ibid.*, xiv.

¹⁹² The counties which have published their own Calendars of Feet of Fines are as follows: Bedfordshire, Berkshire, Buckinghamshire, Cambridgeshire, Cornwall, Cumberland, Derbyshire, Devon, Dorset, Essex, Gloucestershire, Kent, Lincolnshire, Norfolk and Suffolk, Somerset, Staffordshire, Surrey, Sussex, Wiltshire and Yorkshire. 'TNA,' accessed on 16 March 2017, <http://www.nationalarchives.gov.uk/help-with-your-research/research-guides/land-conveyance-feet-of-fines-1182-1833/#4-what-are-feet-of-fines>

In contrast, cases which have detailed arguments are greatly used in this thesis, especially those containing legal practitioners' different strategies for dealing with changing circumstances in court. More importantly, cases which concern the same issue but with different judgments have been presented as well, in order to illustrate the diversity of women's experiences. For example, in chapter 4, I promote an idea that for a woman, claiming a disputed land as her *maritagium* would bring advantage to her; however, in some cases when women did this, it caused them to lose.¹⁹³ Seeking to identify the reasons for these different results is one of the emphases of this thesis – looking at every case and finding their differences in order to understand the logic of and reasons for the final judgment.

2.2.4 Administrative records

In addition to legal documents, some administrative records were used to track down the transmission of inheritance, dower and *maritagium*. The first group consists of chartularies and charters created by individuals. A chartulary, or cartulary, is a collection of charters, particularly in a large volume or set of volumes, which contains duplicate copies of charters, title-deeds, and similar documents belonging to monasteries, corporations, or other land-owners.¹⁹⁴ As such, chartularies contain significant information relating to patterns of descent for landed properties within families. For example, the *Calendar of the Hobhouse Cartulary of the Hungerford Family* not only contains most of the materials relating to transactions of lands in the Hungerford family, including private charters, but it also offers the researcher an opportunity to track how land descended through the generations and gives valuable information about local customs.¹⁹⁵

Close Rolls, Patent Rolls, Charter Rolls and the Calendar of Inquisitions Post Mortem have acted as adjuncts to this study. Close Rolls, which date from 1204, contain copies of closed letters with an executive nature, which give orders and instructions to

¹⁹³ See chapter 4, p. 124-125.

¹⁹⁴ 'BHO', last accessed on 11 March 2019, <http://0-www.oed.com.catalogue.libraries.london.ac.uk/view/Entry/30842?rskey=DUNBx7&result=1&isAdvanced=false#eid>

¹⁹⁵ John L. Kirby. *The Hungerford Cartulary, pt. 2: A Calendar of the Hobhouse Cartulary of the Hungerford Family* (Chippenham: Wiltshire Record Society), 2007.

royal officials such as sheriffs. They were produced in the royal Chancery.¹⁹⁶ They could also be sent to individuals, recording private deeds, including sales, wills, leases and quitclaims. Although the contents of the Close Rolls are mainly personal and private, they often deal with matters of great importance. For instance, the letters divulge both national and foreign policy.¹⁹⁷

Patent Rolls, in contrast to Close Rolls, consist of copies of letters issued open, or patent, which expressed the crown's will on various matters of public interest.¹⁹⁸ The remit of the rolls is diverse and includes everything from royal prerogative, revenue, judicature, truce negotiations with foreign princes and states, and the appointments of ambassadors. Moreover, Patent Rolls record grants and confirmations of liberties, offices, privileges, lands and, more importantly as far as this thesis is concerned, wardships.¹⁹⁹ The Charter Rolls cover the period from 1199 to 1517 and record royal charters. They cover grants of land, liberties, and privileges to towns, civil and religious corporations and individuals. Apart from original granting charters, charters of confirmation are also enrolled, which either recite the grant in the original charters in full or not; sometimes they have new grants added.²⁰⁰

Patent Rolls, Close Rolls and Charter Rolls collectively belong to Chancery Rolls, but Charter Rolls distinguish themselves from the others by having been executed in the presence of witnesses whose testimony assured the validity of the charters. They also offer more elaborate and detailed clauses.²⁰¹

¹⁹⁶ The close rolls from 1204 to 1277 were published as *Rotuli Litterarum Clausarum in Turri Londonensi asservati* (2 vols, Record Commission, 1833-34); the close rolls from 1227 to 1272 were published as *Close Rolls of the Reign of Henry III* (14 vols, HMSO, 1902-38); however, the close rolls from 1272 to 1509 were published as *Calendar of the Close Rolls* (47 vols, HMSO, 1900-63). The former two series are in Latin transcript and the latter is in English. See 'TNA,' last accessed on 12 March 2019, <http://discovery.nationalarchives.gov.uk/details/r/C3614>

¹⁹⁷ Sir Thomas Duffus Hardy, *A Description of the Close Rolls in the Tower of London: With an Account of Early Courts of Law and Equity and Various Historical Illustrations* (London: 1833), 1-3; 'TNA,' last accessed on 12 March, 2019, <http://discovery.nationalarchives.gov.uk/details/r/C3614>.

¹⁹⁸ The patent rolls from 1202-1216 were published in Latin transcript as *Rotuli Litterarum Patentium in Turri Londonensi asservati, 1201-1216* (Record Commission, 1835); the patent rolls from 1216 to 1232 were published in Latin transcript as *Patent Rolls of the Reign of Henry III* (2 vols., HMSO, 1901-3); the patent rolls from 1232 to 1582 were calendared in English as *Calendar of the Patent Rolls* (HMSO, 1906-), which is still continuing. See 'TNA,' last accessed on 13 March 2019, <http://discovery.nationalarchives.gov.uk/details/r/C3626>

¹⁹⁹ For the content of the patent rolls in detail, see *Ibid.*

²⁰⁰ Most of the charters rolls during the reign of John are transcribed in *Rotuli chartarum in turri Londinensis asservati*, ed., T. D. Hardy (London, 1837). *Calendar of the Charters Rolls Preserved in the Public Office Record Office, 1256-1516* calendars a large part of the charter rolls. See *Ibid.*

²⁰¹ *Ibid.*

Inquisitions Post Mortem²⁰² were local enquiries into lands held by a deceased individual who held the land of the king. Their purpose was to ascertain if any income, or other rights, was due to the crown.²⁰³ In that sense they offer information on landholding and inheritance in medieval and early modern England. Because they mainly concerned tenants-in-chief, they involved people of considerable wealth and status. An inquisition post mortem was initiated when a tenant-in-chief died. The Chancery would then produce a writ ordering the escheator to hold an inquisition in his county. If this tenant-in-chief held the lands in different places, then the writs could be sent for multiple times. The escheators would be asked to take the lands into the king's hands, and to summon a jury of local men to clarify the value of the deceased's land and property.²⁰⁴ The Inquisitions Post Mortem have revealed much detail about the issues with which this thesis is concerned; they offer meticulous records of the amounts of land certain families held, information about the heirs, and more importantly, the amount of dower widows held. They have helped to clarify certain transactions regarding the possession of properties.

2.2.5 The limitations of the sources

Despite the abundance of legal records, they do have their limitations. Regarding the Plea Rolls, the surviving records during the reigns of King John and Henry III only constitute a small part of the records.²⁰⁵ For instance, between 1201 and 1203 there were thirty-three eyres held, but records have only survived for seven.²⁰⁶ The records of the itinerant justices in the early thirteenth century were kept by the justices as their property. Not until 1257 did the barons of the Exchequer order the rolls of justices in eyre, of the bench and coram rege to be transmitted to the treasury.²⁰⁷ A dearth of the records of general eyre during the first half of the thirteenth century makes tracking cases more difficult, and the cases which historians could investigate would never be representative of the majority.

²⁰² Some inquisitions post mortem were kept in the chancery and the others were in the Exchequer. See *Ibid.*

²⁰³ *CIPM* used in this thesis is the online version from 'BHO,' accessed on 29 June 2018, <http://www.british-history.ac.uk/inquis-post-mortem/vol2>

²⁰⁴ 'TNA,' last accessed on 13 March 2019, <http://www.nationalarchives.gov.uk/help-with-your-research/research-guides/inquisitions-post-mortem/>

²⁰⁵ Crook, *Records of the General Eyre*, 12-14.

²⁰⁶ *Ibid.*, 13.

²⁰⁷ *Ibid.*, 12.

Both Curia Regis Rolls and CP 40s seldom contain exactly what the litigants said or record a case from beginning to end. They need to be supplemented by other sources, such as Year Books. Therefore, it often happens that a lawsuit stopped abruptly at some point without any final result being recorded. For example, the dower dispute between Maud de Braose and her son Roger, which I will discuss in detail in chapter 5, had been going on for three years but stopped in 1286 with no final judgment made. They might have reached an agreement in private, which will never be uncovered. While Year Books provide the detail of arguments from the litigants, serjeants and justices, they only begin from the last two decades of the thirteenth century, and therefore can only reflect a small part of the objectives of this thesis.

It should be noted that neither the Curia Regis Rolls nor CP 40s can reflect the experiences of women from all classes of society because, as mentioned, villeins were not allowed to go to the king's courts for land pleas. The court records I examine here show the experiences of people from the upper or middle classes, or those who could afford to have their pleas heard in the king's court.

Another limitation of this thesis is the exclusion of local customs, in that the court records I examine are from the king's courts. Some specific customs regarding women's property rights are peripherally discussed, such as those in Winchester, Lincoln and London, but they are not emphasised. These local customs, certainly, have attracted historians' attention, and many of them have already done excellent and in-depth research on local customs.²⁰⁸ Leaving out local customs also excludes the discussion of certain types of tenure such as burgage and gavelkind from this thesis. The main type of tenure in the court records I examine is socage, the most common residual tenure in medieval England.

A further serious limitation is the general authenticity of legal records. Charles Donahue points out that litigants' arguments could be deceptive. Since it is impossible to prove the validity of the arguments, it is always risky to make any assumption that may be based on false evidence.²⁰⁹

As stated earlier, this study aims to construct a vivid picture of women in the medieval courts: how did they use legal mechanisms to strive for their property rights,

²⁰⁸ See, for example, Wilkinson, *Women in Thirteenth-Century Lincolnshire*; Barron and Sutton, *Medieval London Widows, 1300-1500*; Hanawalt, *The Wealth of Wives*.

²⁰⁹ Donahue, *Law, Marriage and Society in the Later Middle Ages*, 6-7.

and what strategies did they use to obtain, or regain, their *hereditas*, *maritagia* and *dos*? It also demonstrates how they were affected by the arguments their opponents applied against them. It is hoped, therefore, that by investigating the various legal documents that were either complementary or contradictory to each other in thirteenth-century England, this study will show how women exercised and protected their rights to their property.

2.3 Methodology and the structure of the thesis

In order to understand how women pursued their property rights, this study will mainly consist of case studies focusing on individual women's experiences in court in order to illuminate wider, collective experiences. Only three types of property rights will be looked at in order to explore the realities women faced. For instance, innumerable women called Maud will have to come to court to protect their property rights, but each of them will have their own story to tell.

As mentioned, the thirteenth century proved an important turning point in legal history as a result of the revolutionary development of the common law and the numerous statutes concerning property rights that were laid down by the political establishment through parliament. The laws regarding women's inheritance, *maritagiium* and dower profoundly impacted women's property rights; therefore, those statutes should be seen as a watershed moment. Each case study will consider the impact of certain enactments on the outcome of the case; examine how the statutes were interpreted by different parties; and consider how women coped with each new law and how long it took for the new laws to filter through to become a standardised part of court practice. The arguments either made by them directly or by their legal representatives will be examined in order to see what efforts these women, and their counter-parties, made in order to comply with, to contend with, and even to avoid what the law dictated.

As mentioned, Donahue has noted that the litigants' arguments might be deceptive, and therefore lead us astray. He dedicates one chapter in *Law, Marriage and Society in the Later Middle Ages* to discussing lying witnesses and attempts to tease out the truth.²¹⁰ Indeed, litigants' statements cannot always be true and it would be too naïve

²¹⁰ *Ibid.*, 46-62.

to believe they were telling the truth. This study, however, uses this information in order to explore litigants' strategies, that is, I will explore the reason why litigants have argued in a particular way. Whether they lied or not, their evidence shows both the legal problems and the social issues with which they were confronted; it also shows the level of their intent to win their suits. Lying, of course, is a strategy that has been used in courts from the distant past to the present; therefore, litigants' statements have been included unconditionally in this study. For instance, a case I examine in chapter 4 reveals that while the widow claimed a disputed land as her *maritagium*, her opponent argued that it was her dower.²¹¹ This widow might have been either lying or telling the truth, but it does not concern me in this thesis because what I attempt to illustrate is the difficulties and different scenarios women might face in court when they pursued their property rights, and what possible arguments they would adopt to defend their rights.

Case studies, of course, inevitably have limitations. As mentioned, this thesis highlights those cases with important or interesting legal arguments in order to explore wider experiences women had in court, but the cases represented in this thesis are by no means representative of all women's experiences. Some cases might be exceptional, and cannot be applied to the majority of women litigants. As Loengard suggests in 'What did Magna Carta Mean to Widows?', some widows faced the defence saying that they were in fact not widows because their husbands were on the Crusades.²¹² The objection as such was rare compared to the most frequent ones, such as arguing a widow's husband had never been seised of the land in question. However, case studies provide a wide range of circumstances women could possibly encounter in court. Consequently, they tell us more than simply looking at what the law says and reveal the discrepancies between the law in theory and in practice.

The study will start by discussing medieval women's property, namely *hereditas*, *dos* and *maritagia*. Legally, a medieval woman could own her own property, so I will explore her right to that property under the common law from the late twelfth century to the early fourteenth century. The theme of each chapter is as follows: (i) heiresses in court, (ii) *maritagium* as women's land, and (iii) widows in court. These themes will be discussed in Chapters 3, 4 and 5 respectively.

²¹¹ See chapter 4, p.121-122. The case of Alice de Lundresford.

²¹² Loengard, 'What Did Magna Carta Mean to Widows?', 141-142.

Chapter 3 will primarily examine heiresses, including those female heirs of noble and rich families. A daughter could only be an heir when there was no male heir in the same generation. However, unlike the male heir, who, according to custom, inherited the whole of the father's inheritance (primogeniture), a daughter should share the inheritance with her sisters, if she had any. Daughters inherited by means of an equal division of the property. Both *Bracton* and *Glanvill* show that this principle was clearly regulated only after the twelfth century, and according to J. C. Holt it was the cause of litigation.²¹³ The equal division of inheritance between daughters makes the cooperation and conflict between them worthy of discussion, and this will be one of the focuses of this chapter. Another significant section will consider the conflict of interests between widows and heiresses. Although medieval historians have long discussed the conflicts between heirs and widows, this chapter will further explore the inheritance issue when heirs were female. In addition, the difficulties faced by heiresses in claiming their inheritance in the courts will be explored.

Chapter 4 discusses an important form of property for non-heiress daughters. Because not every daughter had a chance to become an heiress and inherit property, they were all considered to possess 'an heiress's potential'. When a daughter married, she would be granted some property from her family, whether in real estate or in movables. Such property, given to married women, is called *maritagium*, which means a marriage portion or dowry. For a non-heiress daughter, a *maritagium* would support her after her husband's death. Most families offered *maritagia* to their daughters, although there were no laws to impose this as an obligation, so it would consist of only a small amount of property, or whatever could be afforded. This chapter will show that claiming a certain amount of land as *maritagium* was a strategy often used by both plaintiff and defendant. It will then be demonstrated how claims to *maritagium* benefited women.

Next, the thesis analyses Claire de Trafford's '*maritagium* as women's land' concept. *Maritagium* in most cases served as the family's property, including both the bride's blood family and in-laws. A bride who was given *maritagium* could not use the land freely since it usually fell under the control of her husband. Thus *maritagium* could easily be taken away from her once married, rather than being kept intact to pass on to

²¹³ Holt, *Colonial England, 1066-1215*, 250.

her children. The chapter will conclude by querying the veracity of Claire de Trafford's idea of '*maritagium* as women's land'. Her rule delineates that *maritagium* was passed down from woman to woman, from mother to daughter, but no such rule officially existed and neither was there a social consciousness to suggest that *maritagium* should be passed on to a woman's daughters as their *maritagia*, as she suggests.

In chapter 5 we discuss dower rights in widowhood. Numerous academics have written prolifically about this topic, including Barbara A. Hanawalt and Joseph Biancalana, but we expand further. Although the common law stipulated that widows were entitled to either a nominated dower or one third of their late husbands' property, several regulations, including the 1225 Magna Carta, the Statute of Gloucester, the Statute of Merton and the Statute of Westminster II 1285 supported this, claiming dower in court was, in fact, a difficult task for widows to accomplish. These rights were reluctantly documented in law, offering no guarantee of them being received. This chapter will also show that, in addition to the obstacles widows faced when claiming their rights, their ability to make private agreements was also significant. Finally, the rights of the most powerful group of women, widowed heiresses, will be looked at. Although Henry I's Coronation Charter did not impose any rule on widowed heiresses, they actually owned considerable amounts of property which meant that many men wanted to marry them. Therefore, through the cases they were involved in, I hope to demonstrate how capable and influential widowed heiresses could be.

Although the focus of this study is women, not all women went to court on their own, since more often than not they were represented by legal practitioners. Therefore, the influence of legal practitioners on women's property under the common law will be discussed in this chapter. In particular, the claims that attorneys used in court, and whether they affected the final judgements, will be explored. For this discussion, I will explore two paths: (i) the contribution that practitioners brought to women's property claims; and (ii) the real experiences that women had with their properties. Women brought cases to court because the substantive law did not cover all scenarios, and it is the outcomes of these cases that show how women's property rights in common law developed.

This study will conclude by comparing the property rights of heiresses, brides and widows. The cases that appear most frequently in legal documents were those of women who went to the courts in order to secure their own property. Dower might have been

the only property over which a woman could have sole control, but the significance of inheritance and *maritagium* and the rights of women to dispose of them should not be underestimated. I will clarify the position by exploring the differences and similarities between *hereditas*, *maritagium* and *dos* as the common law developed.

2.4 A contribution to history

Sue Sheridan Walker regards dower as ‘women’s business’; likewise, Claire de Trafford believes *maritagium* to be ‘women’s land’. Indeed, dower and *maritagium* seem to be property that belonged only to women in legal terms as specified by common law, but this did not extend to real-life terms. We ought also to bear in mind that both rights are indirectly attached to men. For example, a widow’s right to dower depended entirely on her husband’s decision; therefore, if her husband neither left her property nor gave the widow nominated dower during the marriage, she obtained nothing after his death. *Maritagium*, which a bride obtained to support her new family, was also a type of property that was ‘attached’ to men in that it fell under her husband’s control after they married – at least, this was true prior to the Statute of Westminster II in 1285. Likewise, a woman could only become an heiress when there was no male heir. The right of inheritance, *maritagium* and dower for a thirteenth-century English woman was predicated and depended entirely on the existence of men. No matter which property right a woman held, be it inheritance, *maritagium* or dower, they were all entangled with either a man’s interest or were related to family. When a woman pursued her property in court, a small part of her motive for doing so was to protect her own benefit, but by launching litigation it meant there were at least two of the following parties involved - women, men, heirs and other tenants.

This study also aims to analyse the gap between the common law and reality. This will be examined by investigating various kinds of difficulties women encountered when they claimed their property rights in court. Although the 1225 Magna Carta declared that women should, after the death of their husbands, have their inheritance, marriage portion and dower without any additional conditions,²¹⁴ in reality they encountered a number of difficulties when they demanded their dower. The problem might have been due to the fact that the description of this particular right was abstract

²¹⁴ *English Historical Documents*, ed. Douglas and Rothwell, vol. 3, 342.

and thus many thirteenth-century women found that they had no right to any property unless they resorted to legal action. Law-making is usually a tool monopolised by the ruling or wealthy classes, hence legal practice is a reflection of social circumstance. By examining the predicaments in which women found themselves because of the laws concerning their rights to property, this study will show how they overcame their circumstances and managed to secure their property rights.

In order to truly understand the nature of women's property and their rights to it, it is necessary to examine a broad spectrum of marriage and inheritance. Hence, instead of only looking at noblewomen, as many researchers have previously, this study will look at how women from different classes pursued their property rights. It will consider the differences between them, and whether they were treated differently by thirteenth-century courts or in quite similar ways. Although this study cannot encapsulate all medieval women, it will attempt to elucidate individual experiences by allowing otherwise unknown women to stand out from the obfuscation of history.

Chapter Three: Heiresses in Court

So, why begin with heiresses' inheritances instead of *maritagium* and dower? A woman could play as many diverse roles as a man did in his life, from a daughter to a sister, an heiress, a bride, a widow, and even a widowed heiress. Each role had its own obligations and rights cemented in law, which will be carefully investigated in this thesis. A woman could become an heiress at any stage of her life. In medieval England, the eldest son inherited all; however, if there was a failure of male issue, a daughter, or daughters, would inherit.

Twenty-six court cases relating to heiresses are examined this chapter, concerning the issue of homage and service, wardship and marriage, disputes over inheritance shares between co-heiresses, husbands' interests in wives' inheritance, and collaboration between co-heiresses against other litigants. The study begins with an explanation of the notion of an heir, and the different inheritance patterns that applied in the thirteenth century. The discussion will then examine the form of female succession, which was equally divided between daughters, and it will consider what impact this had on co-heiresses. This will be followed by an investigation into the obstacles co-heiresses were faced with in court; whether in collaboration with or in confrontation against others. The focus will then turn to how heiresses managed their inheritance to sustain themselves and protected their property rights; and finally, the chapter will analyse how the benefits of inheritance affected women's families, depending on what form of legal actions they had taken. It will consider, for example, the exchange of inheritance shares between co-heiresses and the effect this had on the family. This will be followed by an examination of the obstacles they faced when claiming their inheritance against others, especially in cases where husbands alienated their wives' inheritance. Following a discussion of the legal status and vulnerability of heiresses, the focus of the chapter will move to the issue of wardship and the crown's interests in noble heiresses.

3.1 Who is an heir?

Who is entitled to be an heir? In present day common law the definition of an heir and heiress is one 'who is entitled by law to succeed another in the enjoyment of

property or rank, upon the death of the latter'.²¹⁵ Glanvill articulates that heirs could be near or remote. The former were the heirs of a man's body, that is, his sons or his daughters.²¹⁶ Concerning remote heirs, *Glanvill* also gives a clear answer:

The nearest heirs of any person are those whom he has begotten of his own body, such as a son or a daughter. In default of such heir, the more remote heirs are called, such as grandsons and granddaughters descending lineally from son or daughter *ad infinitum*.²¹⁷

The inheritance would thus pass through the family line. First and preferred are male heirs, namely brothers; if there was no male heir it would fall to the female blood relative, the sisters. Following this were the uncles on the paternal side, then on the maternal side; and last are aunts and their descendants.²¹⁸ Should a couple fail to produce a surviving male heir, the daughter would inherit. If the man had more than one daughter, then they inherited together.²¹⁹

According to Pollock and Maitland, primogeniture was not the prevailing, or the sole, pattern of inheritance in pre-Norman England, that is prior to Domesday Book. Indeed, some Anglo-Saxon thegns held inheritance in parage, i.e., co-heirs divided the inheritance equally. Co-heirs did not do homage and service to the eldest heir; instead they were present at the king's court, and only one heir, usually the firstborn son, would be present on behalf of his co-heirs, which made the collection of reliefs, aids and taxes easier. Patterns of inheritance in England were confused until the time of Henry II, when *Glanvill* clarified the different forms of succession according to different types of tenure. For instance, he declared that, if the deceased were a knight, or held the land in military service, his eldest son should inherit all, and the younger sons should not claim any part of the inheritance. If a man was a free sokeman then his sons should divide his inheritance after his death. However, the tradition of reserving the capital message to the eldest son, as a mark of respect for his seniority, was found in some places. *Glanvill*'s statement implies that there were at least two different rules of inheritance, but the 'free sokemen' *Glanvill* referred to remained a minority that gradually

²¹⁵ 'OED,' accessed on 10 June 2016, <http://0-www.oed.com.catalogue.libraries.london.ac.uk/view/Entry/85509?rskey=LPH51R&result=1&isAdvanced=false#eid>

²¹⁶ *Glanvill*, 75.

²¹⁷ *Ibid.*, 75.

²¹⁸ *Ibid.*

²¹⁹ *Ibid.*, 76.

disappeared over time – some fell into villeinage, and others into military service. Thus, by the end of the twelfth century, primogeniture applied to most parts of the country as the dominant form of inheritance.²²⁰

Some local customs did designate that sons divide inheritances, for instance in Kent, Norfolk, Suffolk, Northamptonshire and Rutland.²²¹ Moreover, in some places the custom of ultimogeniture was applied, whereby the youngest son, instead of the eldest, succeeded as the heir. This custom, which came to the attention of English lawyers in 1327 through a case in Nottingham, originated in France. Nottingham was divided into two boroughs; one was called the French borough, and the other, the English borough. Ultimogeniture was found in the latter, which led to the name of ‘borough English’. Most ultimogeniture occurred in villein tenements; hence, inheritance by the youngest son appears to have been more prevalent among villeins.²²² Although the pattern of inheritance differed from place to place, even shire to shire, at the end of Henry III’s reign a universal common law inheritance finally prevailed.²²³

Six rules applied to the general concept of succession: (i) a living descendant excludes his or her own descendants; (ii) a dead descendant is represented by his or her own descendants; (iii) males exclude females of equal degree; (iv) among males of equal degree only the eldest inherits; (v) females of equal degree inherit together as co-heiresses; and (vi) the rule that a dead descendant is represented by his, or her, descendants overrides the preference for the male, in that a grand-daughter by a dead eldest son will exclude a younger son.²²⁴

Whilst the first rule can be easily understood, the second rule may need more explanation. Pollock and Maitland stated that when a man died without leaving a descendant this meant that, even if he had other kinfolk who would be his heir, he was described as dying ‘without an heir of himself’. This also explained the sixth rule that it was when a man died without any heir of his body that his brother or sister could inherit from him.²²⁵ The third and fourth rules were embodied in primogeniture, and the fifth explained the division of inheritances between co-heiresses.²²⁶

²²⁰ Pollock and Maitland, *The History of English Law before the Time of Edward I*, vol. 2, 263-269.

²²¹ *Ibid.*, 270.

²²² *Ibid.*, 279-281.

²²³ *Ibid.*, 260.

²²⁴ *Ibid.*

²²⁵ *Ibid.*, 261.

²²⁶ *Ibid.*, 260, 274.

As previously stated, only when there were no male heirs could a daughter inherit and she would have to meet the following determining factors before she could be considered to be an heiress: (i) she had to be born of her father's body; and (ii) she had to have been born within the marriage (if she was illegitimate, even if her father had no male heir, she could not be an heiress).²²⁷ As *Glanvill* put it, 'no-one who is a bastard or not born of a lawful marriage may be a lawful heir.'²²⁸

What made an heiress different to an heir? To understand this, it is necessary to examine the dominant pattern of inheritance – primogeniture. As mentioned, every military fee should descend as an impartible unit. This form of inheritance also avoided many possible disputes because all lands went to the eldest son. An equal division among sons, or daughters, complicated the relationship between a lord and his tenants,²²⁹ so making the eldest son inherit all possessions was, by comparison, a simple arrangement. Hence, by the end of Henry II's reign, the courts had settled on primogeniture as a principle.²³⁰ Book VI of *Britton*, c. 3 stated the following:

Age is material; because he who is the first born is admissible before the younger son of the same father and mother, and the younger brother will remain nearest heir to the elder, or at least a near heir, according as the elder shall have issue or not.²³¹

Given that *Britton* is the earliest summary of the law during the time of Edward I, it could be inferred that in the thirteenth century, primogeniture was well established and applied in England. If the eldest son inherited all possessions from his father, could this ever happen among daughters? Was the eldest daughter entitled as the heiress to inherit all her father's possessions? Here, *Glanvill* states that female inheritance was different to that of sons, as follows:

If anyone leaves only one daughter as his heir, then the rule stated for an only son clearly applies. But if he leaves several daughters, then the inheritance will clearly be divided between them whether their father was a knight or a

²²⁷ None of the illegitimate children, male or female, were allowed to access the inheritance. However, in medieval Wales, the definition of bastard was different from that in England. Bastard only referred to a child who was not recognised by his or her father. All children, whether born in or out of legitimate marriages, who were acknowledged by their fathers could have a share in inheritance. See David Walker, *Medieval Wales* (Cambridge: Cambridge University Press, 1990), 143.

²²⁸ *Glanvill*, 87.

²²⁹ Pollock and Maitland, *The History of English Law before the Time of Edward I*, vol. 2, 273-276.

²³⁰ *Ibid.*

²³¹ *English Historical Documents*, ed. Douglas and Rothwell, vol. 3, 969.

sokeman, but saving the chief meassage to the eldest daughter on the conditions set out above.²³²

Likewise, if there was an advowson,²³³ the daughter could not claim the first presentation as her own, rather the other daughters or parceners should have their shares in the presentation.²³⁴ According to *Glanvill*, another prominent difference between an heir and an heiress was that a man was obligated to the lord to do service and homage – an acknowledgment that the vassal was, literally, the lord’s man. By showing such fealty the tenant would receive, in return, a symbolic title for his new position. However, an heiress did not do homage and service, her husband did. Therefore, if daughters were co-heiresses, the husband of the eldest daughter swore homage to the lord. The younger daughters, on the other hand, did service to the chief lord by the hands of the eldest daughter, or her husband. During their lifetime, the husbands of younger daughters, due to interest avoidance, did not need to do homage; neither did they have to swear fealty or pay relief until the third generation of descendants, because the laws of inheritance did not allow the lord and the heir to be the same person. The three generations rule made it impossible for him to have been the heir.²³⁵

3.2 Literature review

This chapter discusses our principal theme – heiresses in court. There are several excellent works on the subject which add to our knowledge of medieval English heiresses. In this section, I will start with the works which touch on the pattern of female succession and move on to those which discuss the more specific topic of heiresses, including the management of inheritance by noble heiresses and the economics of heiresses’ marriages.

²³² *Glanvill*, 76.

²³³ Advowson is a term from ecclesiastical law. It concerned the right to present a member of the clergy to a particular benefice or living, that is, the right to nominate someone as a parish priest. Occasionally, more generally, it could also mean: ‘guardianship, protection, or patronage of a church or religious house; an instance of this’. See ‘OED,’ accessed on 11 January 2018.
http://www.oed.com/search?searchType=dictionary&q=ADVOWSON&_searchBtn=Search

²³⁴ Pollock and Maitland, *The History of English Law Before the Time of Edward I*, vol. 2, 274-276.

²³⁵ If the homage was done, land could not revert to the grantor. Since the grantor had received homage, he should warrant the grantee for the land, rather than enjoy it himself. In this situation, the heir and the lord became the same person, which was forbidden by the law. Pollock and Maitland, *The History of English Law Before the Time of Edward I*, vol. 2, 274-276. However, *Glanvill*’s statement is questioned by Holt, who believes that the rules *Glanvill* described were not applied in the country. The detailed discussion of this is in the later part of this chapter.

‘Inheritance by Women in the Twelfth and Early Thirteenth Centuries’, by S. F. C. Milsom, studies the patterns of women’s inheritance from the Norman Conquest to the early thirteenth century.²³⁶ He stresses how the relationship between lords and heiresses changed when inheritance by women went from one sole daughter inheriting to all the daughters inheriting. He points out that before the thirteenth century neither Norman nor Anglo-Saxon sources suggest that spilt or partible inheritance was applied generally to daughters. Rather, prior to the *statutum decretum*, only one daughter received the inheritance, and the best proof of this is to be found in Henry I’s Coronation Charter,²³⁷ chapter 3, which implied that only one daughter could inherit her father’s possession. However, for unknown reasons, following the *statutum decretum*, inheritance by women became equal division. Consequently, disputes between co-heiresses increased noticeably, which led to the wider use of the writ *nuper obit*. This could be initiated by a sister of the co-heiresses who had been dispossessed by other co-heiresses of the tenements which their father, brother or any common ancestor had died seised.²³⁸

The *statutum decretum* may refer to a legislative act, or a court decision designed to have general effect. However, it is uncertain when exactly the *statutum decretum* was made. According to Hudson, it was probably made after the production of the 1130 pipe roll, when the rule of equal division between daughters had not been a standard.²³⁹

Milsom also discusses the husband’s interests. Since every daughter could obtain a share of an inheritance, a husband was unlikely to obtain the whole of it unless he, or his father, was able to buy the marriages of all the daughters. Milsom also analyses the relationship between the lord and the husband, and goes on to suggest that the husband’s importance to the lord is based on whether he and the heiress had a surviving legitimate heir. If they did, a husband’s homage took its full effect; otherwise, the husband had very little significance to the lord. Hence, we might conclude that although the heiress’s job was simply to transmit the inheritance, she and her heir were much more important to the lord than the husband.²⁴⁰

²³⁶ Milsom, ‘Inheritance by Women in the Twelfth and Early Thirteenth Centuries,’ 231-260.

²³⁷ Coronation Charter, c. 3. See *English Historical Documents*, vol. 2, 2nd edn., ed. David C. Douglas and George W. Greenaway (London, New York: Taylor & Francis Group, 1981), 401.

²³⁸ Milsom, ‘Inheritance by Women in the Twelfth and Early Thirteenth Centuries,’ 231-237, 244-245.

²³⁹ Hudson, *The Oxford History of the Laws of England*, vol. 2, 353.

²⁴⁰ Milsom, ‘Inheritance by Women in the Twelfth and Early Thirteenth Centuries,’ 250-260.

In *Colonial England 1066-1215*, and the 1985 *Transactions of the Royal Historical Society*, J. C. Holt devotes an entire chapter to the heiress and the alien,²⁴¹ from the point of view of the family and the economy. He points out that a woman inherited, not because of any title, but because, in the absence of male heirs in the same generation, she was the only means of continuing the lineage.²⁴² Essentially, women only received inheritances in order to keep their families' property intact. This also reiterated the notion that women were entirely subordinate. Holt also casts doubt on *Glanvill's* statement concerning the division of inheritance between daughters. He states that, prior to 1130, descent through the female line was always to a single heiress. The pipe rolls of 1130 record twenty-seven fines for wardship or marriage but there is no hint that the inheritance was divided in the female line until the *statutum decretum* in the 1130s, which declared that, 'where there is no son, the daughters divided their father's land by spindles, and the elder cannot take from the younger her half of the land without violence and injury'.²⁴³

Fifty years after the *statutum decretum*, *Glanvill* restated that all daughters should divide inheritance, but he further explained that the husband of the eldest daughter should perform homage to the lord for the whole fee. The younger daughters and their husbands performed homage and paid reasonable relief and services to the eldest daughter and her heirs. Holt argues that this might be misleading and that *Glanvill* might have written this 'law' because he wanted to avoid tax himself, mainly in reliefs and wardships, which his own daughters and their husbands had to pay to the lord. He does, however, state that what *Glanvill* described was still a fairly recent procedure. In any case, this meant that there was not only one way of arranging a divided inheritance.²⁴⁴

In *Portraits of Medieval Women: Family, Marriage, and Politics in England 1225-1350*, Linda E. Mitchell used case studies taken from different legal documents. For example, chapter 2, 'Agnes and her Sisters: Squabbling and Cooperation in the Extended Medieval Family', examines how the Ferrers sisters managed their inheritance as co-heiresses. Agnes and her six sisters were the children of William de Ferrers (1193-1254) and Sibyl Marshal (1209-1245). The seven sisters had little chance

²⁴¹ The 'alien' here refers to foreigners.

²⁴² Holt, *Colonial England 1066-1215*, 247; J. C. Holt, 'Feudal Society and the Family in Early Medieval England: IV. The Heiress and the Alien', *TRHS*, 5th ser., 35 (1985), 1-28.

²⁴³ *Ibid.*, 260.

²⁴⁴ *Ibid.*, 253.

of inheriting William's property because William had a legitimate male heir, Robert, from his second marriage to Margaret de Quency (c. 1218-1280). However, as mentioned earlier in this chapter, every daughter was a 'potential heiress' throughout her life. For the Ferrers sisters this happened when their mother's last surviving brother, Anselm Marshal (c. 1201-1245), died in 1245. His death saw the vast Marshal inheritance fall to thirteen co-heiresses, seven of whom were the Ferrers sisters.²⁴⁵

Mitchell used the records of the royal courts and the rolls of the Chancery to find out what the Ferrers sisters received in their inheritance, as well as the ways in which they managed their property, and their interactions with people outside their immediate family. The Ferrers sisters acted as co-plaintiffs with other Marshal family heirs in order to protect their property, or to sue tenants for trespass, debt, or other proprietary actions. Moreover, during the 1270s and the 1280s they sometimes exchanged property with the heirs outside their immediate family. The Ferrers sisters also transferred property within their smaller family circle; and they not only exchanged property but purchased each other's inheritances. For instance, in 1300 Cecily purchased Sibyl's portion for £1000 and continued to hold her own and Sibyl's shares as late as 1315.²⁴⁶

Later, however, part of the Ferrers sisters' inheritance was taken away by the three surviving widows of the Marshal men, and they were compelled to relinquish the most prestigious portion of their inheritance to the widow of Walter Marshal.²⁴⁷ In the end, Mitchell states that the experiences of the Ferrers sisters in managing and attempting to retain their inheritance by making business-like agreements with each other concerning their joint inheritance serves as a paradigm for the examination of the activity of heiresses in medieval England.²⁴⁸

Louise J. Wilkinson, in her *Women in Thirteenth-Century Lincolnshire*, compares each class of women in Lincolnshire, from noble women to gentle women, townswomen, peasant women and criminal women. She discusses each group from four perspectives: marriage, dower, property and work. In doing so, she places less emphasis on heiresses' ability to manage their inheritance than on their marriages. No matter to which class a medieval woman belonged, her marriage was a crucial issue for both her and her bridegroom's family since the property settlements accompanying marriage

²⁴⁵ Mitchell, *Portraits of Medieval Women*, 13-14.

²⁴⁶ *Ibid.*, 22-25.

²⁴⁷ *Ibid.*, 18.

²⁴⁸ *Ibid.*, 27.

were particularly important for the material well-being of non-inheriting daughters. It was certainly important for the bridegroom's family should the bride be an heiress due to a forthcoming inheritance.²⁴⁹ In the case of peasant women, Wilkinson points out that primogeniture was slower to become established and never totally superseded older inheritance customs in which sons equally inherited their father's property. Consequently, this custom might have allowed women better opportunities to claim inheritances. In some Fenland manors, for example, inheritance was divided between both male and female descendants.²⁵⁰

Another important work is S. J. Payling's 'The Economics of Marriage in Medieval England: The Marriage of Heiresses', which discusses the significance of marriage for heiresses in late medieval times from an economic perspective. In that period heiresses were regarded as an effective means of property transfer between families. This was largely due to the Black Death, which saw over 40% of daughters become heiresses at common law, making many young women extremely powerful. Payling stresses the idea that all brides were 'heiresses-potential', and as such, were market commodities, since their fathers on both sides could often stand to profit considerably from their marriages. He also discussed how the rise of cash-rich families impacted the pattern of marrying heiresses, in that these new families who held larger amounts of cash had less to lose than established families when heiresses married.²⁵¹

Most works concerning medieval heiresses analyse the nobility and gentry since they were relatively well documented in primary sources and they usually held significant amounts of real estate. Generally, records for lower-class women are lacking, meaning that upper-class women can be more easily studied. Whilst research can only be conducted where sufficient sources are available, by examining various legal documents, the following discussion of how heiresses managed their inheritance will not only include high-ranking women, but also ordinary heiresses who held lands, albeit not as extensive as those of noblewomen.²⁵²

²⁴⁹ Wilkinson, *Women in Thirteenth-Century Lincolnshire*, 69.

²⁵⁰ *Ibid.*, 118.

²⁵¹ Simon. J. Payling, 'The Economics of Marriage in Medieval England: The Marriage of Heiresses,' *Economic History Review*, 54.3 (2001), 413-29.

²⁵² Peasant women, for instance, were usually recorded in manorial court rolls because they could not go to the king's court. Nevertheless, the records of manorial courts did not usually record the process of litigation, which means that the sources barely reveal how peasant women strived for their inheritance. Often only one sentence is recorded, stating whose daughter gave a fine in order to have her inheritance.

A woman's right over her inheritance drew less attention than her dower, because not every woman could be an heiress. As mentioned previously, noblewomen were not the only group of women who could be heiresses holding estates. Women of the gentry, rich families and free men could also be heirs and heiresses. Therefore, in order to provide a more comprehensive picture of heiresses and their inheritances, the women included in the cases investigated in this chapter are both noble and free heiresses with lands.

3.3 Partible inheritance between daughters

The previous section showed that a woman was considered an heiress only when attempts to produce a male heir failed. The core principle of thirteenth-century inheritance was that males preceded females and direct lines excluded collaterals. As mentioned above, partible inheritance between daughters made its first written appearance in the *statutum decretum*, and one must wonder why this rule changed.

Historians, including Holt and Milsom, have not come up with a cohesive answer, although Holt proposes that it might have been due to a formal and deliberate change of policy.²⁵³ Nevertheless, almost half a century after the *statutum decretum*, Glanvill restated the rule, indicating that by this stage partible female succession must have become well established. But how long did this take to come into effect?

Whilst a date cannot be ascribed, the following case involving the whole barony of Pain Peverel might shed some light. The inheritance was divided among four sisters on the death of their father, William Peverel, at various points between 1130 and 1133. The eldest daughter, Matilda, died without issue so her share fell to her three sisters.²⁵⁴ According to *Glanvill*, if one of the brothers or sisters died, his or her portion accrued to the remaining brothers or sisters.²⁵⁵ The dates of this case seem to indicate that partible inheritance was employed at the same time as the *statutum decretum* in the 1130s. It is not possible to know whether the co-heiresses knew of the new *statutum decretum* rule, or if the equal division of property among daughters had already been adopted by some families. What we do know, however, is that the change of law from a sole daughter to all daughters inheriting did not go without a hitch. For instance, King

²⁵³ Milsom, 'Inheritance by Women,' 252.

²⁵⁴ Ward, *Women of the English Nobility and Gentry 1066-1500*, 101.

²⁵⁵ *Glanvill*, 76.

John granted the whole inheritance of William de Buckland to William's youngest daughter, forcing the two elder daughters and their husbands to sue the youngest daughter in 1218.²⁵⁶

Therefore, although the rule of partible female inheritance had become well established, it is not hard to find exceptions. For example, a 1226 case reveals how an eldest daughter, who regarded herself as a sole heir, denied her sisters' right of inheritance. Julia and her husband, Thomas Cusin, made a claim that her elder sister, Petronilla, had disinherited Julia because Petronilla thought that, as the first-born, she should inherit all possession, as with primogeniture.²⁵⁷ Cases such as those of the Peverels, the Bucklands and the Cusins show discrepancies in the pattern of female succession. As early as 1130, the Peverel sisters shared their inheritance. On the other hand, by 1226, a younger sister can still be found suing the elder sister for taking the whole inheritance. Nevertheless, these cases suggest that at least by 1218, when the Buckland case was heard, people knew that all daughters were entitled to a share of inheritance in the absence of a male heir.

We now turn to the question of homage and service by co-heiresses. There has been a lingering debate stretching back to the thirteenth century regarding how daughters performed homage and service to the lord. Did they even need to perform homage and service? According to *Glanvill*, only the husband of the eldest daughter did homage for the whole fee to the chief lord, and the younger daughters and their husbands did not need to until the third generation. Meanwhile, younger daughters and their husbands should do the service by the hand of the eldest daughter or her husband. A case in 1220 illustrates this rule. Geoffrey de Saukevill claimed to be the holder of the free tenements of Hamon de Gatton. Geoffrey inherited a tenement from his mother, Ela, who had two younger sisters, Sibyl and Idonea. Geoffrey produced a chirograph that had been made in the king's court between William de Marcy and his wife Ela – Geoffrey's mother – Robert de Hikekesham and Sibyl, his wife, and Geoffrey de Beval and his wife Idonea, concerning the inheritance of Ralph de Dena, the sisters' father. The chirograph showed that Sibyl and Idonea ought to hold their share of the

²⁵⁶ Milsom, 'Inheritance by Women,' 236-237.

²⁵⁷ *CRR*, vol. 12, n. 1839, 374.

inheritance of Ela and her husband, and consequently the eldest daughter, Ela, should make service to the chief lords for her sisters.²⁵⁸

Nevertheless, as mentioned in the literature review, Holt considers this rule, that the younger daughters should hold property of the eldest and do service via her hands, to be a cunning ruse to avoid tax. Therefore, the de Saukevill case may demonstrate that *Glanvill's* attempt at creating a universal law was accepted by some people. Nevertheless, the following case shows the opposite, suggesting that *Glanvill's* rule was not well established, even by the 1230s.

In 1237, William de Forz, 4th Earl of Albemarle (d. 1260), acting as the attorney of his wife, Christina (d. 1246), came to court with other parceners to hear a judgment as to whether the county of Chester was to be divided between co-parceners, each of them holding part from the king in chief, or whether they should hold of William de Forz due to his seniority. The king's council said that they had not previously seen such a case so the assize was adjourned in order to counsel the king.²⁵⁹ If the statement in *Glanvill* had been well established in England, the king's council would not have counselled the king; however, because William de Forz and Christina were tenants-in-chief, and their lands were of great significance to the king, the monarch would have the final decision. Clearly, the pattern of female inheritance did not necessarily conform to what *Glanvill* states, and as the king's involvement demonstrates, there appear to have been more choices than *Glanvill* had suggested.

But why did the king make the decision? When William argued that Chester should be an impartible palatinate, he also claimed that, as the husband of the eldest co-heiress, he should have the right to be the Earl of Chester and thus the holder of the entire land. William might have harboured an expectation from Henry III, since the king's personal choice would have affected the assignment of the inheritance greatly. However, his claims – or the expectations of the king – were not successful. Perhaps if William had paid more attention to one of the king's writs, in 1236 – the previous year – he might not have been so expectant. In 1236 Henry III responded to an enquiry from an Irish justiciar, stating that if a father held in chief of the king, then after the death of the father, each of his daughters would have to perform homage to the king, and every one of them would hold of the king in chief. The writ, which is known as the *Statutum*

²⁵⁸ *CRR*, vol. 8, 387. The case in fact concerns dower.

²⁵⁹ *CRR*, vol. 16, n. 136c, 39.

Hiberniae de Coheredibus, shows a striking difference between *Glanvill* and Henry III's opinion, at least on the issue of tenants-in-chief.²⁶⁰ The writ, as the first unequivocal statement of the king's practice, also contains an explicit message, namely that the king wished to retain his right of wardships and marriages over every co-heiress, so that they had to hold their shares of the king directly.²⁶¹ Henry III even persuaded William de Forz, Christina, the other co-heiresses and their husbands, to give up their claims to the county of Chester and to lands elsewhere. In 1241 William de Forz and Christina finally quit their claims to the rights of the earldom.²⁶²

Arguably, had female inheritance been passed down in the form of primogeniture, it would have saved numerous disputes between co-heiresses, and probably the issue of homage and service as well. Whilst the eldest son could take all of his parents' inheritance no matter how many younger brothers he had, the heiress had to share the inheritance with her other sisters. Regarding daughters as heiresses, *Glanvill* only stated that the inheritance should be divided among daughters, and that the eldest daughter could not take all.²⁶³ However, the reality was always far more complex, especially when the king's interests were involved, as the de Forz case demonstrates. In the thirteenth century women were well aware of the sharing of inheritance among daughters; however, this made female succession complicated due to the number of disputes it engendered, mainly counterclaims to be the sole heiress. As a consequence, partible inheritance soon became one of the main sources of civil cases launched by women. The following section will examine such cases, and how co-heiresses argued against each other in court.

Relationships between co-heiresses were complicated: some were handled amicably, whilst others became very heated. Two heiresses might form an alliance in one suit against their opponents but end up in opposition against each other in another suit due to a conflict of interest. In thirteenth-century legal documents involving such

²⁶⁰ Holt, *Colonial England*, 1066-1215, 253; Pollock and Maitland, *The History of English Law before the Time of Edward I*, vol. 2, 227.

²⁶¹ Waugh, *The Lordship of England*, 96-99; Holt, *Colonial England. 1066-1215*, 253; *CRR*, vol. 3, 375-376; 'ODNB', accessed on 26 June, 2018, <http://0-www.oxforddnb.com.catalogue.libraries.london.ac.uk/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-29480?rskey=lnCGpV&result=3>

²⁶² When Christiana died in 1246 without surviving children, her share fell to her surviving sister, Dervorguilla. See 'ODNB,' accessed on 26 June, 2018, <http://0-www.oxforddnb.com.catalogue.libraries.london.ac.uk/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-29480?rskey=lnCGpV&result=3>

²⁶³ *Glanvill*, 76.

disputes, conflict appears more frequently than cooperation. Let us consider how these disputes arose and what common arguments emerged between co-heiresses.

In 1227, Richard of Pirie brought a claim for himself and his wife, Sara, against Ralph Faber of Staunton and his wife, Avicia, and Julia of Staunton. Avicia and Julia were Sara's sisters and the disputed land consisted of half of one messuage and six acres of land with appurtenances in Staunton, which Richard and Sara claimed as Sara's share of inheritance from her brother, William of Easton Neston. They also insisted that the messuage should be Sara's due to her seniority. Ralph and Julia argued that all litigants had agreed to the division of William's land and that his will had instructed Sara and Richard to assign his inheritance to the sisters. Ralph and Julia argued that Sara and Richard had assigned the better part of the inheritance to themselves. Moreover, all the defendants argued that they had divided the inheritance according to the allotment made by Richard, so he and Sara had no legal grounds for claiming the disputed land as her share. In this case, the division of the inheritance was executed according to the will of the eldest sister, and it seemed that the younger sisters were not satisfied with what Sara and her husband arranged because she assigned herself better land.²⁶⁴

Another point worth mentioning in this case is the division of the capital messuage. According *Glanvill*, the capital messuage held under a sokeman should be reserved to his eldest heir or heiress, but in this case the capital messuage had been divided among parceners. Sara claimed the messuage was hers because she was the eldest, but whether this was true is unclear. This case suggests that the eldest sister 'claimed the land as capital messuage' as a tactic in order to retain more land. Although she was ordered to compensate the other sisters in cash for the loss of their share, because land was generally considered to be more valuable than cash the idea of acquiring a whole messuage of land must have been very appealing to her.²⁶⁵

Of course, the more co-heiresses there were the smaller the share they received. Therefore, the last thing an heiress would want to hear about is the unexpected

²⁶⁴ *CRR*, vol. 12, n. 1861, 379-380

²⁶⁵ *Ibid.* Although the eldest daughter was able to hold the capital messuage in spite of the equal division, she should compensate the other co-heiresses with cash or other property to the same value of their share of the capital messuage. When Ranulph III de Blundeville, the Earl of Chester, died in 1233, his inheritance was partitioned by his four sisters, namely Maud, Mabel, Alice and Hawise. Upon Ranulph's death, the eldest sister, Maud, transferred the right to her eldest son, John, to inherit the capital messuage without any dispute. The same John also inherited the title of earl as the male heir of the eldest sister of Ranulph. Each heiress was allotted a definite manor or castle as capital messuage. See R. Stewart Brown, 'The End of the Norman Earldom of Chester,' *English Historical Review*, 35 (1920), 26-54.

appearance of another heiress. In 1226, Cecily de Swinetorp made a claim through an attorney against Thomas de Sandal' and his wife, Maud, for a quarter of the land in Serlby, Tortworth and Blie, as her right and reasonable share. The land had been held by inheritance of Hugh of Moeles, Cecily and Maud's brother, in the reign of King Richard. However, Thomas and Maud refused to respond because, after the death of Hugh, another brother, Gervase, enfeoffed part of the land to Maud's son. To complicate matters, another unanticipated aspect was revealed – Cecily and Maud had other sisters who lived in Normandy, although it was uncertain if they were alive. In the end, Cecily took one-sixth of the inheritance, a decrease from a quarter, and Thomas was in mercy.²⁶⁶ The reason why Cecily and Maud did not mention that they had other sisters was not explained, but it is possible that they concealed the other sisters' existence to gain a greater share.²⁶⁷ The case delivers a significant message – compared with a male heir, who could inherit a clean, whole inheritance, co-heiresses were relatively disadvantaged and the more co-heiresses there were, the less their share would be.

Heiresses would sometimes resort to trickery in order to obtain a greater share from other co-heiresses. For instance, one heiress tried to disinherit her sister by claiming she had become a nun. Maud, daughter of Thomas Playce made a claim against Roger of Grimston and his wife, Joan, for a moiety²⁶⁸ of one messuage and twenty bovates²⁶⁹ of arable land with appurtenances in Newton, as her rightful share from her father. Maud said Thomas had three daughters, Joan, Alice and herself. Alice had entered a convent at Watton and became a professed nun so that her share descended to Maud and Joan as joint heirs, but Roger and Joan amassed everything, leaving Maud with nothing. However, Roger and Joan refused to answer this writ, instead claiming that Maud too had become a professed nun.²⁷⁰

In facing this claim, Maud argued that she was only four years old on her father's death, and was in the wardship of Gilbert de Gant, who sold the wardship to Master Thomas de Grimston. Thomas had married his nephew, Roger, to Maud's sister, Joan,

²⁶⁶ The party described as in mercy was adjudged by the court to owe a penalty.

²⁶⁷ *CRR*, vol. 12, n. 1847, 476.

²⁶⁸ Moiety means a half, one of two equal parts. See 'OED,' accessed on 15 March 2016, <http://0-www.oed.com.catalogue.ulrls.lon.ac.uk/view/Entry/120752?redirectedFrom=moiety#eid>.

²⁶⁹ A measurement of land, equivalent to the size of area which could be cultivated by one ox drawing a plough for a year.

²⁷⁰ *The Earliest English Law Reports*, ed. Paul Brand, 4 vols. (London: The Selden Society, 1996–), vol. 4, 554-555.

and then placed Maud in the house of Nun Appleton. Maud contended that she had been too young to understand what a profession was. Nevertheless, Roger and Joan asserted that Maud made her profession in front of the prioress of the convent. However, Maud stressed that the prioress had simply placed a black veil on her head. Despite Maud's argument, the couple questioned why she only left the nunnery long after she had come of age.²⁷¹

A judgment was made, which declared that neither an abbess nor a prioress was present to receive a profession at that time, hence the term profession was not valid. Despite this ruling, Maud did not receive a share of the inheritance, even though the profession was not binding. Roger and Joan made another clever claim. They argued that Alice, the other heiress, was also a professed nun, actually living in secular habit and having never professed, so she should have as much right to a share as Maud. Thus, Maud's claim had backfired on her, even though she argued that such an exception against her could not be accepted, since the first exception had been peremptory. In the end, no conclusion was reached and an enquiry by jury was sought.²⁷²

Placing an underage heiress into a nunnery and making her devote her life to religion was a common tactic used by relatives in order to be rid of her and to gain her inheritance for themselves.²⁷³ There are numerous cases of heiresses claiming that they took the profession when they were too young and that it should be voided, in order for them to have access to the inheritance. In the above-mentioned case, Maud had been lucky that the court considered her profession to be invalid. Not every heiress forced into a nunnery had the same luck. A tragic story in 1195 clearly shows how vulnerable an heiress could be when a runaway nun claimed her share of her father's inheritance. The heiress, who had been professed for fifteen years before she returned to a secular life, argued that she was coerced into the convent by her guardian, whom she accused of trying to secure her father's property for himself. After she had been excommunicated, the case went to the king's court, but unfortunately the final record has not survived and the outcome is unknown.²⁷⁴

Looking again at Maud's case, one intriguing point is that the court adjudged her profession to be void because no abbess or prioress had been present, rather than, as

²⁷¹ *Ibid.*

²⁷² *Ibid.*

²⁷³ Eileen Power, *Medieval English Nunneries c.1275-1535* (Cambridge University Press, 1922), 33-37.

²⁷⁴ The name of the heiress was not recorded. *Ibid.*, 33-34. For the case, see *VCH Bucks.*, vol. 1, 355.

she maintained, because she had been forced into a religious life. It could be inferred that the court considered the argument of her unwillingness and her tender age to be insufficient. This raises questions as to whether forcing an underage child into a monastery or nunnery was legal, whether an underage profession could be legally binding, and at what age it was considered legal to make a profession. According to The Decretals of Gregory IX (1234),²⁷⁵ a true profession should be made willingly by an unmarried person once they had reached the age of discretion.²⁷⁶ The minimum age for a profession was thirteen for girls and fifteen for boys, therefore any profession made before those ages would be considered invalid. However, secular court could not decide whether a profession was valid or not, as this clearly came under the scope of ecclesiastical law.²⁷⁷ This is why, in Maud's case, the secular court could only investigate with due procedural justice. In Maud's case, it is not known when she had made the profession, only that she did so 'at such a tender age'. It may be assumed, however, that she took it before turning thirteen, since her guardians asserted that even after she came of age she remained in the nunnery, meaning that she must have been under thirteen when she professed, which was against ecclesiastical law.

It was common to see a co-heiress go to court to claim her reasonable share because other co-heiresses had taken all the inheritance and left her with nothing. A case recorded in Bedfordshire eyre in 1276 reflects such a situation. Isabel de Lungeville made a claim against John of Braybrooke and his wife, Joan, Isabel's sister, for a moiety of a knight's fee with appurtenances in Barford and Colmworth, as her share from her father Richard Oyldeboef. She said her father had died in his demesne as of fee, and the land descended to her and Joan, as daughters and heiresses, but Joan and her husband, John, held everything, withholding her reasonable share.²⁷⁸

Joan and John said they were not obliged to answer because Isabel had previously brought a writ of right patent concerning the same moiety in the county, and that it had subsequently been removed before the justices at Westminster. Therefore, Isabel withdrew her writ.²⁷⁹ As both this case and Maud's show, both plaintiffs claimed that

²⁷⁵ The Decretals of Gregory IX are a significant source of medieval canon law. They were designed to be a new, authentic and universal collection of law. F. Donald Logan, *Runaway Religious in Medieval England, c. 1240-1540* (New York: Cambridge University Press, 1996), 4.

²⁷⁶ *Ibid.*, 10.

²⁷⁷ *Ibid.*, 10-12.

²⁷⁸ *The Earliest English Law Reports*, ed. Brand, vol. 3, 46-47 / *The Earliest English Law Reports*, ed. Brand, vol. 1, 97-98.

²⁷⁹ *Ibid.*

they had nothing, whilst their counter-parties claimed to hold everything. This may suggest that while equal division was the principle of female succession, the distribution between sisters was frequently unfair, with the more powerful co-heiress likely to take the others' shares.²⁸⁰

Numerous cases suggest that heiresses came to court with their husbands because married women could not act in the courts as *femme sole*. Also, disputes between co-heiresses became more complicated once they were married. The following case shows the conflicts between three sisters concerning an inheritance which might have been given as a gift to one of the daughters and her husband. When an heiress married, her husband could dispose of his wife's property as long as he had her consent, hence her inheritance meant as much to him as it did to her.

In 1290, John du Boys and his wife, Agnes, brought a writ of '*de rationabili parte*', also called '*nuper obiit*' in 1290, against Lucy of Heswall and Juliana, for a 'third part of a third part of a certain amount of lands' upon the death of Henry, their grandfather. John and Agnes said that Henry was seised in his demesne, and that from Henry the right descended to Agnes, as daughter and heiress. Agnes had three daughters, Lucy, Juliana and Agnes, John du Boys' wife. This couple claimed that Lucy and Juliana held the entirety, thus Agnes was not entitled to as her share.²⁸¹

In response to John and Agnes, Lucy and Juliana argued that Agnes and her husband were seised of one messuage and three acres of arable land with appurtenances from Robert and Agnes, to hold for her and her heirs. They further pointed out 'that one messuage and three acres of land were given to John du Boys and his wife in frank-marriage;²⁸² and unless they put it into hotchpot with the remainder, we do not think that they can demand her rightful portion'.²⁸³

Faced with the other two sisters' demands, the representative of Agnes and John said that these tenements – i.e., one messuage and three acres of land – were given to

²⁸⁰ Another good example is the three sisters of the Hepple family, namely Elizabeth, Maud and Agnes, who were involved in an inheritance dispute at the beginning of the thirteenth century. According to the records, Elizabeth was sued by her two sisters respectively, and it was claimed that she occupied the share which belonged to Agnes. *CRR*, vol. 3, 105-106.

²⁸¹ *Year Books of the Reign of King Edward I*, ed. and trans. Alfred J. Horwood, 5 vols. (London: Longmans, Green, Reader, and Dyer, 1863-1879), vol. 2, 398.

²⁸² A tenure by virtue of which a man and his wife held lands granted to them by the father or other near relative of the wife, the estate being heritable to the fourth generation of heirs of their bodies, without any service other than fealty. 'OED,' accessed on 11 January 2016, <http://0-www.oed.com.catalogue.ulrls.lon.ac.uk/view/Entry/74241?redirectedFrom=frank+marriage#eid>.

²⁸³ *Year Book of the Reign of King Edward I*, ed. Horwood, vol. 2, 400.

John and his heirs in fee simple, and not to John and Agnes in frank-marriage. In order to prove his statement, the representative provided a charter with witnesses and a fine, showing that the gift was in fee simple, and not in frank-marriage, as they had said. However, Lucy and Juliana insisted that the said tenements were given to John and Agnes in frank-marriage. Afterwards both parties asked to summon a jury.²⁸⁴

The issue of the case was whether the disputed tenement was *maritagium* or not. Lucy and Juliana insisted that the said tenements were granted in frank-marriage, therefore Agnes should put her *maritagium* back into the inheritance pot, so that the three sisters could divide the whole inheritance equally.²⁸⁵ On the other hand, Agnes and her husband, John, argued that the said tenements were granted to John and his heirs, which meant they were not obliged to return the disputed tenements. This case shows that, when a husband's interests were involved, inheritances between co-heiresses became more complex. From the point of view of the husband, *maritagium* was the property intended for his new family and he certainly did not expect to return it. However, the co-heiresses, on the contrary, preferred to receive the entirety of the inheritance, which meant that the daughter who had already been endowed with *maritagium* from the inheritance should return it so that the inheritance could be fairly shared in its entirety.

Co-heiresses were not always sisters; sometimes the relationship could be as aunts and nieces. In 1278, a case involved a conflict between a great-niece and her great-aunt. William of Horsendon, who had three sisters, Idonea, Beatrice and Joan, held eighty acres with appurtenances in Shenley. Idonea had no children and it is unknown whether Joan had issue. Beatrice had one son, Henry, and one daughter, Margery. Henry had a daughter called Agnes, and Margery had one son named William. After the death of William of Horsendon, his sister Beatrice, and Joan and Beatrice's daughter, Margery, took possession and divided the property equally. However, Agnes, the daughter of Henry, brought a writ of *nuper obiit* against Joan because Joan had received everything and she had received nothing.²⁸⁶

In response to Agnes' claim, Joan said that Margery died seised so the right to her share descended to William, as the son and heir, who was presently in possession. She

²⁸⁴ *Ibid.*, 402.

²⁸⁵ This is called hotchpot. See above 'Introduction'. I will also discuss it in detail in the next chapter.

²⁸⁶ *The Earliest English Law Reports*, ed. Brand, vol. 3, 53-54.

did not want to answer in the absence of the parcener, William. However, Agnes argued that Margery had no right to inherit because Henry was the son and the heir.²⁸⁷ Agnes' argument seems to correspond to the rule of inheritance – male precedes female – so it was reasonable for Agnes to win the suit. Nevertheless, Joan contended that Henry was born before the marriage, so he could not be the legitimate heir of Beatrice. Eventually, Joan said that she only held about one messuage and thirty acres of the questioned tenements, and she would surrender one half of what she held to Agnes as her reasonable share.²⁸⁸

According to the rule of inheritance, it was Henry who should inherit Beatrice's share, so Agnes had good reason to claim her share; but Joan's argument meant that Margery was the only legitimate heir of Beatrice, which would disinherit Agnes and ensure that she could no longer claim her share of William's inheritance.²⁸⁹ No judgment was made in this case, nor did the jury declare whether Henry was born before the marriage. Instead, Joan and Agnes settled the dispute, which was regarded as an agreement between them.

Situations could also be complicated when there was no kinship between the potential heiresses. In 1285, at the Northamptonshire eyre, Maud, wife of William, brought a writ of *mort d'ancestor* against Joan, wife of Alan de Charytres. The inheritance in question was from a woman named Brune, Joan's mother. Brune had married twice, and in the first marriage, she bore two children, Simon and Joan; in the second marriage, she had John, as the heir, with her husband, Peter Basset, who remarried after Brune's death, and fathered Maud, the plaintiff. Brune's inheritance descended to John, the heir from her second marriage with Peter Basset.²⁹⁰ The issue in this case was, to whom should John's inheritance descend?

John's inheritance came from Brune, so in this case, although both Joan and Maud were the half-blood sisters of John, they could not be the co-heiresses; instead, they were rival heiresses. The inheritance could only descend to the closest heir. The serjeant on Joan's side said that the inheritance came from Brune, and as the daughter of Brune, Joan was the closer heir. The serjeant from Maud's side argued that Brune had enfeoffed Hervey of Borham, who afterwards gave the land to Peter Basset, Maud's

²⁸⁷ *Ibid.*

²⁸⁸ *Ibid.*

²⁸⁹ 'no-one who is a bastard or not born of a lawful marriage may be a lawful heir.' See *Glanvill*, 87.

²⁹⁰ *The Earliest English Law Reports*, ed. Brand, vol. 3, 235-244.

father. From Peter, the fee and right descended to John, and since Maud was Peter's daughter, the sister and heir of John, she had the right to succeed to the land.²⁹¹

In order to protect Joan's right to inherit, her serjeant revealed another piece of evidence, a charter made by Hervey. It suggested that Hervey had given the land to Peter and Brune and the heirs of their bodies. Thus, if they died without any heir of their own, the land was to remain with Simon, the son of Simon Maunce, Brune's first husband. If Simon should die without an heir the land was to remain with his sister, Joan, the current tenant. As if to strengthen his point, the serjeant added, 'We also tell you that by law it is essential that the charter should come to court because it is conditional and the condition cannot be proved by a jury'.²⁹²

The presence of the charter was unexpected to Maud, since her serjeant said they knew nothing about it. The justice, Saham,²⁹³ judged that, because of the charter, Maud and William should take nothing.²⁹⁴ Although both Joan and Maud were John's half-blood sisters, thus potential heiresses, the inheritance had belonged to Brune, so Joan was considered to be a closer heir than Maud, who had no kinship with Brune. However, the key point that allowed Joan to win was her status as heiress, confirmed by the charter which clearly stated that Joan should be the heir.

3.4 Collaboration between co-heiresses

In spite of the distressing fact that co-heiress siblings were so often set against each other, a number of cases do show how they cooperated in order to defeat their opponents. In 1220, three sisters, Idonea, Margery and Elizabeth, came to court together, with their husbands, to answer Roger de Sumervill for an intrusion. The sisters were accused of intruding on the land of Maud, who had held property in Cosinton. After Maud's death, the land descended to Roger. However, the sisters retorted that they held the said land by inheritance from Maud. Roger was afterwards found to be their brother, so they had actually been born of the same parents. The judgment was that Roger should hold the land in question.²⁹⁵ It could be inferred that the sisters and Roger were half-blood

²⁹¹ *Ibid.*

²⁹² *Ibid.*

²⁹³ William of Saham (c.1225-1292). His first judicial appointment was in 1273-1274 as a justice of the King's Bench. For a detailed biography, see 'ODNB', accessed on 12 June 2018, <http://0-www.oxforddnb.com.catalogue.libraries.london.ac.uk/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-24472?rskey=3JIrbE&result=1>

²⁹⁴ *Ibid.*

²⁹⁵ *CRR*, vol. 4, 268-269.

siblings, so they had disputes about the inheritance from Maud. The case clearly shows the co-operation between the sisters and that, in jointly challenging a rival heir, they were willing to form an alliance in order to prevent their share of the inheritance dwindling, or worse, being taken away.

Sometimes, a co-heiress would ally with another against the third. In 1236, Cecily and her sister, Agatha, challenged their sister, Isabel, for their share of inheritance from their father, William de Hardres. Isabel occupied the others' shares, eighty acres of wood in Hardres. Afterwards, she admitted their rights and agreed to concede a moiety of the wood to them in return for which they would do her the service of two parts of a knight's fee. By doing so, Cecily and Agatha quitclaimed all rights in the other half to Isabel and her heirs.²⁹⁶

Forming an alliance could offer an heiress a better chance of winning a suit, hence it was sensible for co-heiresses to form groups. In 1237, Isabel of Fleet and Gunnora of Fleet appeared with their husbands against Christine and her husband, and Alice, daughter of John, for their reasonable share – a half share of ten acres of land with appurtenances in East Fleet and the middle part of twenty-acres of land with appurtenances in West Fleet. They also claimed to be the heiresses of John of Fleet, who also was Alice and Christine's father. In the end, Richard de Grenehelde, Christine's husband, and Alice, gave half a mark to the plaintiffs to make an agreement. A year later, they reached a final concord in court. Isabel and Gunnora quitclaimed their rights and that of their heirs to Christine, Alice and their respective heirs. In return, Christine and Alice granted Isabel and Gunnora 3s 6d of rent in Smarden to be received every year.²⁹⁷ This case reveals a major difference between female and male succession. The 'equal division' among co-heiresses led to a plethora of outcomes and differences of opinions, because the division could never be equal, and each might have thought the others' shares to be more valuable, in that they could produce greater profits.²⁹⁸

An agreement between co-heiresses about the division of inheritance is sometimes misleading, since they might have consented to the allocation reluctantly and had no choice but to agree. A confirmation made by Richard I of the division of the inheritance of William de Say (c. 1133-1177) in 1198 shows extremely unfair terms between co-

²⁹⁶ *Calendar of Kent Feet of Fines*, ed. Churchill and others, 137.

²⁹⁷ *Ibid.*, 149-150.

²⁹⁸ *CRR*, vol. 16, n. 256.

heiresses which caused them to inherit a lesser share in 1218. William de Say had two heiress daughters, Beatrice and Maud. The land, called Brinnington, with its appurtenances remained forever in the hands of the younger Maud, and her heirs, together with the service of William de Reigny and Ralph, son of Bernard. Moreover, Maud ought to have ten liberates of land from the first acquisition, or escheat, of their inheritance to remain for her and her heirs by hereditary right. The rest of the inheritance had been given up by Maud and her heirs to her elder sister, when she and her heirs quitclaimed everything to Beatrice, including demesnes, services, homages, tenements, and all rights and hereditary claims that their ancestors held at any time without any reservation. Furthermore, the agreement demanded the sisters' husbands, Geoffrey fitz Peter (c. 1162-1213) and William de Buckland (c. 1155-1216) should faithfully follow the agreement. Therefore, Maud, her husband and their heirs could not claim any right.²⁹⁹

The case was deceptive as it involved complicated politics concerning the king's interests. As stated in Henry I's Coronation Charter, the king had absolute power to dictate in matters concerning heiresses' marriages and inheritances. In this case, Richard I showed his favouritism to the elder sister, Beatrice. Even if Maud was frustrated by an inequitable partition, she was not in a position to object. Jennifer Ward points out that this partition between Maud and Beatrice was unequal because Beatrice was married to Geoffrey fitz Peter, who was a justiciar between 1198 and 1213, and hence they received the greater share.³⁰⁰ Maud eventually agreed, no matter how reluctantly, but in 1218, following the death of Geoffrey fitz Peter and William de Buckland, she claimed her reasonable share, which is testament to her frustration with the original partition. Unfortunately, after an adjournment, the case disappeared from the record, so whether Maud claimed more of her share back from Beatrice remains a mystery.³⁰¹

A glimpse into the disputes and collaboration between co-heiresses shows how many conflicts were caused by partible inheritance, since truly equal division was practically impossible and it also seemed likely that women would encounter more difficulties than their male counterparts when managing their shares. The next section, therefore, will

²⁹⁹ Ward, *Women of English Nobility and Gentry 1066-1500*, 100.

³⁰⁰ *Ibid.*

³⁰¹ For further discussion, see Milsom, 'Inheritance by Women,' 231-259.

focus on how heiresses managed their inheritance through various kinds of legal actions and property transactions, including grants, exchanges, purchases, leases and agreements. It will also examine the husband's interests after marrying an heiress.

3.5 Her inheritance and her husband's interests

As a woman with property, an heiress enjoyed the right to dispose of her inheritance or manage it by granting, exchanging, or selling it in order to gain more profit. However, once married, her freedom to dispose of it dwindled. The following section will examine cases that show the different strategies heiresses used to manage their inheritance in order to accrue more profit. It will also show the means by which a woman and her husband might manage their property and estate to achieve maximum benefit.

The first case, however, is rather sad because the heiress unwittingly granted her land to another, which caused the loss of her inheritance. Christine and her sister Joan brought a writ of *mort d'ancestor*³⁰² against Henry de Somerville, and the assize came to give its verdict on whether Richard Wassand, the father of Christine and Joan, died seised of his demesne as of fee of two acres of arable with appurtenances in Worthington. Henry brought a charter which showed that Christine had enfeoffed him with all the land that the sisters were claiming. The assize found that, after the death of Richard, his wife, Joan, was in seisin of the contended tenements because the couple had acquired the land jointly. While the said sisters were in wardship, as Richard's heirs, Joan, their mother had Christine make the said charter in order to benefit Henry, her son by her first husband. To render the charter void, the sisters said that Joan had always remained in seisin, so Christine held none of the disputed land during Joan's lifetime and her grant was invalid. The jurors subsequently said that Joan had surrendered land to Christine, so she was in seisin for two days and subsequently enfeoffed Henry on lease through the charter.³⁰³ The judgment was:

It was then said that even shorter seisin would have been quite sufficient to grant an estate to another because, where the fee and right is in the person to whom the surrender is made by the livery of a glove, the surrender would be

³⁰² *Mort d'ancestor* was an action brought where a plaintiff claimed that a defendant had entered upon the former's freehold following the death of one of his relatives.

³⁰³ *The Earliest English Law Reports*, ed. Brand, vol. 3, 133.

sufficient and would be valid in perpetuity.³⁰⁴ It has been found by the assize that the said Christine had sufficient seisin of the said land by the surrender of the said Joan as of her right and inheritance and also she acknowledges the said charter to be her deed, it is adjudged that Christine is to take nothing in relation to a moiety of the said land by this writ. And Joan her sister is to recover her seisin of a moiety of the said land against the said Henry.³⁰⁵

Hence it was adjudged that, no matter how short the time during which a person had seisin, it would be sufficient to grant an estate. Therefore, Christine's charter was legally binding, no matter how hard she argued that her mother, Joan, had forced her to make the enfeoffment because Joan wanted to benefit her son from another marriage, Henry. Although Christine eventually took nothing, fortunately Joan, the other co-heiress, had not made any action in relation to the disputed land, so she was allowed to recover her seisin. It is particularly noticeable that the law did not remove both of the heiresses' rights to recover land just because they had made a false claim together. Hence Christine was allowed the opportunity to have her share once her sister, Joan, recovered the inheritance.

Similarly, the following case shows how an heiress attempted to make her enfeoffment void to regain her inheritance. In 1293, Alice, who was underage, and her sister, Joan, brought a writ of *mort d'ancestor* on the death of their father against one B. The representative of B. admitted that their father died seised, but afterwards the sisters enfeoffed B. of a tenement. Moreover, they released and quitclaimed the land to B. To prove his statement, B. had put forward a charter made by Alice and Joan as confirmation. The representative of the sisters firstly admitted that the charter was their deed, but said that they were never seised of the questioned tenement so they could not have enfeoffed B. Therefore, the charter was void.³⁰⁶ Although the outcome of the case is not recorded, it is thought that, if the charter were valid, there would be little chance of the sisters winning. The strategy Alice and Joan used is reminiscent of Christine's

³⁰⁴ Surrender was an action which meant the giving up of an estate to the person who had it in reversion or remainder, so as to merge it into a larger estate; the giving up of a lease before its expiration; spec. the yielding up of a tenancy in a copyhold estate to the lord of the manor for a specified purpose; or a deed by which such surrender is made. See 'OED,' accessed on 16 January, 2016, <http://0-www.oed.com.catalogue.ulrls.lon.ac.uk/view/Entry/195029?rkey=HEm4nu&result=1&isAdvanced=false#eid>.

³⁰⁵ *The Earliest English Law Reports*, ed. Brand, vol. 3, 133.

³⁰⁶ *Year Books of the Reign of King Edward I*, ed. Horwood, vol. 2, 456-458.

case. The heiresses in both cases tried to void the enfeoffment by asserting that they had never been in seisin, and consequently should not have been liable for any enfeoffment which harmed their inheritances.

Unlike the above-mentioned cases, the following show how heiresses managed their inheritances. Between 1270 and 1271, Matilda, daughter and heiress of Adam de Stanborne, granted Adam Perceval of Portsmouth, for the sum of 8 marks, all her tenements with houses that she had inherited from her father. Adam was to pay half a pound of cumin or a halfpenny to Matilda every year.³⁰⁷ Another release made between 1293 and 1294 shows that Emma and Edith, the daughters and heiresses of Robert de Merton, granted to Roger, vicar of Kingston, their right, by a rent payable to them, to land in Norbiton at Le Goldbeters and land in Kingston at Le Meydenelond.³⁰⁸

Women with inheritance, especially with real estates, could profit from their inheritance in miscellaneous ways. The two cases mentioned above suggest that by leasing or granting their land to others, heiresses received cash, grain and, more importantly, specific items that they required. These profits could continue not only during the woman's lifetime but also during her heirs'.

As demonstrated earlier, the relationship between co-heiresses was often unfriendly because of disputes over inheritance, but some final concords of disputes between co-heiresses show a capacity for mutual agreement. Isabel and Agnes went to court against each other for a moiety of one carucate of land in Aylesford, Sifleton, Ryarsh and Farleigh, which had belonged to their father, Ingram de Sifleton. Isabel claimed this to be her right, and Agnes admitted it. Therefore, Isabel granted Agnes, her husband and their heirs two thirds in demesne of the moiety of that carucate of land. In return, Agnes was to pay 20s every year during the lifetime of their mother, Lucy, who held the third part of the demesne in dower. After Lucy's death, Agnes could have the third part. Together with the other two parts, Agnes and her heirs should, by then, render 30s yearly to Isabel and her heirs. By doing this, Isabel and her heirs would acquit the moiety of the aforesaid carucate of land against the chief lords of that fee and their heirs, from all services belonging to that moiety.³⁰⁹ This agreement made the obligations on both parties clear and demonstrated the significance of making inheritance profitable.

³⁰⁷ TNA, Chancery, C 146/3612.

³⁰⁸ TNA, Records of the Exchequer, E 326/2780.

³⁰⁹ *Calendar of Kent Feet of Fines*, ed. Churchill and others, 48

By granting the land to Agnes, Isabel received continuous income from Agnes yearly, not only for her lifetime but also for her heirs' lifetimes. Moreover, she and her heirs would be exempt from the services of the moiety of the carucate. In addition, she would obtain more cash after their mother's death, and was spared the inconvenience of dividing the dower share of Lucy as the sisters' inheritance.

Whilst these cases show heiresses' ability to manage inheritances, it should not be forgotten that, once an heiress married, her inheritance mattered not only to her, but also to her husband, her husband's family, her heirs and even her natal family. In the case of families rich in real estate, the heiress's husband was able to benefit from his wife's inheritance, either financially or politically. The Beauchamp family, for instance, demonstrated just how much a husband could obtain from his wife's inheritance. William (IV) de Beauchamp (c. 1238-1298), ninth Earl of Warwick, was the son of William (III) de Beauchamp of Elmley and Isabel Mauduit. Isabel inherited the earldom of Warwick when her brother was confirmed as dying without a direct heir. After her brother's death, the earldom of Warwick fell on her son, William (IV) de Beauchamp. The inheritance from the Mauduit family made a significant impact on the Beauchamp's family standing. William inherited the office of Chamberlain of the Exchequer, while through his father he became the hereditary Sheriff of Worcestershire and hereditary pantler³¹⁰ at royal coronations. Between 1261 and 1268, William not only increased the family's estate by succeeding to the earldom of Warwick, but also by marrying Matilda, daughter of John fitz Geoffrey (c. 1206-1258), who inherited a quarter of her father's property and merged it with assets in the Beauchamp family.³¹¹

Expanding a family's estates by marrying an heiress was commonplace within upper-class families. Apart from the Beauchamps, many families increased their lands by forming alliances with heiresses. The d'Abenon family are one such example. They were a knightly family who held lands from 1086 onwards. By extending their estates they became prominent in Surrey without needing to participate in national affairs. Around 1100, the family held some lands in Freston, Albury and West Molesey, Surrey. In 1234 the family already held numerous estates in Surrey and Bedfordshire, so that

³¹⁰ An officer in a large household who was in charge of the bread or pantry. 'OED,' accessed on 3 July 2018, <http://0-www.oed.com.catalogue.libraries.london.ac.uk/view/Entry/137018?redirectedFrom=pantler#eid>

³¹¹ 'ODNB,' accessed on 12 June 2017, <http://0-www.oxforddnb.com.catalogue.libraries.london.ac.uk/view/article/47242?back=>

by the time Gilbert d'Abenon (d. 1236) married Maud de la Lote, a neighbouring child heiress who brought lands at Headley close to Fetcham, they had acquired numerous estates. It seemed that the family were eager to expand their estates by marrying brides from adjacent families. For example, Gilbert's son, John d'Abenon, married Avelina, a member of the Chaworth family, because he was interested in the lands they held in Derbyshire and Nottinghamshire.³¹² The Beauchamps and the d'Abenons exemplify how important an heiress was to her husband's family and they also demonstrate the various marital strategies employed by the gentry and nobles. In essence, marriage was not about love, but about estates.

Similarly, as Mitchell suggests in *Portraits of Medieval Women*, when William de Ferrers (c. 1193-1254), 5th Earl of Derby, and his wife, Sibyl Marshal (c. 1209-1245) arranged marriages for their seven daughters, they directly, or indirectly, linked them to the Marshal orbit of political and marital alliances, reinforcing the circle of the Marshal-Chester family. Mitchell points out that the family's orbit was moving towards the maternal instead of the paternal side, which suggests that the husband's family could share in and benefit from his wife's status, which is the opposite of what historians and anthropologists tend to believe – that a wife shared the status of her husband.³¹³

Once an heiress married, her inheritance became a family issue, not only for her natal family but also for that of her husband. Every legal action concerning her inheritance had to have her husband's approval, and she could not manage it without his consent. Thus, every legal action that happened in relation to an heiress's inheritance shows the will of a 'unit'. A case in point is Isolda of Cardinham (c. 1235-1301), the heiress of the barony of Cardinham, who administered her inheritance alongside her husband. The Cardinham estates lay almost exclusively in Cornwall and even though Isolda's father, Andrew of Cardinham, was one of the foremost barons in Cornwall, they had little influence outside of the county. Before Isolda succeeded to the barony, it had been inherited by males for seven generations, and was influential within Cornwall. Isolda married Thomas de Tracy (c. 1224-1266) at the age of nineteen, and following his death, she married William de Ferrers (c. 1225-1279) in 1267. The

³¹² *Ibid.*,

<http://0-www.oxforddnb.com.catalogue.libraries.london.ac.uk/view/article/52780/?back=,54495>

³¹³ Mitchell, *Portraits of Medieval Women*, 15-16.

following records show how she and her first husband, Thomas, administered her inheritance.

Between 1259 and 1260 the couple came to court to make an agreement with Hugh of Cardinham. The two parties had been in dispute concerning two parts of the manors of Bodwithgy and Arrallas. The case was settled when Hugh granted them the said tenements in exchange for the manor of Ludgvan. There was one condition, that should Hugh die without a blood heir, the tenements he granted to Isolda and Thomas would revert to Hugh. Likewise, the manor of Ludgvan, which Thomas and Isolda granted to Hugh, would revert to them and their heirs forever. Furthermore, the agreement even mentioned the dower of Hugh's wife, Amya. If Amya survived Hugh and Hugh had no blood heir, the manor of Ludgvan would become Amya's dower. However, if Amya demanded the two parts of the manor of Bodwithgy and Arrallas as her dower, the manor of Ludgvan would revert to Thomas and Isolda.³¹⁴

Two years after this agreement was made, Thomas and Isolda made another arrangement concerning Isolda's inheritance with Henry de Tracy (c. 1251-1311). Thomas and Isolda confirmed that they granted Henry one messuage and one ploughland in Arrallas as gift. If Isolda died without an heir from her body, the said tenements would remain with Henry forever. Yet, if Isolda had an heir from her body the tenements would descend to that heir after Henry's death. Hence, Henry was able to enjoy the land during his lifetime even if Isolda had an heir.³¹⁵ After the death of William, Isolda became a widowed heiress. During her widowhood the town of Lostwithiel and the castle at Restormel were acquired by Richard, Earl of Cornwall, and in the following year she sold the manors of Bodardle and Cardinham to Oliver de Dinham, lord of Hartland, Devon, which augmented the Dinham family's estates. At about the same time, she conveyed Tywardreath and Ludgvan to Henry de Campernulf.³¹⁶ Although her land management in her widowhood eliminated Dinham's family's lands, Isolda demonstrated that an heiress could remain active in managing estates both during her marriage and in her widowhood.

³¹⁴ *Cornwall Feet of Fines*, ed. Joseph Hambley Rowe, 2 vols. (Exeter: Devon and Cornwall Record Society), vol. 1, 88-89.

³¹⁵ *Ibid.*, 99-100.

³¹⁶ 'ODNB,' accessed on 14 May 2017, <http://0-www.oxforddnb.com.catalogue.libraries.london.ac.uk/search/quick/?quicksearch=quicksearch&docPos=1&searchTarget=people&simpleName=Isolda&imageField.x=6&imageField.y=5&imageField=Go>

The Basset sisters, from the barony of Headington also demonstrate how an inheritance went from ‘a business between sisters’ to ‘a business led by a husband’. Thomas Basset II (c. 1156-1220) died leaving three daughters as heirs: Philippa, Joan and Alice. Each inherited one-third of the barony. Philippa took Headington as her share and she died around 1265. Joan took the lands in Colynton and also died around 1265. Both their shares thus fell to Alice, who had originally taken Whitford in Devon as her share. Consequently, her inheritance increased from one-third to the whole barony. Alice married twice and had three daughters, Margery, Ela and Isabel, by her second marriage.³¹⁷ The three co-heiresses had sufficient land – indeed far more than they would have expected to have. The allotment of their inheritance was arranged by Isabel’s husband, Hugh de Plessetis from the barony of Hook Norton, who gave lands to Margery and Ela in exchange for their share of Headington.³¹⁸ It is not known whether Hugh managed his wife’s property on her behalf, or whether he acted on his own will; however, the records do show that he had acted in his family’s best interests, and that they had acted as a unit. This particular case appears to have been typical of the relationship between husband and wife when it came to managing the wife’s inheritance. The record also suggests that, after marriage, an heiress could not dispose of her inheritance for her own interests, but for the couple’s joint interests.

3.6 Difficulties of claiming their inheritances in court

For an heiress, inheritance was not a birth right. She became ‘the heir’ when there was no male heir, and due to the equal division of inheritance between co-heiresses, as has been shown above, she was likely to encounter more obstacles than a sole male heir when claiming her inheritance and subsequently. What difficulties might an heiress face when demanding her inheritance in thirteenth-century England? The next section will examine those difficulties, as well as those faced by widows, and how women tackled them in court.

³¹⁷ She was married firstly to William II Malet and secondly to John Biset.

³¹⁸ Ivor J. Sanders, *English Baronies: A Study of their Origin and Descent 1086* (Oxford: The Clarendon Press, 1960), 52.

3.6.1 The clash between inheritance and dower

The conflict between inheritance and dower often caused clashes between widows and heirs. A widow was entitled to her dower, which was one-third of her husband's property, from the death of her husband until her own death. The husband's heir could only obtain the dower share after the widow had passed away. According to *Glanvill*, a suit between the heir and the widow could be infinitely varied because the latter might claim her dower as either a nominated or reasonable dower. If the former, the heir should let her have her nominated dower; if the latter, the heir should assign her the third part of all the freehold tenements of her late husband who had held them in his demesne.³¹⁹ Conflicts occurred when widows took legal action on their dower, because they might harm the heir's interests, for example by alienating the dower. In such a situation, the Statute of Gloucester c. 7 regulated the recovery of dower by heirs:

Likewise if a woman sells or gives in fee or for term of life the tenement that she holds in dower, it is established that the heir or other person to whom the land ought to revert after the woman's death, shall at once have recovery to demand the land by a writ of entry made therefore in the chancery.³²⁰

The clash between dower and inheritance also occurred when there were male heirs, so what was the difference when an heiress and a widow were involved? If only one heiress appeared against a widow, their respective situations might not have been so different. When the heiress was married then she would attend court in her husband's company. However, if there were multiple co-heiresses, the situation could vary. A coalition might be formed by co-heiresses against the widow. In other circumstances, it could prove to be a particularly hostile court room.

In 1242, Katherine, who had been the wife of Roger of Sudbury, claimed against William of Liketon the third part of twenty-acres of land with appurtenances in Newton as her dower. For this land, she demanded that William should call Christine and Beatrice, daughters and heiresses of the said Roger, to warrant him. The sisters, who were in the custody of Katherine, argued that they had no land which they were able to warrant because their father Robert did not die seised of the property except for one

³¹⁹ *Glanvill*, 66.

³²⁰ *English Historical Documents*, ed. Douglas and Rothwell, vol. 3, 417.

message in Sudbury, which Katherine held in dower. In response to the sisters, she insisted that she ought to hold the said message for her lifetime as long as she remained unmarried, whether the heirs came of age or not, according to the custom in Sudbury'.³²¹

William retorted that Katherine only held half of the message as her nominated dower and the other half she held through wardship of the heiresses. Contrary to Katherine's statement regarding the Sudbury custom, he said the actual custom was that no woman would hold more than half a message in which her husband died seised after the heirs came of age. William pointed out that Katherine ought not to have her dower because Roger never held the ten acres that she demanded in his demesne, neither at the time of marriage nor afterwards, so he had not been able to endow her. A jury was summoned to testify whether Robert had been seised of the ten acres during the marriage and whether the custom mentioned in Sudbury was true, i.e., that a woman could hold the whole message for her lifetime after the death of her husband, even after the heir came of age.³²² The record shows that the case ended with a concession, but it does not record the final judgment.

This case shows a widow withholding the heiresses' inheritance according to local custom. If the local custom in Sudbury had actually been as Katherine indicated, it could be inferred that Christine and Beatrice might never have obtained their inheritance, which might have profoundly harmed their interests. This case also reveals the sometimes rocky relationship between the common law and local customs. The judges from the royal courts seemed to be unfamiliar with local customs, hence they needed a jury to confirm them. It is also obvious that, once the local customs were verified, the judges would prioritise them over the common law.

Heirs and heiresses in the thirteenth century did not expect the dower share to fall to them as an inheritance immediately on the deaths of their fathers, because widows would hold them for the rest of their lives. If an heir's father had no wife to survive him, he or she would have a greater expectation of inheritance. Before 1290,³²³ Alice, Joan and Margery brought a writ of *mort d'ancestor* together as co-heiresses on the death of their brother, Robert, against the master of the hospital at Bedford.³²⁴ The master's

³²¹ *CRR*, vol. 17, n. 821.

³²² *Ibid.*

³²³ The precise year is unknown.

³²⁴ *The Earliest English Law Reports*, ed. Brand, vol. 4, 511-512.

lawyer argued that Robert was still alive so the co-heiresses could not claim the inheritance. The evidence of ‘living Robert’, however, lies in another litigation. A certain widow called Robert to warrant regarding the contended tenement, which she held in dower, and she was impleaded by this master. The ‘living Robert’ eventually defaulted, so the master recovered seisin. Robert’s default proved the master’s argument that he was still alive. However, this unknown Robert had assigned part of his inheritance as this widow’s dower. Apparently, the three sisters did not know their brother was still alive nor did they foresee that their inheritance had been assigned as dower for a stranger. This woman might well have been a total stranger to them. The case suggests that heirs’ and heiresses’ expectations of inheritance were easily demolished by widows, especially unpredicted ones, because they were not able to inherit the dower land until widows died. This created numerous uncertainties. For instance, the heir might die before the widow’s death, and have no chance to enjoy his or her inheritance.³²⁵

Curtesy also posed a threat to an heir’s inheritance. A case recorded before 1290 involved a man who had married a woman with a carucate of land with appurtenances granted in frank-marriage to their heirs. They had two daughters.³²⁶ After the man died, the woman remarried and had a son named Alan. After the woman’s death, the two daughters brought a writ of *mort d’ancestor* against the second husband. The representative of this second husband said he could not answer without the presence of Alan, the rightful heir, since the second husband held the land in curtesy.³²⁷

In order to support the two co-heiresses’ rights, their representative argued that the second husband only had free tenements on the land, and the fee and right belonged to the sisters because the feoffment had been made to the woman, her first husband and their heirs, namely the two sisters. The final judgment is not recorded.³²⁸ In this case, the heiresses not only faced the withholding of their inheritance, but they were also threatened with losing it completely since the son born from the second marriage might have been regarded as the rightful heir. The sisters stood a better chance of winning back their inheritance if the said carucate of land with appurtenances was confirmed to have been given to their parents and the heirs of their bodies. Although both dower and

³²⁵ The clash between inheritance and dower will be discussed more in chapter 5.

³²⁶ The precise date is unknown.

³²⁷ *The Earliest English Law Reports*, ed. Brand, vol. 4, 533-534.

³²⁸ *Ibid.*

curtesy could delay the timing of inheritance, in theory, heirs were expected to receive it after people who held dower or property by curtesy had died. Nonetheless, the situation could be far more complicated than described here, creating a real threat of loss of inheritance.

3.6.2 Requiring the presence of all the co-heiresses as a strategy

Obstacles impeded both male and female heirs, but there were some difficulties faced by an heiress that a male heir seldom encountered. The most obvious one is the demand for the presence of all co-heiresses in court. When an inheritance came to males, there was usually only one heir, since there were considerably fewer successions by plural male heirs than by co-heiresses. When a co-heiress came to court, without the other co-heiresses, to demand her right of inheritance, she might be rejected by her opponent.³²⁹ In 1274, Hervey of Boreham was summoned to answer Robert de Bracy and his wife Maud in relation to a plea that he had prevented them from presenting a suitable rector to a moiety of the church of Halstead. Maud had three other sisters, Eleanor, Joan and Idonea, all of whom were co-heiresses of their father, William, and they had divided the inheritance between them. However, Hervey said he was not obliged to answer them because the couple also acknowledged that Maud had three sisters as co-heiresses who were not named in the writ.³³⁰

Likewise, the case mentioned on page 83-84 shows an unwillingness on the part of the defendant to respond because of the nonattendance of the parceners. When Agnes demanded her share of her inheritance against her grandaunt, Joan, she was refused an answer unless William, the heir of Margery, one of the co-heiresses in the case, was present.³³¹ The presence of all co-heiresses was a double-edged sword because, in some cases, it brought a great advantage to co-heiresses. Referring to arguably the most powerful heiresses in the country at that time, the Ferrers sisters, Linda E. Mitchell suggested:

Having multiple coheirs was an advantage for the defendant because by law, all of the heirs had to be listed in the writ and all had to appear before the case

³²⁹ In some cases, co-heiresses would settle an agreement with their opponents in private if some of the heiresses did not appear.

³³⁰ *The Earliest English Law Reports*, ed. Brand, vol. 1, 19.

³³¹ *The Earliest English Law Reports*, ed. Brand, vol. 3, 53-54.

could be heard in court. It must have been impossible for a plaintiff to win a case in which over thirteen powerful co-defendants were involved.³³²

In the case of the Ferrers sisters, they were lucky in that no opponent was as resourceful and wealthy as they were. Although the chances of facing a group of powerful co-heiresses, such as the Ferrers sisters, were slim, it would be extremely tough for a litigant. Even though they might not be noble women, a plurality of opponents suggests both resources and strategic superiority. Alternatively, though, requiring the presence of all co-heiresses was frustrating, resulting in delays that their opponents frequently used to their advantage.

I suggest that requiring the presence of all co-heiresses often gave legal opponents a good reason not to answer their writ, and could be used as a tactic to delay the proceedings in order to have more time to equip themselves with effective strategies for winning the suit. The need for all co-heiresses to be present, therefore, was only beneficial for women if they were organised as a coalition.

3.7 Legal remedies for inheritance if alienated by a husband

As shown in earlier cases, marrying an heiress could be greatly advantageous to a man because women with inheritances possessed land and money. How did husbands control their wives' land? A statement in *Glanvill* might go some way to answer this question. He states: 'Husbands of any women whatsoever cannot alienate any part of the inheritance of their wives without the consent of their heirs, nor remit any part of the right of those heirs, except for the term of their lives.'³³³ Therefore, if a husband wanted to alienate any part of his wife's inheritance, he did not need her agreement. As a consequence, once an heiress married, she lost her independence and control of her property, which was held jointly with her husband. The husband also became entitled to take the fruits and profits of his wife's land during the marriage. Based on this right, he could alienate his wife's estate to another.³³⁴ Although such rights only extended for his lifetime, the husband's alienation often caused trouble if his wife wanted to deny this disposition after his death.

³³² Mitchell, *Portraits of Medieval Women*, 19.

³³³ *Glanvill*, 76.

³³⁴ Pollock and Maitland, *The History of English Law before the Time of Edward I*, vol. 2, 403-404.

A husband was able to sell, lease, alienate, grant and give land away without consulting his wife.³³⁵ The only instance where land was prevented from being given away was if the consent of the heir was not given, not that of the wife. The Statute of Gloucester c.3 states:

It is likewise established that if a man alienates a tenement that he holds by the law of England, his son shall not be barred by the deed of his father, from whom no inheritance descended to him, from demanding and recovering his mother's seisin by a writ of *mort d'ancestor*, even though his father's charter states that he and his heirs are bound to warranty. And if an inheritance has descended to him from his father, then he shall be excluded from the value of the inheritance that has descended to him. And if an inheritance descends to him from the same father at a later date, then shall the tenant recover from him his mother's seisin by a judicial writ that shall issue out of the rolls of the justices before whom the plea was pleaded, to resummon his warrantor, as has been done in other cases where the warrantor comes into court and says that nothing descended to him from him by whose deed he is vouched. In the same way the son's issue [shall recover] by writ of *ael, cosin* and *besael*. Likewise, in the same way the heir of the wife, after the death of his father and mother shall not be barred from an action by his father's charter, if he demands the inheritance or marriage of his mother by a writ of entry that his father alienated in the time of his mother, of which no fine is levied in the king's court.³³⁶

To elaborate on c.3, if the heir has no inheritance passed on to him because of his father's alienation of his mother's land, he or she could recover the mother's seisin by the writ of *mort d'ancestor*. Similarly, the writ of entry could help the heir recover his mother's inheritance, alienated during her lifetime by her husband, provided there were no fines levied in the king's court. This condition denotes that if a fine was made for the alienation, then the heir would be incapable of recovering the mother's inheritance, because, when the fine was levied, it indicated that the wife not only showed her consent to the alienation, but might also have been examined separately from her husband in

³³⁵ *An Illustrated History of Late Medieval England*, ed. Christopher Given-Wilson (Manchester: Manchester University Press, 1996), 65.

³³⁶ *English Historical Documents*, ed. Douglas and Rothwell, vol. 3, 416.

order to express her true opinion on the alienation. Therefore, only when the woman had truly agreed to the alienation could the fine be levied.

If chapter 3 of the Statute of Gloucester only encompassed alienated land that could be recovered by the heir, was there any remedy for the wife to recover her land after the husband's disposition? According to *Bracton*, she could bring a writ of entry saying the disputed land was 'her right and inheritance (or her *maritagium*) and into which the aforesaid³³⁷ had no entry except for the aforesaid, her former husband, who demised it to him, whom she could not gainsay in his lifetime.'³³⁸ By the end of the thirteenth century, chapter 3 of the Statute of Westminster II further stipulated that, provided the wife survived her husband, she might have a chance to recover her land when the husband lost it by default, including being absent himself and refusing to defend his wife's right or wishing to surrender it against his wife's will. Chapter 3 therefore enabled the wife to bring a writ of entry, *cui ipsa in vita sua contradicere non potuit*, which meant that during the husband's lifetime she could not contradict his willingness to recover her land.³³⁹ However, she could only do this when she had been widowed, so she could only recover her land if she survived her husband. If she did not, her alienated inheritance could only be recovered by her heir if the heir was willing to do so.

While *Bracton* suggested that the writ of entry was a good strategy for a widow to recover the alienated land, the defendant had numerous ways to deny her rights. *Bracton* also suggested several possible defences that could be used against the wife. Firstly, it could be argued that the land was acquired through the wife before the marriage, or after the death of the husband. Secondly, a defendant might admit that he had obtained the land through the husband, but the wife had confirmed her husband's alienation in widowhood. Thirdly, a defendant could answer that the widow was personally in the king's court with her husband when the disputed land was alienated, and willingly agreed to the gift, because the king would not allow any coercion against her will in his court.³⁴⁰ The first and second arguments that *Bracton* suggested reveal that a woman's control over her property dwindled after marriage. Ironically, when her single status bestowed on her full control of her property, it could at the same time function as an

³³⁷ The aforesaid refers to the defendant here.

³³⁸ *Bracton*, vol. 4, 30.

³³⁹ *English Historical Documents*, ed. Douglas and Rothwell, vol. 3, 416.

³⁴⁰ *Bracton*, vol. 4, 31.

effective defence for her opponent – full control, full liability. *Bracton* also noticed this, so he provided the above-mentioned arguments, considering a woman's single status as a strong and effective tactic against women themselves. It was coercion by her husband that gave a woman the right to recover her property, because during the marriage she could not act of her own free will. As a married woman could only act as *femme covert* in courts, she was rendered effectively voiceless in legal proceedings. Significantly for this case, it concealed her identity as a free agent; maybe she had agreed to the gift, but still claimed that she had been coerced as a strategy. The truth remains hidden beneath a shroud of secrecy.

In response to such an unscrupulous tactic, *Bracton* advised another course of action for the defendant – to prove that a woman's consent was shown in the royal court. If her consent was taken in private, then there was a high possibility that she succumbed to coercion; however, according to *Bracton*, the king did not permit any violence in the royal court, so if the defendant could prove that she gave the consent there, she would fail to recover her property.³⁴¹ However, it was unthinkable that a woman would freely express herself in the royal courts. Furthermore, wives were often coerced into surrendering their property by their husbands out of fear of the threat of physical punishment. *Glanvill* clearly stated that wives could not gainsay their husbands' alienation. However, such protection was limited and the husband's desires were always a priority. This reflected women's subordinate status during the Middle Ages. In addition to this kind of exploitation, an heiress could be exploited by her guardian, or the person holding her wardship. The next section will examine wardships over heiresses and their legal status in thirteenth-century England.

3.8 Wardships and the legal status of heiresses

As stated in *Glanvill*, upon the death of their ancestors, the heirs of sokemen were placed in the custody of their nearest kindred. If the inheritance descended from the paternal side, custody fell on the maternal side; likewise, if the inheritance came from the maternal side, custody fell on the paternal side. However, if the heirs were female, they remained in the custody of their lords. If they were minors the custody would last until the wards were of age, during which time the lords were responsible for finding

³⁴¹ *Ibid.*

them suitable marriages and assigning them their reasonable share of inheritance. Even if they were of full age, they still needed to remain in the custody of the lords until their lords assented to their marriages; otherwise, they could not marry. If a man had only a daughter or daughters and married them without the consent of his lord, he would be deprived of his inheritance forever. A father could also demand the licence to marry his daughter from the lord, who ought to either consent or show a just reason for rejection, and then the daughter could be married with her father's advice contrary to the lord's inclination.³⁴²

Unlike heiresses of sokemen, the heiresses and heirs of barons were not only under the custody of their lords but also had to pay relief to the king. *Glanvill* clearly states that 'upon the death of a baron holding of him in chief, the king immediately retains the barony in his own hands, until the heir has given security for the relief, although the heir should be of full age'.³⁴³ Furthermore, the king had control over the marriage of barons' daughters. In 1100, he issued a Charter of Liberties, which states in chapter 3:

If any of my barons or other men should wish to give his daughter, sister, niece, or kinswoman in marriage, let him speak with me about it; but I will neither take anything from him for this permission nor prevent his giving her unless he should be minded to join her to my enemy. And if, upon the death of a baron or other of my men, a daughter is left as heir, I will give her with her land by the advice of my barons.³⁴⁴

One hundred and twenty-five years later, the crown again showed its control over the heirs of nobles, and profited from them in chapter 2 of the 1225 Magna Carta, which states that:

If any of our earls or barons or others holding of us in chief by knight service dies, and at his death his heir be of full age and owe relief he shall have his inheritance on payment of the old relief, namely the heir or heirs of an earl £100 for a whole earl's barony, the heir or heirs of a baron £100 for a whole barony, the heir or heirs of a knight 100s, at most, for a whole knight's fee; and he who owes less shall give less according to the ancient usage of fiefs.³⁴⁵

³⁴² *Glanvill*, 84-85.

³⁴³ *Ibid.*, 233. A further discussion of minors can be seen in C. T. Flower, *Introduction to the Curia Regis Rolls, 1199-1230 A. D.*, vol. 62 (London: Selden Society, 1942), 255-265.

³⁴⁴ Fordham University: Medieval sourcebook, accessed on 19 January 2016, <https://legacy.fordham.edu/halsall/source/hcoronation.asp>.

³⁴⁵ *English Historical Documents*, ed. Douglas and Rothwell, vol. 3, 341.

The crown's interests were mostly limited to women of nobility or the rich because they held land. When arranging marriage for an heiress, the king had power over his men, so the husband would only be someone he thought acceptable. At the most basic level, the intended husband should not be the king's enemy and should be financially or politically acceptable.³⁴⁶ In order to secure his right of consent over heiresses' marriages, the king would make sure that, if the heiress married without his permission, her inheritance would be forfeited to him as punishment.

The following case shows how Margery, heiress of the Earl of Warwick, presented herself to Henry III at court. She promised that if she was betrothed before Ascension Day, or if she married without the king's permission, all the lands she held in demesne, together with Warwick Castle, would be forfeited to him. Thus, marrying without permission was clearly profitable for the king, and could enable him to obtain more lands.³⁴⁷

The king and the lords were eager to retain the right to arrange wards' marriages. Not only was this profitable, but it also created social alliances through the promotion of the lords themselves or their family members. In *The Lordship of England - Royal Wardships and Marriages in English Society and Politics 1217-1327*, Waugh points out that a successful bid for a wardship could result in substantial economic or social improvement. It did not always matter who the ward was, so long as he or she had ample land to strengthen the position of the potential partner. In landed families at least, the choice of partners for wards or widows was thus neither random nor accidental; it was aimed specifically at forging more powerful family alliances. Wardship was an important acquisition.³⁴⁸

For a lord, holding custody not only implied power over his men but also increased his dignity, by marking him as 'a lord'. An intriguing case in 1211 tells of a lord's rage when the eldest daughter of a knight married without his consent. The lord in question, Robert Maudit, complained that Robert Morin, the knight, coerced the eldest daughter of John Maudit into marriage without his consent. He would not accept the fine of 100 marks and, furthermore, accused Robert Morin of using force to prevent him from entering his land.³⁴⁹ The lord's consent to the ward's marriage was not only a sign of

³⁴⁶ Waugh, *The Lordship of England*, 65-69.

³⁴⁷ *CRR*, vol. 17, n. 234, 60.

³⁴⁸ Waugh, *The Lordship of England*, 210-212.

³⁴⁹ *CRR*, vol. 6, 156.

dignity, but was also of great value, since the wardship was treated as movable property. Guardians could sell, lease, bequeath, or apply them as collateral for loans. In the thirteenth century, the demand for land was rising, so money could easily be raised by leasing lands held in wardship, which caused wardship prices to increase substantially. In 1248, for instance, in Canterbury, the wardship of Cecily, the heiress of Michael Tanet, originally in the custody of Margaret, Countess of Lincoln, was later sold to one Joan for 100 marks.³⁵⁰

Heiresses in custody could be vulnerable. A case in 1220 shows how one heiress was disinherited by her guardian. Geoffrey de Burnevill had two daughters, Maud and Alice. He gave their custody to John de Littlebury, who married his eldest son and heir, John, to Alice, and his younger son, Saer, to Maud. John and Alice had four children. John, the elder brother, wanted the whole inheritance, so he put Maud in Sopwell Priory, in an attempt to make her a nun.³⁵¹ The guardian had obtained the sisters' inheritance by marrying both of them to his sons. Even worse was the attempt to annex Maud's share by making her a nun. This resulted in Maud quitclaiming her share in favour of Alice.³⁵²

Custody equated to property, and property that a guardian could sell for profit at that. For example, a case in 1241 reveals that one particular guardian, Gilbert of Bereham, held the custody of Denise and Christine, the daughters and heiresses of Philip de Guestlings, when they were minors. He sold the right to the eldest daughter's husband, John de Hores, who would return her reasonable share when she came of age.³⁵³ Another example occurred in the Somerset barony of Curry Malet. When Baron William Malet II died in 1194 he left three daughters, Helewise, Mabel and Bertha, as his heirs. In 1211, Bertha's inheritance went to her two sisters (she was probably the youngest).³⁵⁴ In the same year, Nicholas Avenel, Mabel's husband, claimed against a man named Henry for an intrusion in the manor of Kelve, which was under the custody

³⁵⁰ *Calendar of Kent Feet of Fines*, 205.

³⁵¹ *CRR*, vol. 9, 65.

³⁵² *Ibid.*

³⁵³ *CRR*, vol. 16, n. 1573, 304-305. Nevertheless, his former custody caused him trouble with Matthew de Scotyny. Matthew came to court against Gilbert for one carucate of land with appurtenances in Wodeton'. He argued that Gilbert had no entry to the disputed land unless through Edmund, archbishop of Canterbury, who unjustly disseised him. Gilbert said he was not obliged to respond, and he could not lose or gain the said land because he was not its owner. He had only held the custody of the heiresses, which had been conveyed to John. Realising that he might have named the wrong person in the suit, Matthew argued that he did not know about the transmission and that should not harm his right.

³⁵⁴ *CRR*, vol. 9, 5.

of Hugh Pointz, husband of Helewise. Nicholas said that Pointz had no right to hold the manor in custody because Pointz had married the younger daughter, and he, Nicholas, had married the eldest. Moreover, he had been assigned service from Pointz so he should hold the custody not Hugh.³⁵⁵

A woman could be an heiress for her lifetime, but there was a big gap between being an unmarried heiress and a married one. An unmarried heiress had to remain in the custody of her guardian, whether she was of age or not, until, with the consent of her lord, she married. Prior to being married, she could present at court on her own; afterwards she and her husband would be regarded as a ‘family unit’. All the married heiresses mentioned in this chapter were recorded as ‘coming to court with their husbands’. Thus they had lost the status of *femme sole*, which they would not regain until they became widows.

3.9 Conclusion

Female succession was not uncommon in thirteenth-century England. Between 1086 and 1327, 146 baronies – about 71 per cent of 204 English baronies – were succeeded to at least once by heiresses.³⁵⁶ Sisters also stood a chance to inherit. *English*

³⁵⁵ Sanders, *English Baronies*, 38-39.

³⁵⁶ Including baronies and probable baronies. According to Sanders, probable baronies were those for which there is no evidence of the payment of baronial relief; seven of them were so big that they are considered as baronies; 9 of them were the lands of earls. The baronies succeeded by heiresses are as follows: Aldington (p. 1), Arundel (p. 1), Ashby (p. 3), Ashfield (pp. 3-4), Aveley (p. 4), Bampton (p. 5), Barony of Biset (pp. 5-6), Barony of Gloucester (p. 6), Barony of Miles of Gloucester (p. 6), Beckley (p. 9), Bedford (p. 10), Belvoir (p. 12), Benington (pp. 12-13), Beverstone (pp. 14-15), Blagdon (p. 15), Blythborough (p. 16), Bolam (p. 17), Bolingbroke (pp. 17-18), Bourn (p. 19), Bradninch (pp. 20-1), Braose Baronies in Wales (pp. 21-2), Bulwick (p. 22), Burgh By Sands (pp. 23-4), Burstwick (pp. 24-5), Cainhoe (pp. 26-7), Castle Combe (p. 28), Castle Holgate (pp. 28-9), Cavendish (pp. 29-30), Caxton (p. 30), Chester (pp. 32-3), Chipping Warden (pp. 33-4), Chiselborough (p. 34), Clare (pp. 34-5), Clifford (p. 35), Cogges (pp. 36-7), Gottingham (p. 37), Crick (pp. 37-8), Curry Malet (p. 38), Eaton Bray (pp. 39-40), Ellingham (pp. 41-2), Embleton (p. 42), Erlestole (p. 42), Ewyas Harold (p. 43), Field Dalling (p. 44), Folkestone (pp. 44-5), Folkingham (p. 46), Freiston (pp. 47-8), Great Bealings (p. 48), Great Torrington (pp. 48-9), Hanslope (pp. 50-51), Hatch Beauchamp (p. 51), Headinton (pp. 51-2), Helmsley (p. 52), Hockering (pp. 53-4), Hook Norton (p. 54), Hooton Pagnell (p. 55), Hunsingore (p. 56), Kendal (pp. 56-7), Kirklington (pp. 58-9), Leicester (pp. 61-2), Long Crendon (pp. 62-4), Marshwood (p. 64), Morpeth (pp. 65-6), Much Marcle (p. 66), Mulgrave (pp. 66-7), Nether Stowey (p. 67), North Cadbury (p. 68), Odell (pp. 68-9), Okehampton (pp. 69-70), Pleshy (pp. 71-2), Poorstock (p. 72), Pulverbatch (pp. 73-4), Redbourne (pp. 74-5), Richard’s Castle (p. 75), Shelford (pp. 76-7), Skelton (pp. 77-8), Skirpenbeck (pp. 78-9), Southoe (p. 80), Stafford (p. 81), Stainton Le Vale (pp. 81-90), Stansted Mountfitchet (p. 83), Staveley (pp. 83-4), Stoke Trister (p. 84), Styford (pp. 84-5), Tarrington (pp. 86-7), Thoresway (pp. 88-9), Totnes (p. 89), Trematon (pp. 90-2), Walkern (p. 92), Warwick (pp. 93-4), Wem (pp. 94-5), Weobley (pp. 95-6), West Dean (pp. 96-7), West Greenwich (pp. 97-8), Whitchurch (p. 98), Winterbourne St. Martin (pp. 99-100), Wooler (p. 100), Wormegay (p. 101), Writtle (p. 102), Alnwick (p. 103), Appleby (pp. 103-4), Barnstaple (p. 104), Barony of Ros (pp. 105-6), Bourne (pp. 107-8), Bramber (p. 108), Brattleby (p. 109), Callerton (pp. 109-110), Chepstow (pp. 110-11), Chilham (pp.

Baronies: a Study of their Origin and Descent 1086-1327 records 74 baronies – about 36 per cent of 204 English baronies – being inherited by sisters following the death of male heirs.³⁵⁷ When a male heir died without issue, his inheritance would fall to his sisters, which made every daughter a potential heiress. These women had to be creative and constructive to ensure the division of partible inheritance, in ways that male heirs did not have to be.

Heiresses differed to their male counterparts both in gender and the manner of their succession. After 1130, when the equal division of inheritance between daughters became the norm, every heiress and her husband was entitled to a share. It was this rule that made heiresses differ from a sole male heir and which became the source of numerous inheritance conflicts which saw co-heiresses bringing litigation to court for their rights. The records show disgruntled heiresses not satisfied with their shares; heiresses coveting others' shares; co-heiresses obtaining nothing because others had taken it all; alliances of co-heiresses; and co-heiresses as rivals. All such examples, and more, appeared in the medieval courts as a consequence of partible inheritance. As Mitchell points out, when co-heiresses formed alliances, they could be invincible, but this only worked when they were rich, resourceful, litigious, and determined. The fact that all co-heiresses were required to appear, together, could be significantly

111-12), Chitterne (p. 112), Clun (pp. 112-13), Dudley (p. 113), Egremont (p. 115), Eton (pp. 116-17), Flamstead (pp. 117-18), Fotheringay (pp. 118-19), Headstone (p. 119), Hasting (pp. 119-20), Haughley (pp. 120-1), Hepple (p. 122), Horsley (pp. 122-3), Irthington (p. 124), Kempsford (pp. 125-6), Kentwell (p. 126), Langley (pp. 127-8), Lavendon (p. 128), Lewes (pp. 128-9), Liddel Strength (p. 129), Little Easton (p. 130), Manchester (p. 130), Mitford (pp. 131-2), Odcombe (pp. 132-3), Old Wardon (pp. 133-4), Papcastle (pp. 134-5), Patricksbourne (pp. 135-6), Pontefract (p. 138), Rayne (pp. 139-40), Richmond (pp. 140-1), Skipton (p. 142), Stogursey (pp. 143-4), Swanscombe (pp. 144-5), Tamworth (pp. 145-6), Topcliff (p. 148), Whalton (p. 150), Witham (p. 151). Sanders, *English Baronies*.

³⁵⁷ The baronies inherited by the male heirs' sisters are as follows: Arundel (p. 1), Ashby (p. 3), Ashfield (pp. 3-4), Bampton (p. 5), Barony of Gloucester (p. 6), Barony of Miles of Gloucester (p. 6), Bedford (p. 10), Belvoir (p. 12), Beverstone (pp. 14-15), Bolingbroke (pp. 17-18), Bourn (p. 19), Bulwick (p. 22), Burgh By Sands (pp. 23-4), Burstwick (pp. 24-5), Cainhoe (pp. 26-7), Castle Holgate (pp. 28-9), Cavendish (pp. 29-30), Chester (pp. 32-3), Clare (pp. 34-5), Gottingham (p. 37), Eaton Bray (pp. 39-40), Ellingham (pp. 41-2), Folkestone (pp. 44-5), Folkingham (p. 46), Great Torrington (pp. 48-9), Hanslope (pp. 50-1), Helmsley (p. 52), Hockering (pp. 53-4), Hook Norton (p. 54), Hunsingore (p. 56), Kendal (pp. 56-7), Leicester (pp. 61-2), Long Crendon (pp. 62-4), Odell (pp. 68-9), Pleshy (pp. 71-2), Poorstock (p. 72), Pulverbatch (pp. 73-4), Redbourne (pp. 74-5), Shelford (pp. 76-7), Skelton (pp. 77-8), Southoe (p. 80), Stafford (p. 81), Stainton Le Vale (pp. 81-90), Stansted Mountfitchet (p. 83), Staveley (pp. 83-4), Stoke Trister (p. 84), Totnes (p. 89), Warwick (pp. 93-4), West Greenwich (pp. 97-8), Whitchurch (p. 98), Winterbourne St. Martin (pp. 99-100), Wooler (p. 100), Barony of Ros (pp. 105-6), Brattleby (p. 109), Callerton (pp. 109-10), Chepstow (pp. 110-11), Chilham (pp. 111-12), Dudley (p. 113), Egremont (p. 115), Eton (pp. 116-17), Flamstead (pp. 117-18), Fotheringay (pp. 118-19), Haughley (pp. 120-1), Horsley (pp. 122-3), Lavendon (p. 128), Manchester (p. 130), Odcombe (pp. 132-3), Old Wardon (pp. 133-4), Papcastle (pp. 134-5), Patricksbourne (pp. 135-6), Pontefract (p. 138), Skipton (p. 142), Stogursey (pp. 143-4), Swanscombe (pp. 144-5). *Ibid.*

disadvantageous, since the rule was often used by their opponents as a delaying tactic which would allow them more time to prepare their cases.

While heiresses were highly valued in the marriage market, they were also highly vulnerable, often becoming the pawns of their guardians, some of whom sought various means to disinherit them, such as placing them in convents, where they were compelled to make a profession and become nuns. This vulnerability even extended to noble heiresses, especially those who were widowed and had enormous wealth, since they were exploited by the crown, coveted by a myriad of ill-meaning suitors, and were often at risk of abduction and extortion.

The purpose of primogeniture was to keep inheritances intact, but multiple female succession and equal division resulted in a weakening of this concept, since whole inheritances ended up being split into several pieces – the more co-heiresses there were, the smaller the share they received. Furthermore, it was almost impossible to secure equal division, since the value of a piece of land might vary in different parts of the country. Thus, it was hard to satisfy every co-heiress and many disputes resulted. Numerous sources illustrate disputes where co-heiresses would become severely antagonistic towards each other, whereas others indicate collaborative alliances, such as that of the extremely powerful Ferrers sisters, who came together to fight off their enemies. Although these sisters had fought each other over some disputes, they walked into court arm in arm to defend each other's conflicted land. Compared to their male counterparts, co-heiresses faced more disputes over inheritance. In many instances, therefore, co-heiresses were bound together, since, as with symbiosis, one could not completely exclude another. The dynamics that played out as a result have never bored historians.

Through exchanges, grants, leases, purchases and other legal actions, thirteenth-century heiresses showed that they could manage their inheritances to a greater or lesser extent. However, after their marriages, when their husbands gained control over their inheritances, many heiresses attended court with them. Twenty-five per cent of the cases examined in this chapter show that the heiresses came to court with their husbands, which not only suggests that married women were not permitted a voice but also that they were denied any agency and authority in court. Thus, the question arises of whose court case was being represented. Perhaps a woman's husband was there simply as a companion, as the law required he should be, or he might have initiated the litigation

against his wife's wishes. What is clear is that entering marriage was often part and parcel of a woman's disempowerment. After marriage, a husband could dispose of his wife's land without her approval, which often led to numerous disputes and litigations. Nevertheless, the women's agency differed from places and jurisdictions. Some places, such as London, allowed a wife to act as *femme sole* to some extent. If she owned her own shop and craft in the city of London, she could rent a shop, answer the debt, sue and to be sued as a single woman in court.³⁵⁸ Thus, outside the king's court, women's agency differed and was affected by local customs.

Despite women's loss of control over their property, the common law did give them some rights to protect their inheritance. They could either show that there had been no consent to the husband's alienation or could recover the land after he died, using that lack of consent as just grounds for a claim. Nevertheless, if consent was confirmed, a woman had no chance to recover her lands. The protection of the wife's lands was demonstrated clearly in the Statute of Gloucester (chapter 3), but it was enacted for the benefit of the wife's heir rather than for her. Both *Bracton* and chapter 3 of the Statute of Westminster II confirmed the widow's right of recovery if her property had been alienated against her will by her husband, but she could only do this after her husband's death, that is, if she survived him.

Despite being a subordinate group in medieval England, women were still able to go to court to pursue their inheritances. The resulting court cases reflect the various dynamics between and within families. Consequently, with or without their husbands, women were able to make themselves visible, at least in the court records. As Barbara A. Hanawalt states, 'the right of women to inherit was never questioned'.³⁵⁹ Nevertheless, heiresses fought for their inheritance even when the law put them into subordinate and dependent positions and gave them limited resources to protect their own rights.

³⁵⁸ Caroline Barron, 'The "Golden Age" of Women in Medieval London,' *Reading Medieval Studies*, 15 (1989), 40.

³⁵⁹ Hanawalt, *The Wealth of Wives*, 54.

Chapter Four: *Maritagium* as Women's Land?

Of course, inheritance was not the only source of women's property. While primogeniture prevailed across the country, there remained many sons and daughters who would never be heirs or heiresses and stood to inherit nothing. There were many alternative options for non-heirs, including marriage. How could a non-heiress make herself attractive to men in the marriage market if she possessed no property? Part of the answer was *maritagium*, known as marriage portion or dowry, which, to a greater or lesser extent, compensated non-heiress daughters for their dim prospects – not only as a financial attraction and guarantee for her new family but also as a hedge against her possible widowhood. This chapter will consider how *maritagium* developed in thirteenth-century England. It will introduce *maritagium* and show how women pursued it in court and managed it thereafter. Twenty-three court cases will be discussed in total, and at the end of the chapter, the common belief that *maritagium* was 'women's land'³⁶⁰ will be challenged by suggesting that *maritagium* was actually more akin to 'family business' rather than property that concerned daughters or women only.

4.1 What is *maritagium*?

Maritagium, the Latin for marriage portion, refers to the money, rent, or property that a bride brings to her husband.³⁶¹ Also known as a dowry, 'it was usually given by the father of the bride to the groom and the groom's family, and was initially intended as a contribution towards the upkeep of the bride'.³⁶² In England it was customary for a financial arrangement to be agreed upon by the families of the bride and the groom before betrothal. Although this was not a legal obligation, a woman was expected to bring either real estate, movable property or cash to her new family – although land was preferred.³⁶³

According to *Glanvill*:

³⁶⁰ In some senses, *maritagium* was women's land because it was usually granted to brides rather than grooms. However, I suggest that in a broader sense, *maritagium* had more of the features of 'family land' than 'women's land', an argument which I will address in full later this chapter. Claire de Trafford and Henrietta Leyser, for instance, are among the scholars who believe *maritagium* to be 'women's land'.

³⁶¹ *Maritagium* can refer to marriage, and the right to give in marriage and marriage portion in thirteenth-century England. See 'Dictionary of Medieval Latin for British Sources,' accessed on 14 September 2016, <http://logeion.uchicago.edu/index.html#maritagium>

³⁶² Peter Fleming, *Family and Household in Medieval England* (New York: Palgrave, 2001), 37.

³⁶³ Leyser, *Medieval Women*, 107.

Every free man who has land may give a certain part of his land with his daughter, or with any other woman, as a marriage-portion, whether he has an heir or not, and whether the heir if he has one is willing or not, and even if he is opposed to it and protests.³⁶⁴

Initially, *maritagium* referred to the property a man's father granted to his son and the son's wife. Although it was not common in thirteenth-century England, a few cases show that the grooms' fathers, rather than their brides' fathers, granted *maritagium* to their sons and their wives. Some men gave endowments called '*ad se maritandam*' to their daughters or sisters who were not heiresses in order to attract potential husbands, because women who were not heiresses found it difficult to attract suitors. However, such a grant was usually in fee, so was not technically *maritagium*, since if the woman was not married, or she had no issue, or no issue survived her, the grant would go to her nearest collateral heir.³⁶⁵

Claire de Trafford suggests in 'Share and Share Alike? The Marriage Portion, Inheritance and Family Politics' that unlike dower, '*maritagium* was a strong customary pressure instead of a legal obligation to a family'. The custom effectively protected daughters as it was a father's right to pass on an inheritance to his daughters, even if the heir opposed it, reflecting the significance of dowry.³⁶⁶ Dowry, therefore, was not only a property of the bride and groom, it was also a settlement to help the newly-wed couple sustain their future family.

Marriage in medieval England had to follow certain formalities. Firstly, even before the betrothal the *maritagium* had to be arranged between the bride and groom's families. The significance of *maritagium* can be seen at a very early stage prior to the marriage, since a betrothal ceremony could not be held until a settlement was agreed.³⁶⁷ Jennifer Ward points out that marriage was inextricably linked to property and wealth, and consequently the choice of marriage partners would influence a family's future. This applied to the nobility in particular. Concerns over money and land were usually underlined in marriage contracts.³⁶⁸ From the point of view of the groom, *maritagium* meant the addition of new property for his family. It might seem that the bride's family

³⁶⁴ Glanvill, 69.

³⁶⁵ J. M. Kaye, *Medieval English Conveyances* (Cambridge: Cambridge University Press, 2009), 136.

³⁶⁶ de Trafford, 'Share and Share Alike?' 36.

³⁶⁷ Leyser, *Medieval Women*, 107-111.

³⁶⁸ Ward, *Women of the English Nobility and Gentry 1066-1500*, 107.

suffered a great loss in this exchange, but the specificities of *maritagium* meant that the bride's family did not necessarily lose the land since, under certain conditions, the property could revert to the donors.

From the twelfth to the early thirteenth century a grant of *maritagium* was often made to a husband and his heirs, which meant that his wife had nothing, except for her dower, if she survived him. After the 1190s, grantors started to add limitations, for example stipulating that the grant was for the wife, the husband and their issue only, and that if there was a failure to produce an heir the grant would revert back to the donor and his heirs. Such a condition meant that *maritagium* did not descend like a normal fee.³⁶⁹

Maritagium granted in marriage and in frank-marriage had different features. *Glanvill* describes two kinds of marriages – one was free from performing homage and service, and the other was liable for the performance of services but not homage. When marriage was called free, a free-man gave a certain part of his land with a woman in marriage to her husband, and such land was decreed:

‘free of all services, which shall be discharged by the donor and his heirs to the chief lords. The land shall remain free in this way until the third heir, nor shall the heirs meanwhile be bound to do homage for it. However, after the second heir the land shall again be liable for the service due from it, and homage shall be taken for it; and if it is part of a military fee, it will bear the service of the fee in proportion to its size.’³⁷⁰

On the other hand, if the land was not given in frank-marriage, the woman's husband and his heirs needed to perform service, but not homage, until the third generation.³⁷¹ In 1212, for instance, John de Wahull was accused by Ellis de Beauchamp and his wife, Constance, of performing neither homage nor the service of two knights in the tenements of Maulden. John argued that the said tenements were given to his grandmother, Rose, as *maritagium*, which descended to his father, Simon, and then to him. He was only the second generation after the woman to whom the property was given in *maritagium*. He asked for a judgment as to whether he owed homage and relief.³⁷² Although the case did not show in which form the *maritagium*

³⁶⁹ Kaye, *Medieval English Conveyances*, 138.

³⁷⁰ *Glanvill*, 92.

³⁷¹ *Ibid.*

³⁷² *CRR*, vol. 6, 354.

was given, it was probably not given in free marriage because the claim that Ellis and Constance made clearly indicates that John owed them homage, service and relief. However, John cleverly avoided mentioning service by only arguing that he should not do the homage and relief. Such features of *maritagium* sometimes made litigation more complicated and confusing than it really was.

For a medieval woman, marriage was as much a negotiation concerning lands and money as a ceremony of love. Particularly for a noblewoman, it involved choosing a man from a family of similar wealth and status in order to create a strong, wealthy alliance. Consequently, marriage was subject to political debate.³⁷³ If a woman's potential husband was of higher social status or greater wealth, a larger dowry might be expected. Peter Fleming calculated the average value of dowry given by baronial families between 1300 and 1500 to be in excess of 100 marks. By the fifteenth century, a woman whose father could afford a dowry of 800 marks might expect to attract a husband of knightly rank.³⁷⁴

Fleming also suggests that, up to the mid-thirteenth century, a marriage portion usually consisted of land, but in later times, landed dowry was more likely to be replaced by money, partly as a result of an increasingly commercialised society which gave rise to a new 'cash rich' class.³⁷⁵ Moreover, giving land as a marriage portion meant that the father of the bride might not be able to keep his real estate intact. However, by the fourteenth century, the old form of *maritagium* and dower was replaced by jointure, a single estate limited to a couple and their issue, which was defined as 'a competent livelihood of freehold for the wife of lands and tenements, to take effect upon the death of the husband for the life of the wife at least.'³⁷⁶ If a jointure was set on the bride and the groom, the bride's father provided a similar sum of money as *maritagium*. In return, the groom's father promised the couple some land or income from the land to help the bride survive widowhood.³⁷⁷ Since this study is only concerned with the thirteenth century, jointure, which did not prevail until the following century, will not be explored in this chapter. Nevertheless, because its early

³⁷³ Ward, *Women of the English Nobility and Gentry 1066-1500*, 16.

³⁷⁴ Fleming, *Family and Household in Medieval England*, 37.

³⁷⁵ *Ibid.*

³⁷⁶ 'OED,' accessed on 18 April 2018, <http://0-www.oed.com.catalogue.ulrls.lon.ac.uk/view/Entry/101563#eid40430315>

³⁷⁷ Payling, 'The Politics of Family: Late Medieval Marriage Contracts,' 161-173.

development took place towards the end of the thirteenth century it will be mentioned in the later part of this thesis.

4.2 Literature review

As Kathleen Hapgood Thompson pointed out in ‘Dowry and Inheritance Patterns: Some Examples from the Descendants of King Henry I of England’, dowry has not received much attention from medieval historians compared to dower.³⁷⁸ Most information about dowry is usually only marginal to studies of medieval women. Nevertheless, some exceptional works do consider *maritagium*.

In Claire de Trafford’s ‘Share and Share Alike? The Marriage Portion, Inheritance, and Family Politics’, she examined several cases and cartularies in order to discuss the transmission of *maritagium* during the twelfth and thirteenth centuries. Unlike dower, she found *maritagium* was a strong customary pressure rather than a legal obligation and suggested that many mothers passed their *maritagia* onto their younger sons, because inheritance from the father’s side would pass to the eldest son, leaving the younger with nothing.³⁷⁹ Sometimes, the heir himself assigned his mother’s *maritagium* to a younger brother. Or alternatively, she could choose to keep seisin and let her son live on the land.³⁸⁰

De Trafford further suggested that although some widows granted their *maritagia* to their daughters, it is still unclear why they chose daughters over sons. One possibility de Trafford put forward, is that *maritagium* was expected to be used as ‘women’s land’.³⁸¹ An illuminating example can be found in *The Cartulary of the Wakebridge Chantries at Crich*, which shows a piece of land had been passed through three generations for women as *maritagium*.³⁸²

Granting *maritagium* to daughters rather than sons might happen when a daughter was not granted any *maritagium* before her father’s death, and her brother was probably unable or unwilling to grant her *maritagium*. Therefore, her mother granted her own *maritagium* to her daughter as *maritagium* again.³⁸³ Moreover, in *Bracton* the question

³⁷⁸ Kathleen Hapgood Thompson, ‘Dowry and Inheritance Patterns: Some Examples from the Descendants of King Henry I of England,’ *Medieval Prosopography*, 17.2 (1996), 45-61.

³⁷⁹ de Trafford, ‘Share and Share Alike?’ 38.

³⁸⁰ *Ibid.*, 39.

³⁸¹ *Ibid.*, 42.

³⁸² *Ibid.*, 43. *The Cartulary of the Wakebridge Chantries at Crich*, ed. Avrom Saltman (Derby: Derbyshire Archaeological Society, 1976), n. 99.

³⁸³ *Ibid.*, 40-42.

was asked whether a mother with several daughters should, in her widowhood, give her whole *maritagium* to just one. This suggested not only an expectation that it should be shared between all her daughters, but also an expectation that daughters had a special claim to their mothers' *maritagia*.³⁸⁴ However, de Trafford found plenty of evidence of widows granting *maritagia* to non-inheriting sons, rather than to daughters, which she regarded as a surprising in light of the belief that *maritagium* was often reused to provide for a daughter.³⁸⁵

As mentioned earlier, most *maritagia* would revert to the grantor in the event that the woman had no issue, but de Trafford has cast doubt on this practice. She suggested that it was not a firmly established fact that the land reverted because that required women to keep in contact with distant kin.³⁸⁶

De Trafford was of the view that the use of *maritagium* within families had two ramifications. Firstly, a woman's ability to dispose her own *maritagium* diminished patriarchy. Although a husband was free to make grants from his wife's *maritagium*, he always had to be aware that she could negate the gift during her widowhood. Similarly, heirs had been aware that their mothers could alienate lands permanently in their widowhood, making them unable to inherit their *maritagia*. However, widows' power was affected by De Donis,³⁸⁷ because they were no longer able to alienate their *maritagia*. Consequently, a woman's status within the family may have become more precarious.³⁸⁸ The second ramification was the nature of inheritance in the early Middle Ages. Numerous families in the twelfth and thirteenth centuries had been comparatively generous towards their daughters, providing them with different forms of marriage portion, including land, rent, or goods, but this seems to have dwindled, resulting in the enactment of De Donis. In de Trafford's opinion, prior to this period, rather than enforcing primogeniture, it would appear that families used various strategies, including *maritagium*, to continue to provide land for as many descendants as possible.³⁸⁹

³⁸⁴ *Ibid.*, 45. *Bracton's* answer to it was negative. See *Bracton*, vol. 2, 224.

³⁸⁵ *Ibid.*, 45.

³⁸⁶ *Ibid.*, 46.

³⁸⁷ De Donis Conditionalibus is the first chapter of the Statute of Westminster II (1285), which required that the grantor of the land limited the granted land that could be inherited by the grantees' direct descendants, and prevented alienation by the grantees. A detailed discussion will follow in the later part of this chapter.

³⁸⁸ de Trafford, 'Share and Share Alike?' 47-48.

³⁸⁹ *Ibid.*, 47-48.

Unlike de Trafford, who examined many cases of *maritagium* in ‘Share and Share Alike?’, Kathleen Hapgood Thompson used the descendants of King Henry I of England as examples to discuss the relationships between dowry and inheritance. Her study concluded that among the princely and magnate families of England and Western France in the twelfth century, dowry was comparatively widespread and became one of the most common forms of estate strategy. For example, Henry I, by granting his daughters substantial dowries, rendered his daughters more attractive to suitors.³⁹⁰

One example is that of Constance, Henry’s daughter, who married Roscelin, Vicomtes of Maine, whose family held territory at Beaumont-sur-Sarthe in Normandy.³⁹¹ The Roscelins were also masters of the southern approaches to Normandy, and Henry I needed their family’s support against the Angevins. In order to consolidate the alliance, Henry I prepared a considerable dowry for Constance’s marriage, including the particularly valuable great royal manor of South Tawton in Devon, which could ‘support fifty ploughs’. Constance’s dowry not only presented the de Beaumonts with a substantial stake in England, but it would also help to unite Henry I’s Anglo-Norman realm. This property was held by the family for years and in 1175, Constance’s granddaughter, Constance, took it with her as her dowry when she married Roger of Tosny at Sees. After being in the de Beaumont family for two generations, the *maritagium* was held by the Tosnys until 1309. The dowry of the two Constances had not only served as worthy dowry for both women, but it descended through the family’s female line as dotal property.³⁹²

A similar case is that of Matilda, Henry I’s illegitimate daughter, who married Rotrou, Count of Mortagne, whose family’s land lay between southern Normandy and Chartres. Although details of her dowry are unknown, the property was probably located in Sussex.³⁹³ The couple’s benefactions were situated in the neighbouring manors of Aldbourne and Wanborough on the Wiltshire and Berkshire border.³⁹⁴ In 1086, Aldbourne was in the king’s demesne, and it was assessed at forty hides. Rotrou was to grant 20s from his revenues to the priory at Lewes. In 1066 and 1068

³⁹⁰ Thompson, ‘Dowry and Inheritance Patterns,’ 45-47.

³⁹¹ *Ibid.*, 49.

³⁹² *Ibid.*, 49-52.

³⁹³ *Ibid.*, 52-53. According to Thompson, Orderic Vitalis also described the alliance between Matilda and Rotrou. See *The Ecclesiastical History of Orderic Vitalis*, vol. 6, ed. and trans. Marjorie Chibnall (Oxford: Clarendon Press, 1978), 398.

³⁹⁴ Thompson, ‘Dowry and Inheritance Patterns,’ 52-55.

Wanborough had been assessed at nineteen hides and Rotrou had paid £18. Matilda herself was to grant a hide of this manor to the priory of Lewes. Both manors had been in the hands of Rotrou's son, Count Rotrou III, since the late 1160s, and had remained in his family for a hundred years before being lost in 1204 following a political disaster.³⁹⁵

Thompson suggested that Matilda's *maritagium* was a watershed moment in the history of dowry, since in 1120, her daughters, Philippa and Felicia, became co-heiresses. Philippa married Helias of Anjou, younger son of Fulk, Count of Anjou and brother of Geoffrey le Bel. Helias would have succeeded to Aldbourne and Wanborough if Rotrou had not married again and fathered three sons from the second marriage, the eldest of whom ought to have inherited Aldbourne and Wanborough. However, the record of the Aldbourne lawsuit shows that the Rotrou family members were not the sole proprietors of Matilda's dowry. In the mid-twelfth century, a son of Wanborough, the Count of Puntun', possessed authority in Aldbourne. The king ordered John of Ponthieu (c. 1140-1191) to ensure that the priory of Lewes was held in peace, thanks to the hide of land at Wanborough that the Countess Matilda had given in the time of the king's grandfather.³⁹⁶

John's tenure of Aldbourne and Wanborough was an isolated holding, a considerable distance from his main landed interests, and he owned these because of his wife Beatrix, who was the child of Rotrou II's eldest daughter, Philippa. Therefore, Wanborough and Aldbourne were assigned as Beatrix's dowry.³⁹⁷ The couple held the two manors until the 1160s, when they were either surrendered, exchanged, or sold back to the Rotrou family. They remained as dotal property and were reused to endow the heirs, or rather heiresses, of the woman who had first brought them to the family. Dotal property was often regarded as extraneous to the family's main estate strategy and therefore might be used for any purpose that protected the core of the family's property for the main line. Indeed, dowry, as ancillary property, was frequently endowed on a younger son or as a daughter's dowry.³⁹⁸

Both de Trafford and Thompson examine landed marriage portions and focus on a few specific examples. However, as mentioned above, marriage portions consisted of

³⁹⁵ *Ibid.*, 52-54.

³⁹⁶ *Ibid.*, 55-57.

³⁹⁷ *Ibid.*, 55-58.

³⁹⁸ *Ibid.*, 57-59.

either estates or movable goods, and preference for the form may have differed from place to place. For instance, Barbara A. Hanawalt offered another insight into the marriage portion in medieval London in *The Wealth of Wives: Women, Law, and Economy in Late Medieval London*. Chapter 3 thoroughly examines the development of the granting of marriage portions. For fathers with daughters, providing a daughter's marriage portion was essential. The London Mayor, Gerard Bat,³⁹⁹ famously made a bad joke about how securing the dowry for his daughters might cost him his job⁴⁰⁰ Hanawalt also suggests that the preferred form of dowry, for those who could afford it, was real estate, which usually belonged to the mother's dowry. Not all families could afford real estate and the alternative was paying the dowry in cash and valuables. Some even converted real estate into cash. Cash was advantageous to some husbands because they could use the hard currency in trade or merchandising. However, dowry in real estate was preferred as its transfer was recorded in the city records, which could be referred to should there be any dispute. Movable goods, including cash, were not usually recorded and were easily disposed of in private transactions. All in all, dowry was considered a necessary condition for an honourable marriage, no matter how low its value.⁴⁰¹

As time progressed, *maritagium* evolved into jointure, and from the fourteenth century onwards, jointure became a prevalent form of marriage portion. Regarding the development of jointure, in 'Politics of Family: Late Medieval Marriage Contracts', Payling addresses three important issues: (i) maintaining the bride in her widowhood; (ii) guaranteeing the groom's inheritance; and (iii) ensuring the finances of the couple's children. In order to address these issues, Payling examined three medieval marriages in light of the changing form of *maritagium* and dower and found that, from the point of view of brides' fathers, the marriages of non-inheriting daughters played a crucial role in extending their families' political and social horizons, in that the father would be compensated if he acquired a successful son-in-law who would add to both his political capital and his worldly reputation.⁴⁰²

³⁹⁹ Gerard Bat was the Mayor of London from 1239 to 1240, and sheriff of London in 1232-1233 and 1235-1236. 'Map of Early Modern London,' last accessed on 4 February 2019, <http://mapoflondon.uvic.ca/GBAT1.htm>

⁴⁰⁰ Hanawalt wants to express how important and significant marriage portions could be, especially within noble and rich families. Hanawalt, *The Wealth of Wives*, 56.

⁴⁰¹ Hanawalt, *The Wealth of Wives*, 58-59.

⁴⁰² Payling, 'The Politics of Family: Late Medieval Marriage Contracts,' 161-173.

The emergence of jointure, a new kind of settlement, deprived the crown of the wardship of valuable lands because, when a tenant-in-chief died leaving an under-age heir, the crown lost the wardship of those lands, together with the dower lands bestowed on her by common law, in which the widow had a joint interest. The bride's father, however, would have preferred to keep his estates intact and, instead, raised a money portion, thereby creating a more stable inheritance.⁴⁰³ If the bride died young and without issue the cash her father had paid would be returned to him. As Payling pointed out, 'it was the bride being childless rather than the mere fact of her premature death that justified repayment.'⁴⁰⁴ The bride's father would also place restrictions on the groom's father for disinheriting his son, so the bride could fully enjoy the jointure after the death of her husband. If the groom survived to inherit, the wife was entitled to a common law dower and jointure, which was a large part of his inheritance.⁴⁰⁵

Payling suggested that jointure evolved, not from dower, but from *maritagium* and emerged out of its decline. Another significant question is put forward in Payling's article: why did jointure not replace dower until the end of the thirteenth century, while the money portion replaced landed *maritagium* in the mid thirteenth century? It was not until the first chapter of the Statute of Westminster II in 1285, commonly known as De Donis Conditionalibus, that jointure became a form of settlement that addressed the concerns of the fathers of brides. As mentioned previously, before De Donis a groom could disinherit the daughters of his wife of any jointure settled upon them, in favour of his son by his second wife; whereas, after De Donis, he was not entitled to do so. De Donis, therefore, led to the decline of *maritagium*, since the bride's daughters would no longer be disinherited from their mother's *maritagium*.⁴⁰⁶

In addition to the above works, two other books discuss *maritagium*, marriage and inheritance. In *Family and Inheritance*, Jack Goody looked at the relationship between women, property and inheritance. In England, dowry could involve the bride's father building a house for the couple; however, he stated that daughters in England rarely received land as dowry, a statement with which I disagree and will disprove later in this

⁴⁰³ *Ibid.*, 27.

⁴⁰⁴ *Ibid.*, 29.

⁴⁰⁵ *Ibid.*

⁴⁰⁶ *Ibid.*, 30-31.

chapter.⁴⁰⁷ Peter Fleming's *Family and Household in Medieval England* spends a chapter explaining marriage settlements. Fleming stated that dowry was generally given in land until the mid-thirteenth century, but thereafter it usually took the form of money, which, if the bride predeceased her husband without leaving children by him, resulted in a repayment of part of the dowry.⁴⁰⁸ The author also points out that a wise father would have been reluctant to leave any of his daughters unwed, since each one would have been a lost opportunity, or 'a wasting asset if not used to tap into networks'. However, the original purpose of the marriage settlement was intended to safeguard a wife if she became widowed, because if she was not an heiress she might be left without any means of support until she could claim dower.⁴⁰⁹

As Kathleen Hapgood Thompson pointed out, there has been little research into dowry, and the findings of this study support her view.⁴¹⁰ I believe that medieval historians ought to pay more attention to *maritagium*, since by doing so it will not only cast more light on women's property rights, but also by proxy on their relationship with various of their family members. Both Thompson and de Trafford suggested that *maritagium* was regarded as 'women's property', and was often reused as grants to either younger sons or daughters. Thompson, however, believed that dotal property was reused to endow the heirs, or heiresses, and the cases she presents indicate that *maritagium* was more often reused as *maritagium* for daughters, at least in noble families; whereas, de Trafford's research shows an opposite perspective, in that she believes that grants of *maritagium* were made more frequently to younger sons than to daughters.⁴¹¹

This raises several questions. Firstly, in noble families in the thirteenth century, was it true that there was a preference for granting *maritagia* to younger sons rather than daughters? Secondly, if this were true, was it an 'unspoken rule'? Thirdly, when de Trafford points out that the reversion of *maritagium* was not necessarily enforced, does she mean that *maritagium* had more often descended in the marital family rather than being returned to the bride's original family? Fourthly, apart from reforming dower

⁴⁰⁷ Jack Goody, 'Inheritance, Property and Women: some Comparative Considerations.' in *Family and Inheritance: Rural Society in Western Europe, 1200-1800*, ed. Jack Goody, Joan Thirsk and E. P. Thompson (Cambridge: Cambridge University Press), 10-30.

⁴⁰⁸ Fleming, *Family and Household*, 37.

⁴⁰⁹ *Ibid.*, 38.

⁴¹⁰ Thompson, 'Dowry and inheritance patterns,' 46.

⁴¹¹ de Trafford, 'Share and Share Alike?' 36-48; Thompson, 'Dowry and Inheritance Patterns,' 45-61.

or dowry for future generations, what other functions did *maritagium* have? Fifthly, there is a discrepancy between Goody's argument and that of other authors. He suggests that daughters in medieval England seldom received land as dowry, but other authors suggest that land was widely used as marriage portion and was in fact the preferred form of dowry, at least before the rise of jointure. Does Goody's argument only refer to women from the lower classes, whose parents did not own real estate at all?

In order to answer the above questions, in the rest of this chapter I will examine cases related to *maritagium* from various thirteenth-century sources, revealing the difficulties a woman might have faced when she was disposing of her *maritagium* both before and after De Donis, and how disputes over *maritagium* were tackled in court.

4.3 Claiming land as *maritagium* as a strategy

Due to its 'reversion' feature *maritagium* differed from an ordinary fee in that it did not descend like normal inheritance. A *maritagium* was often granted to the couple and their issue only, so if an heir was not produced, or any other condition was not met, that could lead to reversion. At first sight, *maritagium* gives the impression that it was not as strong and stable a right as the right to inheritance, because of the probability of reversion. Numerous court cases, however, suggest otherwise. Claiming disputed land as *maritagium* became a highly-used strategy by litigants, implying that *maritagium* was seen as a powerful right.

In 1208, Alice de Lundresford defended her right to *maritagium* when William Gulafre and Maud, his wife, pleaded against her, contesting two parts of land in Holbeam Marsh.⁴¹² The couple said that Alice had more in dower of the tenements than she should have, and the said tenements had belonged to Richard, Alice's late husband and Maud's brother (Maud was the nearest heir of Richard). Alice argued that she did not hold the tenements in dower but as her *maritagium*, which she had received from the donor, Alfred de St. Martin. Moreover, she had a writ as proof of the grant, showing that Alfred had given the tenements to Richard, son of Hugh de Lundresford, with Alice, daughter of Mabel de Cantewrthe, in *maritagium*, to hold from the monastery to which Alfred did service by rendering one-pound of pepper every year. Alice presented another writ made by Hugh de Lundresford in which he confirmed that the Lord Alfred

⁴¹² *CRR*, vol. 5, 207, 289-290; Flower, *Introduction to the Curia Regis Rolls, 1199-1230 A. D.*, vol. 62, 252.

de St. Martin gave the tenements in question to Richard with his granddaughter Alice in *maritagium*. If Alice and Richard had heirs, those heirs would remain in the tenements, but if there was no heir, the tenements would remain with the monastery.⁴¹³

This case clearly shows the different strategies of the two parties. Maud and William thought that claiming the disputed land as Alice's dower would give them a better chance of winning, since the dower for a widow was one-third of the property, and Alice could claim no more unless she had a nominated dower. However, Alice retorted that she held the tenements as her *maritagium* instead of dower, so she was capable of enjoying the entire holding and not just one-third. This case can also be seen as a clash between an heiress and her husband, on the one hand, and a widow, on the other. From the point of view of Alice, claiming the land as her *maritagium* had a greater advantage, because *maritagium* was property for 'a woman and her family', which would remain with her and her issue until reversion. Dower, on the other hand, was 'a right of women but from men's land', which should descend to the husband's heirs. Although the final decision is not recorded, it can be deduced that Alice retained the disputed lands if they were confirmed to have been her *maritagium*.⁴¹⁴

In 1242, another case also demonstrates how useful claiming land as *maritagium* could be. John de la Lee and his wife, Alice, claimed against Henry Crok and Beatrice, his wife, for one messuage and fifteen acres of land with appurtenances in Gomshall as her reasonable share of the inheritance from William Crok, Alice and Beatrice's father. Henry and Beatrice defended themselves by saying that William had given the disputed messuage and appurtenances to them in marriage two years before his death, and Beatrice had a charter to prove this statement. John and Alice, on the other hand, insisted that William died seised of the messuage. A jury was summoned afterwards in order to confirm whether the messuage had been given in *maritagium*.⁴¹⁵ (I shall deal with the possible outcomes of this and the following case below, once I have described both.)

A year later, a very similar suit was brought in Suffolk when William de Pyrho and his wife Margery claimed against Hervey Bude and Maud, his wife, for eighteen-and-half-acres of land with appurtenances in Barham, which Fulk de Barham, father of

⁴¹³ *Ibid.*

⁴¹⁴ Alice objected that William and Maud had brought the wrong writ. The final concord is not recorded.

⁴¹⁵ *CRR*, vol. 17, n. 585, 120-121.

Margery and Maud, had held. Maud and Hervey argued that the land has been given as *maritagium* to them. Margery and William retorted that Fulk died seised of the land. The above two cases not only raise the issue of *maritagium*, but also demonstrate the dynamics created by co-heiresses. The defendants in each of these cases argued that the disputed land was their rightful share of the inheritance and not the other sister's *maritagium*, so that they could have a share in the disputed lands.⁴¹⁶

It is not known whether Beatrice and Maud received land as *maritagium* from their fathers, but one thing is sure – their sisters, Alice and Margery, were trying hard to deny Beatrice and Maud's claims that the disputed land was *maritagium*. If Beatrice and Maud succeeded in proving the disputed land as their *maritagium* they would definitely have had a greater chance of winning their suits.

The above two conflicts echo the idea I suggested in the previous chapter, that equal division could never truly be equal because some co-heiresses found their fellow co-heiresses' share more appealing than their own. This might have been because one piece of land was more fertile, thus yielding a better harvest, or because it was nearer to other land held by the family, or simply because a *maritagium* was greater than a post-mortem share might have been. Diverse reasons such as these cannot be ascertained, but it seems certain that they ignited disputes which eventually led to court.

In 1249, Parnel, daughter of Roger de Molendin', claimed against Richard Cruc for ten acres of land and two acres of meadow in Corsley, which Christina de Molendin', Parnel's mother, gave her as *maritagium* when she married Richard. It was argued that this should now revert to Parnel because they were later divorced.⁴¹⁷ Richard argued that the land was not Parnel's *maritagium* but had been acquired by him from one Rocelin Hose three years after he married Parnel. The jurors confirmed that the land was Richard's acquisition instead of Parnel's *maritagium*, so it was adjudged that she should receive nothing.⁴¹⁸ This case shows that a husband could only enjoy his wife's *maritagium* when they were married. Once the marriage was annulled, the wife would regain full control over her *maritagium*. Parnel must have recognised this fact and claimed the lands as her *maritagium*, which would have increased her chances of

⁴¹⁶ *CRR*, vol. 17, n. 1191.

⁴¹⁷ *Civil Pleas of the Wiltshire Eyre, 1249*, ed. M. T. Clanchy (Devizes: Wiltshire Record Society, 1971), n. 53. The definition of divorce in this research is not the same as that of modern divorce. Divorce in the Middle Ages meant an annulment.

⁴¹⁸ *Ibid.*

winning her suit. However, unfortunately for her, the jurors confirmed that the disputed lands were indeed an acquisition made by Richard during their marriage, and Parnel lost the suit.⁴¹⁹

Also in 1249, Gilbert of Walcote and his wife Agnes claimed against William Bissop and his wife Lucy one virgate of land in Upham as Agnes' right.⁴²⁰ They said that William and Lucy had no entry other than by one Christine, who had nothing except the wardship thereof while Agnes was under age. William and Lucy denied Agnes' right, saying that Christine did not have wardship; on the contrary, the disputed land was Christine's inheritance and she, as was her right, had given the land in frank-marriage to Lucy and Thomas, son of Hugh, Lucy's former husband. Both parties afterwards offered the king half a mark to have an inquest to decide whether this was the case. As with the previous case, the defendant declared that the contested land was her *maritagium*, believing this to be a good strategy.⁴²¹

Claiming land as *maritagium* did not always prove advantageous. The case mentioned in chapter 3 of this study demonstrates that such a claim could create a crisis if it related to the division of inheritance between co-heiresses. In 1290, when Agnes and her husband, John du Boys, demanded Agnes' share of inheritance, the other two co-heiresses, Juliana and Lucy, argued that Agnes and John had been granted some tenements in frank-marriage as *maritagium*. Therefore, unless they put the *maritagium* back into the hotchpot, they were not able to demand a reasonable share of the inheritance.⁴²² Agnes and John retorted that the disputed tenements had been granted to John and his heirs in fee simple instead of *maritagium*.⁴²³ It may be seen from this case that claiming land as *maritagium* could act as a double-edged sword. Sometimes it earned claimants a greater chance to win, but it could also give the defendant a right to insist on her *maritagium* being returned so that it could be divided between all the heiresses.

Putting *maritagium* back into hotchpot sparked a vehement debate about whether it was inheritance or a special gift. The defendants' argument in the du Boys case was clearly based on 'maritagium as inheritance', and they stuck to this notion in order to

⁴¹⁹ *Ibid.*, n. 5.

⁴²⁰ *Ibid.*, n. 374.

⁴²¹ *Ibid.*

⁴²² *Year Books of the Reign of King Edward I*, ed. Horwood, vol. 2, 398-400.

⁴²³ *Ibid.*

gain an advantage. However, if *maritagium* was regarded as part of an inheritance, it would be disadvantageous for a woman who wanted to have her share of an inheritance after she had been granted *maritagium*. Nevertheless, *maritagium* was more often deemed to be a special fee tail than part of an inheritance. For instance, *Bracton* says that *maritagium* could be revoked by a wife after the death of her husband if he had wilfully alienated it, which implies that *Bracton* saw it as a fund for the conjugal unit. *Bracton* also pointed out that if a husband granted his wife's inheritance or *maritagium* to his son or daughters as gift, then such alienation would be regarded as irrevocable because it was made in 'an honest cause'.⁴²⁴ Moreover, *maritagium* was mostly granted with a condition – it was for the bride, the husband and their heirs, and consequently it functioned as an entail. Chapter 1 of the Statute of Westminster II 1285 was proof that people were demanding that *maritagium* should descend only to the wife's heir. I will discuss the impact of the Statute of Westminster II (*De Donis*) on *maritagium* in more detail later in this chapter.

A woman had every right to claim her *maritagium* because it was the property arranged for the bride and her new family. In theory, she had rights over her *maritagium*, as her property, but in practice, it was her husband who managed the *maritagium* during the marriage. She became legally dependent on him, and he could alienate it without her concurrence.⁴²⁵ Therefore, how did wives manage their own lands when they were placed in a tight corner by both their husbands and the laws? What difficulties did they face when their lands were disposed of by their husbands, or by others? The following section will examine how wives used their *maritagia* and the various crises brought about by others' alienation of their *maritagia*.

4.4 Women's management of *maritagium*

A wife could not dispose of her own lands without her husband's consent until his death, that is, she could only dispose of it in her widowhood. However, numerous sources record land disposition not only during widowhood but also during marriage.

A medieval woman, however, generally found that she had more freedom and power once she entered widowhood because she no longer required her husband's

⁴²⁴ *Bracton*, vol. 4, 31.

⁴²⁵ Pollock and Maitland, *The History of the English Law before the Time of Edward I*, vol. 2, 400-409. 'The only process whereby the fee can be alienated is a "fine" to which both husband and wife are parties and to which she gives her assent after a separate examination.' See *Ibid.*

consent when she disposed of her land.⁴²⁶ It was common for women, especially women of the nobility and gentry who often held large estates, to grant their property to others. For instance, at the end of the twelfth century, Hawise, Countess of Gloucester, granted part of her *maritagium* at Pimperne, Dorset, to Nuneaton priory during her widowhood. In her charter she said:

I wish also that they should have and hold the aforesaid lands and rents freely and quietly, peacefully and honourably, in pure and perpetual alms, as my lord William Earl of Gloucester ever held them or my father who gave that manor to me in free marriage, in meadows and pastures, roads and paths, waters and ponds and mills, wood and plain, and in all places, with all liberties and free customs.⁴²⁷

Because rich and noble women had sufficient lands, there are numerous sources showing them making grants to religious houses and not asking for money or services in return. Nonetheless, they might expect some intangible returns, such as reputation or ecclesiastical salvation of the soul. Besides granting their *maritagia* to others, more ordinary women could still transfer their dowry. In 1220, Philip de Ulecote and Maud de Coiners, John Chaplain, Oger le Daneys, Thomas le Despenser and Reynold Reeve were summoned to the assize to answer an allegation that they had unjustly disseized Elizabeth, wife of William de Rue, of a free tenement in Dinsdale. Maud de Coiners argued that the land was her *maritagium*, and that she had transferred it to Geoffrey de Coiners, her brother, for his lifetime. After his death, the land should have reverted to Maud. To prove her argument, she presented a chirograph made between them. In response to Maud, William and Elizabeth said that Geoffrey gave the land to her in *maritagium* when she was betrothed to her first husband, who held the land while he was alive. The jury found that Maud had significant lands, all of which were part of her *maritagium*. She later transferred all the land to Geoffrey, for his lifetime only, and Geoffrey gave six bovates of the land to William as *maritagium* with Elizabeth, his daughter. The final decision was that William and Elizabeth eventually recovered their seisin and Maud was in mercy.⁴²⁸

⁴²⁶ However, if any of her actions related to *maritagium* harmed the heir's right, the heir could negate her action afterwards. Again, the law shows its concern that *maritagium* was more for the benefit of the heir than the wife, which impeccably reflects the subordination of women's status.

⁴²⁷ Ward, *Women of the English Nobility and Gentry*, 95-96.

⁴²⁸ *CRR*, vol. 9, 190-191.

Had Maud foreseen that her brother would grant part of her *maritagium* to his daughter, Elizabeth, and her husband, also as *maritagium*, she might not have transferred it to Geoffrey. The reason why she transferred her *maritagium* to her brother remains a mystery, but it seems unlikely that she anticipated her brother would grant the *maritagium* in *maritagium* again. Her statement shows that she believed that Elizabeth and William unjustly disseised her. Her transfer led to the dispute with her niece, which saw her lose her seisin temporarily. When these two women's *maritagium* rights clashed, in this case, the law favoured Elizabeth, whose *maritagium* had been granted more recently.

The reason why Elizabeth and William were successful was probably because Elizabeth had been disseised by Philip, from whom Maud had then gained possession of the land. Maud might have had a title to the land but needed to sue for the land rather than benefit from Philip's wrongful disseisin. Another point to emphasise is that it is unknown if Maud had transferred her *maritagium* when she was a widow. If she had transferred it when her husband was still alive she would have needed his consent for the alienation. This case shows that women could transfer their *maritagia* to another person, at least for their lifetime, and that if that person granted the *maritagium* to another, again as *maritagium*, such a deed was lawful and would allow the grantee to retain the *maritagium*.

In the thirteenth century, protection for grantees' right of *maritagium* was powerful, even though in this instance Maud, the woman who first granted it, lost part of it to Elizabeth as a result. In 1249, another case highlights the law's solid protection of women's right regarding *maritagium*. The jury had to testify whether William of Bremhill unjustly disseised William of Coleville of two acres of meadow in Cove. They said that the meadow was the right and inheritance of William of Coleville, who enfeoffed Agnes de Suhwude of that meadow, so that Agnes was in seisin for a long time. Agnes later gave that meadow to William of Bremhill in free marriage with her daughter, Agnes. Therefore, William of Bremhill and Agnes were in full seisin for more than three weeks. Afterwards, William of Coleville ejected them, holding the meadow in seisin himself because William of Bremhill and Agnes had refused to render him the service that they owed. The jurors stated that William of Coleville enfeoffed Agnes de Suhwude of the meadow in full, and Agnes later enfeoffed William of Bremhill of the same land and gave it to him in frank-marriage with her daughter, Agnes, in return for

the aforementioned service. Thus, it was adjudged that William of Coleville had no rights in the holding except the services owed to him.⁴²⁹

Because William of Coleville enfeoffed Agnes de Suhwude of the disputed meadow in full power, this meant that it was not a *maritagium* with conditions attached. Agnes had complete control over the land and the right to dispose it. After the meadow was granted in *maritagium* to her daughter and her husband, William of Bremhill, the couple also had full rights, so William of Coleville could only ask for their service. However, if William of Coleville had not enfeoffed but granted the meadow as *maritagium* to Agnes de Suhwude, and she granted it again as dowry to her daughter, could William of Coleville have claimed his seisin? The first thing to be clear about is the difference between enfeoffment and the granting of *maritagium*. To enfeoff someone meant to invest with a fief, to put a person in possession of the fee-simple or fee-tail of lands, tenements, etc.⁴³⁰ The feoffee would have hereditary right in the estate, while land granted in *maritagium* might revert to the donor in the future. Assuming that this gift of *maritagium* to Agnes de Suhwude had a condition of reversion should she and her husband have no issue, as was the case with most *maritagia* in thirteenth-century England, William of Coleville would have had no right to enter the granted land because Agnes de Suhwude had a daughter. However, if the condition was that the land would descend only to the heirs of Agnes' husband, William of Coleville might have had justification to enter the land.

A wife could manage her own *maritagium* by various means, which are sometimes not clearly recorded in legal documents. For instance, an early thirteenth-century notification shows that one Simon Coc obtained a house which had been *maritagium* for one Florence, but it did not clarify how he received it.⁴³¹ Florence might have enfeoffed or granted the house to Simon in fee. The notification was in fact made by Walter Trainel in order to confirm that he had given to his brother, Roger Trainel, part of the house in which Griffin the Smith lived. Walter bought it from Simon Coc, who obtained it from Griffin's widow, Florence, whose *maritagium* it had been, and the sale was witnessed by many citizens of Worcester as well as by Florence herself. Roger held

⁴²⁹ *Civil Pleas of the Wiltshire Eyre*, ed. Clanchy, n. 52, 42-43.

⁴³⁰ 'OED,' last accessed on 9 June 2016,

<http://www.oed.com/view/Entry/62130?redirectedFrom=enfeoff#eid>

⁴³¹ 'que fuit de maritagio Florentie quam ipse Symon accepit in feodum de predicta Florentia post decessum Griffini viri sui.' *The Cartulary of Worcester Cathedral Priory*, ed. R. R. Darlington (London: Printed for the Pipe Roll Society, 1968), n. 374, 196.

it from Florence, paying her 19d annually.⁴³² This case indicates that there were many ways for a woman to give her *maritagium* permanently to others. In similar cases discussed in this section, most women disposed of their dowry in their widowhood since they had more freedom to do so. As previously explained, it was difficult for a wife to dispose of her *maritagium* whilst her husband was still alive, and even if she could, we cannot guarantee that this action was reflective of her own thoughts and actions as her husband would accompany her to court. Hence, we cannot know whether such dispositions were motivated by the wife or the husband.

Nonetheless, some women, more usually from noble and rich families, showed an extraordinary capacity to manage their *maritagia* during marriage. This is especially notable given women's generally limited social freedom and lack of money to resort to the law in order to fight for their or their families' interests. However, the ability to grant *maritagium* in a woman's widowhood threatened the status of *maritagium* as a kind of entail, and before De Donis, a number of cases suggest that the court would rather protect the right of a grantee, who received a widow's *maritagium*, than the right of the woman's heir or heirs.⁴³³

With regard to a widow's ability to grant her *maritagium*, Paul Brand points out that chapter 27 of the Petition of the Barons (1258) did not prioritise the will of the donor, which most legal historians believe, but dealt with the more uncommon circumstance of a widow, who had no issue by her late husband, granting or selling her *maritagium* of her own free will.⁴³⁴ Brand also states that the specific details given in the petition suggest the possibility that there might be a particular case behind it. Chapter 27 mentions that if someone granted a carucate of land in marriage with a daughter or sister, the heirs of the donor could regain the gift if the daughter or sister had no issue, and such a gift was not absolute but conditional. A surviving transcript of 23 July 1259 supports Brand's theory. William of Ditton granted one carucate of land to his son, William, and his wife Margery, the daughter of Alan of Maidstone. William, the son, died without issue and Margery granted the land to her father, Alan, a transaction which was confirmed by a final concord made at the 1256 Kent eyre. After Margery's death,

⁴³² *Ibid.*

⁴³³ For detailed discussion, see Biancalana, *The Fee Tail and the Common Recovery in Medieval England*, 56-57.

⁴³⁴ Again, gratitude is due to Dr Paul Brand for the discussion of c.27 of the Petition of Barons. An unpublished transcript is kept in TNA at Kew in the C 260 Class of Recorda.

William's brother, Ralph of Ditton, claimed the carucate of land, saying that it should revert to him as the heir of William of Ditton. Afterwards, Ralph withdrew from the writ and reached an agreement with Alan. Alan had quitclaimed the land to him in return for payment of 22 marks. Chapter 27 of the Petition of the Barons reveals concern about the alienation of land granted in *maritagium* after the death of the husband, where there was no issue from the marriage. The quantity of land in this case – one carucate – corresponds to that in chapter 27. Moreover, the timing seems to be right: Margery died after 1256 and Ralph might have filed his complaint at Oxford in 1258. He launched another suit in 1259.⁴³⁵

Declaring land to be *maritagium* brought numerous advantages to claimants, but it also threw up clashes of interest. When a father granted part of his inheritance to his daughter as *maritagium*, his heir lost that land as his inheritance. It is not unreasonable, therefore, for an heir to have begrudged the granting of *maritagium*. A case in 1199 demonstrates an heir's complaint regarding the large dowry his sister had received. William de Cowley pleaded against Alice, his sister, for five virgates of land in Cowley as his right and inheritance. He complained that his father had given the said land to Alice, and the grant was so substantial that it had left him with no land at all. He asked for judgment as to whether his father was able to give all of his land in *maritagium*, thereby disinheriting his rightful heir. Alice defended herself by saying that she held no more than one virgate of the land, and William actually held other lands from their father. William afterwards complained that Alice had alienated her *maritagium* after the start of the plea. Alice, however, disagreed, retorting that when she alienated her *maritagium* the plea had not begun. In the end, it was confirmed that Alice did not hold as much land as William had asserted, and consequently she won the suit.⁴³⁶

The question of whether a father could grant so much land in *maritagium* that it disinherited his heir may perhaps be answered by *Glanvill*, who stated that any free man could give a certain part of his land to any woman even if his heir did not consent to it.⁴³⁷ Although he did not comment explicitly as to whether giving an entire inheritance to any woman was allowed, he did say 'a certain part of his land', possibly indicating that granting all of a man's land to a daughter was not allowed, or even if it was, it was

⁴³⁵ *Ibid.*

⁴³⁶ *CRR*, vol. 1, 87.

⁴³⁷ *Glanvill*, 69-71.

a very rare occurrence. The final decision in this case recorded that Alice went without a day because she did not hold the whole inheritance. If Alice, on the contrary, had held the whole inheritance, would she have needed to render to her brother his reasonable share? I suggest that this would have been likely, because *Glanvill* states that only a part of the inheritance, rather than the whole, could be granted to a woman. Given this, the judges might have adjudged that Alice needed to give some of her *maritagium* to her brother. Another method for dealing with the dispute would have been resorting to private agreement. This would have given more space for the siblings to negotiate an arrangement which could satisfy both of them.

Notably, Isabel de la Brome came to court to defend herself against her brother, Robert of Skyteburn, who claimed one virgate of land in Serge de Huse from her as his right. Robert argued that the virgate was in his mother Alice's right, so it should have descended to him. Isabel replied that Robert could claim no right because their mother gave that land in *maritagium* to her daughter when she married Alexander de la Brome. She also presented a charter recording Alice's grant. Although Robert acknowledged the charter, he retorted that Alice had given the land to Isabel while she was married to John Mikelfot, and was under his authority. Robert clearly believed that Alice's grant to Isabel was coerced by John Mikelfot. Afterwards, the judgment stated that Robert should recover his seisin against Isabel because it was recognised that Alice was married to John before she gave the land to Isabel.⁴³⁸ Robert's argument suggests that a woman's alienation of her own land might be the result of her husband's coercion rather than her own intention, but also shows how reluctant he was to have part of his inheritance alienated. It was better to keep an inheritance intact and complete, and the grant of *maritagium* harmed his right to it.

4.5 *Maritagium* in legislation in late thirteenth-century England and the early development of jointure

4.5.1 *Maritagium*: reversion

As mentioned, dowry was more of a strong customary pressure than a legal obligation. Most *maritagium* agreements were conditional, often reverting to the donor

⁴³⁸ *Civil Pleas of the Wiltshire Eyre*, ed. Clanchy, n. 314. Another date was given to this case, but later Robert defaulted himself.

and his heirs if there were no issue. *Maritagium* was also often alienated during the marriage for various purposes and this frequently affected the rights of the donors, causing dissatisfaction. A case from 1284 illustrates such disapproval when a donor attempted to void the alienation of a *maritagium*.

Hugh le Deen came to court against Simon of Londonthorpe and his wife Isabel for the tenements that Hugh's father, William, had granted to Alan of Winwell and his wife Cecily and the heirs of their bodies as *maritagium*. Hugh pointed out that Alan and Cecily had died without a blood heir so the tenement should have reverted to his father, William, and then descended to him. Simon and Isabel argued that Alan and Cecily had a son and a daughter. What makes this case so crucial and interesting is the arguments made by both parties' representatives.⁴³⁹

When the justice, William of Saham, asked whether the issue attained to any estate, Simon and Isabel's representative concluded that they had no obligation to answer and contended that since the couple had issue, the will of the donor was accomplished. Therefore, as long as Alan and Cecily had issue, their alienation could always bar the donor and all others from an action, no matter whether the heir was dead or alive on the day of alienation. Essentially, Alan and Cecily had had issue, so they did not die without an heir of their bodies. The justice responded that the writ brought by Hugh said 'that they died without heir begotten of their bodies,' and did not say 'that they had no heir of their bodies (as your argument supposes).'⁴⁴⁰

To clarify the justice's response: the resolution of the case lay between the terms 'they died without heirs begotten of their bodies' and 'they had no heir of their bodies.' The former meant the couple might have had heirs begotten of their bodies, but those children had died before their own death. The latter meant that the couple had no heirs from their bodies for the whole of their lives. To elaborate upon the argument, Simon and Isabel's representative thought that, as long as Alan and Cecily had issue from their bodies, the alienation of *maritagium* would be valid whether or not an heir was alive when the alienation was made. However, Hugh's representative insisted that if the heir died before Alan and Cecily's death, the alienation should have been void.

⁴³⁹ *Baker and Milsom Sources of English Legal History*, ed. John H. Baker and S. F. C. Milsom, 2nd edn. (Oxford, New York: Oxford University Press, 2010), 47-48. See also BL, Royal MS. 10A.V, fo. 93; *Earliest English Law Reports*, ed. Brand, vol. 1, 110.

⁴⁴⁰ *Ibid.*

As the case proceeded, the justice seemed to be siding with Hugh's argument, so Simon and Isabel's representative changed his strategy. Instead of emphasizing that the alienation of *maritagium* was legal as long as the grantee had issue, he insisted that Alan and Cecily had a daughter, Alice, who survived them. Alice had entered into part of the disputed land and alienated a messuage of it. Alan and Cecily did not die without (living) issue, making the alienation by Alice valid. Confronting this argument, Hugh's representative also adjusted his strategy, insisting that the alienation was made before Alan and Cecily had any children. In the end, Hugh was adjudged to take nothing and was to be amerced.⁴⁴¹

A telling fact can be discerned here. The donor did not want the gift to be alienated if there was a failure of issue, whether this was because the grantees had had no children or because of the early death of a child. Even alienation before the birth of a child seemed not to be accepted, since Hugh's representative regarded such an alienation to be contrary to the terms of the gift. On the one hand, the condition of the *maritagium* insured that *maritagium* could only be enjoyed by the family with surviving issue, and, on the other hand, it limited the newly-wed couple's right to manage their *maritagium*.

It is important to recognise the aim of the conditions attached to *maritagium* and the disapproval expressed by donors in relation to its alienation before examining the late thirteenth-century legislation. From the end of the thirteenth century onwards, two significant pieces of legislations dealt with dowry. Although chapter 3 of the Statute of Gloucester was not specifically about *maritagium*, 'the inheritance' that an heir could recover loosely covered the mother's *maritagium*,⁴⁴² in that chapter 3 clearly gave an heir the right to recover his, or her, mother's inheritance and dowry if they had been alienated by the father. At the same time, the regulation reflected the fact that a wife's inheritance, or dower, was frequently alienated by her husband, thereby disinheriting the heirs.

4.5.2 De Donis

The Statute of Westminster II was issued in 1285, and the first chapter, known as De Donis Conditionalibus (De Donis), regulated the recovery of *maritagium* and the restriction of its alienation. It was common to have conditions in thirteenth-century

⁴⁴¹ *Ibid.*

⁴⁴² *English Historical Documents*, ed. Douglas and Rothwell, vol. 3, 428-429.

marriage contracts that said the gift was for the bride, the groom and their issue only, and that if the bride and the groom should die without issue, the gift so given would revert to the donor. The rule of reversion, therefore, indicates the donors' wish that they would prefer to keep the land intact should the function of the *maritagium*, which was to support the wife and her new-formed family, fail. Hence, if a donor's original intention was to keep the land intact, they would not be happy to see the given land alienated by the couple. Moreover, if the feoffees alienated the land, it could disinherit their own issue, which would also contradict the wishes of the donor. Therefore, in order to protect donors' intentions, the later part of De Donis states:

In such wise that those to whom the tenement was thus given upon condition shall not have the power of alienating the tenement so given and thereby preventing it from remaining after their death to their issue, or to the donor or his heir if issue fail either because there was no issue at all or because it has failed by death, the heir of such issue failing. Neither shall, henceforth, the second husband of such woman have anything by the curtesy after the death of his wife in a tenement so given upon condition, or the issue of the woman and second husband have hereditary succession, but instead immediately after the death of the man and woman to whom the tenement was so given, it shall revert after their death either to their issue or to the donor or his heir as it aforesaid.⁴⁴³

This enactment illustrated a problem that had long haunted donors and their heirs, specifically that it was highly possible that granted land would be alienated to the detriment of the donors. Worse, though, was the possibility that the grantees might alienate the land without having a legitimate heir, so the donor's rights would be further infringed upon, since the land should have reverted to him or her entirely. De Donis gradually proved popular since it limited a newly-wed couple's rights to alienate granted land.

A clash between the Statute of Gloucester 1278 and De Donis can be seen in a case from 1304.⁴⁴⁴ Robert de Tony and his attorney came to court against Thomas of St Omer for one messuage, two carucates, thirty virgates, a fifty-four-acre meadow, a forty-acre pasture, and £6 6s 2d in rent, in Britford and Bramshaw. Robert argued that

⁴⁴³ *Ibid.*

⁴⁴⁴ *The Hungerford Cartulary*, pt. 2, ed. Kirby, n. 1001, 13.

his ancestor, Ralph de Tony, held these lands and rent in his fee and right, which descended to Roger, his son and heir, then to Ralph, Roger's son and heir, and finally to Robert, the plaintiff. That is, Robert was demanding the land his grandfather once had held. In his defence, Thomas stated that Parnel, the wife of Ralph de Tony, had survived Ralph and enfeoffed him with the land in the king's court in Salisbury on 30 September 1281. A fine was also levied between Parnel and Thomas by which Parnel recognised the right of Thomas, by her gift, to hold the land with warranty for himself and his heirs from her and her heirs, by rendering a bunch of roses at Midsummer. This fine was made before De Donis, when it was still lawful for the tenements to be alienated in frank-marriage or fee tail.⁴⁴⁵

Robert said he should not be excluded from claiming his right because according to the Statute of Gloucester 1278:

It is likewise established that if a man alienates a tenement that he holds by the law of England, his son shall not be barred by the deed of his father, from whom no inheritance descended to him, from demanding and recovering his mother's seisin by a writ of *mort d'ancestor*, even though his father's charter states that he and his heirs are bound to warranty. And if an inheritance has descended to him from his father, then he shall be excluded from the value of the inheritance that has descended to him. And if an inheritance descends to him from the same father at a later date, then shall the tenant recover from him his mother's seisin by a judicial writ that shall issue out of the rolls of the justices before whom the plea was pleaded, to resummons his warrantor, as has been done in other cases where the warrantor comes into court the same ways the son's issue [shall recover] by writ of ael, cosin and besael. Likewise, in the same way the heir of the wife, after the death of his father and mother shall not be barred from an action by his father's charter, if he demands the inheritance or marriage of his mother by a writ of entry that his father alienated in the time of his mother, of which no fine is levied in the king's court.⁴⁴⁶

This meant that the heir was not barred from claiming the seisin of his ancestor on one side by the deed of his ancestor on the other side, from whom there was no inheritance. In this case, the disputed land had been granted to Parnel and Ralph and Ralph's heirs

⁴⁴⁵ *Ibid.*

⁴⁴⁶ *English Historical Documents*, ed. Douglas and Rothwell, vol. 3, 416.

in frank-marriage.⁴⁴⁷ De Donis similarly implied that an individual would not be excluded by a mother's deed from claiming his mother's inheritance. In order to protect his right, Thomas retorted that the heirs were excluded, even though nothing descended to him by hereditary right, and that Robert, as Parnel's heir, ought to warrant him.⁴⁴⁸ However, it is impossible to know who won the case in the end because Robert subsequently failed to appear in court, so Thomas went without a day.⁴⁴⁹

The lands and rent in Britford that Robert de Tony claimed were actually the *maritagium* of Parnel, his ancestor and Ralph de Tony's wife. In 1232, Walter de Lacy granted the manors of Britford in Wiltshire and Yarkhill in Herefordshire to the same Ralph in frank-marriage with Parnel his daughter, to hold to him and his heirs, and free of all services save the king's. If Parnel should die without children and heirs, the manors would revert to Walter and his heirs. The dispute was obviously caused by Parnel's alienation of the disputed lands and rent. Thomas was trying to make his enfeoffment by Parnel lawful, therefore he argued that a fine had been made between them in the king's court, before De Donis. The later part of De Donis stated that:

it is to be understood that this statute applies to the alienation of a tenement contrary to the form of a gift made after this, and does not extend to gifts made before it. And if a fine is levied hereafter on such a tenement, it is not to be legally binding, and the heirs or they to whom the reversion belongs will not be bound to lay their claim if they are of full age.⁴⁵⁰

Did Robert have the right to recover the contested land according to the Statute of Gloucester 1278? Thomas's representative argued that the Statute of Gloucester only stated that the heir could recover a tenement his ancestor held by 'the law of England', which exclusively referred to curtesy tenants in thirteenth-century England. Tenants in frank-marriage could alienate the enfeoffment after they had issue to their disinheritance, and this was supported by De Donis. Thomas also argued that the fine and the enfeoffment were made before De Donis so he had the right to retain the

⁴⁴⁷ *The Hungerford Cartulary*, pt. 2, ed. Kirby, n. 1001, 13.

⁴⁴⁸ *Ibid.*

⁴⁴⁹ The procedure of litigation was never short and quick and it often consisted of many appointments for returning dates in order to have a judgment. That is, before the final judgment the litigants would have another appointed date to come back for the next session; therefore, 'went without a day' means that there is no appointed date dictating the parties to return. However, it does not necessarily mean that the litigation had reached a final judgment; sometimes, the case just closed and the litigants had to launch another suit concerning the same issue again.

⁴⁵⁰ *English Historical Documents*, ed. Douglas and Rothwell, vol. 3, 429.

enfeoffed property. Although the final decision is not recorded, Thomas might have been able to retain the lands and rent in Britford, which had been Parnel's *maritagium*. One possible explanation is that De Donis was enacted later and articulated that it could only apply to the alienation of a tenement in the form of a gift made after De Donis was issued. Hence, because Parnel had granted her *maritagium* long before De Donis, the law did not apply retrospectively.

The later part of De Donis, which concerns the second husband's inability to disinherit the heirs of a woman's first husband, was intended to protect the rights of the groom's family. Such a restriction probably arose from the frequent disinheritance of the heirs of a first husband. A case in point is a suit from 1231, in which Joan de Bosco, through her attorney, pleaded against Ralph de Bray for one carucate of land with appurtenances in Gazeley as her right.⁴⁵¹ She said Ralph had no access to that land other than through her mother, Alice. Moreover, the questioned land was given in *maritagium* to William de Bosco, with Alice, and to her heir. Joan said she was the heir of William and Alice, so she claimed the said land as her right. However, Ralph argued that the land was the inheritance of his wife, the aforementioned Alice, and ought to remain with her for her lifetime. According to custom and law, he had young sons by Alice, which gave him a right to retain the disputed land for life. Furthermore, he denied that the land was given to William and Alice and their heirs, but to William and Alice and the heir from Alice,⁴⁵² which meant that the sons of Ralph and Alice fell into this category. The argument was that these boys had a right to Alice's *maritagium*, and so did Ralph, though for him it was during his lifetime only.

The phrase 'according to the custom and law' in Ralph's argument refers to a husband's curtesy which allowed him to hold his deceased wife's *maritagium* for his life if they had children.⁴⁵³ This case happened about fifty years before the enactment of De Donis, when there was no regulation prohibiting the second husband and his heirs from enjoying the wife's *maritagium*. The dispute demonstrates the crisis faced by the first husband's heir when the mother remarried and had a sibling from her second marriage, since this compelled any children from the first marriage to divide the *maritagium* of the mother with the heirs from the second marriage.

⁴⁵¹ *CRR*, vol. 14, n. 1067, 219.

⁴⁵² *Ibid.*

⁴⁵³ Pollock and Maitland, *The History of English Law before the Time of Edward I*, vol. 2, 414-20.

After De Donis the first husband's heir no longer faced such a threat, since it deprived the heir from the second marriage of the right to enjoy the mother's *maritagium*. From the point of view of the wife, one of the functions that *maritagium* should serve was to provide protection and support for her own issue, no matter which husband had fathered them. It is evident that De Donis protected the three parties' rights - the donor, the woman to whom the land was given, and the first husband of the woman. Although the ideal purpose of *maritagium* was to support and help the bride to survive when she entered widowhood, especially for non-heiress women, *maritagium* meant more to them. As previously mentioned, marriage in medieval England was a matter of negotiation with another similar match, since both sides wanted as much benefit as possible. De Donis protected the donor's right, usually the bride's family, but also assured the groom's family that the *maritagium*, which was settled upon the couple themselves, would not be disposed of by others if the groom died before the bride, or the bride remarried. When De Donis declared that the issue from the second husband had no hereditary right to their mother's *maritagium*, *maritagium* lost its initial purpose - to protect the bride and her own issue. Nevertheless, this situation could be prevented by granting land to a woman in fee tail, which enabled her issue to enjoy the land.

Such remedies were usually found in marriage contracts. A case in 1307 suggests a gift was made to the issue of one of the donees only. One R. brought the writ against Thomas Launf claiming certain tenements as his right. He said that Ralph, his grandfather, was seised in his demesne as of fee of the tenements, and that he gave the tenements to on Adam, with Janette in frank-marriage. They later died without issue so the right to the tenements reverted, and ought to revert, to Ralph, as donor, according to the contract. He also showed a charter which said, 'Ralph enfeoffed the said Adam and Janette in frank-marriage, to have and to hold to Adam and Janette and to the heirs of the body of Janette begotten, and bound himself and his heirs to warranty.' Adam died without issue by Janette and she took another husband, with whom she had a son, Thomas, who was now tenant. Thomas asked for a judgment as to whether R. could demand anything from him, because R. was the heir of Ralph, and by this charter R. was bound to warrant him.⁴⁵⁴ Moreover, the charter articulated that the fee should descend to Janette's heir, which implied that no matter which marriage the heir had

⁴⁵⁴ *Year Book of the Reign of King Edward I*, ed. Horwood, vol. 5, 493-494.

been produced from, as long as the heir was Janette's child, he or she had every right to enjoy the said tenement. This case explicitly shows how conditions were used to exclude the potential exploitation of the *maritagium* by the groom, saving the *maritagium* to the bride and her issue.

4.5.3 De Donis and the early development of jointure

Every statute was enacted for particular reasons, and De Donis was the result of the early development of jointure. Although jointure did not prevail until the fourteenth century, during the last twenty years of the thirteenth century, numerous sources began to refer to it. A good example is a case at the Leicestershire eyre of 1284 when one John brought a writ of *mort d'ancestor* upon the death of his uncle, Thomas, against Geoffrey of Stapleford and his son, Richard. The disputed tenements were held at that time by Geoffrey, his wife, Joan, and their son, Richard. John claimed that the tenement was *maritagium* granted by one Robert to Joan, Joan's ex-husband, Thomas, and the heirs of their two bodies. After Thomas died, Joan had two husbands and a son by each of them; nonetheless, neither of these husbands had the right to enjoy the curtesy of the *maritagium*, which had been granted to Joan and Thomas and their heirs alone. Consequently the fee should have reverted to the heirs of Robert.⁴⁵⁵

This case not only shows the background to the emergence of De Donis but also the law protecting wives. Joan was actually absent from the assize as the case proceeded, and the presiding judge, Siddington, stated: 'If we were to take the assize in the absence of Joan we would be doing wrong to Joan because she would lose free tenement without bring warned and this would not be proper'. The other legal practitioner, Lisle, suggested 'That would be true if Joan was in possession but now it is Geoffrey alone who has warranted and, if the land being claimed is lost, Geoffrey will provide exchange from his own land'. Although Geoffrey was asked to present his wife, Joan, to the assize, she eventually essoined.⁴⁵⁶ The legal practitioners' statements suggest that the law gave protection to the wife if she lost her *maritagium* through her husband's mismanagement of it. They also suggest that she could obtain other land in compensation.

As settling jointures on couples became prevalent from the end of the thirteenth

⁴⁵⁵ *The Earliest English Law Reports*, ed. Brand, vol. 3, 136-141.

⁴⁵⁶ *Ibid.*

century, the old forms of *maritagium* and dower declined. Likewise, recorded disputes concerning *maritagia* were replaced by those relating to jointures. The word '*maritagium*' became used less frequently, while the word 'joint-feoffee' was seen more often. The former is found in cases of a bride holding a landed marriage portion from her father or her relatives when she married; and the latter is seen in cases of jointure, where the father of the bride did not give her *maritagium* but paid cash to the groom's family in order to have a piece of land granted by the groom's father to the bride and the groom jointly. What effect did this change have on women and their legal status?

In 1294 one A. brought a writ of entry against a T. le Charer and Joan, his wife, for a house in Westminster. Le Charer and Joan defended themselves by saying that the father of A. had never been seised of the house, and then defaulted at the next court session. Afterwards, they were summoned to hear the judgment, but T. le Charer did not attend court and only his wife, Joan, was present. Joan argued that she wished to defend her own right before the judgment was announced.⁴⁵⁷ One of the legal practitioners, Berwike, stated in her defence, 'The Statute⁴⁵⁸ states that where the husband makes default or will not answer or faintly defends the right of his wife, if she comes before judgment and pray to be received'. However, the other practitioner, Suthcote, disagreed. He counter-argued that, 'The Statute aids you only where the husband alone is impleaded; and this may be understood from the first words of the Statute, which says, "When the husband being impleaded &c."; Judgment if she ought now to be received and answered singly, inasmuch as she heretofore pleaded together with her husband.'⁴⁵⁹

In response to Suthcote, Berwike argued 'if her husband had lost these tenements by defaults, she, after her husband's death, would have had recovery by writ of entry; whereby it appears that if she come before judgment she ought to be received to defend &c; and we tell you that R. the father of A. was never seised in such wise that he could be disseised, ready &c.'⁴⁶⁰

In the end it was decided that Joan should recover her land because for a wife who was a joint-feoffee of land, chapter 3 of the Statute of Westminster II provided her with

⁴⁵⁷ *Year Book of the Reign of King Edward I*, ed. Horwood, vol. 2, 342-344.

⁴⁵⁸ The Statute refers to c. 4 of the Statute of Westminster II, 128.

⁴⁵⁹ *Year Book of the Reign of King Edward I*, ed. Horwood vol. 2, 344.

⁴⁶⁰ *Ibid.*

a remedy to recover her land. If her husband absented himself, refused to defend her right or wished to surrender it against his wife's will, the wife should come before the judgment to defend her right.⁴⁶¹ However, this case also proves another important point in the development of common law: it evidences the increasing importance of physical presence in court. This echoes the Stapleford case mentioned above, where justice Siddington believed that it would be 'doing wrong to Joan' to take the assize in her absence.

4.6 *Maritagium* as 'women's land'?

As I suggest in the introduction of this chapter, this study will challenge the idea of '*maritagium* as women's land.' In a sense, *maritagium* was indeed women's land, but not in every sense. This discussion will be divided into two parts. Firstly, I will unpack the central idea of de Trafford's argument that, in medieval England, daughters were possibly regarded as having a special claim to *maritagium*. Furthermore, the reason that a widow granted her *maritagium* to her daughter instead of to her male heir was probably because *maritagium* was used as 'women's land'.⁴⁶² De Trafford sampled rich and well-landed families as examples, omitting the very different social-cultural structures that governed ordinary and middle-class families. Moreover, she believed that a widow could grant her *maritagium* to her children, usually her sons. Although it is hard to prove that granting her children her *maritagium* increased their dependence, I would suggest that it did, at least, lead to an increased expectation of receiving their mother's *maritagium*.

Secondly, returning to an issue I addressed in the introduction, does de Trafford's argument mean that there was an unspoken rule that a mother would rather grant her dowry to her younger sons than to a daughter? Or, was there a social consciousness of 'daughters' special claim to *maritagium*', which meant that *maritagium* was regarded as 'women's land'?

If it is true that medieval mothers in England more frequently granted their *maritagia* to younger sons than to daughters, then the social expectation of daughters' special claim to *maritagium* would not have existed. On the other hand, if there was an unspoken rule about a daughter's special claim to *maritagium*, then there should have

⁴⁶¹ *English Historical Documents*, ed. Douglas and Rothwell, vol. 3, 431.

⁴⁶² de Trafford, 'Share and Share Alike?' 41-45.

been more evidence of granting *maritagium* to daughters than to younger sons. When a woman had several male and female children, would she save her *maritagium* for her younger sons or grant it to her daughters?

4.6.1 *Maritagium*: son or daughter?

In 1200, when Walter de Scoteny married Helen, daughter of William, Helen brought lands in Roxby and North Willingham as her *maritagium*, which were then given as *maritagium* to her elder daughter, Agnes, although they had two other sons and one daughter.⁴⁶³ On the contrary, in 1232, Walter de Lacy granted the manors of Britford in Wiltshire and Yarkhill in Herefordshire to his daughter, Parnel, and her husband Ralph de Tony as *maritagium*. This *maritagium* instead of either descending to their heir, Roger, or being granted to their daughter, Constance, was granted to someone outside the family, namely Thomas of St Omer, his heirs and his assigns by Parnel, which caused the dispute in 1304.⁴⁶⁴ In 1241 in York, Eda de Baylloil enfeoffed her *maritagium* to her two sons, Hugh and Robert, in her widowhood, who afterwards delivered it back to Eda for life so that she could use it as farmland for 40s rent.⁴⁶⁵ In this case, it does not tell us whether Hugh and Robert were Eda's younger sons, so it would be careless to assume that this was the reason for granting her *maritagium* to them. Nevertheless, one thing is certain – *maritagium* was a significant asset that could support a family, especially if the wife became widowed. The sons in this case cooperated with their mother to gain the best possible outcome by using *maritagium* well.

The above three case studies suggest that *maritagium* was not necessarily saved for one particular child 'begotten from the couple'. According to surviving cartularies and charters in thirteenth-century England, *maritagium* was more often descended to heirs over daughters or younger sons. Alternatively, it was simply disposed of by the wives themselves, as Parnel did, or by their husbands. For instance, the *Hungerford Cartulary* only states one case where a mother's *maritagium* was entirely passed on to her

⁴⁶³ *Feet of Fines for the County of Lincoln for the Reign of King John, 1199-1216*, ed. Margaret S. Walker (London: Pipe Roll Society, 1954 for 1953), n. 5, 3-4.

⁴⁶⁴ *The Hungerford Cartulary*, pt. 2, ed. Kirby, n. 1000.

⁴⁶⁵ *CIPM*, vol. 1, n. 220.

daughter as *maritagium*.⁴⁶⁶ Likewise, there are nine charters related to *maritagium* in the *Basset Charters*, and only one mentions that a mother's *maritagium* was granted to her younger son.⁴⁶⁷ This particular charter, which was made between 1180 and 1182, shows that Thomas Basset granted the vill of Compton Basset, which was his wife's *maritagium*, to her younger son, Alan of Wycombe, with the consent of the eldest son and heir, Gilbert.⁴⁶⁸ Similarly, in the *Hungerford Cartulary*, there are fifteen charters showing gifts granted in marriage; fourteen suggest that *maritagia* were from the fathers' inheritance rather than the mothers' *maritagia*.⁴⁶⁹ In other words, approximately 93% of all cases concerning *maritagium* in the *Hungerford Cartulary* do not indicate a recycling of *maritagium*. A reasonable explanation is that *maritagium* was often alienated during the marriage for various reasons, including financial concerns. This also reflects the purpose of De Donis, which allowed an heir to demand limits on a grantee's right to alienation, especially for those grantees who had no heirs.

4.6.2 *Maritagium* not recycled as *maritagium*

When Claire de Trafford points out that it is possible for *maritagium* to be recycled again as 'women's land', she mentions the *Wakebridge Chartulary*. In it, she found a 'recycled *maritagium*' stretching over four continuous generations, the longest chain on record.⁴⁷⁰ However, there is only one charter relating to *maritagium* in the *Wakebridge Chartulary*, which is the one she used as an example.⁴⁷¹ Likewise, she detailed a charter listed in the *Chartulary of Healaugh Park* where a mother granted her *maritagium* in *maritagium* to her daughter again.⁴⁷² Whilst these charters evidence the grant of *maritagium*, only one suggests that the *maritagium* was granted 'in *maritagium*' repeatedly, and only two show the widows granting their *maritagia* to others.⁴⁷³ It is true that some mothers would save their *maritagia* as *maritagia* for their

⁴⁶⁶ *The Hungerford Cartulary, pt. 1*, ed. Kirby, n. 526. Emma granted with warranty to Agnes her daughter one fore-earth and one acre of land in Heytesbury which her father gave Emma on the day of her marriage.

⁴⁶⁷ These nine charters are *Basset Charters c.1120-1250*, ed. William T. Reedy (London: Pipe Roll Society, 1995), n. 6, n. 47, n. 78, n. 137, n. 178, n. 179, n. 164, n. 182, n. 200.

⁴⁶⁸ *Basset Charters*, ed. Reedy, n. 178.

⁴⁶⁹ Except for *The Hungerford Cartulary, pt.1*, ed. Kirby, n. 526, which shows *maritagium* was saved for *maritagium* again.

⁴⁷⁰ de Trafford, 'The Contract of Marriage,' 243-244.

⁴⁷¹ *The Cartulary of the Wakebridge Chantries at Crich*, ed. Saltman, n. 99.

⁴⁷² *The Chartulary of the Augustinian Priory of St. John the Evangelist of the Park of Healaugh*, ed. J. S. Purvis (Wakefield: Yorkshire Archaeological Society, 1936 for 1935), 147-148.

⁴⁷³ *Ibid.*, 30, 38, 80-81, 98, 147-148, 194.

daughters, but compared to those who did not do so, the numbers are very limited. De Trafford's proposal that in thirteenth-century England *maritagium* was treated as 'women's land' relies on only a very few cases and ignores the fact that more cases show the inverse. Therefore, the idea that *maritagium* was women's land because of 'recycled *maritagium*' is not very convincing.

A more reasonable explanation could be that only rich families were capable of recycling *maritagium* onto the next generation because they did not need to alienate *maritagium* for financial reasons. However, in some rich families, or among the upper classes, a *maritagium* was easily alienated. A good example is Maud de Clare (c. 1223-1289), Countess of Gloucester and Hertford. Between 1249 and 1250 Maud de Clare transferred a large part of her *maritagium* – namely the manor of Navesby, Northamptonshire – to Isabel de Forz, Countess of Aumale, also the niece of Maud's husband, Richard de Clare (c. 1222-1262), and her husband, William de Forz. According to the suit Maud launched after the death of William, she claimed that it had been demised against her will and she had therefore been reluctant to alienate her *maritagium*. Isabel challenged Maud's argument by pointing out that, according to the law, before a fine was levied, a woman should be examined separately. If Maud had been reluctant to transfer her property, she should have disagreed to it in court, a place that was free of coercion. Isabel produced a chirograph which showed Maud's consent to the demise, and she won the suit.⁴⁷⁴ Maud's case also reveals that, even a high status woman could succumb to the coercion by her husband. This placed both her and her property in a precarious position. As suggested in chapter 3 (see p. 102), it is too naïve to believe that the king would not allow any coercion against a woman's will in his court as *Bracton* suggested.⁴⁷⁵ A woman was never truly free of coercion, even in the king's court, because of a wife's social subordination whilst married. If she disagreed with her husband, she risked the relationship becoming hostile, which would only bring disadvantage to her. Noblewomen were not afforded more independence than their counterparts amongst the lower classes – all were inferior to men in the eyes of the law and society.

⁴⁷⁴ Mitchell, *Portraits of Medieval Women*, 36.

⁴⁷⁵ *Bracton*, vol. 4, 31.

4.6.3 *Maritagium* as family business

Although most *maritagia* in the thirteenth century were granted by the fathers of the brides or by close male relatives to support women, their heirs and their marriage, it is misleading to regard *maritagium* as ‘women’s land.’ Apart from there being insufficient cases to prove the practice of ‘*maritagium* as *maritagium* again’, plenty of cases show that *maritagia* were more often than not disposed of by wives’ husbands, heirs, and relatives, because they had easy access to a woman’s dowry. Between 1220 and 1257 a confirmation was made by Eustace Rospear to the monks of Rufford of all the gifts made by his great grandfather, grandfather and father. In addition, he gave his land in Shirebrook, the *maritagium* of his wife, to them, with the assent of her brother, Sir Nicholas de Meynell.⁴⁷⁶ It is curious why the alienation needed the wife’s brother’s consent, but it may have been because he was the person to whom the *maritagium* would revert.

Another good example in the early thirteenth century is a *maritagium* granted by Richard of Grafton Manor to his daughter Petronilla and Walter of Kingsford. Richard granted 20s rent from the tenement that was held by Osbert, son of Robert, and his brother, Richard. Petronilla granted part of the rent from her *maritagium* to her son, John, before 1241, who quitclaimed 10s of the rent to William de Beauchamp (III) of Elmley Castle.⁴⁷⁷ Another case, which may have been heard in the fourteenth century, also indicates that even a *maritagium* completely preserved and passed to the second generation was easily disposed of by the heir. One Richard granted a certain amount of land to Osbert de Lay with Emma, his daughter, in frank-marriage to hold to him and his heirs by Emma, with reversion to Richard and his heirs. Part of this *maritagium* was granted again to Emma’s daughter, Alice, who quitclaimed it to Robert de Berton in her widowhood.⁴⁷⁸

4.6.3.1 Alienation of *maritagium* by husbands

Heirs were not the only ones who might not commit to the preservation of *maritagium*. Husbands also posed threats to their wives’ *maritagia*. A key group of people who had the right to enjoy women’s lands were husbands, who gained access to

⁴⁷⁶ *Rufford Charters*, ed. C. J. Holdsworth (Nottingham: Thoroton Society, 1972-1981), n. 366, 208.

⁴⁷⁷ *The Beauchamp Cartulary 1100-1268*, ed. Emma Mason (London: Pipe Roll Society, 1980), n. 133-n. 135, 81-83.

⁴⁷⁸ *The Hungerford Cartulary, pt. 1*, ed. Kirby, n. 1, n. 11.

and control over *maritagia* during their marriages. It is clear that a husband could alienate his wife's inheritance without her concurrence, but in the case of *maritagium*, his ability to do so was restricted, because his control over her *maritagium* might be referred to as wardship.⁴⁷⁹ As mentioned, *maritagium* often had a proviso saying that it reverted to the donor if there was no heir from the donees' bodies. Consequently, the husband's control over his wife's *maritagium* was often magnified if they had a child, because this enabled the husband to enjoy his wife's land for the whole of his life. In consequence, plenty of cases reveal that women went to court for *maritagia* alienated by their husbands.

A case in 1249 reveals just how a woman's *maritagium* could be alienated by her husband. Galiena, wife of Robert Malebise, presented herself against Gillian and Christian of Worth for one messuage in Highworth as her right and *maritagium*, into which Gillian and Christian had no entry except by Richard of Widhill, to whom Robert Malebise, Galiena's former husband, demised it. However, Galiena said she could not contradict his alienation in his lifetime. Afterwards, Gillian and Christian did not attend court and a summons was issued. In the end the messuage was taken into the king's hand by default, and they were summoned to appear again on the octave of Trinity.⁴⁸⁰

Likewise, in 1293, in Norfolk, one Margaret, widow of Nicholas, made a claim against Roger Barefoot to four acres of arable land with appurtenances in Oxwick as her *maritagium*. She argued that Roger had only gained the right of entry from Nicholas, whom she could not gainsay during her lifetime. In response to Margaret, Roger retorted that the disputed tenements had been a gage⁴⁸¹ from William de Bec, who had promised six marks payable at a certain term as a *maritagium*, and Nicholas could only hold the said tenements until William paid him the said six marks. Subsequently William paid the money when the term for payment came, so neither Margaret nor Nicholas had a right to the disputed tenements. Despite Margaret's insistence on the disputed land as her *maritagium*, the jurors said that the four acres had not been given

⁴⁷⁹ Hudson, *The Oxford History of the Laws of England*, vol. 2, 789.

⁴⁸⁰ *Civil Pleas in Wiltshire 1249*, ed. Clanchy, n. 149. The final result is not recorded.

⁴⁸¹ Something valuable deposited to ensure the performance of certain action, and liable to forfeiture in case of the failure of the action. See 'OED,' accessed on 14 June 2018, <http://0-www.oed.com.catalogue.libraries.london.ac.uk/view/Entry/76016?rskey=B7B6sq&result=1&isAdvanced=false#eid>

in *maritagium*. Thus, Margaret took nothing through her writ and was amerced for the false claim.⁴⁸²

Two points deserve discussion here. First, from Margaret's point of view, she was reluctant to let her husband lease the *maritagium* to Roger, but, as the record suggests, she was in no position and no right to contradict his deed, which meant that she only tried to recover her *maritagium* after the death of her husband. Secondly, it explicitly states that Margaret was trying to claim the four acres of land as *maritagium* instead of a gage, which echoes the argument I put forward earlier in this chapter that claiming disputed land as *maritagium* gave female litigants a better chance of winning. Her strategy might have succeeded if the land had been confirmed as *maritagium* instead.

Not all husbands disposed of their wives' *maritagia* without the wives' consent, even though they did not need it. The following case shows how a husband obtained his wife's consent when he alienated her *maritagium*. Early in the reign of Henry III, a notification was made in Worcester by Walter the weaver that with the assent of his wife Matilda he had sold her *maritagium* for 20s to John, Matilda's brother. The *maritagium* had been given to Matilda and Walter by her father, Roger de la Hulle. The phrase 'with the assent of Matilda' should always be doubted, because, according to *Glanvill*, a wife should not contradict her husband's disposition on her land.⁴⁸³ Nevertheless, it is noteworthy that husbands rarely clearly mentioned their wives' assent when their land was being alienated. It can be deduced that the mentioning of the wife's assent was to prevent her recovering it after her husband's death. It is unknown whether Matilda was forced to give her consent, but the case highlights a wife's dilemma. She could not contradict her husband's action, but once she gave her concurrence she could not negate that action after his death.

4.6.3.2 *Maritagia* taken away from women

Property was not only threatened by husbands, but also by other people. One example was mentioned earlier in this chapter, when Maud transferred part of her landed *maritagium* to her brother Geoffrey and lost the said property because of another grant made by Geoffrey. Disputes over *maritagia* resulting from alienations by the wives' siblings, relatives, or family members were not uncommon. For example, in

⁴⁸² *Year Book of the Reign of King Edward I*, ed. Horwood, vol. 2, 620.

⁴⁸³ *CRR*, vol. 1, 309, 317, 378.

1208 one Hersenta found that her *maritagium* had been sold to others by her son, Lawrence, while she and her husband had been overseas. Therefore, Hersenta and her husband, Reynold, went to court against Philip, to whom her son, Lawrence, had sold the land. According to the contract between Philip and Lawrence, Philip should give the land back when Hersenta and her husband returned. However, Philip showed a confirmation stating that he had been delivered one virgate of land with appurtenances in Sugestaple by the service of two years and through an agreement by Reynold and Hersenta.⁴⁸⁴ It seemed that Hersenta's *maritagium* was so valuable that even her son wanted to make some profit from it. If the agreement Philip showed was true, it could be inferred that Hersenta and Reynold might have accepted that the *maritagium* had been alienated, but later regretted this and launched the suit.

Sometimes wives' *maritagia* were not disposed of by others but were simply disseised. In 1201, a final concord in Lincolnshire suggests that Alice de Amundeville was disseised by her brother of her *maritagium*. Alice claimed that her brother, Jollan de Amundeville, disseised her of the *maritagium* given to her by their father, Ellis, while Alice was in his wardship. Afterwards, an agreement was made between them, whereby Alice returned half a knight's fee in Winthorpe, which she had claimed as her *maritagium*, to Jollan and his heir in perpetuity. In return, Jollan conceded to her two carucates of land and seven bovates of land with toft and croft, in Winthorpe. He also gave Alice and John de Hocton' and their children four crofts and the third part of one mill-house in the same place. John and his heirs would hold the said tenements of Jollan through the free service of the third part of one knight. If, by chance, Alice died before she had heirs by John, the said tenements would revert to John and his heirs. Jollan would have the homage of John, and Alice gave her fidelity to him as well. In the end, Alice returned their father's charter to Jollan.⁴⁸⁵ Although Alice had been disseised of her *maritagium* by her brother, it seems that through an agreement she managed to compensate herself. The reason why Jollan disseised his sister remains unknown, but it may have been the result of frustration over his imperfect inheritance, part of which had been given as *maritagium* to Alice. He may well have regarded this as damaging for his inheritance.

⁴⁸⁴ *CRR*, vol. 5, 289. The final decision is not recorded.

⁴⁸⁵ *Feet of Fines in Lincolnshire*, ed. Walker, n. 37, 19-20.

A case in Norfolk in 1206 also shows the disseisin of *maritagium*. Hugh de Polstede and Hawise, his wife, sought from Walter de Grant Curt one carucate of land with appurtenances in Burnham. They said the land belonged to Ascelin, Hawise's mother, and had been granted as *maritagium* by Ascelin's father, William de Grant Curt. The defendant, Walter de Grant Curt, was accused of intruding on Ascelin's *maritagium* by force while she was sick. However, Walter refused to respond unless Hawise's sister, Julia, was presented.⁴⁸⁶ Afterwards, the jury confirmed that William de Grant Curt gave the disputed land to Hugh de Candos, with Ascelin in *maritagium*, that she held the land as *maritagium* until her death, and that Walter intruded into her *maritagium* fifteen days before her death. It was therefore adjudged that Hugh de Polstede and his wife Hawise and Julia and her husband, William de Gimigham, had the disputed land as co-heiresses.⁴⁸⁷ Walter de Grant Curt might have been the relative of William de Grant Curt, and Walter may also have been be Ascelin's relative. This case is uncommon because *maritagium* land was seldom intruded into by force, which suggests that the woman in this case had faced a bigger threat than other people who had disputes over their *maritagium*.

As has been described elsewhere, because landed *maritagium* was more profitable than movable property, in the thirteenth century, it was unusual to see *maritagium* remain intact for several generations within families. Hence, various kinds of legal actions – such as enfeoffments and grants – were often found attached to them. For instance, the *Hungerford Cartulary* includes fifteen charters related to grants of *maritagium* in frank-marriage or marriage, and only one suggests that the same *maritagium* was saved as *maritagium* for the next generation.⁴⁸⁸ The rare examples of keeping *maritagium* intact suggest how important *maritagium* was to a family's finance. Another point worth mentioning is that the rent from landed *maritagium* could function as 'liquid capital', allowing the family to manage it with more flexibility.

In the case of rich and noble families, *maritagium* was neither necessarily saved for the next generation nor used as liquid capital for their financial need. *Maritagia* could be used for ecclesiastical purposes. In the *Earldom of Gloucester Charters: The*

⁴⁸⁶ Again, the defendant's requirement of all co-heiresses' presence acted as a strategy to delay the proceedings.

⁴⁸⁷ *CRR*, vol. 4, 80-81, 102.

⁴⁸⁸ *The Hungerford Cartulary*, ed. Kirby, n. 1, n. 6, n. 81, n. 88, n. 102, n. 189, n. 190, n. 444, n. 919, n. 999, n. 1036, n. 1053, n. 1143, n. 1248.

Charters and Scribes of the Earls and Countess of Gloucester to A.D 1217 only two charters are recorded that relate to *maritagium*, and both of them were granted to religious houses by Hawise, the Countess of Gloucester. She granted land from her *maritagium* at Pimperne to Fontevrault Abbey and St. Mary, Nuneaton.⁴⁸⁹

Another significant piece of proof which renders the idea of ‘*maritagium* as women’s land’ impotent is the debate on whether it was a grant or a pre-mortem inheritance. When Biancalana suggested the similarity between female inheritance and *maritagium* he supported his contention by saying that, if *maritagium* was regarded as a grant, no one could ask a daughter to put her *maritagium* back into the pot (hotchpot). Nevertheless, when *maritagium* was seen as a pre-mortem inheritance, the daughter needed to ‘hotchpot’ upon the death of her father for the division of inheritance. Therefore, from this point of view, *maritagium* shows no hint of being ‘women’s land’. The *curia regis* also supports this argument when it states that, if a daughter with *maritagium* sued to share her father’s inheritance, she should put her dowry back into the pot for division; however, her sister was not eligible to force her to do so by suing her for a division. Thus, the king’s court favoured the idea of ‘*maritagium* as a pre-mortem inheritance’. However, to some extent, it also protected her right by only enforcing the return of the dowry to the pot when the woman brought forward the suit concerning the inheritance by herself.⁴⁹⁰

4.6.3.3 De Donis and donors’ interests

De Donis also contradicted the idea of ‘*maritagium* as women’s land’ by ensuring the law’s protection of grantors and restricting women and their husbands from alienating *maritagia* as they wished. At the same time, it protected the first wife’s issue. From *maritagium* to De Donis and then onto jointure, a *maritagium* has never been considered a particular generous gift to the newly-wed couple. Its purposes had always been both to support the new family and act as a guarantee to the widow. Ironically, *maritagium* had always been granted with conditions, hence it had come to be regarded as part of the inheritance. Therefore, *maritagium* became an arrangement that concerned the family’s interests, which frequently caused disputes within families. This

⁴⁸⁹ *Earldom of Gloucester Charters: The Charters and Scribes of the Earls and Countesses of Gloucester to A.D. 1217*, ed. Robert B. Patterson (Oxford: Clarendon Press, 1973), n. 67, n. 68.

⁴⁹⁰ Biancalana, *The Fee Tail and the Common Recovery in Medieval England*, 52-53.

further supports my notion of it being a ‘family’s business’ rather than ‘women’s land’.

I also contest the statement by another scholar, Jack Goody, who asserted that ‘daughters in England rarely got land as dowry’. He did not provide any references to support the statement or explain the reasons for his assertion.⁴⁹¹ In fact, landed dowry was still more prevalent than the gift of movable objects in England throughout the whole of the thirteenth century. Peter Fleming believes that, from the mid-thirteenth century onwards, *maritagium* in cash had gradually been replacing landed *maritagium*. However, this might be inaccurate because the development of *maritagium* in cash was more closely related to jointure, which did not become popular until later in the fourteenth century. For instance, in the *Basset Charters*, seven charters explicitly mention gifts granted in marriage, all of which were landed *maritagia*.⁴⁹² Likewise, in the *Hungerford Cartulary*, which covers the thirteenth century to the early fifteenth century, of the fifteen charters that relate to grants in *maritagium*, only one of them included rent.⁴⁹³ In the *Cartulary of Worcester Cathedral Priory*, of three charters that involve grants in marriage, all are *maritagia* in real estate.⁴⁹⁴

Was the notion of ‘*maritagium* as women’s land’ in thirteenth-century England as suggested by Claire de Trafford ever justified? It was well acknowledged that once a woman entered marriage, her *maritagium* became a valuable asset to her husband’s family and was easily disposed of even before being granted to her younger sons or daughters. Sometimes, it just simply descended or reverted to the heir of the donor when there was no heir begotten of the woman. Even though *maritagium* was the property granted to a wife with her husband and their children, it was mostly disposed by her husband, children, or relatives. It would be misleading to believe that most people and families had the expectation of ‘*maritagium* as women’s land’, in part due to the high probability that *maritagia* would be alienated by husbands and others.

A wife’s management of her own *maritagium* was rather limited to herself as the woman of the first generation. Similarly, her daughters were barely able to manage their mother’s *maritagium* because it was often disposed before they had a chance to benefit from it. Therefore, this study has shown that, in thirteenth-century England, *maritagium*

⁴⁹¹ Goody, ‘Inheritance, Property and Women,’ 10-30.

⁴⁹² *Basset Charters*, ed. Reedy, n. 6, n. 47, n. 78, n. 137, n. 178, n. 179.

⁴⁹³ *The Hungerford Cartulary*, ed. Kirby, vol. 1, n. 1, n. 6, n. 81, n. 88, n. 102, n. 189, n. 190, n. 444, n. 526, n. 999; vol. 2, n. 1036, n. 1053, n. 1143, n. 1248. The only movable *maritagium* was n. 1248.

⁴⁹⁴ *The Cartulary of Worcester Cathedral Priory*, ed. Darlington, n. 366, n. 374, n. 419.

functioned much more as family's land than women's land.

4.7 Conclusion

Maritagium, as a gift and means of support for the conjugal unit and their children in thirteenth-century England, was never regarded as a normal fee. With its special rule of reversion, it created numerous disputes within families, yet it provides a fascinating insight into a woman's natal family and her newly-formed family. For the family of the bride, *maritagium* was part of their inheritance, and they usually expected this property to revert to the family after her death if she had no children. However, the principle of reversion meant that claiming a piece of land as *maritagium* became a useful strategy for the donor, or the heir of the donor, against the woman's heir, or, if she took one, her second husband. An advantage to the receiver of *maritagium*, was that, by having it confirmed to be her right in *maritagium*, should her right be disputed, she could fully and completely have a title to enjoy the land, even though she barely had a right to dispose of it because of the limitation on alienation.

From the point of view of the woman's opponent, he or she ran more risk of losing a suit if the woman could prove that the disputed land was her *maritagium*. Nevertheless, the act of claiming her land as *maritagium* created a crisis for a woman who had been granted land as *maritagium* should there be a demand for her share to be divided between co-heiresses. This situation arose because of the rules of 'hotchpot', which meant that a woman had to return her *maritagium* in order to obtain her inheritance share. Furthermore, for a woman, the advantage of claiming land as *maritagium* was limited, as she was the original grantee. Her heirs usually faced various opponents – the donor, the donor's heir, the second husband, or the heir of the second husband. This was particularly true prior to De Donis, when the second husband could still enjoy the curtesy of the woman's *maritagium* from the first marriage. Nevertheless, after De Donis, women found they had more restrictions regarding the disposal of their *maritagia* because De Donis prioritised the rights of the grantor.

Did the enactment of De Donis really result from a decrease in generosity towards daughters of families, as de Trafford suggests? She cites no reference to prove her statement. Also, to what extent could we call a family's granted *maritagium* generous? To take one example, if we compare a man who granted all his inheritance (say, one flour mill) to his daughter as dowry, and a rich man who granted only one-tenth of his

inheritance (say, three virgates of land), which one should be considered more generous? Judging from the size of the property, the rich man might win in terms of generosity, if generosity is based on sheer value; whereas, a man who granted all his inheritance should perhaps be regarded as being more generous given the actual cost to him. However, the enactment of De Donis does not emanate from an ambiguous definition of generosity, but from the gradual development of *maritagium* as an entail, as Biancalana and Kaye suggest.

From this point of view, *maritagium* never served as ‘women’s land’ because, in the end, it protected the grantor’s right and will through the recognition of ‘*maritagium* as pre-mortem inheritance’. Furthermore, *maritagium* was so often disposed of by a woman’s husband and heirs before the woman was able to exercise any control over it. The majority of people did not expect to save *maritagia* for their daughters because, before De Donis, *maritagium* was intended to provide support for a new conjugal unit and act as inheritance for the grantor’s family. After De Donis, it was more usually the grantor’s inheritance. The passing on of *maritagium* to subsequent generations was extremely rare, and even when it did occur it was only in very rich families. I suggest that the use of *maritagium* by women very much depended on their families’ interests and that there was no preference for granting *maritagium* to younger sons, or saving them for daughters. Some *maritagia* were passed on to younger sons, some to daughters, but more were purely for financial purposes. All of the examples given here show that there was no principle, or norm, for managing *maritagium* in the sense of ‘one size fits all’, but rather, it was characterised by diversity.

Nevertheless, before De Donis, in the eyes of the bride to whom it was granted, there was no doubt that *maritagium* was her land and her property, and property played a hugely important role in running a family, particularly a new one. It may be seen from the records that a woman had the ability to manage her *maritagium*, through exchanging, granting, and enfeoffing. For rich and noble women, it was even common to grant their *maritagia* to religious institutions in their widowhood for the salvation of their souls. After De Donis, however, the ability to manage their own *maritagia* drastically declined, for the law favoured the grantors’ rights and introduced a standardisation for managing them that had previously been missing. In early medieval England, *maritagium* could not be described as ‘women’s land’ because it was sometimes granted by a groom’s father to the groom and his heirs only, and left the bride with nothing. By the end of the

thirteenth century, *maritagium* fully became an entail serving the grantors' interests. *Maritagium* was already functioning as 'family's land' because De Donis circumvented women's capacity of alienating their *maritagia*.

Chapter Five: Widows in Court

While inheritance and *maritagium* were both property that women obtained either before or during their marriage, dower could only be obtained upon a husband's death. Dower, a life interest for a widow, did not pass to her heir, but reverted to her late husband's heir, although her heir and her husband's heir were often the same. It gave the widow sole control over property. Such a right gave the widow a certain degree of power as she had no right to dispose her husband's property while he was alive. According to the common law, dower was one-third of the land held by the widow's late husband. However, the rule differed in local customs or tenures. A Wilton widow, for instance, was able to choose between her 'free bench' (a share in her late husband's dwelling) or a £5 dower.⁴⁹⁵ The dower share in Tittleshall in Norfolk was a half because it was crown land.⁴⁹⁶ Local customs will generally be excluded in this chapter as it will focus on common law dower cases, which followed the rule of one-third.

However, some local customs will be discussed in order to demonstrate a range of options which allowed women to exercise their rights over dower, and to illustrate the significance of local customs during the development of a common law system.⁴⁹⁷ While this thesis is primarily concerned with estates, it is important to keep in mind that if a husband had no land, then the dower of his widow could include his money and chattels.⁴⁹⁸

5.1 Literature review

Dower, the most sought after right by women in medieval England, has been widely discussed in scholarship. The publications mentioned below constitute the most important research on dower. They are grouped by author, as follows.

(i) Joseph Biancalana.

A comprehensive illustration of how dower developed can be seen in Joseph Biancalana's 'Widow's at Common Law: The Development of Common Law Dower'. Two significant findings were proposed by Biancalana. The first was the redefinition

⁴⁹⁵ Jennifer C. Ward, *Women in England in the Middle Ages* (London: Hambledon Continuum, 2006), 66.

⁴⁹⁶ Flower, *Introduction to the Curia Regis Rolls, 1199-1230 A. D.*, vol. 62, 239.

⁴⁹⁷ The local customs of Winchester, for instance, will be discussed in this chapter.

⁴⁹⁸ Loengard, 'Rationabilis Dos,' 62.

of dower asserted by royal jurisdiction in 1176. Dating back to the tenth century, dower referred to the specific endowment by a husband at the time of marriage. After the death of her husband, the widow could have one-third of a life interest in his acquired land, i.e., her customary entitlement.⁴⁹⁹ Dower was not the only endowment a widow could have. In 1176 the Assize of Northampton established that the royal judges had jurisdiction over dower claims from the widows of free tenants. The endowment was emphasised in a public ceremony, and a tenant's seisin at death.

The 1176 Assize denoted that a widow's entitlement to acquisition had to be read into the endowment at marriage.⁵⁰⁰ It also denoted that a son needed to have land in the first place in order to assign the widow her dower. Therefore, the distinction between acquired land and inherited land was blurred as a result of the difficulty of distinguishing widows' different entitlements. Inevitably, a widow's customary entitlement became one-third of the land which descended to her.⁵⁰¹ Chapter 7 of the 1217 Magna Carta articulated the redefinition of dower – it was either specific land given at the church door on the marriage day or one-third of the land her husband held during the marriage.⁵⁰²

The second prominent finding Biancalana had is the misreading of Chapter 7 of the 1217 Magna Carta, which he called 'the reinterpretation of Magna Carta in the mid-1230s'.⁵⁰³ The document has often been misinterpreted as stating that a widow could choose between her nominated dower and common law dower, but this is not the case. This misreading was caused by the particular requirements of pleading and proof, and the logic of proof.⁵⁰⁴ The royal judges required the widow who claimed her nominated dower to produce witnesses, something which was also required of the defendant. As Biancalana noted, the proof of witnesses was symmetrical: if one party produced witnesses, the other party could do likewise.⁵⁰⁵ This method was meant to implement Chapter 7. However, as Magna Carta came to be understood as the authoritative statement of English common law, the royal judges became conscious that they were

⁴⁹⁹ Joseph Biancalana, 'Widows at Common Law: The Development of Common Law Dower,' *The Irish Jurist*, 23. 2 (1988), 255-329. Biancalana pointed out that in the beginning of the tenth century, in some but not all places in France, widows' shares of acquisition merged into dower.

⁵⁰⁰ *Ibid.*, 313.

⁵⁰¹ *Ibid.*, 294-297.

⁵⁰² *Ibid.*, 313.

⁵⁰³ *Ibid.*, 329.

⁵⁰⁴ *Ibid.*

⁵⁰⁵ *Ibid.*, 314.

administering a distinct body of law. They further regarded the specific endowment at the day of marriage as an agreement, a grant, or a local custom. In contrast, one-third of the share was common law.⁵⁰⁶

In consequence, the widow who claimed her common law dower did not need to produce witnesses, which prevented a defendant from calling witnesses in order to prove that she was endowed with other land at the marriage.⁵⁰⁷ If the defendant wanted to deny her claim of common law dower, he had to prove that she had accepted the nominated dower after the death of her late husband.⁵⁰⁸ Once the defendant could not plead that the widow had been endowed at the church door, the widow who, in fact, was endowed with a nominated dower at the church door, was able to elect between her nominated dower and common law dower. Consequently, it was recognised by the royal judges that the widow could waive her nominated dower in order to choose her common law dower.

Biancalana's article not only clarified how the definition of dower developed because of certain political and judicial changes, but also discussed the procedural development of dower litigation, painting a clear picture of dower in the years between the 1176 Assize of Northampton and the mid-1230s. Biancalana was also aware of the discrepancies between legal treatises and legal practice. This supports the focus of my thesis, which investigates the gap between the theory of statute law and what really happened in practice.

(ii) Sue Sheridan Walker

In her article “‘Litigant Agency’ in Dower Pleas in the Royal Common Law Courts in Thirteenth and Early Fourteenth Century England”, Walker stressed a woman's role in litigation by posing the following important questions: (a) Can a woman's role as litigant be accurately interpreted if the legal documents show her speaking through a representative? (b) What kind of lawyers were there? And (c) how were they used in dower pleas? Although Walker thought having a lawyer tended to distance the client from the proceeding of the suit, widows who went to the royal courts to secure their dowers would usually have had professional legal practitioners to speak for them, such

⁵⁰⁶ *Ibid.*, 315.

⁵⁰⁷ *Ibid.*

⁵⁰⁸ *Ibid.*, 325.

as attorneys or serjeants.⁵⁰⁹ If a court case was likely to be lengthy, appointing an attorney would have been very useful. Furthermore, by the end of the thirteenth century, attorneys, serjeants, justices, and even court clerks were professionals who were able to manage the business of royal courts.⁵¹⁰ In Walker's opinion, the fact that so many widows sought justice at the royal courts in order to secure their dower showed that they had access to those courts; and the voices of women in the Common Bench were heard through the professional attorneys, judges and serjeants.⁵¹¹

In another article, 'Litigation as Personal Quest: Suing for Dower in the Royal Court, circa 1270-1350', Walker suggested that 'the common practice of going to the law was a compelling personal experience that called forth an active and competent response by the women', because alone of all civil pleas, dower required a woman to be a plaintiff.⁵¹² She explored widows' experiences of defending their dower in the royal court, and identified the objections that a widows frequently faced: (a) they were not validly married to the man from whom they demanded dower; (b) they were accused of adultery; (c) they had not reached the age of nine, the legal age for receiving dower, when they were endowed; (d) they had accepted a lesser portion of land as their nominated dower; (e) their husband had committed a felony and (f) their late husband was not seised of the land at the marriage or afterwards.⁵¹³

Walker showed the same opinion as she had in "'Litigant Agency' In Dower Pleas in the Royal Common Law Courts in Thirteenth and Early Fourteenth Century England', suggesting that widows had agency to some extent, and even if a widow did not have an attorney, she would have a serjeant to speak for her. The court records tell us that he was speaking on her behalf.⁵¹⁴

(iii) Janet Senderowitz Loengard

While Walker focused on women's agency in court by examining their dower pleadings, Janet Senderowitz Loengard focused on medieval English women by exploring the relationships between widows and heirs in "'Of the Gift of Her Husband':

⁵⁰⁹ Walker, "'Litigant Agency" in Dower Pleas in the Royal Common Law Courts in Thirteenth and Early Fourteenth Century England,' *The Journal of Legal History*, 24.3 (2003), 3-5.

⁵¹⁰ *Ibid.*, 8.

⁵¹¹ *Ibid.*, 14-15.

⁵¹² Walker, 'Litigation as Personal Quest,' 81-82.

⁵¹³ *Ibid.*, 86-92.

⁵¹⁴ *Ibid.*, 98-99.

English Dower and its Consequences in the Year 1200'.⁵¹⁵ Loengard, who considered dower as a family affair rather than an abstract right, pointed out that few families could afford two women each claiming a third of the property, and it would be even worse if the two women were of the same generation, because such an expense would cripple a family for more than a generation. Thus, dower made it more difficult for an heir to acquire his inheritance because, even when a widow died, the land was not immediately and automatically returned to the heir.⁵¹⁶

In Loengard's other article, 'What did Magna Carta Mean to Widows?', she touched upon different issues by querying the impact of the 1225 Magna Carta on widows, in particular in the thirteenth century. First, she discussed the most frequent difficulties widows encountered when demanding their dowers, and drew on the numerous possible strategies their defendants used. For instance, more often than not, defendants used procedural responses to delay the proceeding of suits, such as asking for a view.⁵¹⁷ Views were abused during the reign of King John, culminating in chapter 48 of the Statute of Westminster II in 1285. Loengard pointed out that the more serious objection to which a defendant might have recourse was to deny that they were the warrantor of the woman's dower and therefore refuse to answer. This could lead to numerous conundrums. What if the warrantor was not in England but overseas? What if even the woman did not know whether he was alive or not? And, what if he had taken to a religious life?⁵¹⁸

Some objections to dower were exceptional, for example, if the husband was a felon or still alive, or even if he was on pilgrimage or a crusade. On the other hand, some objections were commonly used, including that the husband was not seised of the land for which she asked when he married her, that the land was the inheritance or *maritagium* of her late husband's first wife, or that the husband had sold the land before the marriage.⁵¹⁹ Another frequent objection to dower came from the husband's father.⁵²⁰ Loengard explained that when the husband died young and childless, in order

⁵¹⁵ Janet S. Loengard, 'Of the Gift of her Husband: English Dower and Consequences in the Year 1200,' in *Women of Medieval World: Essays in Honour of John H. Mundy*, ed. J. Kirshner and S. F. Wemple (Oxford: Blackwell, 1985), 215-55.

⁵¹⁶ *Ibid.*

⁵¹⁷ Janet S. Loengard, 'What did *Magna Carta* Mean to Widows?', in *Magna Carta and the England of King John*, ed. Janet S. Loengard (Woodbridge: Boydell Press, 2010), 141.

⁵¹⁸ *Ibid.*

⁵¹⁹ *Ibid.*, 139-140.

⁵²⁰ *Ibid.*, 141-142.

to prevent the widow from taking the dower to her second husband's family and future possible disputes, the father would swear that he had not been present at the wedding, nor had he given his consent to it. However, Loengard pointed out that such a bargain usually failed, especially when the woman's father presented a charter setting out the endowment.⁵²¹

Loengard believed that dower was a strong concern for families in general because heirs were frequently reluctant to assign widows their dowers even if their dower rights were written in the 1215 Magna Carta. The result was usually a compromise between the heirs and the widows, or between the tenants who held the dowers and the widows. Some widows quitclaimed their dower and some gave up only a part of it. For a widow, dower was her bargaining chip, and through conceding her dower to the heir of her late husband she gained benefits for her second husband or her other children.⁵²²

Loengard also discussed the disputes that *maritagium* caused in thirteenth-century England. She noticed, as I have described in the previous chapter, that some male heirs complained about the vast amount of *maritagium*, which effectively left them disinherited. Consequently, a prudent father would acquire the heir's consent before granting the land as *maritagium* and record it in the charter. Loengard was of the view that *maritagium* was usually saved by the woman for her daughter or younger sons.⁵²³

Loengard analysed how and if the 1225 Magna Carta made any difference in the short run to widows. She suggested that it did not have an immediate impact on widows. According to Susanna Annesley's research, some widows still paid fines not to be pressured into remarrying, and for obtaining their inheritance, dower and *maritagia*.⁵²⁴ Moreover, contrary to what *Glanvill* and *Bracton* suggested, i.e., that the defining date of dower was the day of the wedding, the 1225 Magna Carta articulated that a widow could claim her common law dower from any land that her husband held during the marriage. People did not, however, recognise this right after Magna Carta 1225. The long-term effect of the Charter was that, by 1311, it had become the rule that a woman could claim a third of all lands that her husband had held at any time during the marriage.⁵²⁵

⁵²¹ *Ibid.*, 142

⁵²² *Ibid.*, 142-143.

⁵²³ *Ibid.*, 145-146.

⁵²⁴ *Ibid.*, 147.

⁵²⁵ *Ibid.*, 149-150.

Loengard posited that as a result of the 1225 Magna Carta, the climate became more favourable to dower throughout the thirteenth century. For instance, the 1275 Statute of Westminster I widened the ability to use the writ of *unde nihil habet* by allowing a suit to go directly to the king's court.⁵²⁶

As for *maritagium*, Loengard suggests that the impact of the 1225 Magna Carta was more indirect. It was only in the first chapter of the Statute of Westminster II in 1285, namely De Donis, that the law explicitly limited the alienation of *maritagium* so that it could only descend as a specific fee to the issue of a husband and wife or revert to the grantor. As Loengard suggested, although De Donis did not mention widows, it compromised a widow's ability to dispose of her lands because she was legally barred from doing so to protect future heirs. The situation was even more disadvantageous should the marriage portion be paid in cash because the money would go to the husband directly, and if he died first, it went to the heir rather than to the widow. Loengard described this as 'a blow to the bride and potential widow's independence'.⁵²⁷

(iii) Paul Brand

Paul Brand investigated both established and more recent views concerning dower. In "“Deserving” and “Undeserving” Wives: Earning and Forfeiting Dower in Medieval England"⁵²⁸, he points out that the age requirement for demanding dower is unclear, which might imply that a widow had to reach a minimum age, for example being old enough to bear children when the marriage was contracted. However, a husband who was underage could still endow his wife, and even if he died before reaching his maturity, she would have her dower. Thus an under-age husband seldom became an objection to widows claiming dower in court. It seems, therefore, that before 1250 it was unthinkable that a widow would not have received her dower – no matter her age. However, there was a shift in opinion, leading to a belief that a widow should have to 'earn' her dower before she was allowed to claim it. Along with being under age, widows who had not been endowed at the church door were disqualified from claiming dower, although this requirement was gradually abandoned in the second half of the

⁵²⁶ *Ibid.*

⁵²⁷ *Ibid.*, 150.

⁵²⁸ Paul Brand, "“Deserving” and “Undeserving” Wives: Earning and Forfeiting Dower in Medieval England," *The Journal of Legal History*, 22.1 (2001), 1-20.

thirteenth century. Lastly, if a wife committed adultery she was not entitled to dower although the second part of chapter 34 of the Statute of Westminster II stipulated that if her husband was willing, without the coercion of the church, to take her back and live with her, her right to dower could be restored.⁵²⁹ Brand also points out that a very small number of widows admitted they had been living in adultery, with such admissions frequently being followed by reconciliations. Alternatively, couples might become estranged for good reasons, such as economic necessity. Brand concluded by stating his belief that the provisions of the 1285 Statute confirmed changing opinions about dower. Before the statute, the older position was that dower was an automatic entitlement arising from a valid marriage. However, after 1250, dower was regarded as a reward for services rendered. Once those services failed to meet the expectations of the husband, the reward could be forfeited.⁵³⁰

(iv) Susanna Annesley

In ‘The Impact of Magna Carta on Widows: Evidence from the Fine Rolls 1216-1225’ Annesley explored an immediate impact of Magna Carta on women, by studying the Fine Rolls.⁵³¹ She discussed its impact in three prominent areas: remarriage, dower and wardship. She found that although Magna Carta 1215 did show an improvement in widows’ lives, they still paid for their freedom of remarriage. The crown kept exploiting widows by having them pay a fine when they either married without consent or chose to stay single. Therefore, Annesley argued that a widow’s payment of a fine for her freedom did not breach chapter 8 of Magna Carta 1215, which said ‘no widow shall be forced to marry so long as she wishes to love without a husband, provided that she gives security not to marry without our consent if she holds of us, or without the consent of her lord if she holds of another.’⁵³² It is clear that the the provisio of chapter 8 to some extent justified the fine widows paid for their freedom.⁵³³

⁵²⁹ Chapter 34 of the Statute of Westminster II contained three main issues: (i) the rape of women; (ii) women’s adultery; and (iii) the abduction of nuns. See *English Historical Documents*, ed. Douglas and Rothwell, vol. 3, 447-448.

⁵³⁰ Brand, ‘“Deserving” and “Undeserving” Wives,’ 1-20.

⁵³¹ Susanna Annesley, ‘The Impact of Magna Carta on Widows: Evidence from the Fine Rolls 1216-1225,’ ‘Fine of the Month’ (November 2007). See ‘Henry III Fine Rolls Project,’ last accessed on 6 April 2019, <https://finerollshenry3.org.uk/content/month/fm-11-2007.html#fn53>

⁵³² *English Historical Documents*, ed. Douglas and Rothwell, vol. 3, 328.

⁵³³ Annesley, ‘The Impact of Magna Carta on Widows’.

Regarding dower in the Fine Rolls, Annesley defied an idea put forward by Loengard that ‘many or most dower actions were begun in earnest and were vigorously litigated’.⁵³⁴ She argued that widows’ dower rights were, in fact, enshrined within the laws and customs of the kingdom, in that some cases show the heir assigning dower to the widow without reluctance.⁵³⁵

Annesley continued to examine the impact of the 1215 Magna Carta on wardship, a previously highly profitable privilege for the crown. Only five fines indicating widows’ payment for securing their children’s wardship were found in the Fine Rolls between 1215 and 1225. This is considered a significant decline, and an improvement in widows’ right when compared with the high frequency of widows paying fines for wardship during the reigns of Richard and John.⁵³⁶ Nevertheless, Annesley has been aware that the Fine Rolls cannot tell us about the complicated relationships and negotiations which might happen behind the scenes when arranging a wardship.⁵³⁷

In short, from the analysis of these three categories in the Fine Rolls, Annesley believed that after Magna Carta 1215, the crown still used widows’ dower as a bargaining tool for their remarriage, and there were still many loopholes in the 1215 Magna Carta that the king could exploit. Despite of the predicaments that widows continued to face after the 1215 Magna Carta, the Charter itself did improve their lives. As Annesley pointed out, the Fine Rolls show some non-baronial widows fiercely pursuing their rights in court.⁵³⁸

The above works widen our understanding of widows’ lives, from the pleading of dower to how the statutes affected dower right in the thirteenth century. Building on this research, this chapter will add to knowledge about dower by referencing sixty-five court cases to illustrate an individual widow’s experiences at court. It will primarily examine the difficulties encountered in the courts when women demanded their dower, and move on to discuss the gap between the theoretical law and what really happened in court. Alongside these cases, the following significant legislation will be described and discussed in terms of its impact on dower: the 1225 Magna Carta, the Statute of Merton, the Statute of Gloucester, and the Statute of Westminster II. This chapter also

⁵³⁴ *Ibid.*, Loengard, ‘Of the Gift of her Husband,’ 253.

⁵³⁵ Annesley, ‘The Impact of Magna Carta on Widows’.

⁵³⁶ According to Annesley, 15.6 percent of the recorded fines was offered by widows during the reigns of Richard and John, and only seven percent of the total recorded fines after 1217. *Ibid.*

⁵³⁷ Annesley, ‘The Impact of Magna Carta on Widows’.

⁵³⁸ *Ibid.*

stresses both the alliances and disputes between widows and heirs and how widows actually managed their dowers.

Sue Sheridan Walker posited that dower was ‘women’s business’. However, in this chapter I suggest that dower was women’s business with their family’s interests.⁵³⁹ A widow could only enjoy dower for her own lifetime, as the right would then descend to her late husband’s heirs rather than her own. This meant that not only widows themselves, but also their husbands’ heirs, could claim dower, thereby creating difficulties for widows when demanding it.

When Annesley suggested that dower cases might not have made the relationship between widows and heirs as hostile and frustrating as Loengard believed, she was also aware that the sources she utilised, the Fine Rolls, were not designed to record enough detail to tell us the extensive arguments that might have been involved. Although this thesis agrees with Annesley that not all dower cases caused the relationship between the widow and the heir to sour, it subscribes to Loengard’s idea that dower was a family affair.⁵⁴⁰ From one glimpse at the bench rolls, it is clear that they contain more detail than Fine Rolls. In this chapter, then, I will look at the dower cases in depth, trying to understand the influence that it brought to families.

While dower may have been regarded as ‘women’s business’ it must not be forgotten that it also affected the heir’s inheritance. Consequently, it stirred up a copious amount of disputes within families. This chapter will also examine the family dynamics arising from disputed dower. To conclude, two well-known widowed heiresses will be examined in order to demonstrate how capable, powerful, influential, but at the same time vulnerable they were. By looking at their active involvement in dower suits, this chapter will reveal some fascinating insights into widows in court.

5.2 The Coronation Charter and Magna Carta

Women with property had always been attractive to the crown. As early as the Coronation Charter, made by Henry I (c. 1068-1135)⁵⁴¹ in 1100, the crown declared its right over widows in the later part of Chapter 3:

⁵³⁹ Walker mentioned this idea in Walker, “‘Litigant Agency’ in Dower Pleas in the Royal Common Law Courts in Thirteenth and Early Fourteenth Century England,” 1-22.

⁵⁴⁰ Loengard, ‘Of the Gift of her Husband,’ 231.

⁵⁴¹ The Coronation Charter is also known as The Charter of Liberties, and was issued at the coronation of Henry I.

And if, on the death of her husband, the wife is left and without children, she shall have her dowry and right of marriage, and I will not give her to a husband unless according to her will.⁵⁴²

Chapter 4 states:

But if a wife be left with children, she shall indeed have her dowry and right of marriage so long as she shall keep her body lawfully, and I will not give her unless according to her will. And the guardian of the land and children shall be either the wife or another of the relatives who more justly ought to be. And I command that my barons restrain themselves similarly in dealing with the sons and daughters or wives of their men.⁵⁴³

In the Charter, Henry I only mentioned the widows of his barons and his other men, but it did, in fact, cover all the widows in his kingdom.⁵⁴⁴ However, the differences between noble women and non-noble women should be noted because non-noble women usually had too little land to be attractive to the crown. As a result, non-noble women are very much absent from the records. As time progressed, the crown's interest in and protection applied to widows in the kingdom was restated. For instance, in the 1215 Magna Carta, chapters 7 and 8 state respectively:

Chapter 7: At her husband's death, a widow may have her marriage portion and inheritance at once and without trouble. She shall pay nothing for her dower, marriage portion, or any inheritance that she and her husband held on the day of his death. She may remain in her husband's house for forty days after his death, and within this period her dower shall be assigned to her.⁵⁴⁵

Chapter 8: no widow shall be compelled to marry, so long as she wishes to live without a husband. Provided she gives security that she will not marry without royal consent, if she holds her lands of the Crown, or without the consent of whatever other lord she may hold them of.⁵⁴⁶

⁵⁴² 'Et si mortuo marito uxor eius remanserit et sine liberis fuerit, dotem suam et maritacionem habebit, et eam non dabo marito nisi secundum uelle suum.' in 'Early English Laws,' accessed on July 20 2015, http://www.earlyenglishlaws.ac.uk/laws/texts/hn-cor/view/#edition,1_0_c_14/edition,1.

⁵⁴³ 'Si uero uxor cum liberis remanserit, dotem quidem et maritacionem suam habebit, dum corpus suum legitime seruauerit, et eam non dabo nisi secundum uelle suum. Et terre et liberorum custos erit siue uxor siue alius propinquorum qui iustius esse debet. Et precipio ut barones mei similiter se contineant erga filios et filias uel uxores hominum suorum.' *Ibid.*

⁵⁴⁴ 'Et si quis baronum uel aliorum hominum meorum', *Ibid.*

⁵⁴⁵ *English Historical Documents*, ed. Douglas and Rothwell, vol. 3, 318.

⁵⁴⁶ *Ibid.*

Chapter 7 not only stressed that widows could obtain their marriage portion and inheritance without interference, but also that they would be assigned their dowers as a right. Although chapter 8 gave widows the right to remain unmarried, it also gave the king a legal excuse to exploit them. When Magna Carta was reissued in 1225, chapter 8 was combined with chapter 7, and they differ slightly from the 1215 version. It read:⁵⁴⁷

A widow shall have her marriage portion and inheritance forthwith and without any difficulty after the death of her husband, nor shall she pay anything to have her dower or her marriage portion or the inheritance which she and her husband held on the day of her husband's death; and she may remain in the chief house of her husband for forty days after his death, within which time her dower shall be assigned to her, unless it has already been assigned to her or unless the house is a castle; and if she leaves the castle, a suitable house shall be immediately provided for her in which she can stay honourably until her dower is assigned to her in accordance with what is aforesaid, and she shall have meanwhile her reasonable estover⁵⁴⁸ of common. There shall be assigned to her for her dower a third of all her husband's land which was his in his lifetime, unless a smaller share was given her at the church door. No widow shall be forced to marry so long as she wishes to live without a husband, provided that she gives security not to marry without our consent if she holds of us, or without the consent of her lord if she holds of another.⁵⁴⁹

The 1215 Magna Carta, therefore, reassured widows of their right to obtain dower. However, they still encountered various obstacles when claiming it because, as court proceedings demonstrate, there were dilemmas one could face as a result of the clash between the legislation and the common law. Before looking at widows' experiences, however, it is important to look at the meaning of 'dower'. Here *Glanvill* stated what it was in theory:

That which a free man gives to his wife at the church door at the time of his marriage ... when a man endows his wife either he nominates certain property as dower, or he does not. If he does not nominate dower, then one third of the

⁵⁴⁷ The change was not made in 1225 but originally in 1216 and 1217.

⁵⁴⁸ The right to collect wood.

⁵⁴⁹ *English Historical Documents*, ed. Douglas and Rothwell, vol. 3, 342.

whole of his free tenement is deemed to be her dower, and the reasonable dower of any woman is one third of the whole of the free tenement of which her husband was seised in demesne at the time of the marriage.⁵⁵⁰

According to this, four elements must be fulfilled to render it valid: (i) the husband should be a free man; (ii) he must endow his wife at the church door; (iii) the property he endows should be his free tenement; and (iv) he must be seised in demesne at the time of the marriage. These four elements, however, led to numerous disputes, thereby impelling widows to bring dower writs to court.

5.3.1 Difficulties of claiming dower: villeins and villeinage

The first requirement, that a husband should be a free man meant, therefore, that if a widow's husband had been a villein she was not entitled to dower. In 1211, a woman named Remilda brought a dower writ to court against one Henry for her reasonable dower. She claimed that she was endowed by her late husband, Nigel. Henry retorted that Nigel held the said land in villeinage so he was not able to assign dower. Both of the parties asked for a jury verdict.⁵⁵¹ In 1200, one Edith faced the same problem. Her opponents, Baldwin and Ralph, argued that she and her husband were holding the land in question in villeinage.⁵⁵² Did widows whose husbands were villeins ever have a chance to claim their husbands' land as dower? Edith's case may offer an insight.

Edith made an agreement with Baldwin and Ralph that she quitclaimed her right to them and, in return, they gave her 20s on the feast of Saint Andrew, and 10s on the day of Saint Thomas as compensation.⁵⁵³ Since Baldwin and Ralph did not legally have to compensate Edith, why did they make an agreement with her and compensate her at all? The reason is not recorded, but this agreement conveyed an important message: the widow could receive compensation, such as money, even if she was not legally entitled to her dower. Edith lost her dower because her late husband was a villein, but she received money as compensation. However, not every widow whose husband had been a villein was so lucky as to strike a private deal with her opponents. More often than not, if a widow was confirmed as a villein, or the wife of a villein, she lost her right to

⁵⁵⁰ *Glanvill*, 58.

⁵⁵¹ 'et Henricus dicit quod predictus Nigellus fuit villanus et quod inde eam dotare non potuit, quia tenuit terram illam in vilenagio; et ponit se super juratam.' *CRR*, vol. 6, 147.

⁵⁵² *CRR*, vol. 1, 313.

⁵⁵³ *Ibid.*

claim dower in the king's court. Sometimes the situation could be the other way round and a widow claimed dower against a villein. In 1211, one Agnes failed in claiming her dower against Ralph, her tenant, who was a villein. Instead, she had to bring action against the lord, not the villein.⁵⁵⁴ Making an agreement with her opponent was not the only option for the wife of a villein. If she could prove that her husband held the land in free tenement, she stood a good chance of restoring her dower. For instance, in 1244 one Margery faced the defence of her late husband's landholding in villeinage when she claimed her dower, but the sheriff determined, with the statement of the jury, that her late husband held the claimed land and the mill freely, thus Margery recovered her dower.⁵⁵⁵

To complicate matters further, holding land in villeinage did not always mean that the tenants were villeins. Some free men could possibly hold land in villeinage, which led to a failure of claiming dower. In 1290, one Emma claimed her dower from Robert de Vere, the Earl of Oxford. She insisted that she and her late husband, John Tamewade, held tenements of the earl by fixed services. These services were an arguing point for Emma because it was typical for land held by villeins to have undefined services instead of defined services, which meant that villeins had to do anything the lords asked of them. However, the earl retorted that Emma and her late husband had held the land in villeinage and they had nothing in the said tenements except at his will. Afterwards, the jury said on their oath that the said John had held the land in villeinage, thus the earl won the suit.⁵⁵⁶

Several points in this case are worth mentioning. Firstly, what does 'at his will' suggest? If a man was a villein, it meant that he held his tenement at the will of his lord, and thus the earl was able to eject him any time. However, in practice, the lord would be rather reluctant to do so since the villein's possession of land was protected by the custom of the manor. For instance, if or when a villein succeeded to land in the possession of his predecessor, he had to go to the manorial court and pay a fine – called *gersum* – to his lord, rendering to the lord a heriot, namely the best beast of the deceased. Once he had performed this act of fealty to his lord, then his seisin in the tenure was legally protected. Hence, once he fulfilled the three duties of fine, beast and fealty, his

⁵⁵⁴ *CRR*, vol. 10, 93.

⁵⁵⁵ *CRR*, vol. 17, n. 349.

⁵⁵⁶ CP 40/81, AALT, IMG 2862.

land would be guaranteed to be descended from generation to generation.⁵⁵⁷ Secondly, although Emma lost the suit, she could still claim some kind of women's entitlement under manorial custom, which was known as 'free bench'. Therefore, widows who were villeins, or who were married to them, were not entitled to dower rights in common law, but were entitled to some rights through manorial custom, which varied from place to place.⁵⁵⁸

In some places, for instance in Newington in Oxfordshire and in Bucksteep in Sussex, widows were able to keep all of their husbands' tenements since the tradition was that widows should hold them until the heir came of age. Once the heir was old enough, the widow could freely take a part of the tenement as her 'free bench'. This was usually half, or two thirds, and the rest was surrendered to the heir. In other places, for example in Bramford in Suffolk, women were entitled to all of their husbands' tenements as their 'free bench' but ceased to have half if they remarried or fornicated. Although this condition only held in very few manors in England, other manors' customs allowed women to keep their dower even if they married again.⁵⁵⁹

A husband's villein status indicated that the widow was not entitled to her dower in common law, but it also relays a significant message – that a widow possessing her dower depended greatly on her husband. *Glanvill* articulates that, when a husband endowed his wife, it 'should be his free tenement and he shall be seised in demesne'. Free tenement, or 'freehold', meant that such an estate should be transferred to the owner's heirs and assigns, and it could only be transferred through lineal descendants. As a consequence, the widow's plea for dower would be rejected if her opponent claimed and proved that her husband did not have his free tenement and was not seised in demesne.

5.3.2 Difficulties of claiming dower: her husband should be in seisin of the dower land

According to *Glanvill*, a widow's dower portion was also based on how she was endowed on the day of marriage, a factor that became an often-argued point by opposing parties. In the following case, the defendant argued beyond that point from

⁵⁵⁷ George Caspar Homans, *English Villagers of the Thirteenth Century* (Cambridge, Mass: Harvard University Press, 1941), 109.

⁵⁵⁸ *Ibid.*, 177-194.

⁵⁵⁹ *Ibid.* Villein widows' right of free bench could amount to more than one third of the lands of which the husband had been seised, in some places at the time of the husband's death, in others at any point during the marriage.

‘whether she was endowed’ to ‘whether the widow’s husband had the capability to endow her’. In Essex, one Agnes, the widow of William Baker, brought a suit against Richard de Gardino for a messuage with appurtenances in Barking as her nominated dower from the gift of William Pistor, her former husband. Richard put to the jury whether William Pistor had his messuage in demesne on the day he was betrothed to her, thereby querying if he was he able to endow her at all.⁵⁶⁰

The removal of land held in seisin could sometimes be traced back to the husband’s ancestor. In 1200, for instance, Gilbert Avenel came to court with his wife, Amice, to claim her dower from her late husband, John de Eston. Amice insisted that she was entitled to have her dower, arguing that it had been granted to her with the consent of John’s father, who on the day that she married gave and granted that land to his son in order to endow her. Furthermore, he gave seisin by way of a broken knife.⁵⁶¹

Matthew, the son and heir of John, on the other hand, said John’s father never granted that land to his son, nor was his son seised thereof. He went on argue that John’s father was not present at that wedding, nor could he grant or give that land because it was the inheritance of John’s mother, which fell to her as her reasonable portion. After the death of John, his wife, Matthew’s mother, held it for twelve years; and he, Matthew, had now been holding it for ten years since his mother’s death. She also afterwards made an agreement with his aunts so that the whole of the land, which belonged to the said sisters, remained with him. Since John’s father had not been seised of the said land when John endowed Amice, John by no means had a right to give Amice the questioned land.⁵⁶²

In theory, Amice might have been the step-mother of Matthew, who was reluctant to give Amice her dower share, so he argued that the land in question was from his mother, whilst his father, John, had only the right of curtesy, i.e., the land was not entitled to be considered as dower. The claim he put forward meant that neither Amice’s late husband, John, nor John’s father had been in seisin of the disputed land. By claiming this, Matthew justified his right over the land because no free man could endow his wife with land of which he was not seised. More importantly, Matthew’s

⁵⁶⁰ *CRR*, vol. 3, 58.

⁵⁶¹ *CRR*, vol. 1, 323; Flower, *Introduction to the Curia Regis Rolls, 1199-1230 A.D.*, vol. 62, 238.

⁵⁶² *Ibid.*

argument indicates a possibility of distinguishing between the mother's land and the father's land in order to bar a step-mother's dower claim.

5.3.3 Difficulties of claiming dower: the church door issue

Glanvill noted that a wife should be 'endowed at the church door', that is, she should be endowed from marriage. This peculiar wording became a point of contention that the opponent of a widow could use as a means of attack.⁵⁶³ For instance, in 1203, one Euticia, claimed her dower against the Abbot of Nutley of one virgate with appurtenances in Winchendon, with which Gervase, her late husband, had endowed her in front of the church door.⁵⁶⁴ Indeed, prior to 1243 fourteen cases appear in the series of Curia Regis Rolls that describe widows coming to court to prove that they were endowed 'at the church door', which suggests that proving the church door issue was decisive, not only for pursuing dower but also when an opponent claimed that a woman had not been legally married. However, by the end of the thirteenth century, 'marrying in front of the church door' became less essential. On this issue, Paul Brand pointed out an argument unearthed in the last decade of the thirteenth century, suggesting that, 'Even if she was not married to him at the church door but at home by words of marriage in his death bed she will be held his wife.'⁵⁶⁵ This argument might have been influenced by *Bracton*, which suggests that, if a man took several wives and none of them could be confirmed as his lawful wife, the law must consider the one who remained with him at his death as the lawful one.⁵⁶⁶

The wording 'with the consent of the husband's father' likewise became proof in dower suits. Although this did not become a highly-argued point, it is still occasionally found. For instance, in 1233, Hugelina claimed her dower against Nicholas Chese for the third part of thirteen acres of land with appurtenances. She stressed that William, her late husband, had endowed her with the consent and good will of his father.⁵⁶⁷ Similarly, Ida, whose late husband was Simon de Thomewell, declared that she was

⁵⁶³ *Bracton* explains that the marriage could only be valid if the woman was endowed before the church, and hence, her dower would be valid as well. The reason for making the endowment publicly was to prevent any clandestine marriage, which would affect the heir's right to succession.

⁵⁶⁴ *CRR*, vol. 2, 87.

⁵⁶⁵ Brand, "'Deserving" and "Undeserving" Wives: Earning and Forfeiting Dower in Medieval England', 1-20.

⁵⁶⁶ *Bracton*, vol. 2, 271.

⁵⁶⁷ 'unde idem Willelmus eam dotavit per assensum et voluntatem Saheri patris sui etc'. *CRR*, vol. 15, n. 450.

endowed by Simon at the church door ‘with the consent’ and the good will of Simon’s father, Roger.⁵⁶⁸

Why did the widows stress that they were endowed with the consent of their fathers-in-law? As mentioned earlier, Loengard pointed out that the statement ‘without the father’s consent’ was frequently used in dower cases as an objection to the widow’s dower, because the family of the husband, in particular the husband’s father, did not want the dower to go beyond the initial family when the widow remarried.⁵⁶⁹ To put it into a broader context, as Biancalana suggested in ‘Widows in Common Law: The Development of Common Law Dower’, the widow’s emphasising of consent to the endowment from her late husband’s father indicates the secular law’s attitude towards marriage – it should be held in public and have approval from the families, especially the groom’s.⁵⁷⁰ Furthermore, acquiring consent from the father of the groom indicates that marriage was a ‘family business’, and should be under the control of family because of the future redistribution of property.

5.3.4 Difficulties of claiming dower: when was the dower endowed?

Among the requirements for obtaining dower, the timing of the endowment was, if not the most important, definitely the most complex one. Before Magna Carta, if a husband did not endow his wife at the time of marriage, the wife would probably lose her dower. In 1200, Cecily de Bensinton claimed her dower against Thomas de Bensinton. Thomas claimed that her late husband, William, was not seised of the disputed land on the day that he married her.⁵⁷¹ Thomas’s statement echoes *Glanvill*’s definition of dower, which could be either nominated dower or one-third of the land that a woman’s husband held at the time of marriage. One might consider ‘one-third of the land at the time of the marriage’ to be unfair to a widow, because during the marriage the husband might have obtained extra land by purchase and inheritance. Thus, after his death, his wife could only claim for one-third of the land her husband was seised of on their marriage day, even if the couple ended up holding more lands subsequently.

⁵⁶⁸ *Ibid.*, n. 1579.

⁵⁶⁹ Loengard, ‘What did Magna Carta Mean to Widows?’ 142.

⁵⁷⁰ Biancalana, ‘Widows at Common Law,’ 288-292.

⁵⁷¹ ‘quia predictus Willelmus vir suus non fuit inde seisitus die qua eam desponsavit’. *CRR*, vol. 1, 192. The previous session of this case was adjourned because Thomas refused to respond without Cecily’s warrantor being present. See *CRR*, vol. 1, 143.

Chapter 7 of the 1225 Magna Carta more or less solved this problem. It stated that a widow should be assigned for her dower a third of all her husband's land, which he held in his lifetime, unless a smaller share was given to her at the church door. As long as the husband held the land at any time during the marriage then the widow was entitled to claim her share. It is clear, therefore, that Magna Carta established a different standard for obtaining dower; certainly it was a more generous standard than *Glanvill* had set. In fact, chapter 7 bestowed even more rights and protection on women than before. Not only did it set a more generous standard for claiming dower, it also guaranteed that a widow need not pay anything to obtain her inheritance, *maritagium* and dower, which meant that she did not have to pay fines for obtaining her property as had previously been the case.⁵⁷²

Although chapter 7 of the 1225 Magna Carta was designed for all widows in the country, there were still some places that favoured their local customs over the new regulation. In Scarborough, for instance, widows were only able to claim the tenements of which their husbands had died seised.⁵⁷³ Likewise, Lincoln had its own local liberties. According to *Bracton*, in 1220, a widow in the city of Lincoln could only claim her dower from the land of which her husband had died seised,⁵⁷⁴ in contrast to *Glanvill's* description that dower could only be claimed from the land her husband held on the day of the marriage. The following case regarding custom in the city of Lincoln confuses things further. In 1238, Maud, who had been the wife of one Grene, made a case against Thomas Anand in court for half of half a messuage as her dower. Thomas was called as the warrantor of his brother, Wigot Anand, so this dower litigation had originally been between Maud and Wigot. Coming to the court, Thomas argued that Grene was neither seised of the contested messuage on the day he married Maud, nor during their marriage, so he could not possibly have endowed her. A jury consisting of twelve citizens of Lincoln was summoned to confirm whose statement was true. The jury confirmed that Grene had been seised of the land after he married Maud. Consequently, it was adjudged that Maud should recover her dower from Thomas.⁵⁷⁵

⁵⁷² Annesley, 'The Impact of Magna Carta on Widows'.

⁵⁷³ Walker, *Wife and Widow in Medieval England*, 74. See also *Borough Customs*, ed. Mary Bateson, 2 vols. (London: Selden Society, 1904-1906), vol. 1, 1; vol. 2, 128.

⁵⁷⁴ *Bracton*, vol. 3, 389.

⁵⁷⁵ *CRR*, vol. 16, n. 736.

In this case, the assignment of dower in the city of Lincoln did not comply with the standard described in *Bracton*, that a widow could only claim the tenements of which her husband died seised. Instead, it seemingly followed the standard of common law. Was this due to a discrepancy between *Bracton* and the court record? On closer examination of Maud's case, her dower was not addressed as 'one-third of her late husband's land'. Instead, she claimed for specifically half of half a message, which should be her nominated dower.⁵⁷⁶ It could be inferred that, in the city of Lincoln, if a widow was endowed with nominated dower, then her husband should have held it when they married; if her husband did not endow her nominated dower, then she could only claim the dower from the land of which he died seised.

Excluding persistent local customs, chapter 7 of the 1225 Magna Carta did in fact bring numerous advantages to widows, which can be discerned from the following case. In 1243, one Maud came to court to claim her nominated dower by showing her husband's charter of endowment. However, it was alleged by the defendant, Robert de Sunder, to have been granted long after their espousal.⁵⁷⁷ Robert's argument clearly stated that Maud had not been endowed at the church door at the time of marriage and therefore she was not entitled to claim her dower. This accords with chapter 7 of the 1225 Magna Carta, which stated that a widow was entitled to one-third of her late husband's land during the marriage, or the nominated dower endowed at the church door. Maud could not deny this, and thus she changed her strategy from claiming nominated dower to her common law share. She was finally adjudged to have a third share of the land because she waived the specific dower. Had it not been for chapter 7 of the 1225 Magna Carta, would Maud's case have been adjudged differently? She still would not have been able to claim her nominated dower, since it was given during the marriage, and she could still only acquire one-third of the land her husband was seised of on the day of their marriage. Although the record does not reveal to us whether Maud's husband held more land after the marriage, or if he, in fact, held less land than

⁵⁷⁶ According to Louise J. Wilkinson, if a Lincoln widow's husband held land in burgage, she could claim half of the land of which her husband died seised as her dower. However, in this case, the report does not suggest this to be the case. Moreover, Thomas argued that Grene was not seised of the land when he married Maud, which does not correspond with the rule of claiming land of which he died seised in burgage tenure. See Wilkinson, *Women in Thirteenth-Century Lincolnshire*, 95.

⁵⁷⁷ 'quia, si unquam (confecta fuit, facta) fuit per longnum tempus postquam predictus Willemus eam desponsavit et non quando eam dotavit ad hostium ecclesie.' *CRR*, vol. 17, n. 1555.

when he married, the wider definition of common law dower, as it appears in chapter 7, gave Maud and other widows more room to argue for their dower.

If chapter 7 did not apply, what would have happened to widows who claimed their dower from the land their husbands acquired during the marriage? The answer may be found in some cases dealt with prior to Magna Carta 1225. In 1212, one Margaret came to court to demand her reasonable share of dower, namely the third part of all the free tenements held by her late husband, Hugh. The attorney for the defendant retorted that Hugh had not been seised of the land on the day of the marriage, nor had it descended to him, so he had not been able to endow her. Despite this fierce charge from the defendant, Margaret's attorney said that on the day Hugh had married Margaret he had endowed her with the third part of the land that he had been able to acquire. In the thirteenth century this argument was not common, so there could have been a specific promise from the owner of the disputed land that Hugh would be able to acquire it in the future. It was only later that Hugh actually acquired the land. Consequently, Margaret's attorney claimed the third part of the tenements as her reasonable dower.⁵⁷⁸ Instead of admitting that Hugh was not seised of the questioned land on the marriage day, he stressed Hugh's future ability to acquire it. However, Margaret's attorney afterwards changed his strategy from claiming a third share to claiming the specific endowment.

5.3.5 Difficulties of claiming dower: land-to-be-acquired as dower

Under what circumstances would a man promise his wife that he could acquire some specific land in the future? Inheritance might be one possibility. According to *Bracton*, 'the husband could endow his wife with his parents' inheritance if he had their consent by a written document, or had them granting the consent at the church door, publicly'.⁵⁷⁹ In 1220, Nicholas and his wife, Crecia, sued Robert Cotel for Crecia's nominated dower from her late husband, Richard Cotel, specifically one-third of all the land he had held, one third of all the land which might come to him and land that came after his father's death, which had been assigned to his mother in dower. In reply, Robert argued that Crecia's late husband, Richard, had not been in seisin of the disputed land when he endowed her, and neither had Robert's mother, Leticia, held it in dower.

⁵⁷⁸ *CRR*, vol. 6, 345-346.

⁵⁷⁹ *Bracton*, vol. 2, 273.

Richard had in fact given the said land to him for twenty years before he married Crecia and he had taken his homage. Moreover, Robert said that Leticia had once been seised of the land in question, but later gave it up to him, so Richard's father did not die in seisin. Robert's argument was that that Richard had no legal grounds for inheriting the land. The jury was therefore summoned to adjudge whether the husband held the disputed land at the time of marriage, or whether he might have acquired it afterwards. In the end, the couple withdrew the claim of one-third of the land that might have been held in dower by Leticia.⁵⁸⁰

The above case shows that the law recognised 'land to be acquired as dower'. As stated in *Bracton*, dower could be constituted from lands and tenements which were to be acquired, but such 'promised land' should be acquired during the lifetime of the husband. If the land was acquired after the death of the husband, then the wife's dower claim would fail, because she could not claim anything of which her husband had never been in seisin, unless the 'promised land' had a condition saying that it was to revert to the husband after the tenant's death.⁵⁸¹ *Bracton*'s statements echo Robert's argument, which attempted to convince the judges that the disputed land had never been Richard's 'to-be-acquired' land. Thus, Crecia had no legal grounds to claim it as her dower. It is noteworthy that Robert mentioned that he had acquired the disputed land long before Crecia and Richard married, because it presupposes that, by arguing the land was acquired before the marriage, his claim would be successful. If Robert had argued that the land was acquired after the marriage, it might have been assigned to Crecia as dower, as the 1225 Magna Carta declared that widows could claim dower from the lands of which their husbands were seised during any point of the marriage. Consequently, arguing for disputed land that had been alienated by husbands after the marriage became a pivotal strategy for widows. The following case provides a perfect demonstration.

In 1225, one Edith, whose late husband was Henry le Corviser, demanded her dower against a Richard, concerning one messuage with appurtenances in Ashburn. Richard said that he had purchased half of the said messuage before Henry married her and the other half after they married. He conceded the third part of the half he bought after the time of the marriage, and Edith accepted it.⁵⁸² But Edith further claimed a third

⁵⁸⁰ *CRR*, vol. 9, 368.

⁵⁸¹ *Bracton*, vol. 2, 268.

⁵⁸² The record does not say if Richard gave the third to Edith as her dower.

part of the other half message by arguing that her husband had, in fact, sold this other half to Richard after they married rather than before the marriage. Both parties asked for a jury.⁵⁸³ This case draws a distinction between land sold before and after the marriage. Edith's tactic is clear – she went to court to recover her dower, which had been alienated by her husband.⁵⁸⁴ Perhaps Edith's version was true, but this could never have been confirmed. Nevertheless, arguing that the disputed land had been alienated after the marriage was certainly advantageous to widows, chiefly because they stood no chance of demanding dower if land had been alienated before the marriage.

5.3.6 Difficulties of claiming dower: he was never seised of the land.

All in all, by the late thirteenth century, the new standard of claiming dower seemed to have become a normal part of legal proceedings. Both legal practitioners and defendants had developed arguments stating that a widow's late husband had not been seised of the disputed land either on the day they married or during the marriage. In the Plea Rolls, many dower cases that were rejected show that this argument had become formalized, since it was repeated frequently.⁵⁸⁵

The frequent use of the phrase 'the husband had never held the land' in the late thirteenth century not only echoed chapter 7 of the 1225 Magna Carta but also placed the litigant in a disadvantaged position against the widow. As long as the husband had held the land at any point during the marriage, the wife would be entitled to demand dower thereafter. Subsequently, legal practitioners needed to stress that the widow's husband had never been in seisin of the disputed land so that the widow would have no legal grounds to claim her dower.

5.4 Two women, one dower.

The disputes that widows encountered did not only arise from the conditions of claiming dower, but also from miscellaneous allegations that their rivals put forward in court. Sometimes the widow found herself facing a threat from another woman. In 1212, when Margaret brought a writ of dower to court to demand her reasonable share of

⁵⁸³ *CRR*, vol. 12, n. 633.

⁵⁸⁴ The law refers to the Statute of Westminster II 1285, which will be discussed in detail in the later part of the study.

⁵⁸⁵ 'quodam vir ipsius die quo ipsam desponsavit nec unquam postea fuit inde in seisina ut de feodo ita quod eam inde dotare potuit.' For a few examples, CP 40/82, AALT, IMG 3418, IMG 3425.

dower from her late husband, Geoffrey, she was confronted with a complicated situation. The jury had to ascertain whether Geoffrey had been able to endow her or not. They discovered that Geoffrey had been married to one Maud before his marriage to Margaret. When Geoffrey married Maud he had been given the disputed land by Maud's father, William, from whom Margaret claimed her dower. However, Geoffrey had returned the land to William afterwards. Therefore, William's wife, Maud's mother, had her dower from that said land. The judgment was made that Geoffrey had not been able to endow Margaret, so she would hold nothing.⁵⁸⁶ This judgment created an interesting situation. Although it squashed Margaret's hope of obtaining dower, it did protect the other woman, Maud's, right to dower. In fact, the case has more intriguing points than merely dower. Although the document does not reveal whether the disputed land given by William was *maritagium*, or simply a normal gift, the fact that the land had been returned to William means that it might have been *maritagium*, with a condition that if there was a failure of issue it should revert to the donor. Two further questions arise. The first is whether Margaret could have claimed her third share of the land as dower if the land had not been returned to William. The answer is quite clear – she could not. Second, assuming that the land had been given in *maritagium*, under what circumstances could the donors keep it? Since there must have been a legitimate heir or heiress the land would not have reverted to the donor. Therefore, if the land had not reverted to William, and Margaret pursued her case further, she might have been opposed by the heir and faced further rejection, since all Geoffrey would have had was curtesy, rather than being seised of the land.

The following case also concerns two women's rights to dower. In 1292, one Alice brought a writ of dower against Beatrice in the Hereford eyre. Alice and Beatrice were married to two different men, but their dower shares were from the same land, which led to the dispute. The serjeant, Henry Spurgnel, said, 'she (Alice) is not entitled to have dower; for the reason that Beatrice against whom the writ of dower is brought, was first endowed of the tenement of the endowment of her husband Robert'.⁵⁸⁷ A case in 1284 presents a similar set of circumstances, except that the women's husbands were brothers. Avice and Denise married two brothers, Alexander and Andrew respectively. After the deaths of both men, the women found their dower was from the same land,

⁵⁸⁶ *CRR*, vol. 6, 248-249.

⁵⁸⁷ *Year Books of the Reign of King Edward I*, ed. Horwood, vol. 1, 114.

since their husbands both died in seisin. Denise was the claimant because Avice, at that moment, was in possession of the dower. The jurors said that Alexander was first seised of the tenements which Denise sought as dower, and endowed Avice before Andrew was seised of them. As a consequence, Denise was amerced for a false claim.⁵⁸⁸ The sisters-in-law deserved sympathy because of their husbands' negligence. The only way in which Denise could have been recompensed would probably have been for her to come to a private agreement with Avice and try to enjoy the same dower land together.

In the *Calendar of Inquisitions of Post Mortem*, vol. 1, six cases between 1236 and 1272 show different women's dowers being settled on the same land.⁵⁸⁹ One case even suggests that three ladies had been dowered on the same fee. Unfortunately, the record does not provide enough detail about how they sorted out the predicament. The difficulty might have been worked out easily when the widows were endowed with common law rather than nominated dower. For example, one case reveals that after the death of one Roger, his mother had been holding one third of his land in dower, and his wife should be dowered from a third of the residue.⁵⁹⁰

Six out of 107 dower cases in *CIPM*, vol. 1, suggest this predicament. It may not seem a large proportion but it reflected the difficulty some women faced. Dowers on the same land may have been caused by the early death of a son, which inevitably led to a dilemma for his mother and his wife. It could also result from the negligence of husbands, who endowed their wives on the same land. There could be two consequences from this. First, if the son had an heir, it might seriously harm his right to his inheritance, two thirds of which was occupied by the two widows in the family. Second, it might result in a dower suit between the women who had their nominated dowers on the same land. In this case, one of the women would always lose her dower.

This second consequence could affect two women who married the same man. Marriage in medieval England was a life-long contract. Unless the first wife died or the marriage was nullified, the second wife would almost always not be endowed, other than in very rare circumstances, such as when the land containing a dower portion was given to the husband and his heir. In that situation the second wife could obtain the dower because, even the first wife was still alive, she was excluded from dower.

⁵⁸⁸ *The Earliest English Law Reports*, ed. Brand, vol. 1, 163.

⁵⁸⁹ *CIPM*, vol. 1, n. 2, n. 156, n. 218, n. 235, n. 426, n. 756. There are 187 dower cases in *CIPM*, vol. 1

⁵⁹⁰ *Ibid.*, n. 218.

Therefore, in most cases where a woman found her dower portion to be exactly the same as the other woman's, the other woman would usually be her mother-in-law, or, as in the case of Avice and Denise, their husbands appeared to hold the land together.

How, then, did legal practitioners tackle these situations? The following case may cast some light. In 1292, one Joan came to court to demand her reasonable dower against William, the heir of her late husband. She was challenged by William's representative as follows:

She is not entitled to have dower; for the reason that these tenements whereof she demanded dower, were wholly in the seisin of Robert de Molcastre, father of her husband Walter, and the father endowed his wife, named Mabel, of the entirety, and which Mabel is now bringing her writ of dower against us for the entirety, an action for dower having accrued to her first.⁵⁹¹

The priority of assigning dower was based on who was endowed first. Therefore, even if there were two women, for instance, a wife and her mother-in-law, competing for the same piece of land as dower, the mother-in-law would not necessarily be assigned the dower. *Bracton* stated that if a son endowed his wife and his father later remarried, his father could not endow his second wife what had been endowed to his daughter-in-law.⁵⁹² In the above case, obviously Mabel was endowed earlier, hence the defendant's representative tried to deny Joan's rights. In 1294, a note made by a legal practitioner refers to the judgment of 'Joan's' 1292 case:

And note that the son's wife cannot recover dower out of the tenement which was previously charged with dower to another woman, unless her husband has made satisfaction to that woman for her dower, so that he was seised of the entirety; as was alleged in the plea above.⁵⁹³

That is, the interests of the woman endowed first came before the woman endowed late. The husband did, however, have an obligation to compensate the former with other land, or sufficient cash to satisfy her for wielding her dower share. This should have happened before the husband died, but it is doubtful if this would indeed have happened and have been executed by the son.

⁵⁹¹ *Year Books of the Reign of King Edward I*, ed. Horwood, vol. 2, 406.

⁵⁹² *Bracton*, vol. 2, 275.

⁵⁹³ *The Year Books of the Reign of the King Edward I*, ed. Horwood, vol. 2, 408-410.

The next section concerns a second wife. Since she was not the first to be endowed, how did she defend her right to dower? A further case from 1294 explains the circumstances under which she could obtain her dower.

Note that, where land is given to a man and this wife and the heirs of their two bodies begotten the husband's second wife shall not have dower; but if land be given to a man and his heirs, his second wife shall have dower.⁵⁹⁴

The above statement clarified what the second wife could claim when the first wife died. It depended on the exclusion of the land on the grounds that the first wife, for whom the dower had been set, could not, or did not, claim it. Again, the law shows its limited power to protect women's dower. Once there was a dispute between two women concerning dower, it could only be assigned to one woman. Consequently, when the law failed to protect a woman's dower, she might try to obtain it by intrusion. One such case was that of Alice de Mohun, a Somerset widow, who was accused of intruding into a knight's fee in Somerset. She intruded into the land which the grandmother of her late husband held in dower.⁵⁹⁵ The above cases all suggest that the law only protected one woman's dower right when two women were competing for it. This notion can be seen in *Bracton*, which stated:

Dower may be constituted by one husband to several wives as well as to one, while all are live, or successively, when they die or after a divorce has been had for some reason, in the same realm or county or in different ones, but in an action of dower one will be preferred to the others, it having been established in the ecclesiastical court which of them is his lawful wife.⁵⁹⁶

What happened if none of the women could be confirmed as a man's lawful wife? *Bracton* stated that in this instance none of them could obtain dower, or the one who remained with the husband when he died would be the lawful wife. The statement indicates that an unlawful wife did not deserve dower even if it was the fault of her 'so-called' husband, and there was no remedy for these women who believed themselves entitled to the dower.

⁵⁹⁴ *Ibid.*, 368.

⁵⁹⁵ 'Henry III Fine Rolls Project,' n. 55, (1217-1218), accessed on 21 March 2017, <http://www.finerollshenry3.org.uk/home.html>

⁵⁹⁶ *Bracton*, vol. 2, 271.

5.5 She had too much dower.

There was always the risk that a widow would win nothing at court. Sometimes she might have even been refused dower because she already had property worth more than its value. In the 1285 Northamptonshire eyre, Thomas Malekak came to court with his wife, Alice, to claim her dower from Gerard de Lisle and his wife, Alice. Gerard and Alice defended themselves by stating that, after the death of this Alice's father, she got his inheritance, which did not amount to more than £30 in total. However, Thomas and his wife, Alice, had dower from Alice's father of £15. She had more than her dower, and thus they wrongfully refused the admeasurement of dower.⁵⁹⁷

It can be inferred that Thomas's wife, Alice, had married the other Alice's father. As an heiress, Alice, Gerard's wife, inherited the property whose value did not amount to more than £30, but Thomas wife had wrongfully acquired her dower, whose value was £15, which was more than a third of the standard dower share.⁵⁹⁸ Two more similar cases are recorded in the series of Curia Regis Rolls before 1243. It was usually concluded that 'she should be satisfied with what she has now'. Such a charge also appeared frequently when a widow had already obtained her nominated dower, but she subsequently claimed her one-third as well.

5.5.1: She had too much dower: common law dower vs. nominated dower

One Avice, widow of William, faced this predicament in 1221 when she claimed the third part of one messuage with appurtenances in Stamford as her reasonable dower. The defendant, Clement, argued that Avice already held half of a messuage in the vill of Stamford as her nominated dower. It is possible that Avice insisted that the half messuage was her *maritagium* because the court had to decide whether that half messuage was her nominated dower or *maritagium*.⁵⁹⁹ Another widow, Egelina de Curtenay, had the same issue with Richard de Camville and his wife, Eustacia, concerning a free tenement. Richard and Eustacia said Egelina had already held a specific manor as her dower and asked whether she could claim the tenement as well. Egelina replied that the claimed tenement was actually the appurtenances for that specific manor, and so she was admitted to hold the said tenement.⁶⁰⁰

⁵⁹⁷ Admeasurement of dower was used frequently when a widow was claimed as having too much dower.

⁵⁹⁸ *The Earliest English Law Reports*, ed. Brand, vol. 3, 267.

⁵⁹⁹ *CRR*, vol. 10, 238.

⁶⁰⁰ *CRR*, vol. 6, 123.

It was thought that a widow should be contented with either nominated dower or common law dower, and if she failed to obtain dower by one means, she could always turn to the other option. The reality, however, was that whatever option she sought she might face a lengthy and weary negotiation. In 1272, Beatrice, Queen of Germany, made a claim against Edmund, Earl of Cornwall, for one-third of the manor of Eye, its castle and honour and a serjeanty in the Exchequer with appurtenances. Edmund contested that Beatrice was endowed on the day she was married with a fixed dower of 4000 marks and she had agreed to this. He asked for judgment as to whether she could claim any dower other than that assigned to her.⁶⁰¹ Going back a long way, *Glanvill* stated, ‘If he does not nominate dower, then one third of the whole of his free tenements is deemed to be her dower’,⁶⁰² suggesting that a widow could claim her common law dower if her husband did not assign her a nominated dower. But there was no hint that the widow could claim both.

Edmund even showed a deed made by Beatrice, which contains the following passage: ‘I, Beatrice of P, while yet unmarried, have remitted and quitclaimed to the said lord Richard earl of Cornwall, all right and claim which might come to me as dower on all his manors, and tenements in England, unless I have issue by the said Richard’. Beatrice fought back, saying, ‘it would be dangerous and deleterious not just to her but to all ladies claiming dower in the future if such proofs as the earl offers are admitted without good reason to defeat their claims to dower contrary to the common law of England and the provisions of Magna Carta 1225’.⁶⁰³

Beatrice insisted that she had not accepted the King of Germany’s offer of the said 4000 marks, nor did she agree to this. She stressed that every widow after the death of her husband should, under the terms of the 1225 Magna Carta and the law of England, be endowed in the normal way unless she was endowed with specific land or tenements at the time of the marriage. What is interesting is how Beatrice questioned her so-called nominated dower:

The earl has said that the king of Germany endowed her at the door of the church when she married her with a fixed amount, that is with four thousand marks ... such a form of endowment is both conditional and uncertain. Thus

⁶⁰¹ *The Earliest English Law Reports*, ed. Brand, vol. 1, 21.

⁶⁰² *Glanvill*, 59.

⁶⁰³ *The Earliest English Law Reports*, ed. Brand, vol. 1, 22.

he cannot say that it was fixed in amount since this is logically incompatible with a conditional endowment.⁶⁰⁴

Here, the queen cast doubt on the said 4000 marks and regarded them as uncertain and conditional. Indeed, what the king of Germany had promised her was cash instead of real estates; compared to land, it is reasonable to consider cash as ‘uncertain’. Beatrice and Edmund made an agreement: she eventually remitted and quitclaimed to the earl and his heirs whatever right she had, or could have, by way of dower in all lands and tenements with appurtenances which belonged to Richard, her late husband, in England. In return the earl granted Beatrice lands to the value of 500 marks in Lechlade and Langborough, and so on.⁶⁰⁵

One justice in the 1289 Wiltshire eyre made a clear statement concerning the issue of ‘specialty endowment or common entitlement’ when Edward of Wyke came to court against John English and his wife, Edith, for a plea of *mort d’ancestor*. Edward’s representative said that Edith, the widow of Edward’s father, was not entitled to claim the one virgate of land as dower for she had already brought the writ of dower against Edward and recovered her dower everywhere. Edith and John’s attorney retorted that Edith’s late husband, William, had endowed her with one-third of all his land and this one virgate of land as well. The other serjeant questioned Edith as follows:

On which do you wish to rely: the specialty or the common entitlement? For you cannot have both, as Magna Carta 1225 says ‘that the wife is to have a third share etc. as her dower unless she is endowed of less etc.’⁶⁰⁶

The justice concluded by stating, ‘when you brought your writ of *unde nichil habet*⁶⁰⁷ at common law you waived the specialty. When the wife chose one, the other became unjustifiable surplus, and all the surplus was regarded as usurped’.⁶⁰⁸ The justice clarified the rule on the issue of special endowment or common entitlement by addressing a clear idea that ‘you cannot claim more than you should deserve’.

The writ of *unde nichil habet* sometimes exempted women from going through long proceedings in court. In 1233, Maud came to court against Bartholomew and his wife Maud for her reasonable dower in Buckland. The defendants delayed the session by

⁶⁰⁴ *Ibid.*, 21.

⁶⁰⁵ *Ibid.*, 21-23.

⁶⁰⁶ *The Earliest English Law Reports*, ed. Brand, vol. 4, 439-440.

⁶⁰⁷ ‘Of which she has nothing.’ When no dower had been assigned to the widow during the time required by law, she could, at common law, sue through writ of dower *unde nichil habet*.

⁶⁰⁸ *The Earliest English Law Reports*, ed. Brand, vol. 4, 439-440.

calling their warrantors. The court decided to shorten the postponement, because Maud claimed she had nothing in dower (*nichil habet de dote*).⁶⁰⁹ Maud's claim might have been interpreted as an inability to present herself properly to the court. This potentially disrupted the plan the defendants had made to delay the proceeding. This case shows that under the architecture of the law, there was still some space for flexibility. It also made suing in court more user-friendly.

5.6 No valid marriage, no dower

Meeting all the requirements of dower that the law demands did not automatically entitle a widow to her dower. One of the easiest ways to thwart a widow was to prove that her marriage had been invalid, since only a lawful wife was eligible to have dower. In 1201, one Agnes, widow of Philip de Dive, claimed her dower against Philip son of Philip de Dive. She asserted her right to the free tenement which belonged to her late husband in Holywell, Witham and Thenford. Philip, the son came to court and claimed that Agnes had not been lawfully married to his father.⁶¹⁰ A marriage could be deemed invalid for a number of reasons, for example marrying a man on his sickbed could render the marriage invalid. In order to prevent women from taking advantage of dying and sick men, the law deprived women of dower if they married men who were not in a clear state of mind. In another case in 1201, Cecily de Cressy demanded her dower against William de Cressy, and William said that Cecily married her late husband, Roger de Cressy, in his sickbed.⁶¹¹ In 1225, Alice claimed her reasonable dower against the Bishop of Lincoln and was refused for a similar reason, because her husband married her for the salvation of his soul when in peril of death and not in church.⁶¹² Moreover, between 1242 and 1243, four cases recorded in the Curia Regis Rolls show widows who were facing the charge of 'invalid marriage' or being 'not properly married'. Hence, if a widow could not prove that she had been legitimately married, she would lose her dower.⁶¹³

An annulment of marriage could also block a widow from claiming dower. The modern concept of 'divorce' did not exist in the Middle Ages and a failed marriage in

⁶⁰⁹ *CRR*, vol. 15, n. 539.

⁶¹⁰ *CRR*, vol. 2, 41.

⁶¹¹ *CRR*, vol. 2, 63.

⁶¹² *CRR*, vol. 12, n. 705.

⁶¹³ 'legitimo matrimonio copulato'. *CRR*, vol. 17, 287, 415.

medieval England was simply annulled. Any mention of ‘divorce’ in the records was, in fact, an annulment declaring the marriage invalid. Medieval church law stipulated only a few specific reasons to ask for a divorce, including: (i) one of the conjugal parties had already made a marriage with another individual; (ii) there was a blood or spiritual relationship between the two individuals, such as a godfather and his goddaughter; (iii) impotence; (iv) using force or fear to obtain the other party’s consent to the marriage; (v) carrying out a crime, such as adultery; (vi) clandestine marriages; and (vii) entering marriage under false pretences.⁶¹⁴ In consequence, the word ‘divorce’ as used in this thesis is not to be compared with the modern definition.⁶¹⁵

In 1268, Geoffrey Fresel and Joan, his wife, made a dower claim against Herbert de Bexville through their attorney. Herbert asserted that Joan was not entitled to dower because she and John, her late husband, had divorced six years before John’s death. A note was made in the report as follows: ‘Note that a wife is not entitled to dower when she and her husband have divorced during her lifetime’.⁶¹⁶

Accusing a widow of having lived in adultery in her husband’s lifetime was another way to make her lose dower. In 1300, William Paynel and his wife Margaret petitioned parliament in Westminster for her reasonable dower of one manor from her late husband, John de Camoys. Nicholas of Warwick, who sued on behalf of the king, said that Margaret ought not to have the dower because she had lived in adultery with her current husband for a long time before John’s death. According to the king’s statute, women living with their adulterers who did not reconcile of their own accord and without ecclesiastical coercion before their husbands’ death would have their petitions rejected.⁶¹⁷ The following reference is to the Statute of Westminster II, chapter 34:

If a wife willingly leaves her husband and goes away and stays with her adulterer she shall be barred forever of action to claim her dower which she ought to have of her husband’s tenements, if she is convicted thereof, unless her husband willingly and without the coercion of the church takes her back and allows her to live with him, in which case action shall be restored to her.⁶¹⁸

⁶¹⁴ For more details, see Donahue, *Law, Marriage, and Society in the Later Middle Ages*, 19-33.

⁶¹⁵ I have chosen to use ‘divorce’. In such cases, they have been reproduced as in the original.

⁶¹⁶ *The Earliest English Law Reports*, ed. Brand, vol. 1, 1.

⁶¹⁷ Ward, *Women of the English Nobility and Gentry*, 61-63. As to the issue of adultery, see Brand, ‘“Deserving” and Undeserving” Wives: Earning and Forfeiting Dower in Medieval England,’ 1-20.

⁶¹⁸ *English Historical Documents*, ed. Douglas and Rothwell, vol. 3, 433.

A case in 1290 demonstrates chapter 34 in action. One Maud found herself facing two challenges when demanding dower.⁶¹⁹ Her first challenge was that the defendants said one third of the dower she claimed had actually been surrendered by her late husband to her mother-in-law, Sibyl, so Maud ought not to claim against them. The second challenge was that she was accused of living in adultery, so that she was not eligible for demanding a third of two thirds of the land.

Confronting this accusation, Maud's answer was rather evasive. She had been living with her late husband, William Lamberd, and was with him when he died. She did not directly deny her adultery; instead, she claimed she was with him at his death and 'in seisin of [her] husband at death'. What does this phrase mean? It is frequently seen in *Bracton* when discussing a relationship between a man and a woman.⁶²⁰ If one is described as 'in possession of the other', it not only indicates that they were a conjugal couple *de facto*, but also reveals that they were entitled to the rights a lawful spouse could claim, such as dower. Therefore, when Maud insisted that she was in possession of her husband, it indicated that William had taken her back and they had reconciled without the coercion of the Church. If this was indeed the case and her first challenge could be resolved, she might have every right to claim her dower.⁶²¹

Widows could not claim all types of land and immovable property as their dower. *Glanvill* stated that a widow's dower share should exclude the chief messuage, which should descend to the heir. This is reminiscent of female inheritance: the daughters should divide the father's inheritance, except for the capital messuage. For example, in 1225 Margery came to court to demand her dower, namely one and a half messuages. The defendant, Roger, however, asserted that the disputed messuage was the capital messuage so he ought not give it to her. In the end Margery received another piece of land in compensation.⁶²²

5.7 Husbands' control over dower

Thirteenth-century legal documents recorded various issues that pushed widows to bring their writs of dower to court. The predicaments to a great extent arose from their

⁶¹⁹ CP 40/82, AALT, IMG 3529.

⁶²⁰ *Bracton*, vol. 2, 271.

⁶²¹ CP 40/82, AALT, IMG 3529. Also, as to the issue of dower and adultery, see Brand, "'Deserving" and "Undeserving" Wives: Earning and Forfeiting Dower in Medieval England,' 1-20.

⁶²² *CRR*, vol. 12, n. 148.

husbands. A husband might alienate his land and thus diminish his wife's dower share. According to *Glanvill*, a wife was not allowed to refuse if her husband wanted to dispose of her dower:

His wife is bound to obey her husband that if he wishes to sell her dower and she opposes him, and afterwards the dower is in fact sold and purchased, she cannot when her husband is dead claim the dower from the purchaser if she confesses, or it is proved against her, in court that it was sold by her husband against her will.⁶²³

It is evident that the wife's consent did not matter because she could only agree to her husband's action. *Bracton* also subscribed to this view, stating 'nor could she gainsay her husband if he wished to sell, or alienate her dower; if she did so she lost her dower *de jure*'.⁶²⁴ The common law indicated that a wife had to obey her husband's decision, and if not, she lost her entitlement. Fortunately, in practice, the consent of the wife did play a significant role in relation to an alienated dower portion. However, if she had consented to her husband's wish to alienate the property containing her dower, she could not claim it back afterwards. As early as the first half of the twelfth century, when the custom was still relatively new, a grant made between 1138 and 1150 reveals how a wife stood to lose her dower should she consent to her husband's action regarding his land. Robert, the butler of the Lord of Clare, gave the church of Thurlow with all its appurtenances to the monks of the priory of Stoke-by-Clare, along with the land in the said vill, to possess by perpetual right, with the consent of Mabel, his wife, and his sons.⁶²⁵

Although showing the wife's consent to the alienation of her dower compromised her rights, it also ensured the safety of the land transaction. It is, however, unclear what kind of behaviour would have been recognised as indicating consent. Proving that a wife had given her approval for the alienation of her dower was a contentious arguing point in the litigation of women's property rights. The definition of 'showing her consent' varied from place to place. Local custom in Winchester, for example, showed a different standard for recognising 'consent'.

⁶²³ *Glanvill*, 60.

⁶²⁴ *Bracton*, vol. 2, 275.

⁶²⁵ Ward, *Women of the English Nobility and Gentry*, 94.

5.7.1 Local customs: Winchester, Lincoln and Nottingham

In Winchester a husband was able to sell his wife's inheritance, *maritagium* and dower provided she was present with him when the alienation was made. Her presence amounted to implicit consent and she did not need to verbalise it. In 1249, one Christina, a Winchester widow, demanded her dower from Edmund Silvestar. She failed because Edmund pointed out that her late husband, Robert, had sold the disputed messuage in her presence. He also stressed that the custom in Winchester was that the husband could sell his wife's inheritance, *maritagium* and dower with her consent if the alienation was made out of necessity, and thus, she could not recover it after her husband's death.⁶²⁶ In the same year, another woman, Alice la Burgeise, suffered a similar fate to Christina. Although it is not recorded whether the land she demanded was dower, *maritagium* or inheritance, the fact that she had been present when her husband sold it, and she was not able to deny this, meant that she lost the suit.⁶²⁷

In the above cases, the wife's presence was taken to mean her implicit consent but what made the cases more intriguing was the definition of 'made out of necessity', mentioned in Christina's case. The custom in Winchester stated that if the alienation was made out of the couple's necessity, then the wife would not be able to recover her right. However, the word 'necessity' is ambiguous. What exactly did it mean? It is reminiscent of the argument over '*maritagium* as inheritance' and '*maritagium* as a gift'. *Bracton* discussed whether the alienation of *maritagium* could be revoked by the wife after the death of her husband. If the *maritagium* was alienated because it benefited the couple and their children – namely, in an honest and necessary cause – then it could not be revoked. Conversely, if the alienation was 'wilful', then it should be revoked.⁶²⁸ Although this case does not tell us whether the alienation of the dower was out of necessity or not, it could be inferred that Christina's dower was alienated for the couple's common benefit, since the custom was confirmed by the locals and Christina was adjudged to take nothing. Nevertheless, the case remains ambiguous to some extent for the following reasons. Firstly, it is unclear whether her assent was examined separately at court according to law. Secondly, the dower that Christina demanded might have been from an earlier husband and not from Robert, as the record says 'one

⁶²⁶ JUST 1/776, AALT, IMG 5781.

⁶²⁷ JUST 1/776, AALT, IMG 5777.

⁶²⁸ *Bracton*, vol. 4, 31.

message with appurtenances in Bredenestrete as her dower' instead of 'from Robert's land'.⁶²⁹

More details concerning Winchester customs can be observed in the following case. In 1229 one Eufemia came to court with her husband to demand dower from her late husband, against Richard and Andrew respectively. She argued that, although she had been present when her late husband sold her dower to Richard and Andrew at Winchester city court, she spoke against the transaction. Richard and Andrew retorted that Eufemia and her late husband, John Martin, had sold her dower in an urgent need (*in magna necessitate*). Furthermore, they contested that Eufemia had ever protested the sale. The jury was summoned and they said that the dower sold to Richard was originally sold to one Adam by Eufemia and John. The dower was later sold to one Thomas, and then to Richard. As to the dower sold to Andrew, they had sold it to him directly. Therefore, Eufemia and her husband lost the suit. Unlike the previous case, Eufemia argued that she had been vocal against the selling of her dower.⁶³⁰

If a wife's presence at court without apparent opposition to the alienation of her rights equated to her consent, it could be inferred that the court might take her absence in court as an objection. In 1229, one Alienora was smart enough to do just that. She came to court against Roger Wascel, William Joberd and his wife, Eva, Hugh de Budeford and John Kipping, each for one message with appurtenances in Winchester as her dower. She argued that her late husband, Henry, had sold the property to the aforementioned parties. The jury found that Alienora had not been present so she could be deemed to have given consent, and therefore all parties had to relinquish her dower. The only exception was one Roger de Lavinton, who retained his seisin of one message because Alienora had been present and showed her consent at that alienation.⁶³¹

In this instance it is not recorded whether the defendants raised the issue of necessity with regards to the alienation, as in the previous cases. The three cases I mentioned, namely the cases of Christina, Alice la Burgeise and Eufemia, all show that the widows' opponents used the defence of 'her husband sold her land out of necessity', alongside

⁶²⁹ JUST 1/776, AALT, IMG 5781.

⁶³⁰ *CRR*, vol. 13, n. 1153.

⁶³¹ *Ibid.*, n. 2018.

taking their presence as consenting to alienation to bar widows from recuperating their dower.

A widow's presence without any protest may have acted as a greater blow to a defendant's case than it having been alienated out of necessity, which made women liable for the rejection of recovery. Alienora's case contrasts to those of Cristina and Alice in that they both attended without any protest and lost their suits; while Eufemia did attend the city court but insisted that she had spoken against the alienation. Eufemia must have known the local customs of Winchester, so she clung to her argument, even though the jury did not confirm her protest.

Asserting that the property had been alienated by the couple out of necessity was often used as an objection when widows tried to recover their land or dower, but it seldom played as important a role as the custom of speaking out against the alienation. It hardly appears to have been examined by the court and jury was rarely called upon to determine the litigation results.

When a Winchester widow, Cristiana, demanded her alienated *maritagium* by her late husband against Ailrich le Cordewaner in 1229, Ailrich said that the *maritagium* was sold in great need (*magna neccessitate*), but the argument was not examined or confirmed by the jury.⁶³² Three out of the four cases concerning Winchester customs mentioned alienation as having been made out of necessity, but none of the litigation went further to define and confirm whether the alienation was made out of urgent need. In my opinion, claiming that the alienation was made out of necessity was definitely a strategy that was applied regularly in Winchester, but it appears not to have been effective, or at least not as effective as claiming that a widow was present with her husband when her land was alienated.

Winchester was not the only place with hostile dower customs. According to Louise J. Wilkinson, a man in Lincoln could sell his inheritance out of necessity, and his wife would not then be able to claim her dower in the property he sold. At first glance, although this custom in Lincoln was not as prohibitive as that in Winchester, it still harmed the wife's dower right greatly, in part because her husband might have sold most of his land before his death, leaving his wife with so little that she could not sustain

⁶³² *Ibid.*, n. 1154.

herself. On the other hand, as Wilkinson suggests, this custom might have reduced the number of dower litigations over land held by burgage.⁶³³

Local customs in Nottingham were even worse for widows when it came to a husband's alienation of dower. In 1290, one Alice claimed her dower against one John, who asserted that according to the customs of Nottingham, if the husband sold his lands, and the couple received money because of the alienation, she was not entitled to receive her dower. He further argued that Alice and her late husband had spent the money after her husband, Robert, sold the disputed land to him. In response to John's argument, Alice argued that no profit from this alienation came to her, and the case went to the jury for confirmation.⁶³⁴

The custom in Nottingham created a more adverse environment for women who claimed dower because the alienation of land usually involved a financial transaction, and it was hard to prove that a wife had not enjoyed any profits from the alienation. In this situation, the wife's consent was of little importance because her opinion played no role, either in the alienation or in claiming dower thereafter. Thus, even though she had not given her consent to the alienation she could not demand dower as long as she received some money from it.

However, in this case it can be inferred that the wife, Alice, might have approved the alienation because in common law a wife had a right to withhold her consent to the alienation of her dower, which would make her entitled to recover the dower after the death of her husband. Therefore, although the record does not reveal whether the wife consented to the alienation, since the dispute was brought to court, she might have consented to the alienation and received money in return. The local customs of Nottingham are reminiscent of those of Winchester, as both extended a husband's rights over his wife's land and her dower, placing the woman in a harsh situation whereby she barely had any say in her husband's legal action over her property, or promised property – dower.

⁶³³ Wilkinson, *Women in Thirteenth-Century Lincolnshire*, 95. Another local custom concerning dower was that, if a wife's husband held his land by burgage tenure, the wife received half of the land he held at his death.

⁶³⁴ CP 40/81, AALT, IMG 2867.

5.7.2 Alienation of dower by husbands

For a widow, the alienation of dower by her husband was made worse by the involvement of multiple parties. In 1307 two women brought writs of dower to court because their husbands jointly purchased and jointly alienated the land. The judge reckoned that neither of their husbands died solely seised of the lands, so neither of the women were entitled to dower.⁶³⁵ A husband's action could lead to difficulties for his wife in gaining her dower. Nevertheless, a wife could recover her dower through the common law.

The following case elucidates how negligent a husband could be. Matilda, the wife of one Simon, claimed her nominated dower, namely one messuage and six acres of land with appurtenances, against German. German argued that the disputed land had been held in the hands of one Lauretta, as dower, and she gave it to her son, the said Simon, before her death. Afterwards, Simon gave the disputed land to German. For this reason, Matilda ought not to claim her dower from him.⁶³⁶ The dower land in this case had been used as 'recycled dower' by the husband, and he apparently did not take good care of his wife's benefits since he alienated the 'promised dower land' to the said German.

In 1276, a similar case involved a husband disposing of the wife's dower share before his death. In 1276, Elizabeth de Pembridge demanded her dower, namely one third of the manor of Pembridge and one third of the advowson of the church of the same manor, with appurtenances. The defendant, Roger de Mortimer, vouched her husband's heir to warrant that he obtained the free tenement in the said manor. An agreement was made between them that Elizabeth would remit and quitclaim to Roger and his heirs all rights, claims and her right of action to the manor by way of dower. In return, Roger granted Elizabeth his manor of Stoke Lacy in the same county. She was to hold this manor of Roger, the son of Roger, and his heirs for life by way of dower. After her death the manor and its appurtenances were to return to Roger and his heirs in perpetuity.⁶³⁷ In this case, although Elizabeth's dower share was disposed by her late husband and was given in the free tenement, she made a concord with the defendant and held another manor for her lifetime in return.

⁶³⁵ *Year Books of the Reign of King Edward I*, ed. Horwood, vol. 5, 512.

⁶³⁶ *CRR*, vol. 12, 143.

⁶³⁷ *Earliest English Law Reports*, ed. Brand, vol. 1, 59-60.

If a widow's husband alienated her dower land to more than one person, the situation would certainly be disadvantageous to the widow because her opponent could delay proceedings by demanding the presence of all the assignees. In 1201, a woman named Emma faced the crisis of losing her dower, namely a free tenement in Upton, Flore and Northampton, which was held by Robert, the defendant. Robert argued that the contested land was divided after the death of Emma's husband into three by lot, including his part. Therefore, he queried whether he could proceed alone without the other two parties.⁶³⁸ Emma encountered a more complicated situation than she might have expected because she had to oppose two more people for her dower.

Of the various kinds of land alienation, the exchange of property could make a situation more complex because the object of the dower was no longer the same. In 1284 Thomas Russell and his wife, Isabel, brought a writ of dower against Leonin of Leake. Leonin said that Nicholas, Isabel's late husband, gave the disputed property to him and his wife in exchange for a virgate of arable land with appurtenances in Walton, which was subsequently given to Master Roger of Seaton. Furthermore, he insisted that Thomas and Isabel had impleaded Roger for one third of the said advowson and virgate of arable and he had satisfied them. In consequence, he asked whether they ought to have dower for what was given in exchange and what was received in exchange as well. Thomas and Isabel said they did not implead Roger and were not satisfied with the land, so a jury was called. Thomas and Isabel eventually obtained the dower.⁶³⁹

In a 1285 Northamptonshire eyre, a justice clarified widows' right to their exchanged dower. When Andrew Sparrow and his wife, Maud, came to court against Isabel of Panton, they demanded one messuage and a quarter of arable land with appurtenances in Grendon, to which Isabel gained title through Philip of Panton, to whom James of Panton, who had unjustly disseised Andrew and Maud, had granted it. Isabel said that she did not gain title through Philip. She held the tenements in dower from James who had endowed her with them. She continued to argue that the land she had held in dower had been exchanged, by her, for this land, and so she held this land in dower, as she had previously held the other. William of Saham, the justice, asked her whether the land was part of her husband's inheritance, as was the other land she had given in exchange. Isabel answered positively. Saham made a judgment as follows:

⁶³⁸ *CRR*, vol. 2, 31-32.

⁶³⁹ *Earliest English Law Reports*, ed. Brand, vol. 3, 152.

‘then this is her dower just as much as the other which she exchanged for this land, for the title of dower applies as much to this land as it did to the other, and so ... etc.’⁶⁴⁰ The case proceeded after this judgment, and came to the opinion that land given in exchange for dower was the same, in law, as land assigned in dower. Hence her title to the land was derived from James, and the writ brought by Andrew and his wife Maud was defective.⁶⁴¹

There were many cases of restitution of dower during the period because wives’ property had been disposed of by their husbands. Therefore, in spite of women’s subordinate status, it was made possible for them to recover their dower, inheritance and *maritagia*. This right of recovery is clearly stated in chapter 3 of the Statute of Westminster II in 1285. However, the first chapter of the Statute of Merton in 1236 had established protection for widows who were expelled from dower that their husband held at death:

Concerning widows who after their husbands’ deaths are expelled from their dower and cannot get their quarantine⁶⁴² without suing for them, namely, whoever withholds from them their dowers or their quarantine out of the lands of which their husbands died seised and those widows afterwards recover by suing, those who are convicted of such wrongful deforcement are to pay those same widows their damages, that is to say the full value of the dower which is theirs from the times of their husbands’ deaths to the day when they recovered seisin of it by judgment of court. And the deforcers are nonetheless to be in the king’s mercy.⁶⁴³

The Statute of Merton only articulated protection for widows who were expelled from dower of which their husbands died seised. Could a widow claim the dower which had once been hers, but had been alienated by her husband before his death? According to *Bracton*, if her nominated dower was alienated by her husband, she was entitled to claim it back against the tenant, whatever the reason for the alienation. Here, the difference between recovering her *maritagium* and inheritance and recovering dower is striking. As mentioned in previous chapters, *Bracton* stated that if the wife’s inheritance

⁶⁴⁰ *Ibid.*, 223.

⁶⁴¹ *Earliest English Law Reports*, ed. Brand, vol. 4, 608-609.

⁶⁴² A period of 40 days during which a widow who is entitled to a dower is supposed to be assigned her dower and has the right to remain in her deceased husband’s chief dwelling; the right of a widow in such a case.

⁶⁴³ *English History Documents*, ed. Douglas and Rothwell, vol. 3, 352.

or *maritagium* was alienated for the benefit of the conjugal couple, then she could not recover it after her husband's death.⁶⁴⁴ However, *Bracton* believed that if the husband alienated her dower for the common benefit of the family, the wife would be entitled to recover it. One possible reason for this is that dower was a life interest, and a woman could only enjoy it for her lifetime. After the widow's death, her alienated dower would eventually be returned to the intended person in order to ensure the stability of the transaction. On the other hand, inheritance and *maritagium* were rights rather than life interests, which could be claimed as held in demesne, so the law was careful when it came to the recovery of inheritance and *maritagium*.

The wife's absolute right of recovering dower often harmed the grantee's right, and from the tenant's point of view the right was perceived as unfair. Therefore, *Bracton* stipulated that the heir had to provide *escambium*⁶⁴⁵ to the tenant from the heir's inheritance. It was a different situation if the widow claimed her third share against the tenant – the tenant kept the disputed land, and the heir was obliged to provide an *escambium* to the widow.⁶⁴⁶ The following case illustrates *Bracton*'s statements about the recovery of dower and providing an *escambium*.

Between 1242 and 1243, Petronilla, widow of Ralph de Tony, claimed her dower, namely the third part of a manor in Walthamstow, against John de Gizorz. John asserted that he had been bequeathed the contested manor for five years by Petronilla's late husband, Ralph, by the confirmation of the king, so he ought not to give her dower. Furthermore, John called Ralph's heir, who was in the custody of the king, to warrant. The king provided Petronilla with land elsewhere in exchange, until the end of John's lease. When that happened her land would be relinquished and she would retain her one third of the disputed land. This case shows the heir's obligation to compensate the widow for dower. Even the king, who had given his confirmation to the alienation, could not neglect the widow's claim on alienated dower.⁶⁴⁷

But what if the heir did not have sufficient land with which to compensate the widow? A case in 1242 might provide an answer. One Katerina demanded a third part of ten acres of land with appurtenances in Newton against William de Liketon as her

⁶⁴⁴ *Bracton*, vol. 4, 31.

⁶⁴⁵ *Escambium* refers to exchange.

⁶⁴⁶ *Bracton*, vol. 2, 270. After the widow's death, the dower might revert to the tenant, if he survived the widow.

⁶⁴⁷ *CRR*, vol. 16, n. 1625.

dower. William summoned Cristina and Beatrice, the heirs of Katerina's late husband, Roger de Sudbury, to warrant him. It was adjudged that William should keep the disputed tenement, and Cristina and Beatrice should compensate Katerina for her dower land from their inheritance; provided their inheritance was sufficient. If it was not, Katerina could have what she demanded from William.⁶⁴⁸ One can infer that the disputed ten acres of land might have been alienated by Roger, Katerina's late husband. In consequence, she resorted to the law in order to recover it. This case also shows the law's intention to protect both the assignee's and the widow's rights. Here the judges considered that William held the disputed land and that the heirs ought to be responsible for providing the widow with another piece of land in order to compensate her for the loss of dower. This result also echoes the principles that *Bracton* described regarding compensation for the loss of dower.

A much earlier case, in 1199, shows the right to recover dower in alienated land. Alice, the wife of one Ralph, sought her reasonable dower against Hugh, her son, and Adam and Robert Walensis. She recovered her seisin in dower from all of the defendants.⁶⁴⁹ A case in 1225 shows how a widow exercised her right after her dower had been sold. Alice, whose late husband was Ralph le Bret, claimed her dower of one third of a half virgate of land with appurtenances in Othorpe against Simon. Simon called another Alice, the sister and heir of Ralph, to warrant, but she did not want to warrant, claiming that Ralph had not died seised of the land and that she had no inheritance from him.⁶⁵⁰

Simon further argued that Ralph had given one virgate of land to him half a year before his death, so that he had a right of estover for the rest of Ralph's lifetime. After Ralph's death, he had been in seisin of the land until Alice (the heir) exchanged it with other land from Ralph's inheritance. The judgment decided that Alice should recover the seisin against Simon.⁶⁵¹ In this case, the crisis that the widow faced was caused not only by her husband but also her husband's heir. Ralph's land had been disposed of twice. Firstly, he had given one virgate of land to Simon before his death; and secondly, his heir, Alice, acquired it by giving Simon other land in exchange after Ralph's death.

⁶⁴⁸ *CRR*, vol. 17, n. 1585. Beatrice and Christina were underage, and were in the custody of Katerina; therefore, despite their presence at court, they did not respond to the writ.

⁶⁴⁹ Ward, *Women of the English Nobility and Gentry*, 115.

⁶⁵⁰ *CRR*, vol. 12, n. 352.

⁶⁵¹ *Ibid.*

Did Alice consent to her husband's alienation of that one virgate of land? Two points need to be stressed here. Firstly, although the record did not mention it, Alice might have not given her consent. Secondly, the reason why Alice was able to recover her dower from Simon is probably because the land that Alice (the heir) gave to Simon in exchange was also from Ralph's inheritance; therefore, Alice (the widow) had the right to recover dower from her late husband's alienated land.

5.7.2.1 Legal remedy: Statute of Westminster II in 1285

Prior to the Statute of Westminster II there was no detailed law articulating widows' right to recover their dower. What impact did the Statute have? In 1292, John's second wife, Joan, demanded dower from one Walter, who had granted her late husband John certain tenements, whereupon John had entered into the disputed land and died seised of them. Joan brought a writ of dower against Walter, who subsequently yielded dower to her. After Walter's death, his wife, Maud, demanded her dower against Joan. Joan's representative said that the right to the dower should not be tried in this case as if it were before the Statute of Westminster II 1285. The other serjeant also agreed because under the common law if, 'rightly or wrongly, one yielded to a woman her dower, or yielded up other tenements, she should hold it always, without the title to dower being tried'. However, such an opinion was opposed by Maud's representative.⁶⁵²

By the time the Statute of Westminster II 1285 (chapters 3 and 4) was enacted, more complete regulations existed concerning wives' ability to recover dower lost because their husbands defaulted a tenement. Chapter 3 stated that the wife might recover her land by a writ of entry *cui ipsa in vita sua contradicere non potuit*, whereby the husband had absented himself and refused to defend his wife's right, or wished to surrender it against his wife's will. The wife could later come before judgment to defend her right, and she should be admitted. On the contrary, if the defendant could prove that he had a right in the tenement he claimed, the wife would take nothing by the writ.⁶⁵³

The Statute of Westminster II 1285 chapter 4 also reflects the inconsistency, before 1285, of judgments on the issue of recovering dower lost by the husband's default:

In the case where the husband loses the tenement demanded by default and the wife after the death of her husband claims dower, it is found that by some

⁶⁵² *Year Books of the Reign of King Edward I*, ed. Horwood, vol. 1, 148.

⁶⁵³ *English Historical Documents*, ed. Douglas and Rothwell, vol. 3, 431.

justices dower is adjudged to her notwithstanding the default which her husband committed, while other justices are of the contrary opinion and adjudge the contrary.⁶⁵⁴

After the Statute of Westminster II, defending a right was known as *resceit*. In the following cases recorded in *The Year Books of Edward I*, the effect of the Statute may be discerned. A note stated that 'the wife would be received under The Statute when she and her husband are impleaded jointly'.⁶⁵⁵ The Statute was also frequently quoted by serjeants, attorneys and justices when it came to dower cases as may be seen in the following two cases.

At the 1292 Hereford eyre, a widow, A., through her attorney brought a writ against B. and C., his wife. B. appeared in court in person, while C. appointed an attorney to appear on her behalf. It seems that A. and C. were competing for dower on the same land, which B. and C. held jointly. B. and C.'s attorney argued that A. was never married to her alleged husband. The attorney of A. showed an official certification to the justice of the bench proving that she was legally married, and A. recovered her dower. Afterwards, C. came to court in person, saying that her husband, B., and her attorney 'had faintly and badly pleaded', so she argued that, by the Statute, she should be received to defend her right. However, when the judgment was given, C. was not allowed to recover her dower under the Statute because A. had to recover her dower, notwithstanding that the other side avowed that the husband was alive.⁶⁵⁶ This case clearly shows that the Statute had been applied by some women towards the end of the thirteenth century, or that they were certainly advised to do so by their legal representatives. Although their attempts did not always succeed, at least they could resort to the law if the loss of dower was caused by their husbands' 'passive attitude' in court.

5.8 Widows' ability to dispose of property

Once a woman became a widow she had sole control over her dower. As a widow, she was a *femme sole* in court, so she was no longer subject to her husband when she wished to dispose of her inheritance, *maritagium* or dower. Her control over her own

⁶⁵⁴ *Ibid.*, 431.

⁶⁵⁵ *Year Books of the Reign of King Edward I*, ed. Horwood, vol. 2, 342.

⁶⁵⁶ *Year Books of the Reign of King Edward I*, ed. Horwood, vol. 1, 106.

inheritance and *maritagium* was incontestable and she could dispose of them as she wished. However, since dower was not ‘her land’, her control over it was not as absolute as with her inheritance and *maritagium*. *Bracton* stated that ‘the wife cannot dispose of any part of her specified dower during the husband’s lifetime’.⁶⁵⁷ Therefore, what kinds of actions over dower were considered to be legal for a widow? Before examining such cases, a look at the Statute of Gloucester chapter 7 (1278) may prove useful:

Likewise if a woman sells or gives in fee or for term of life the tenements that she holds in dower, it is established that the heir or other person to whom the land ought to revert after the woman’s death, shall at once have recovery to demand the land by a writ of entry made therefor in the chancery.⁶⁵⁸

This clearly addresses the right of the heir to recover an inheritance that had once belonged to the woman’s dower, but it also indicates that a woman might sell or give the property she held in dower. From this it may be inferred that women’s legal actions over dower were not uncommon, which would prejudice the heirs, or other persons, to whom the dower land ought to revert. Hence the regulation was made. The common law records probably offer us further insights into this issue.

5.8.1 Leasing her dower

The ensuing case has already been mentioned in the previous discussion of ‘no dower from dower’, but it also reveals a further area for dispute. Joan, who was the wife of Walter de Molcastre, brought a writ of dower against William, Walter’s son, whose representative argued that certain disputed tenements were held by Mabel, the wife of Robert, and Walter’s mother. Joan’s representative said that Walter’s father, Robert, and Walter made an agreement with Mabel in respect of her dower for twenty-seven marks every year, so that Walter was seised of the entirety of it. William’s representative presented the following statement:

Mabel leased her dower to him (William) in consideration of the twenty-seven marks to hold to him and his heirs male of full age; but that if he should not have an heir male, or should at his death have an heir male under age, or should have an heir male of full age and should fail to pay the twenty-seven marks at

⁶⁵⁷ *Bracton*, vol. 2, 275.

⁶⁵⁸ *English History Documents*, ed. Douglas and Rothwell, vol. 3, 417.

any of the times fixed for payment, then and in any such case it should be lawful for her to take her dower without let from them.⁶⁵⁹

The plaintiff still insisted that Walter held her dower to him and his heirs at their pleasure as long as they chose to have it, in consideration of the twenty-seven marks. William's representative used a metaphor to support his client, stating: 'If I take a farm to hold at my will for a certain yearly sum, no one can compel me to hold at will, but I can throw it up at my pleasure, and he made composition only in the form aforesaid'.⁶⁶⁰

The disputes in this case not only answer whether there should be 'dower from dower' but also what sorts of actions a widow could enact on her dower. It seemed that leasing her dower was acceptable, but Joan's representative equated Mabel's lease to William with a quitclaim. Mabel's representative, on the other hand, regarded the lease as renting out your own property. It appears that, even if the widow was permitted to lease her dower share, she might have been at risk of losing her dower on the grounds claimed by Joan's representative.

For a widow, leasing her dower was perfectly acceptable and legal, but she could not ask the lessee to return the tenement before he or she finished the term of the lease. In 1303, a woman brought a writ of dower against a tenant, who, in return, called to court the warrantor, the heir of the woman's late husband. The warrantor called the guardians who had wardship of the land, and all the guardians yielded the dower portion to the woman, except one, Richard de Midd, who argued that he had a ten-year lease for the tenements from this woman. The woman admitted it, so she recovered her seisin but Richard retained his portion for the term of his lifetime.⁶⁶¹

If it was legal to lease the dower, could women sell property, including the dower share?

5.8.2 Selling and granting her dower

A woman called Quenilla came to court in 1221 to claim her specific dower against Henry of Hodsock and his wife, Alice. Alice's attorney argued that Quenilla had sold the whole land to William le Norris, Alice's father. After Quenilla admitted that both parties had reached an agreement, Quenilla remitted her claim of dower in return for

⁶⁵⁹ *Year Books of the Reign of King Edward I*, ed. Horwood, vol. 2, 406.

⁶⁶⁰ *Ibid.*

⁶⁶¹ *Year Books of the Reign of King Edward I*, ed. Horwood, vol. 3, 458-460.

5s.⁶⁶² A case from 1227 shows how a widow, whose late husband was Reginald de Frowik, sold her late husband's land to Andreas Bukerel, and thus disinherited William, Reginald's heir. Andreas said that after Reginald's death he acquired the land in the presence of two executors, Ralph and Roger, Reginald's wife and the abbot of Westminster, the chief lord of the fee. The two executors admitted that they had sold the land for £10, and they further confirmed that Reginald's widow had sold the land at the same time. Therefore, it was adjudged that the heir, William, should recover his father's land from Andreas, who should consequently ask for compensation from the two executors and the abbot. As to the widow, she was adjudged not to be assigned her dower, neither could she have William's custody.⁶⁶³

Compared with selling dower, granting dower was more common and is well documented in the legal records. Statute of Merton c. 2 states:

Also all widows can from now on bequeath the corn from their land, as well from their dower-lands as from their other lands and tenements, saving the service due to the lords for their dower-lands and their other tenements.⁶⁶⁴

Although property in this thesis refers only to immovable property, it is worth looking at what the regulations say about a widow's ability to grant her dower.

Before this is explored, the meanings of 'bequest' and 'grant' should be established. These two legal actions had strikingly similar features. To 'bequeath' is to dispose of personal property, especially money, by a final will,⁶⁶⁵ whereas to 'grant' is to transfer property.⁶⁶⁶ The former usually happened when a person was dying, and took effect after death; the latter could happen at any time. However, for medieval English women, grants were made more often than not during their widowhoods.

The regulations largely affected high status and wealthy women of the nobility and gentry because they held large amounts of land, which would often be granted to others or to the Church. The heir of a woman's husband had the right to succeed to dower, so grants from a widow's dower to religious institutions were a matter of family concern as they affected the family's interests. Granting dower to others could prejudice

⁶⁶² *CRR*, vol. 10, 134.

⁶⁶³ *CRR*, vol. 13, n. 223.

⁶⁶⁴ *English History Documents*, ed. Douglas and Rothwell, vol. 3, 352.

⁶⁶⁵ 'OED,' last accessed on 22 April, 2019,

<http://www.oed.com/view/Entry/17854?rskey=PZZtIM&result=1&isAdvanced=false#eid>

⁶⁶⁶ 'OED,' last accessed on 22 April, 2019,

<http://www.oed.com/view/Entry/80766?rskey=f8AcIt&result=3&isAdvanced=false#eid>

the husband's heir, so such grants needed to be confirmed by a woman's husband and son. To what extent could a widow grant her dower away. Was she, for example, able to grant all of it? These questions matter because granting away dower, of course, harmed the heir's inheritance rights. To help answer this question, the following paragraphs describe situations that arose when several widows granted away their dower.

Hawise de Beaumont (c. 1120–1197), Countess of Gloucester, gave the church of St James in Bristol in perpetual alms one burgage in the new borough of the meadow, namely the last one on the east side, free and quit of all service and custom, just as the earl, her husband, had given it to her.⁶⁶⁷ Thus, the property she granted away was a gift from her husband and probably part of her dower.⁶⁶⁸ We do not know how much dower she actually held, but the frequency and number of her land grants demonstrate the extent of her power to grant. For instance, the *Earldom of Gloucester Charters* records that she granted land ten times,⁶⁶⁹ seven of which were apparently made after the death of her husband, William Fitz Robert in 1183. She granted land in Pimperne (Dorset), Wareham (Dorset), Nurstead (Kent), and Bristol. It is only known that Hawise held Pimperne as her *maritagium*, while the others might have been her inheritance or dower. She granted part of her *maritagium* at Pimperne to Nuneaton priory during her widowhood and some tenements with services to religious institutions, giving Durford Abbey lands that Thomas Aylwin and Richard Makuhus held between 1189 and 1197. Before William's death, she had also granted the same Abbey land held by Robert Wytrow, together with his annual service of 2s.⁶⁷⁰ Hawise's successor, Isabel, Countess of Gloucester, also made numerous grants when she was in widowhood.⁶⁷¹

Although such grants could only be made by very wealthy people, Hawise's case reveals how capable a rich widow was of disposing her own property. It also demonstrates that women could dispose not only of dower but also of *maritagium*, inheritance and gifts from donors. Some granted their dower without any financial return, as Hawise did to St James of Bristol, whereas others granted their property for

⁶⁶⁷ Ward, *Women of the English Nobility and Gentry*, 93.

⁶⁶⁸ Ward notes that the grant might have been Hawise's dower. In the original charter, it does not say clearly whether the grant was part of her dower. *Ibid.*

⁶⁶⁹ *Earldom of Gloucester Charters*, ed. Patterson. The ten grants made by Hawise are as follows: n. 2, n. 55, n. 56, n. 57, n. 58, n. 59, n. 63, n. 67, n. 78, n. 160; the grants she made after the death of her husband are as follows: n. 57, n. 58, n. 59, n. 63, n. 67, n. 78, n. 160.

⁶⁷⁰ *Ibid.*, n. 160.

⁶⁷¹ For examples, see *Earldom of Gloucester Charters*, ed. Patterson, n. 76, n. 114, n. 148, n. 149.

cash payments.⁶⁷² For instance, between 1276 and 1289, a charter of Maud de Clare, Countess of Gloucester and Hertford (c. 1223-1289), shows that she made grants to the priory of Augustinian friars at Clare, amounting to two acres of meadow with appurtenances, which had been a gift and feoffment of one Susanna, and a meadow, a gift and feoffment of William Thurstan of Clare and Matilda, his wife. The charter records that ‘the friars and their successors could have and hold all the aforesaid meadow with its appurtenances of her, Maud, and her heirs or assigns in peace, freely and quietly forever by rendering yearly to the lords of the fee due and accustomed service for all services, aids, suits, customs and demands belonging to Maud or her heirs and her assigns’.⁶⁷³ Maud also made a promise that she and her heirs and her assigns would warrant, acquit and defend forever all the meadow with appurtenances so that her gift, grant and confirmation would have the validity of perpetual authority.⁶⁷⁴

Maud did not grant the gift without rewards, and she still kept the fee due and all accustomed service.⁶⁷⁵ She disposed of the properties at her will, which demonstrates that widowhood bestowed such great power that she could dispose of her property independently. Unlike a grant without reward, a grant with fee or service in return did not hurt the interests of the heir; indeed, it brought profit to the heirs as the assigns. Granting from dower, though, could harm the interests of the husband’s heir through the loss of his or her inheritance. For instance, Giles and his wife came to court to respond to William de Waleton because William claimed he had been disinherited by a gift to a religious house of the lands held in dower.⁶⁷⁶

There is no certain answer to the question of precisely how much dower a widow was able to grant away, because the above cases suggest that widows were seldom in a position to do so. Those who granted property without repayment granted it not from their dower, but from their own inheritance or land they had acquired from others. As was demonstrated in the case of Maud de Clare, the properties she granted were neither

⁶⁷² Although women who granted their property to churches did not ask for financial reward, there was always a purpose in mind. For instance, some of them granted lands to churches for their own salvation. From this point of view, they would always have reward.

⁶⁷³ Ward, *Women of the English Nobility and Gentry*, 199.

⁶⁷⁴ *Ibid.*

⁶⁷⁵ *Ibid.* See also Mitchell, *Portraits of Medieval Women*, 40. Mitchell regards Maud’s grants to religious houses as ‘conspicuous piety’ because she wanted to compete with other noblewomen who devoted either sponsorship or themselves to religion. She even created a monument to memorialise her generosity and her significance to the local community.

⁶⁷⁶ *CRR*, vol. 16, n. 789.

her inheritance nor her dower. Instead, they were the lands she acquired from others. For most widows, granting away their dower would put them in too precarious a situation, since it would trigger future disputes and harm the family's interest. Consequently, it was better to keep their dower lands and to magnify them through benefits until they descended to the heirs of their husbands. From the point of view of heirs, dower constituted their inheritance and it involved every family member's interests. The next section will look not only at a widow's interests, but also at those of heirs.

5.9 Dower as both women's business and family's business

Returning to the question posed in the early part of this chapter: did dower only serve as women's business? Indeed, dower belonged to a woman for her lifetime and could only be claimed by women, so in that sense it was 'women's business'. However, women had little say in how their dower was used whilst their husbands were still alive because of the patriarchal superstructures delineating their unspoken authority. If a woman had a nominated dower and her husband was determined to alienate it during their marriage, then she could voice her objection. Otherwise, as discussed previously, she had little opinion or influence on how her dower was managed during marriage.

Dower descended to the husband's heir. For a widow, dower was her special right and a marker of a newly-found independence; for her husband's heir, it was his or her inheritance and could become a bone of contention which meant they were often reluctant to allow the widow to control it. Some charters show how heirs managed dower and the deals they made with widows which not only utilised dower fairly, but also prevented future disputes. For instance, an early thirteenth century charter shows how a son managed his mother's dower. Adam de Scadewell, with the assent of his wife, Alice, granted to certain monks all the lands with rents that he held in the manor of Henwick, which was also his mother's dower.⁶⁷⁷ The charter did not reveal whether Adam's mother had died or not, so there are two possible explanations for what was going on: (i) his mother was still alive, but had granted her dower to Adam, who assigned it to Alice as nominated dower again; and (ii) his mother had died, so he inherited her dower. It is noteworthy that the granted land was also Alice's dower, and

⁶⁷⁷ *The Cartulary of Worcester Cathedral Priory*, ed. Darlington, n. 141.

her consent was required and then recorded, as this could possibly bar Alice from recovering her dower in the future. The reason I say ‘possibly’ is that there was no fine levied on the grant, that is, Alice was not examined separately in the royal court to check for any coercion, so she could argue that she only gave her consent under duress.

5.9.1 The collaboration between widows and heirs

During 1230 and 1233 a grant was made by Alfred of Penhulle (Penn Hall in Pensax) to some monks. Alfred granted all of his land, with the services of those who held of him, and his mother’s dower. In return, the monks were to hand in a cronnock⁶⁷⁸ of hard corn, half wheat and half rye every six weeks, and half a mark annually until his mother died. After his mother’s death, the monks should pay 10s every year, and the house which belonged to his mother’s dower would revert to the monks after Alfred’s death.⁶⁷⁹ Alfred’s mother was still alive, so it is possible that she consented to the grant of her dower in exchange for things that she and her son needed. The case demonstrates that by managing and profiting from his mother’s dower, a son could arrange a long-term interest until his own death.

For instance, during 1202-1203, one Walter made a deliberate agreement with Toke Dacun concerning his mother’s dower. Walter and his mother Emma granted the dower land to Toke, and in return, Toke and his heirs were to do the service of rendering 1lb. of cumin yearly to Emma and Walter, along with three quarters of corn, wheat, barley and rye and 2s at the four usual terms. The service of rendering cumin would not be quitted until the deaths of both Walter and Emma, while the service of submitting crops would be terminated when either of them died.⁶⁸⁰

The above cases show how some sons managed their mothers’ dower. For some of these men, long-lived widows or mothers barred them from receiving the entire inheritance as early as they might have wished, and they had to learn to manage the dower while the woman was alive in order to benefit from it effectively. Because any action a widow made concerning her dower might have implications for the heir, any decision relating to dower needed their consent. This was the case when Sibyl

⁶⁷⁸ The measurement of corn.

⁶⁷⁹ *The Cartulary of Worcester Cathedral Priory*, ed. Darlington, n. 283, 149.

⁶⁸⁰ *Calendar of Kent Feet of Fines*, ed. Churchill and others, 32.

quitclaimed her dower to Walter Mercator for 11s, and David, the heir, was present in court and gave his consent.⁶⁸¹

5.9.2 Disgruntled heirs

However, not all heirs cooperated with their mothers in this way, and not all relationships were always harmonious. According to *Glanvill*, if the heir neither attested nor admitted the dower claim made by the woman against the tenant, then the plea would turn out to be between the woman and the heir:

So if the heir denies to the woman all the rights she claims, by saying in court that she was never endowed with it by his ancestor, the case may be settled by battle if the woman has three persons who heard and saw, and one of them is a suitable witness who heard and saw her endowed by the heir's ancestor at the church door at the time of her marriage and is ready to prove it against the heir. If the woman succeeded by battle against the heir, then he must deliver the land claimed to the woman, or else assign her equivalent lands in exchange.⁶⁸²

Whether a widow could obtain her right depended on the heir's cooperation, so a good working relationship was advisable.⁶⁸³ The cases that follow illustrate this well.

In 1242, Henry, son of William de Ho, complained that his mother, Godehold, had made waste, sale and ruin of her dower land and caused his disinheritance. Godehold had rendered her dower to Henry in court and quitclaimed her dower right. For this, Henry paid her 20s yearly for the rest of her life.⁶⁸⁴ Rather than wait for his mother's death to inherit, Henry chose to retrieve his inheritance by making his mother relinquish her dower right. This case revealed the dower share to be as important to him as it was to her. Sometimes heirs launched litigation against widows who did not take good care of their dower, for example by leaving land uncultivated. This was known as

⁶⁸¹ *Ibid.*, 53.

⁶⁸² *Glanvill*, 64-65.

⁶⁸³ Even the king could not avoid assigning dower to his mother. For instance, King Edward I had to assign his mother her extensive dower. See *Calendar of Charter Rolls*, 6 vols. (London: HMSO, 1903-1927), vol. 1, 218; 2: 192-193, 196.

⁶⁸⁴ *Calendar of Kent Feet of Fines*, ed. Churchill and others, 165-166.

‘disinheriting’. In such cases, heirs had every reason to feel disgruntled.⁶⁸⁵ Expectations and obligations were placed on widows to maintain their dower in good condition.⁶⁸⁶

In one sense, dower was women’s business, but as this thesis contests, dower was also family business. When they launched dower suits, widows often found themselves up against their own children, resulting in full-scale intra-family wars. A case in point is Felicia, widow of Philip de Beaumont, who claimed against John de Beaumont for the third part of seven virgates and four acres of arable land in Dorsington. John replied that Felicia already had half a hide of arable land in Marston as dower, and he even offered to give the third part of the other lands if she declined his other offers. Felicia then said that Marston had been given to the younger son, Walter de Beaumont, by her late husband, so that she held nothing in dower. John strongly denied this, insisting that Philip had died seised of that half-hide of arable land, and that Walter had been in Ireland for four years. Afterwards a jury confirmed that Philip had given the half-hide of arable land to his younger son Walter, but Walter had asked Philip to be its keeper before he sailed to Ireland. Therefore, it was adjudged that Felicia should have her dower in Dorsington.⁶⁸⁷

Another point worth mentioning is that although Philip managed Marston, he was acting as keeper for Walter, and he did not own the land. John was mistaken in thinking that Philip was the owner. John was probably Philip’s heir, so did not anticipate that his brother would harm his inheritance. These additional factors no doubt turned the case not just into a dispute between the heir and the widow, but into a family matter since everyone was equally invested and involved. This case clearly demonstrates that from the point of view of a son, dower was not only women’s business, but family business.

Relationships between heirs and widows have long been discussed among historians, and it is necessary here to address the question of whether blood kinship affected them. For instance, if a widow was an heir’s biological mother, might this have dispelled disputes over dower? It is reasonable to believe that, in some instances, this was the case. In contrast, if the widow was the heir’s stepmother, was their relationship more likely to be hostile? In *Portraits of Medieval Women*, Linda E. Mitchell stated

⁶⁸⁵ For a few examples, see *CRR*, vol. 13, n. 588, n. 1748, n. 2559, n. 2664.

⁶⁸⁶ Widows might have found many many difficulties in maintaining dower, such as the lack of labour and financial resources to keep the dower in good condition.

⁶⁸⁷ *Rolls of the Justices in Eyre: Being the Rolls of Pleas and Assizes for Gloucester, Warwickshire and Staffordshire, 1221-22*, ed. Doris M. Stenton (London: Selden Society, 1940), pl. 257.

that a stepson's antagonism towards a widow might provoke him to block her from obtaining her dower.⁶⁸⁸ However, this does not necessarily mean that blood relationships were better or more harmonious. Whatever the nature of the relationship, the widow still represented a hindrance to the heir's taking full control of their inheritance. In consequence, the heir might even turn their back on the widow who was their biological mother when it came to questions of dower.⁶⁸⁹

Mitchell takes Gladys Du ap Llewelyn ab lowerth as an example to demonstrate a hostile relationship between heirs and their stepmother. Gladys married, first of all, Reginald de Braose, who had four children by an earlier marriage. Gladys and Reginald produced no heir and Reginald died in 1228. Soon after his death, Gladys married Ralph de Mortimer and they had at least three children – Roger, Hugh and Joan. Ralph died in 1246, making Gladys a widow again. Afterwards, Gladys initiated a number of dower suits against her step-children, the co-heirs from the first marriage. Her step-children resented the ample dower she had from two men, and they were extremely reluctant to give up their inheritance. Consequently, they obstructed her attempts to obtain dower by various methods, for example by claiming outright trespass and by denying her profit and rent from the disputed property.⁶⁹⁰ Ralph's heirs resented losing their inheritance to Gladys, a woman who was unrelated by blood yet had been able to control one third of their land simply because she had once married Ralph. Moreover, she had obtained a considerable portion of dower from her second husband. In this case, the lack of blood relationship goes some way to explain the antagonism towards Gladys.

5.9.2.1 Disgruntled heirs and the long-lived widow: Maud de Braose and Roger Mortimer

The next case demonstrates how even blood relations could turn sour over matters of inheritance. Maud de Braose, daughter of Reginald de Braose, married Roger Mortimer, the son and the heir of Gladys and Ralph, in 1247, making her the step-child

⁶⁸⁸ Mitchell, *Portraits of Medieval Women*, 169-189. See also Linda E. Mitchell, 'The Lady is a Lord: Noble Widows and Land in Thirteenth-Century Britain,' *Historical Reflections / Réflexions Historiques*, 18.1 (1992), 71-97.

⁶⁸⁹ The Mortimer family had been highly involved in politics, and their relationship with the King was more than complicated. Here, I will only explore the dynamics between the widows and their children concerning dower.

⁶⁹⁰ Linda E Mitchell, 'Noble Widowhood in the Thirteenth Century,' in *Upon my Husband's Death: Widows in the Literature and Histories of Medieval Europe*, ed. Louise Mirrer (Ann Arbor, MI: University of Michigan Press, 1992), 169-189.

of Gladys as well as her daughter-in-law. During a series of adverse law suits concerning Gladys's dower from Reginald, Maud and Roger were absent from the record. As Gladys's daughter-in-law, Maud probably did not want to destroy her relationships with her mother-in-law and her husband, which would only have been to her disadvantage. Therefore, the relationship between Maud and Gladys remained harmonious. Ironically, however, Maud found herself involved in a series of time-consuming and depressing legal cases over her dower with her own children, in much the same way as Gladys and her step-children, Maud's siblings.⁶⁹¹

Maud became embroiled in a new row over inheritance with her younger son, Roger, and Edmund, her eldest son. Roger seemed determined to hinder his mother from enjoying her dower. The disputes began in 1283 when Maud sued Roger and her daughter, Isabel, for dower in Shropshire, Worcestershire and Herefordshire. CP 40 records tell us that Maud's dower claim was extremely large; namely, (i) one third of the manors of Larkhope and Stowe in Shropshire against Roger; (ii) one third of the manor of Doddington in Shropshire against Isabel; (iii) one third of the manors of Clifton and Oddingley in Worcester against Roger; (iv) one third of the manors of Marden, Winforton and Willersley in Herefordshire against Roger; and (v) one third of a messuage, three carucates, thirty acres of meadow, 200 acres of wood, one windmill and £17 in rent in Bisley, Gloucestershire against Peter Cobet, the tenant.

Compared to her short encounters with Isabel and Peter Cobet,⁶⁹² Maud's disputes with Roger were relentless. When Maud asked for one third of the manor of Larkhope and Stowe in Shropshire in 1283, Roger firstly requested a view,⁶⁹³ which caused an adjournment. In the following year, Maud amended her request of dower to one third of a messuage and two carucates in Larkhope. What happened to make Maud change her request about the amount of the dower was not revealed, but it might be presumed that downsizing her objective could placate Roger and make it easier for her to obtain dower, on the assumption that she perhaps had claimed too much initially. Afterwards, a series of lengthy cases between her, Roger and Edmund were recorded. As the warrantor of Roger and Maud's eldest son, Edmund defaulted several times, so even

⁶⁹¹ *Ibid.*

⁶⁹² CP 40/50, AALT, IMG 1647; CP 40/62, IMG 4306; CP 40/51, IMG 7479.

⁶⁹³ It means the defendant was asking to view the disputed land in person.

his lands fell into the King's hand as distraint.⁶⁹⁴ In 1286 Edmund finally came to court to confront Maud but he pleaded *force majeure*: in explanation he said that his attorney, William de Acum, had unfortunately been killed on his way to the court.⁶⁹⁵ No record of the closure can be found beyond this point, which suggests that the parties might have reached an agreement in private.

Maud's pleas of one third of the manors of Clifton and Oddingley in Worcestershire went through similar litigation. Roger asked for a view and she again downsized her dower request, namely, one third of Clifton and one third of two thirds of Oddingley. Again, Edmund defaulted several times in Maud's dower suits, believing he was not obliged to warrant his younger brother, Roger.⁶⁹⁶ Maud also changed her claim of dower concerning her pleas of one third of the manors of Marden, Winforton and Willersley in Herefordshire. Her claim on the first two manors remained the same, but she claimed only one third of a rent of 20s in Willersley, and Roger vouched Edmund for two weeks after Hilary.⁶⁹⁷

In 1285 Edmund queried why he should warrant Roger. Roger replied that his father had been seised of his homage and service and Edmund was in seisin of his service. Moreover, Roger was ready to do him homage. The court confirmed Edmund's obligation of warranty because Edmund admitted that the land would revert to him if Roger died without a male heir. Despite the fact that he was obliged to warrant Roger, Edmund seemed to be reluctant to assign Maud's claim. He argued that she was already in possession of six named manors in Herefordshire, one named manor in Shropshire, £6 of land in Berkshire and named lands in Wales from Roger.⁶⁹⁸ Edmund did not clarify whether the mentioned lands were her nominated dower or the dower he assigned to her when her late husband Roger died. The truth remains a mystery as there are no further court records concerning the matter. Edmund defaulted again in Hilary term in 1286, but when Maud and Edmund appeared at court during Easter term in 1286, Edmund claimed that his attorney, William de Acum, had been killed and that was the reason for his previous default.⁶⁹⁹

⁶⁹⁴ The action of distraining. See 'OED,' accessed on 24 August 2018, <http://0-www.oed.com.catalogue.libraries.london.ac.uk/view/Entry/55745?redirectedFrom=dstraint#eid>

⁶⁹⁵ CP 40/62, AALT, IMG 4306.

⁶⁹⁶ CP 40/62, AALT, IMG 4229.

⁶⁹⁷ CP 40/51, AALT, IMG 7479.

⁶⁹⁸ CP 40/62, AALR, IMG 4253.

⁶⁹⁹ CP 40/62, AALT, IMG 4306.

Maud's struggle with her own children over dower not only demonstrates that blood relationships did not necessarily reduce an heir's reluctance to hand dower over to the widow, but also reveals each party's tactics. In this instance, Maud did not stick to her claims throughout; instead she lowered her requests after Roger asked for a view. If Edmund's statements about Maud's holding numerous named manors and lands were true, it could suggest a degree of greediness on her part, and by reducing her initial claims she stood a better chance at winning – people take more risks to avoid a loss than to realise even a small gain.

Seeing the amount of land Maud had claimed, it is understandable that Roger and Edmund were loath to hand it over to her. In consequence, they used every mechanism in the legal system to delay proceedings by requesting views and defaulting. These two actions were both normal and appropriate for a defendant and a warrantor because the law awarded both parties enough time and sufficient method to seek justice. Numerous widows who launched dower suits went through time-consuming litigation, but Maud's was an extreme case. Edmund's unwillingness to cooperate and frequent defaults delayed the proceedings, and while this earned both parties time to come up with new strategies, it must have been exhausting both physically and psychologically for the widow who had to either appear at court herself or send an attorney intermittently for three years without securing what she originally desired. Mitchell believed that Maud certainly went into battle against her sons, but also that the inefficiency of the legal system exacerbated the problems.

There is no doubt that, under the medieval legal system, litigation sometimes appeared to be time-consuming. The longest dower suit considered in this thesis is Maud de Braose's case, but there are also numerous short cases, which were usually resolved in one session. For example, the record of William de Ho's case indicates that the dispute was dealt with in one court session.⁷⁰⁰ Numerous factors contributed to time-consuming dower litigation, and one of them, as Walker suggested in 'Litigation as Personal Quest', was probably that the defendants of dower suits were usually the tenants rather than the heirs.⁷⁰¹ Most tenants summoned the heirs to court for warranty, so the court would have to adjourn until the next session. If the heir defaulted deliberately, the litigation would become lengthy, as Maud de Braose's case shows.

⁷⁰⁰ *Calendar of Kent Feet of Fines*, ed. Churchill and others, 165-166. See p. 207 of chapter 5.

⁷⁰¹ Walker, 'Litigation as Personal Quest,' 84-85.

The process of identifying and valuing lands could prolong litigation as well.⁷⁰² By contrast, if a dower suit simply lay between the widow and the heir, who rendered her the dower immediately, then it would not be time-consuming, despite what Maud's case suggests.⁷⁰³ Suits could be swift if the litigants just wanted to have a written court record affirming the transmission and quantity of the dower, which would be useful if any future dispute happened.⁷⁰⁴

Therefore, Mitchell's statement that the legal system was inefficient may be an overstatement. Both asking for a view of the disputed property and defaulting were frequently used in order to bring an element of fairness into common law. Frederick Pollock points out that default did not cause the defendant to lose a case but amercement was used instead. The courts were reluctant to make a final decision simply because of default.⁷⁰⁵ Therefore, even if Edmund had defaulted to delay proceedings, the court would not automatically judge that Maud had won her dower. It did, however, take some of Edmund's land away in distraint, which, incidentally, then went into the King's hands.

The common law system could have worked in Maud's favour if Edmund had cooperated and assigned her property without any objection. Unfortunately, Edmund decided to delay proceedings as much as the law would allow. Frustrated as he might have been, Edmund's antagonism towards his own mother was not hard to understand. As one of the co-heiresses of her natal family, Maud inherited a quarter of one third of the barony of Miles of Gloucester and the lordship of Radnor, Wales. During her nineteen-year widowhood, she gained full control of her dower and inheritance which led Edmund, a titular lord, to have no income from her dower land for a prolonged period of time. After Maud's death, Edmund finally gained full control over his inheritance, although it only lasted for three years since he died soon after Maud. The

⁷⁰² Flower, *Introduction to the Curia Regis Rolls, 1199-1230 A.D.*, vol. 62, 246.

⁷⁰³ As mentioned, Maud de Braose's case was exceptional, but it also suggests that the dower case between the widow and the heir was not necessarily shorter than that between the widow and the tenant.

⁷⁰⁴ The lengthy dower case raises a question here as to whether dower cases were more time-consuming than others. In my opinion, they were not necessarily more time-consuming than other civil pleas, because it depends on the extent to which the defendant cooperated. As mentioned, it could become as lengthy as Maud de Braose's case, but it could be sorted out in just one session, as in other cases. Compared to *maritagium* or inheritance cases in this thesis, there appear to be more dower cases, but this, of course, does not mean they were more time-consuming. However, this issue is worth more attention and in-depth research in order to work it out.

⁷⁰⁵ Pollock and Maitland, *The History of English Law before the Time of Edward I*, vol. 2, 591-592.

animosity which Edmund felt towards his mother proved that blood relationships did not necessarily prevent family hostilities where dower was involved.

It is impossible to describe a relationship between a widow and an heir in a few words, since it could be influenced by many factors over time. A household that had been peaceful at the point of a husband's death might find itself in disagreement about how to arrange and dispose of dower. Wealthy widows and widowed heiresses, in particular, found themselves facing frustrated heirs because dower not only postponed their actual independence but also crippled them financially. When dower involved large estates, blood relationships mattered little, as the hostilities between Maud and her children demonstrate. This study has shown how the management of the financial interests that flowed from the person awarded the dower could either satisfy both the widow and the heirs, or, alternatively, throw the whole family into chaos.

5.9.3 Claiming common law dower as a more flexible strategy

It is interesting to consider why Maud was claiming her dower in so many different places. She did not have nominated dower and claiming one third of her husband's estates made the amount of dower surprisingly large. In fact, none of the three widows in the Mortimer family, namely Gladys Ddu, Maud de Braose and Margaret de Fiennes (Edmund's wife), had nominated dower, which led to their having to take dower suits against numerous tenants for common law dower share after the death of their husbands. Had the Mortimer widows not been noblewomen and had they held as little land as a freeman, they would not have had to bring so many disputes between them and their tenants to court. Also, thankfully for us, records survive for more cases brought by noblewomen.

Compared to nominated dower, common law dower made a claim more flexible, particularly when a woman's late husband had been so rich in land. Maud's case demonstrates this well. Her husband held extensive lands in Shropshire, Worcestershire and Herefordshire, which motivated Maud to claim her one third share in every possible constituency. Changing her claims while the litigation proceeded shows the flexibility of common law dower, since it allowed some space for negotiation in order to obtain what both parties really wanted. This might include either going through the court and/or coming to a private agreement. As the results of Maud's litigations were not recorded it may be presumed that a private agreement was reached, and whatever was

decided remains a mystery. Private agreements allowed all parties involved more space and better opportunities for solutions that would satisfy everyone.

Maud's relationship with her sons was reminiscent of another Maud – Maud de Lacy de Clare (see also Chapter 4), who became the Countess of Gloucester by her marriage to Richard de Clare. She also had a depressing relationship with her son, Gilbert de Clare (c. 1243-1295), because of dower. Maud had obtained a sizable dower, including the Welsh castle of Usk and the family honour of Clare, Suffolk, but it was this very size that forced Gilbert to sue her when he came of age. This case also shows that, even if the heir and the widow were related by blood, they did not necessarily agree on the use and assignment of dower.⁷⁰⁶ Mitchell's claim that blood relations might ease the tension between an heir and a widow worked in some cases, but, as shown here, there were just as many cases where it did not.

5.9.4 Quitclaiming dower

While scholarship stresses the importance of dower to a widow, an intriguing phenomenon deserves more attention. The number of cases where dower was contested in court reveal its significance for women. Dower not only helped a woman to survive during her widowhood, it also reflected the whole family's interest. The intensity with which dower claims were fought is clear indication of its importance, and most widows fought tooth and nail for their dower rights. Nevertheless, it was common to see widows quitclaiming their dower in exchange for cash or different kinds of crops. For instance, in the *Calendar of Kent Feet of Fines*, there are seventy dower cases, more than a third of which show widows quitclaiming their rights in return for other services. In 1236, Maud, the wife of William Dereby, quitclaimed all her dower right – a moiety of fifty-four-acres of land in Stalisfield – to Reynold de Cornhull, who in return would give her four seams of grain, one seam of wheat and one seam of barley at Michaelmas and two seams of barley at Easter every year of her life.⁷⁰⁷ In the same year, a widow, Emma, quitclaimed her dower to an opponent, in return for which she would receive £21 10s

⁷⁰⁶ Mitchell, *Portraits of Medieval Women*, 36. Mitchell also has a brilliant exploration of the frustrating relationship between Maud de Lacy de Clare and her mother, Margaret de Quency, in chapter 2 of this book. She argued that Margaret treated her own daughter Maud with indifference and carelessness, which led to their depressing relationship. Maud carried these discouraging factors through to the relationship with her own children, especially with Gilbert, who was more than disgruntled with his mother's excessive dower.

⁷⁰⁷ *Calendar of Kent Feet of Fines*, ed. Churchill and others, 141.

every year until her death. Moreover, she was to have four ells of dyed cloth, each ell being worth 2s, for a mantle furred with lamb every year at Michaelmas for the rest of her life.⁷⁰⁸

Why were widows willing to quitclaim their dower right if it was so essential for the rest of their lives? Most dower in the thirteenth century consisted of real estate, so it can be inferred that exchange of land for cash, food or other supplements was a good deal for them, especially for those who had neither sons nor recourse to other labourers, such as male tenants, to cultivate and manage their lands. Ploughing fields was men's work, and pre-fourteenth-century English women were mainly engaged in spinning, brewing and milking.⁷⁰⁹ As Mate points out in *Women in Medieval Society*, apart from their child-care duties and housework, thirteen-century English women also worked in the fields, and undertook milking, shearing, reaping, and raising pigs and poultry.⁷¹⁰ However, some work remained exclusively male, that of the ploughmen, shepherds, carters and pigmen.⁷¹¹ A woman who did most domestic jobs might find herself taking up her late husband's work in the lands and fields after his death.

The anxiety arising from the lack of male labour is evident in the lives of villeins. If a villein's widow had not remarried within a few months of her husband's death, she would be commanded by the lord to choose a husband. If she refused, a bailiff, or reeve would choose a man for her.⁷¹² A salient feature of society, therefore, was complete reliance on the availability of male labour, for fear that land would go to waste. Obtaining land by dower brought no advantage to a widow if she could not work it, and quitclaiming dower land in exchange for cash, food or commodities became a popular choice, as long as the land had been well maintained up to the time of its inheritance. Even in instances where remarried widows were able to obtain labourers, quitclaiming was commonly agreed with opponents. The same preference also applied to higher-status women, who had never worked on the land but had lived instead on tenants' rents.⁷¹³

⁷⁰⁸ *Ibid.*, 145.

⁷⁰⁹ Mavis E. Mate, *Women in Medieval English Society* (Cambridge: Cambridge University Press, 1999), 14, 28, 39-40.

⁷¹⁰ However, occupations open to women after the Black Death changed considerably. They were recruited to activities which had been done by men before the Black Death. *Ibid.*, 27-31.

⁷¹¹ *Ibid.*, 28.

⁷¹² Dyer, *Standards of Living in the Later Middle Ages*, 109-150.

⁷¹³ See, for example, *Calendar of Kent Feet of Fines*, ed. Churchill and others, 83.

5.9.5 The difference between urban widows and rural widows

Was there a difference between what urban widows and rural widows claimed? London, the biggest city in medieval England, developed a very different custom from other places. In that city, a widow derived more profit from movable property since much of her husband's property was likely to have been in chattels and goods. She could also utilise goods and chattels more easily than landed property, for example through investments and bequests.⁷¹⁴ The situation in other towns and cities was more varied.

In Kent, as recorded in the *Calendar of Kent Feet of Fines*, cash, as well as grains or cloth, was more likely to be exchanged for a widow's quitclaimed dower land. In England's fifth largest city, Lincoln, there are eight cases concerning widows quitclaiming their dower in *Final Concords of the County of Lincoln from the Feet of Fines, AD. 1244-1272*, and all of them show that widows either obtained cash, or enjoyed some lifelong rights to certain lands that were not in the name of dower.⁷¹⁵ Unlike the cases in Kent, the Lincoln records tell a rather monotonous story about what widows would exchange for their dower. Similarly, in the records for Norfolk and Suffolk, twenty-six cases clearly state that the final concords contain quitclaims of dower. All suggest that the widows received cash in return.⁷¹⁶ Why were cash and commodities considered such an attractive replacement for dower by widows? One possibility is that some women had reached a later stage in their life-cycle when they became widows, and consequently working the land themselves would have been an impractical option. Some women, of course, became widows at a young age, so working on the land would not have been so difficult for them, but it is also possible that they had young children to raise and cash could serve as a faster and more immediate method for easing their financial need.

⁷¹⁴ *Legitim*, obtaining the third part of the husband's goods and chattels, played an important role which could not be found in most other cities. Parliament denied *legitim* in common law, but according to the custom of London, claims to *legitim* persisted until 1725. Leyser, *Medieval Women*, 176-177.

⁷¹⁵ *Final Concords of the County of Lincoln from the Feet of Fines Preserved in the Public Records Office, A.D. 1244-1272*, ed. C. W. Foster, vol. 2 (Horncastle: Lincoln Record Society, 1920), n. 6, n. 12, n. 25, n. 29, n. 43, n. 71, n. 89, n. 121.

⁷¹⁶ *Feet of Fines for the County of Norfolk for the Reign of King John, 1201-1215; for the County of Suffolk for the Reign of King John, 1199-1214*, ed. Barbara Dodwell (London: Pipe Roll Society, 1958), n. 39, n. 40, n. 41, n. 76, n. 97, n. 111, n. 112, n. 169, n. 171, n. 176, n. 202, n. 239, n. 258, n. 263, n. 278, n. 302, n. 349, n. 387, n. 413, n. 431, n. 448, n. 469, n. 488, n. 551, n. 552, n. 555.

All these records correspond with the argument put forward above that, for a widow, relinquishing dower did not always bring disadvantages. Instead, these agreements show that widows' positions became more flexible. Having land as dower was no longer a necessity, since it had been replaced by the ability to obtain something much more useful, such as a regular cash income for the rest of their lives.

In summary, for widows, quitclaiming dower was not equivalent to losing their dower. Instead, it gave them an incentive to acquire for what they, or their families, needed for the rest of their lives. Quitclaiming an inheritance or *maritagium* did not happen as frequently as quitclaiming dower, which suggests that women used dower as a springboard for further agreements – it helped them to survive widowhood and brought advantages for their families. Through examining the agreements made by widows for quitclaiming dower, this study has found that each case contained different kinds of arrangement. Some asked for cash, some for food and others for various alternative needs to be met. Quitclaiming dower opened up other opportunities because women were able to act more flexibly to negotiate concords, and to request specific items that they needed.⁷¹⁷

5.10 English widows' legal status and powerful widowed heiresses

Janet Senderowitz Loengard suggested that dower was not an abstract right but a family affair.⁷¹⁸ Likewise, Sue Sheridan Walker regarded dower as an essential element in the reconstitution of the family because it provided land for children who did not inherit whilst also serving as a means to maintain widows.⁷¹⁹ Why were widows so special compared to other women? Jennifer Ward mentions that when a woman became a widow she became entitled to make and take independent decisions and actions. Moreover, she no longer fell under the control of either her father or her husband.⁷²⁰ The concept of *femme sole* emerged after the fourteenth century in England, later than the period covered by this research. However, by investigating dower cases in the thirteenth century, it is possible to see how the rights of dower changed over a single century, until the concept of *femme sole* was introduced at the beginning of the next.

⁷¹⁷ Such cases can be found in *Calendar of Kent Feet of Fines*, ed. Churchill and others, 83, 101, 107, 116, 151, 240.

⁷¹⁸ Loengard, "'Of the Gift of her Husband,' 215-255.

⁷¹⁹ Walker, 'Litigation as Personal Quest,' 81-108

⁷²⁰ Ward, *Woman of the English Nobility and Gentry 1066-1500*, 6, 19.

The remainder of this chapter will explore the development of a widow's legal status during that period.

Femme sole referred to women who had both economic and legal status. Widows, single women and women whose marriages had been annulled could all be described as *femmes sole*. According to Marjorie K. McIntosh, the concept of *femme sole* began in London, as well as in some parts of continental Europe, around 1300 and was used to describe a married woman who, to some extent, had independence from her husband, for example running her own business. Initially, only married women were entitled to be considered as *femmes sole* because single women and widows already enjoyed the same social status as men.⁷²¹ However, in recent scholarship, *femme sole* could also be used to describe a woman's independence in court. Hence, the following section will use this concept to examine women's agency in court.

A widow appearing in court in the thirteenth century sometimes found herself defined as both widowed and married at the same time. Once women remarried, they lost their independence and the legal status of *femme sole*.

In 1203, Euticia, who had been Gervase's wife, claimed against the abbot of Notley through her son, Robert, for her reasonable dower, namely, one virgate of land with appurtenances in Winchendon. Ralph, the abbot's attorney, stated that Euticia had a husband and would therefore not respond without him being present.⁷²² Refusing to answer a widow who did not attend court with her new husband was a strategy used by counterparties to delay proceedings and earn more time to devise a better argument.

Almost a century later, in 1292, when one Alice brought a dower claim to court, Lowther, a legal practitioner, pointed out women's subordinate status as follows:

Sir, we see how a man can give a great advantage to his wife where the wife can give no advantage to him. For peradventure she may give to him all that she has, for we see that the husband may enfeof another man, which other may enfeof the wife if he take a fancy to advance the wife.⁷²³

This passage shows how contemporaries regarded women's legal status. From a legal perspective, women gave no advantage to men because they had no power to enfeof them. This was because most women's property was rooted in their husbands. This

⁷²¹ Marjorie K. McIntosh, 'The Benefits and Drawbacks of *Femme Sole* Status in England, 1300 -1630,' *The Journal of British Studies*, 44.3 (2005), 410-438.

⁷²² *CRR*, vol. 2, 87.

⁷²³ *Year Book of the Reign of King Edward I*, ed. Horwood, vol. 1, 142.

concept is also evidenced in 1294 when a woman brought a dower case to court, and a legal practitioner stated that ‘if her husband survived he will have the whole; it is as much her husband’s right as her right’.⁷²⁴ Although the couple were joint feoffees of the property, it was stated that a wife’s present husband enjoyed the same right to her dower as her late husband. This had a number of effects for a woman: (i) if her husband had not died seised of the land containing her dower, she could not claim it; (ii) if she did not have a valid marriage, she lost her dower; (iii) if she was not endowed at the church door by her husband, she was not eligible for her dower; (iv) if her husband wished to make an action on his lands which would harm her dower right, she should obey him.

The extent of the obstacles preventing a widow from obtaining her dower reveal her subordinate legal status. Paul Brand questioned in his essay, “‘Deserving’ and ‘Undeserving’ Wives: Earning and Forfeiting Dower in Medieval England’, whether a widow’s entitlement to dower was wholly automatic.⁷²⁵ In order to meet various requirements in common law, widows had to earn their dower right in court, which, on the one hand, allowed them to enact their legal rights, but, on the other, revealed their subordinate legal status in thirteenth-century England – and, of course, for many hundreds of years thereafter.

A widow’s subordinate legal status, however, does not appear to have diminished her ability to manage property or her attractiveness to men, especially if she were a widowed heiress who had access to dower and inheritance. Widowed noble heiresses have been extensively studied by several scholars, such as Mavis E. Mate, Linda E. Mitchell and Louise J. Wilkinson, because they were so powerful, not only in wealth but also politically. In the following section I will discuss two prominent thirteenth-century widowed heiresses, Isabel de Forz and Margaret de Quency, in order to demonstrate how this group of women used inheritance and dower to their own ends.⁷²⁶

⁷²⁴ *Year Book of the Reign of King Edward I*, ed. Horwood, vol. 2, 342.

⁷²⁵ Brand, “‘Deserving’ and ‘Undeserving’ Wives: Earning and Forfeiting Dower in Medieval England,’ 1-20.

⁷²⁶ For a detailed discussion of Isabel de Forz and Margaret de Quency, see Wilkinson, *Women in Thirteenth-Century Lincolnshire*, 44-66. Mavis E. Mate, ‘Profit and Productivity on the Estates of Isabel de Forz (1260-92),’ *Economic Historical Review*, 33 (1980), 326-334; Mitchell, *Portraits of Medieval Women*, 29-42;

5.10.1 Isabel de Forz (c. 1237-1293)

Isabel de Forz is known for her long widowhood and ample property, which even attracted the attention of King Edward I. Isabel was Countess of Devon and Countess of Aumale and the elder daughter of Amicia (d. 1284) and Baldwin de Revières, Earl of Devon (d. 1245). She became the second wife of William de Forz (or de Fortibus), Count of Aumale (d. 1260), when she was still eleven or twelve years old. The de Forz lands lay in three blocks based on Holderness and Skipton in Yorkshire, and Cockermouth in Cumberland.⁷²⁷

When William de Forz died, his and Isabel's children were all under age, thus the wardship of the heirs and estates passed to the king. Countess Isabel was granted her dower lands, namely, a third of Holderness and half the Barony of Cockermouth including the castle, and the custody (but not the marriage) of her sons Thomas and William. The remaining two-thirds of the estates and the marriage of the heir were granted to Lord Edward (later King Edward I). In 1266 her brother, Baldwin de Revières, died, and she became the heir of the Revières family. She was admitted to Baldwin's lands in Devon, Hampshire, the Isle of Wight, and Harewood in Yorkshire, which made her one of the richest widowed heiresses in England. As the heir, she also took over the obligation of assigning the dower rights of Baldwin's widow and his mother Amicia.⁷²⁸

After Isabel had obtained the dower land and her brother's inheritance, her annual income increased to around £200 a year. However, were it not for her outstanding ability to manage such great amounts of land, her wealth would soon have dissipated. Mavis E. Mate examined all the land she held during her lifetime and how she profited from it. Like most landowners at that time Isabel exploited her tenants by increasing money-rents, tallages⁷²⁹ and entry-fines and benefited from the growing demand for

⁷²⁷ 'ODNB,' accessed on 15 June 2017, <http://0-www.oxforddnb.com.catalogue.libraries.london.ac.uk/view/articleHL/47209?docPos=2&anchor=matc>

⁷²⁸ *Ibid.*

⁷²⁹ Originally, it was a tax which was levied by the Norman and early Angevin kings on the towns and demesne lands of the Crown. It also refers to a tax levied on tenants by their lords. See 'OED' accessed on 26 August 2018, <http://0-www.oed.com.catalogue.libraries.london.ac.uk/view/Entry/197267?rkey=LUsUyz&result=1&isAdvanced=false#eid>

pasture and the charging of fees for the agistment⁷³⁰ of animals in her forests and parks. Moreover, she tallaged most of her manors every year and raised necessary funds when times were hard, although this money only formed a small part of her income, the bulk of which came from the sale of wool and grain.⁷³¹

Due to a rise in wool prices, by 1277 the Holderness estate profits were about a quarter of her total income. Grain sales doubled and tripled in the 1280s and her reeves improved the fertility of her lands. Mate believes that Isabel's success was largely due to her own efforts, although a rising national economy also played its part. She showed great flexibility by focusing on wool, pasture, or grain, as circumstances demanded. For instance, in the Isle of Wight she had legumes planted in thirty-nine acres of land in order to support more stock. She also shrewdly decided not to increase either the area under legumes or her animal numbers because the soil on her Midlands manors was already producing adequate yields.⁷³²

Her extreme wealth brought some disadvantages. Unsurprisingly, she attracted numerous suitors. Both the younger Simon de Montfort (c. 1240-1271), and Edmund Crouchback (c. 1245-1296), First Earl of Lancaster, had acquired marriage licences, although she rejected both. Indeed, Simon de Montfort pursued her and even tried to abduct her, which forced her to hide in Breamore Priory, Hampshire, and later in Wales. She eventually married her own daughter, Aveline, to Edmund Crouchback. Although Isabel remained a strong and successful widow she never had an heir who survived her, outliving all six of her children. When her last heiress, Aveline, died in 1274, she faced another threat to her lands, from King Edward I himself.⁷³³

Edward had always coveted Isabel's land. Twice she had refused to sell her vast southern estates to him, and in 1281, she even won a case against him in court over control of the Isle of Wight. In 1293, she became seriously ill while travelling from Canterbury, and while she lay dying at her manor in Stockwell, London, King Edward I's emissaries rushed to her bedside to persuade her to sell him the Isle of Wight. Numerous noblemen also craved her wealth, but it was only on her death-bed that she finally succumbed to the greatest pressure of all, from the king of England himself. The

⁷³⁰ 'A rate levied on or profit made from the pasturing of another person's chattels.' 'OED,' accessed on 26 August 2018, <http://0-www.oed.com.catalogue.libraries.london.ac.uk/view/Entry/4000?redirectedFrom=agistment#eid>

⁷³¹ Mate, 'Profit and Productivity on the Estates of Isabel de Forz (1260-92),' 326-334.

⁷³² *Ibid.*

⁷³³ *Ibid.*

charters were recorded in the *Red Book of Exchequer*, and although its veracity has been questioned by most historians, in this instance it illustrates the vulnerability of even the most politically powerful and strong-minded of widowed heiresses.⁷³⁴

5.10.2 Margaret de Quency (c. 1206-1266)

Another exceptionally powerful widowed heiress was Margaret de Quency, the sole heiress of Robert de Quency (d. 1217), the eldest son of the Earl of Winchester, and Hawise, sister of Ranulph de Blundeville (c. 1147-1181), Earl of Chester. She inherited the earldom of Chester once her mother died in 1243. Likewise, her husband, John de Lacy (c. 1192-1240) had died earlier in 1240 leaving Margaret a third of his property.⁷³⁵ Her new-found wealth made her extremely attractive to potential suitors and she had no difficulty finding her next husband, Walter Marshal, Earl of Pembroke (c. 1196-1245) in 1242. Walter died only three years later leaving Margaret once again widowed, albeit with a large dower. She had a reasonable third of the Marshal estate, whose enormous inheritance fell on thirteen co-heirs, although what Margaret received, by law, outweighed any of them.⁷³⁶

Margaret's share outweighed that of any of the thirteen heirs and she pursued her reasonable third in court. During the lengthy and complicated dower litigation she forced the Ferrers sisters, seven of the thirteen co-heirs, to give up most of their land, which caused Richard de Clare (c. 1222-1262), Margaret's son-in-law, and also one of the co-heirs, to compensate them for what they lost for Margaret's dower. Margaret's suit had a veritable domino effect because, according to Linda E. Mitchell, the tough task of compensating the Ferrers sisters exacerbated an already fraught relationship between Margaret and her daughter, Maud.⁷³⁷ A closer look at the case reveals that Margaret had not been the only widow entitled to the dower. Two other widows, Eleanor de Montfort (c. 1215-1275) and Matilda de Bohun (d.1252), also had a share in the Marshal inheritance. However, according to the king's order the dower Margaret received was far more than Eleanor and Matilda, which meant that she was one of the

⁷³⁴ She did not have close relatives, so was probably easy to persuade. 'ODNB,' accessed on 15 June 2017, <http://0-www.oxforddnb.com.catalogue.libraries.london.ac.uk/view/articleHL/47209?docPos=2&anchor=mach>

⁷³⁵ According to Wilkinson, *Women in Thirteenth-Century Lincolnshire*, 47, her dower from John was approximately £315 per annum.

⁷³⁶ Mitchell, *Portraits of Medieval Women*, 29-42.

⁷³⁷ *Ibid.*

wealthiest women in thirteenth-century England. Furthermore, due to the legal requirement for co-heiresses to divide their inheritance equally amongst themselves, Margaret's dower also dwarfed the lands of the co-heirs: 'the more co-heirs there were, the smaller share they could have'. This phenomenon was well illustrated in Margaret's case, although the thirteen co-heirs were not all female, male heirs were outnumbered ten to three. In order to meet Margaret's share of the dower, the king disinherited the Ferrers sisters from their property in County Kildare, Ireland, and consequently the sisters sought compensation from Richard de Clare.⁷³⁸

When Margaret set herself against the weaker co-heiresses she made a clean sweep. Not only had her political importance to the king helped her case, but also the architecture of the law had aided her accumulation of vast wealth. Combined with her inheritance and dower from John de Lacy, this made her very wealthy indeed. Undeniably, one-third of the property was a generous allotment for widows, because unless there was only one heir to inherit the other two thirds, more than two heirs could not hope to obtain as much as a widow.⁷³⁹ Although I have already discussed in this chapter the clash of interests between widows and heirs, the conflicts between Margaret and the co-heirs in relation to the Marshal estate overshadowed all other cases in the thirteenth century. However, it must be borne in mind that Margaret was a noblewoman armed not only with extensive wealth, but also with profound political intuition. No ordinary woman would ever be in such a position. Nevertheless, Margaret's case demonstrated that when a wealthy, resourceful and influential widowed heiress's manoeuvres were supported both by the law and by the king, she could easily gain the advantage.

Isabel de Forz and Margaret de Quency were the embodiments of the kind of power and influence that noble widowed heiresses could wield and were undeniably two towering female figures in thirteenth-century England. Interestingly, they had very similar marriage patterns: they were both widowed twice; they both suddenly became heiresses to excessive inheritances; they both accumulated enormous wealth, mostly from dower emanating from their second marriages; and they both demonstrated outstanding abilities in managing estates. Isabel's case clearly shows the risk of being

⁷³⁸ Wilkinson, *Women in Thirteenth-Century Lincolnshire*, 54-55.

⁷³⁹ If there are two co-heirs, each could have one third of the inheritance, which was as much as a widow was entitled to. However, if the dead husband left three co-heirs, the share that each co-heir could obtain was less than that available to a widow.

a wealthy widowed heiress. Whilst her wealth attracted many suitors, it also led to an attempted abduction by an unscrupulous man and aroused a king's covetousness, which led him to use every means to divest her of her property.

Margaret, on the other hand, made the most of an already prominent position during her second widowhood through the pursuance of her dower. Embodying all the advantages a widow and an heiress could possibly have, she fought and defeated thirteen co-heirs in court. She showed that when a noblewoman was in pursuit of a colossal inheritance and dower she could be invincible. However, she would not have been able to accomplish what she did without the architecture of the law, which conferred on her the right to one-third of her late husband's property and aided her case against the heirs. Whilst we might marvel at the wealth a widowed heiress could acquire, it is easy to forget she had a whole legal system behind her. That is why widowed noble heiresses were the most powerful group of women in thirteenth-century England.⁷⁴⁰

5.11 Conclusion

In thirteenth-century England, both common law and the regulations concerning dower underwent a gradual change. The 1225 Magna Carta, the Statute of Merton, the Statute of Gloucester and the Statute of Westminster II were all interwoven with the common law, forming a complex network that aided women to forge some agency from the scant civil liberties afforded to them. Through the case studies described, a comprehensive picture of the specific relationships between widows and their dower has emerged. Thirteenth-century widows were not automatically entitled to dower, since many were seen, as Paul Brand suggests, as 'undeserving widows' and many struggled to obtain their dues. The gap between the actual law and what happened in court reveals that obtaining dower was not a simple matter, since the courts had to take into account not only common law and all the additional regulations, but also local customs.

⁷⁴⁰ Margaret's outstanding talent for estate management is discussed in detail in Wilkinson, *Women in Thirteenth-Century Lincolnshire*, 47-49. According to Wilkinson, she was praised and represented in Robert Grosseteste, bishop of Lincoln's, *Les Reules Seynt Roberd*, a treatise on the management of estate and household. Wilkinson suggests that Margaret acquired her ability to manage property and household during her first marriage to John de Lacy. Due to John's long absence from home, Margaret dedicated more time to estate management. Her first intervention shown in the court record dates from 1226, when she appointed Hugh de Munhaut to be her attorney instead of her husband, John de Lacy, against Roger Martel.

The right of dower depended on husbands. This is true for all four requirements needed to acquire dower in *Glanvill*, (i) that he should be a free man; (ii) he should endow his wife at the church door; (iii) the property he endows should be his free tenement; and (iv) he must be seised in demesne at the time of the marriage. Widows also had to tackle disgruntled heirs who were reluctant to assign them dower.

The increasing use and jurisdiction of both the 1225 Magna Carta and the Statute of Westminster II diminished the authority of texts such as *Glanvill* and *Bracton*. For instance, by the end of the thirteenth century, 'being endowed at the church door', as instructed in *Glanvill*, was rarely deemed a normal requirement for claiming dower; instead, a widow could claim dower from lands held by her husband at any point in the marriage. After the death of her husband a widow had a legal right to recover alienated dower land. Consequently, widows in the thirteenth century enjoyed rights that widows in the twelfth century did not.

It is obvious, therefore, that the law had been evolving to protect a widow's dower right. Increasingly, widows would not be excluded from claiming dower from another man in a writ of *unde nichil habet*, and were entitled to recover their dower if a husband defaulted. The case outlined on p.185 shows that the court even shortened the postponement of litigation because a widow '*nichil habet non dote*'. Not only could the court be flexible, so too could be the claims made by widows and their representatives. For instance, as mentioned on p.174 and p.175, when one Maud failed to claim her nominated dower, she turned to her common law dower as an alternative. By examining different cases, this chapter has shown how varied dower cases could be, illustrating numerous difficulties widows faced in practice, no matter how simple obtaining dower should have been in theory.

The large number of dower cases examined for the purpose of this study offered an important insight into how women acted independently in the courts, to the point where they did not necessarily need a man to be present. As Jennifer Ward stated, dower was the only area in which women could obtain independence. In my opinion, however, medieval English women were never truly independent, either legally or socially, since a large number of women still came to court with their second husbands to demand dower. Rather, what we see is 'a conjugal couple as unit' where we cannot distinguish whose voice was louder in the litigation. When widows remarried, they lost *femme sole*. Only on entering widowhood were women afforded greater powers to dispose of their

property independently, in particular their inheritance and *maritagium*. A woman's dower was only awarded as a mere life interest, and every legal action she made affected an heir's future, or more specifically, might cause family disputes and provoke the heir's objection. To cap all this, disgruntled heirs in particular, who resented long-lived widows for retaining dower land, barred them from obtaining it without delay, as the dower litigation between Maud de Braose and Roger suggests.

Bracton stated that a widow's role was 'to attend to nothing except for the care of her house and the rearing and education of her children.'⁷⁴¹ This concept summed up the status of medieval women. Such subservience affected how they were regarded in relation to family property, and their stories of struggling litter court records pertaining to dower. In this regard, I am more than happy to subscribe to Janet Senderowitz Loengard's statement that 'dower was not an abstract right but a family affair'.⁷⁴² So, although dower played a significant role in a woman's widowhood, it did not amount only to women's business but it was also very much the family's business.

Dower was as important to widows as to heirs, and therefore the disputes that ensued often turned mothers against their sons or daughters, making them into rivals, and sometimes even drawing them into full-scale dower wars in court. Since dower was also part of an heir's inheritance, it was common to see a son managing his mother's dower while she was still alive to boost the family's interests. On these grounds, also, I suggest that dower was not merely women's business but a family's business.

Regarding the difference between inheritance, *maritagium* and dower, dower stands out due to its unique features. Dower was a right that a wife could only obtain as a life interest after the death of her husband. It was also the only derivative right dependent on a woman's husband, whereas inheritance and *maritagium* were derived from the bride's family.⁷⁴³ Therefore, although dower was a woman's right, it was still linked to and dependent on men to administer. It was the most heavily contested charge in court, and the number of dower entries in the CP 40s significantly outnumbers those involving inheritance and *maritagium*, which were supposed to be absolute rights, and the rights they were able to be seised of in fee.⁷⁴⁴ In the thirteenth century, *maritagium*, especially

⁷⁴¹ *Bracton*, vol. 2, 281.

⁷⁴² Loengard, "'Of the Gift of her Husband,' 215-255.

⁷⁴³ As I mentioned in chapter 4, although *maritagium* was initially granted by the groom's family, this situation was rather rare in thirteenth-century England.

⁷⁴⁴ When a woman claimed either her inheritance or *maritagium*, it was usually recorded as '*ius suum*', which means her fee simple right in an estate. Therefore, it is hard to distinguish whether it was her

after De Donis, was conditional on the heir having been begotten by the wife and the husband, but it was still regarded as wives' property rather than a derivative right. All the legal documents examined in the course of this study show a relatively small number of women going to court to seek their *maritagia* or inheritance because, I suggest, these had been disposed of by their husbands either for the benefit of the families or by their own 'wilful' action. Consequently, once married, the wife's grip on her own inheritance and *maritagium* loosened and her opinion on how to dispose of them was limited to either agreeing or disagreeing with her husbands' decisions.

Dower, on the contrary, could only be accessed in widowhood, which ruled out the threat of alienation by the husband. From this point onwards, a woman enjoyed almost full control of the property. (I say 'almost' because dower was technically the heir's inheritance, rather than her own. The widow therefore had an obligation to take good care of it in order not to harm the heir's right.) The 1225 Magna Carta, the Statute of Merton, and the Statute of Westminster II seemed to enshrine legislation that guaranteed a widow's dower right. However, a mere glimpse at dower cases shows there to be a gap between what the law intended and what actually happened in practice, since the records give a detailed insight into the various obstacles women faced in obtaining their dower, with or without the help of their husbands and attorneys. We know, however, that these women were not afraid of confronting their opponents in order to pursue their property rights.

inheritance or *maritagium*. The availability of detailed arguments would reveal which one it was, but most often it is not declared.

Chapter Six: Conclusion

Bride, heiress and widow are all terms used to describe a woman's legal and social status at various stage of her life. In terms of inheritance these not only delineate a specific identity, they also indicate the type of property a woman was looking to acquire. Some women fell into all these categories, while others could claim none of them. From heiress to widow, a woman might constantly have changed her role from womb to tomb, maintaining different identities for different roles. While her life hinged on her family and her husband, she was seldom the lead character in the household for it was the husband, as *paterfamilias*, who was almost invariably the head of the house. Despite their subservient role, medieval women were, in fact, highly visible. A glimpse at contemporary legal records reveals the surprising fact that women were frequently engaged in litigation. While medieval women did not go to common law courts as often as men, but they were just as likely to be involved in litigation, mostly in cases concerned with lands, including *hereditas*, *maritagia* and *dos*. By juxtaposing these three types of property rights, it is possible not only to draw out the differences between them, but also to gain a clear view of how women's property rights developed during the thirteenth century.

So, what was the difference between thirteenth-century English women and twelfth-century English women in terms of property rights? According to *Glanvill*, twelfth-century heiresses enjoyed the same right of inheritance as thirteenth-century women – daughters should equally divide their father's inheritance if there was no male heir.⁷⁴⁵ When a daughter married, *Glanvill* articulated that she could be given a piece of land from her father as *maritagium*.⁷⁴⁶ Her right to *maritagium* remained the same in the thirteenth century, but from the end of the thirteenth century onwards, *maritagium* was gradually replaced by jointure, making marriage portions in cash more prevalent than those in land. Women in neither the twelfth nor the thirteenth centuries had control over their inheritances and *maritagia* during the marriage, and when they were widowed, they might need to pay a fine to recover their own lands.

However, after the 1215 Magna Carta, a widow did not need to pay a fine to have her inheritance, *maritagium* and dower. Moreover, she could claim her dower from the

⁷⁴⁵ *Glanvill*, 76.

⁷⁴⁶ *Glanvill*, 69.

land that her late husband held during the marriage, even if that land had been alienated to others (provided that she did not consent to the alienation). Women in the thirteenth century enjoyed a more generous right of dower, because women in the twelfth century could only claim their common law dower from the land which their husbands held on the day of the marriage. After Magna Carta, women were able to claim dower from the land which their husbands held during the marriage. If women's dower right was a leap forward, then their control of *maritagia* was a step backwards, as De Donis limited women's ability to alienate their *maritagia*. Specifically, it laid down that neither during the marriage nor in widowhood could women alienate their *maritagia*, and *maritagia* should either descend to their children or revert to the donors. The most salient changes between the twelfth and the thirteenth centuries were due to the influences of newly-enacted statutes.

None of these changes could have been observed if it was not for the preservation of court records from the end of the twelfth century. Thirteenth-century England marks a pivotal moment for the development of English common law. Although neither the legal procedures nor, indeed, the legal profession were as yet well established, the nature of the law was gradually changing. Interwoven with newly enacted statutes, the common law, mainly as it appears in *Glanvill* and *Bracton*, together with the various local customs, created a burgeoning and complex legal system, which frequently confused litigants. At the same time, it meant that uncertainty about their rights led people to go to court, and this gave rise to a high degree flexibility in matters of litigation.

The thirteenth century was a primitive era without an efficient means to circulate information, and certainly one without a common knowledge of the law as we have nowadays. Therefore, the new legislation did not create certainty regarding the development of property rights, since the new statutes tended to produce ambiguities. To make things even more complex, the role of ongoing local customs compounded the legal uncertainty. For instance, when a Winchester widow demanded an inheritance that had been alienated by her husband, she might have been disappointed to find that Winchester customs allowed husbands to alienate their wives' inheritance, *maritagia* and dower whenever they needed to. In Nottingham, the local customs similarly placed women at a disadvantage. It set out that, if a wife received money for alienating her property, even if the alienation was done by her husband, she could not recover her

property after her husband died. To counter the frequent clashes between the common law and local customs, the court usually summoned a jury to confirm the customs, allowing them to outweigh the common law. In consequence, some women were ruled out from the protection which the common law conferred on others, causing them to lose their property. Female litigants were sometimes faced with conundrums that the law had created, but more often than not, they took advantage of the still-developing law, with all its flaws, to fight for their property rights. For instance, the *Statutum Decretum* dictated that the pattern of female succession changed from a sole heiress inheriting to all daughters dividing the inheritance, and in the subsequent uncertainty about inheritance rights, daughters were encouraged to go to court, often with their husbands. Likewise, the discrepancy in the standard of demanding dower between *Glanvill* and the 1225 Magna Carta 1225, specifically that a widow could claim her common law dower share from any land her husband held in free tenements at any point during the marriage, encouraged widows and their representatives to use a variety of tactics to obtain dower. The ongoing development of the law inadvertently gave the litigants and their legal practitioners more options or loopholes to fight for their rights.

Women's experiences affected legislation as much as the legislation affected them. In the Year Books, legal practitioners noted various issues that arose over dower and the alienation of *maritagium*, and this resulted in the enactment of De Donis. Thus, while the new legislation was slowly influencing women's property rights, women were in return being compelled to turn to the courts in order to protect their rights. It is therefore important to analyse what happened in the courts in order to understand the reciprocal influences between women and the law. Numerous important developments concerning inheritance, *maritagium* and dower should be emphasized here: (i) the shift of female succession from one daughter inheriting to all daughters equally inheriting; (ii) the limits on alienating *maritagium* after De Donis; (iii) the more generous conditions of claiming dower, i.e., a widow could claim a third of any land of which her late husband had been seised rather than the land of which he died seised; and (iv) the rise of jointures, which replaced *maritagium*, indicating a move towards replacing land with money.

All of these changes and developments cannot be fully understood without case studies, which also reveal the law's protection of women and legal practitioners' efforts to fight for women's property rights. The importance of legal practitioners cannot be

overemphasized. They contributed considerably not only to the development of inheritance, *maritagium* and dower, but also to the enhancement of women's legal status. For instance, as mentioned in Chapter 4, some legal practitioners and judges refused to make a final judgment without the female litigant being present, considering it unfair to women, and declared that *the Statute* required a woman's physical presence in court in order not to 'do her wrong'. Furthermore, the law decreed that only when women had agreed to the alienation of their land and dower could the alienation be executed. However, this protection became an argument used frequently by women's opponents in court, who often insisted that the widows had agreed to the alienation, which was often hard to prove. The protection that the law bestowed on women acted as a double-edged sword. Unless the final fine had been levied, it was hard to tell which party was lying. Levying a fine was a legal device designed to protect the stability of a transaction and women's property rights. When levying a fine for a land transaction, the law demanded that the court examine a wife separately to verify that she was indeed willing to alienate the land and was not being coerced. However, even in the king's court, no woman was ever totally free of her husband's control and she knew that sooner or later outside the court she would have to face her husband. Women were possibly threatened with domestic violence if they disagreed with their husbands' legal actions on their property rights, and that was a reason enough to comply. As demonstrated on p. 144 of this study, Maud de Clare argued that she could not gainsay her husband's decision to transfer her *maritagium* to Isabel de Forz, even when she had been examined separately in court.

Of the many varied case studies consulted, well-preserved court records made women and their activities more visible than ever before, enabling historians to reconstruct not only women's agency in court, but also the extent of their control over their property rights in practice.⁷⁴⁷

We could argue that women's agency is self-evident in their litigations concerning *maritagium*, inheritance and dower because it demanded their physical presence in court. The traditional anthropological view divides society into the dichotomous public (male) and private (domestic, female) realms, arguing that women lacked a public life.

⁷⁴⁷ In fact, the preservation of court records made all kinds of people more visible than before, and left more sources for historians to reconstruct their lives.

However, recent scholarship considers this to be inappropriate.⁷⁴⁸ Linda E. Mitchell, for instance, argues that it is incorrect to remove women from conversations about public life merely because they did not wield public power. She notes that there is a distinction between the two and, using court records, she challenges the notion in order to show numerous medieval English noble widows involved in litigation. This study subscribes to Mitchell's opinion about women as visible in public, as can be seen from the numerous records and cases examined in this thesis.

For instance, a case mentioned on page 199 demonstrates how women pushed back when necessary. It featured the case of a woman forced to represent herself in court after her husband and her attorney put together a 'faint defence' on her behalf, affecting her right. This case strongly shows women's visibility in public life.

Partible inheritance among daughters also brought women into public contexts, since it required siblings to cooperate with each other in order to resolve inheritance issues in court. Likewise, dower litigation made women more visible in court as the law required them to be the plaintiffs. However, when widows remarried they once again became subservient to men in the eyes of the law. Nevertheless, court records show how women devised and used different tactics to pursue their property rights. If a widow found she was not entitled to her specific dower, she turned to her common law dower. Another case shows how one woman insisted that the disputed land was her *maritagium* in order to make it her '*ius suum*',⁷⁴⁹ which was an absolute right as opposed to just a life interest. Similarly, some co-heiresses claimed against each other in order to obtain their reasonable share.

Legal mechanisms, such as adjournment, essoin, and default, influenced women's agency. The sheer length of the process, with its constant disruptions, decreased people's willingness to settle disputes in court. Instead, many of them, as I have shown in this study, withdrew from the courts and made an agreement in private. This also indicates that women's agency can be found both in courts and in private. Therefore, even though many of cases are off-record, a woman's ability to manage her property privately should also be factored into our considerations. A few cases suggest that resorting to the courts was not the only way women settled disputes. If private

⁷⁴⁸ A few scholars support the traditional view, for example David Lockwood and Michael Mann. For more details, see Mitchell, 'A Lady is a Lord,' 71-79.

⁷⁴⁹ For example, see *CRR*, vol. 9, 67-68.

agreements could also be reached, they were good methods for working out disputes, since they were less expensive and cut out the need to go to the courts.⁷⁵⁰ As mentioned, numerous widows were also willing to quitclaim their dower for more useful and practical items in return, which suggests that, as long as both parties agreed, more satisfactory terms might have been arrived at than would have been dictated by a judgment in court.⁷⁵¹

However, women's agency was by no means uninhibited in medieval England. During a woman's life, she was mostly under 'someone's cover'. When she was a daughter, she fell under the authority of her male relatives or her lord, and when she married, she was subservient to her husband. Consequently, she acted as '*femme covert*' in court, that is, there was someone constantly speaking for her. Widowhood activated a woman's agency and independence by bestowing on her the legal status of '*femme sole*', which meant that she could represent herself in court, increasing her visibility. Only when she came to court alone, either as an unmarried woman or a widow, acting as '*femme sole*' without the company of her husband, can we see her acting as a free agent, independently making her own choices. When she did come to court with her husband, how much agency did a woman really have? Court records simply tell us that she was involved in the litigation, and sometimes they reveal her opinions, but more often they do not show them. The records also reveal the conjugal couple as a 'unit' in court, which fits the notion of marriage in medieval England. What the records do not reveal is whether an argument was a woman's opinion or that of her husband. She might have come to court simply because the law required her to do so, but her husband was the one who initiated the suit; or, the argument might have represented both their opinions, and was for their common benefit. Unfortunately, these truths cannot be discerned from the records. What we can say with confidence is that a woman's involvement in litigation was influenced by many factors which limited her agency and her decision.

When discussing medieval women's agency numerous factors should be taken into account, in particular families. The relationship between a woman and her family, for instance, often affected her agency in court. When she changed her status, she had

⁷⁵⁰ For instance, Maud de Braose and her son, Roger, might have reached a private agreement after years-of litigation.

⁷⁵¹ For the cases of widows quitclaiming dower, see pp. 215-16 of this study.

different concerns in relation to her property rights, all of which involved family interests. As I mentioned in the Introduction, chapter 7 and chapter 8 of the 1215 Magna Carta were the only chapters concerning women's property rights, yet they are of great significance because they affected not only women's rights but also those of men. For noble families who owned extensive estates, dower issues always affected more than one family. When Margaret de Quency claimed her dower against her co-heirs, it had serious implications that eventually lead to the disinheritance of the Ferrers sisters. Similarly, the case of Maud de Braose perfectly demonstrated the clash of inheritance rights with dower rights and damaged the relationship between the heir and the widow.

The dynamics between a mother and an heir were dependent on the context of the land, ownership and transmission, and there was not a general rule that could be applied to every family. As demonstrated in Chapter 5, blood relations did not necessarily make the relationship harmonious, because the heir might consider the dower land that the widow held to be an encroachment on his or her inheritance. However, as I suggested, there were just as many encouraging cases as disappointing ones, cases demonstrating cooperation between heirs and widows, who made the benefits of dower not only last for the lifetime of the widow, but also extended to the lifetime of the heir. These different experiences prove that there was no general rule dictating what relationships between widows and heirs should be. Only one thing is certain – no matter what the relationship was between the heir and the widow, all such cases demonstrate that dower was not only a woman's business but also a family's business.

Dower litigation demonstrates the entanglement of women's property rights and families' property interests, and the same notion can be applied to *maritagium*. While Claire de Trafford believes *maritagium* was 'women's land', I would like to challenge this notion by stating that *maritagium* was in fact family's land and family's business. As shown in the cases I examined, *maritagium* was frequently alienated during the marriage for the benefits of the family rather than being saved to be used as *maritagium* again. Also, in thirteenth-century England, there was no common understanding that *maritagium* should be kept for daughters to be used as *maritagium* again. When Claire de Trafford used the *Wakebridge Chartulary* to be an example of 'recycled *maritagium*' over four consecutive generations as being the longest chain on record, she may have taken the exception as the general rule, because there is only one charter related to

maritagium in the *Wakebridge Chartulary*, which is precisely the one she used.⁷⁵² Likewise, in the *Chartulary of Healaugh Park*, only one charter shows a mother granting her *maritagium* as *maritagium* to her daughter again, while of the six charters showing the grant of *maritagium*, only one suggests that it was repeatedly granted as *maritagium*, and two show widows granting their *maritagia* to others.⁷⁵³ Indeed, after De Donis, when limitations were placed on the alienation of *maritagium* in order to abide by the grantors' wishes, *maritagium* was transformed into 'the land of grantors and women' – in other words, family business.

In an age where romantic love played a very minor role in marriage, property was a huge factor when it came to choosing marriage partners. A bride with an inheritance, or *maritagium*, was attractive to suitors, and the property she brought to marriage would not be solely hers, but hers and her husband's. The wife's influence on her property rights plummeted after marriage and only returned to its height in her widowhood. It may sound ironic that control could not be strong until her husband died. A general rule of inheritance was that when there was no the male issue, daughters would succeed – thus it is clear that women only stepped onto the stage and played leading characters in the absence of men. This was commonplace in medieval logic, and consequently it is impossible to discuss women without either putting them into the context of family or with their menfolk. Therefore, all three types of property rights that I examined in this study are either derived from men or specifically designed for women with the interests of men in mind. In the end women managed them not only for their own interests but also for their families' interests. The main concerns regarding property point to men, families and heirs. However, this has study discovered that real life was rather different from the picture suggested by the law.

In reviewing numerous court records it became evident that most women who came to court were referred to as someone's wife or ex-wife. Seldom did I see anyone whose spouse's or late spouse's name was not mentioned, which suggests that disputes regarding women's property rights revolved around marriage and that when entering marriage their control over their own property diminished. Of course, it also shows the significance of marriage in the Middle Ages. Marriage itself, in Charles Donahue's

⁷⁵² *The Cartulary of the Wakebridge Chantries at Crich*, ed. Saltman, n. 99.

⁷⁵³ *The Chartulary of the Augustinian Priory of St. John the Evangelist of the Park of Healaugh*, ed. Purvis, 30, 38, 80-81, 98, 147-148, 194.

words, was a social fact that concerned not only the couples but also their families and all other parties whose financial interests might have been affected. This meant that for upper-class families, marriage concerned politics, feudalism, and finance.⁷⁵⁴ For high status women such as the Ferrers sisters and Maud de Braose litigation was a precarious business. They would spend years resolving problems because the disputes involved the interests of the various noble families involved, and it was highly unlikely that when everyone was powerful and resourceful, anyone would easily give up their rights.

Hereditas, *maritagia* and *dos* were the three types of property rights that drove women to courts. While pursuing property rights in court allowed women to be seen in public, medieval women only acted as keepers after all. Dower, according to S. F. C Milsom, was only ‘a dependent tenure within the inheritance’,⁷⁵⁵ and a widow possessed it only as a life interest. A widow was expected to take good care of the dower, and not to cause waste or destruction that would harm the heir’s right to inheritance. Likewise, the nature of *maritagium* limited women’s management, especially after De Donis. While the law favoured the grantors’ interests rather than the grantees’, it too limited women’s capacity to use *maritagium* but assured that *maritagium* would descend to women’s heirs. Throughout a wife’s life, her role was that of a keeper, obliged to deliver the *maritagium* and inheritance to her heir and dower to her husband’s heir. Although in a sense both men and women were a means of transmitting property, women could not enjoy the same right of disposing property as men. *Bracton* described the ‘ideal role of women’ as follows: ‘she herself ought to attend to nothing except the care of her house and the rearing and education of her children’,⁷⁵⁶ which reflected where the law and society demanded women be part of the domestic sphere. Therefore, women were actually keepers of land for others rather than owners in their own right.

So, how does this particular study contribute to medieval women’s studies in general? Medieval women’s studies is by no means an uncharted field, but a study which juxtaposes the three significant women’s property rights has not been conducted thoroughly before. This study, therefore, compares and examines inheritance, *maritagium* and dower in an attempt to understand how these property rights evolved

⁷⁵⁴ Donahue, *Law, Marriage, and Society in the Later Middle Ages*, 1-3.

⁷⁵⁵ Milsom, ‘Inheritance by Women,’ 231-260.

⁷⁵⁶ *Bracton*, vol. 2, 281.

and the reciprocal influence between them and women in the thirteenth century. While dower litigation appears most often in the records, this does not mean that it was the most important right to women. It does, however, mean that it caused the most disputes both in law and in the family. Though *maritagium* and inheritance may seem far less significant than dower from court records, they nevertheless played a significant role in family. As demonstrated in this study, numerous charters and fines show transactions related to and grants of *maritagium* and inheritance, which greatly influenced not only women themselves but also their families' interests. However, it is undeniable that the sheer volume of dower litigation does suggest that, compared to inheritance and *maritagium*, dower was not only more accessible to women, but also the most sought after property right for women, at least in court. The law created an ironic situation for women whereby their grip on their own property was weak, but their control over their husband's property rights reached an almost paramount status in their widowhood.

While the comparison of these three property rights is one of the contributions of this study, more importantly, it reveals ordinary medieval women's individual experiences. This study, in particular, has presented the stories of a considerably wider group of women that is much more representative of medieval society as a whole. It does not just focus on wealthy or noble women, as scholars have predominantly previously studied, but on women from ordinary families too. Whilst such women are found neither in historic textbooks nor in the *Oxford Dictionary of National Biography*, their experiences deserve much more attention from historians than they have so far received. Their property claims could be just as fierce, strong, fiery, cunning, determined, or evasive, as their richer and more highly positioned counterparts.

Only three types of property rights were investigated in this study, nevertheless every woman going to court to claim her property right has a different story to tell. Such a wide remit enables us to paint a very broad picture of the difficulties they encountered in court and how they tackled them. Going through each case and studying it in detail has also provided an insight into how medieval law operated in practice. It must be borne in mind that, as Charles Donahue points out, litigants often lied in court, and it is important not to accept all arguments at face value.⁷⁵⁷ Yet lying was an integral strategy used by litigants to defend their rights to property. What should be focused on is not

⁷⁵⁷ Donahue, *Law, Marriage, and Society in the Later Middle Ages*, 1-13.

whether the litigants lied or not but whether the lie achieved its goal. Perhaps the reason for lying was their devotion to winning, therefore it must be assumed what they were aiming for was worthy of the lie. This research has attempted to make some of these women, who were considered to be nobodies, to be perceived, at last, as somebodies. If they are not generally visible in history, they are at least visible in this study.

This study also demonstrates that in discussing medieval English women it would be inappropriate to use the simplistic female/private and male/public dichotomy, because of the entanglements between women, men and family. There is no clear boundary indicating what property belonged to women or men, so inheritance, *maritagium* and dower featured more as family's business, rather than exclusively as 'women's business.' Only when placing women in a family context could we understand the development of the female inheritance pattern, *maritagium* and dower through the thirteenth century and how they affected women's agency both in court and in private. Women's engagement in managing these three property rights, of course, reciprocally influenced their development.

Varied, is the word that represents the main idea of this study. This study demonstrates the multi-faceted means by which the common law evolved, and as the common law grew, so too did women's property rights. By examining different cases, this study brings out the various distinct situations and difficulties that women faced in court regarding their property rights. Each case varies from the others, and so did the relationships between women and their family. For instance, the dynamics women created in court were stimulated not only by clashes between themselves and heirs, a clash caused by differences of age and ambition, but also by the complex relationships between women themselves and the way women were, and indeed are, mercilessly pitted against each other. A case involving dower might see two women competing for a same piece of land as dower; some co-heiresses formed an alliance in one suit but turned their back on each other in another suit. In fact, the law contributed considerably to such varied relationships – partible inheritance between daughters led co-heiresses to dispute each other, and they often went to court in order to claim their reasonable share. However, each co-heiress might have had her own subjective definition of reasonable, not to mention her husband's interests, which usually led to a more complex division.

Thirteenth-century common law and legislation sometimes contradicted with and varied from each other, causing confusion and uncertainty regarding property rights. For instance, while *Glanvill* and *Bracton* dictated what the common law should be, newly-made statutes often stepped in, imposing their strictures on people. This allowed litigants and their legal practitioners to have more flexibility to pursue their rights. The uncertainty that the budding law created gave legal practitioners an opportunity to utilise loopholes to help their clients win a suit, no matter how unscrupulous this was. For instance, if a transaction involving a wife's land was carried out by her husband in private with her consent, after her husband's death, she could always argue that she had not assented, and try to recover the land. The veracity of a deed made in private was hard prove. Likewise, the detailed record of legal practitioners' arguments in the Year Books shows how complicated and evasive their arguments could be to protect their litigants' rights. They used numerous methods, including refusing to respond to a writ, or asking the other party to provide evidence, considering it to be their opponents' 'responsibility'. Legal practitioners were also cunning and flexible when they changed their strategies. As demonstrated on pp. 131-2, when a legal practitioner found the judge unconvinced by him, he immediately changed his arguments in order to turn the tide.⁷⁵⁸ In all fairness, legal practitioners did not strive for justice but for their litigant's victory, but as far as this study was concerned, this inevitably protected women's property rights, and helped them to emerge from a private life to a more public one, making them more visible.

What impressions do people have of medieval English women? With all that we have been shown about medieval women from literature, film and even our history books, you would be forgiven for thinking that women were absolutely subordinate to men, particularly their husbands, and that they held very limited rights in every aspect of the law and society. However, the ways in which they engaged with the law, as per this study, show that despite their limited rights they made their own history and did have agency.

Nonetheless, medieval women, and in particular the part they played in the courts, still needs to attract more attention from historians. A glance at the myriad of untranslated court records shows that there are a great deal of unexplored issues waiting

⁷⁵⁸ The case concerns *maritagium*, and the representatives' arguments centred on whether 'they (plaintiffs) died without heirs begotten of their bodies' or 'they had no heir of their bodies.'

to be discovered and discussed. Naturally, this study has its limits. Court records do not represent the experiences of all people, and as Linda E. Mitchell suggests in ‘The Lady is a Lord: Noble Widows and Land in Thirteenth-Century England’, using legal records as a sole source is misleading, because people who did not have disputes would not go to court.⁷⁵⁹ If we only took the cases presented in court as the whole story, we would miss out on a much more diverse version of events. Similarly, there were people who had trouble-free relationships regarding inheritance, *maritagium* and dower whose arguments have not been recorded, which should not be omitted by historians. Although this study examines a wide group of medieval English women, it does not include villeins, who owned even less property and were subject to manorial law rather than common law. In that sense there is more work to be done to examine their perspectives.

Last but not least, since this study focuses on the common law, it does not examine local customs thoroughly and only a few specific customs have been mentioned. Local custom in medieval England is another significant area deserving of more research, specifically the relationship between common law and local customs and the dynamics this created, which considerably influenced not only women’s but also men’s property rights. Overall, this study provides some insight into the reciprocal relationship between women and the law in terms of property rights, and I hope this study will be of interest to other scholars and lead to further research into this fascinating field.

⁷⁵⁹ Mitchell, ‘The Lady is a Lord,’ 96.

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Appendix 1: Index of Cases

Number	Year	Plaintiff	Defendant	Claims	Chapter / Page Number	References	Notes
1	1218	The youngest daughter of William of Buckland	The other two elder daughters of William de Buckland and their husbands	The reasonable shares of the inheritance	3	Milsom, 'Inheritance by women,' 236-237	
2	1226	Julia, Thomas Cusin	Petronilla	Disinherited by the eldest sister	3	<i>CRR</i> , vol. 12, n. 1839, 374.	
3	1220	Geoffrey de Saukevill	Hamon de Gatton	His mother share of inheritance	3	<i>CRR</i> , vol. 8, 387.	
4	1237	Christina (presented by her husband William de Forz, 4 th Earl of Albemarle)	Christina's other sisters and their husbands	Should the co-heiresses hold the land directly to the king or not	3	<i>CRR</i> , vol. 16, n. 136c, 39.	
5	1227	Richard de Pirie	Ralph Faber of Staunton and his wife,	Reasonable share of inheritance / chief message	3	<i>CRR</i> , vol. 12, n. 1861, 379-380.	

			Avicia, and Julia of Staunton				
6	1226	Cecily de Swinetorp	Thomas of Sandal' and his wife	Reasonable share of inheritance	3	<i>CRR</i> , vol. 12, n. 1847, 476.	
7	Pre- 1290	Maud	Roger of Grimston and his wife, Joan	Disinherited due to being placed into a nunnery	3	<i>The Earliest English Law Reports</i> , vol. 4, 554-555.	
8	1195	unknown	unknown	Being coerced into a convent by the guardian	3	<i>V.C.H. Bucks.</i> , vol. 1, 355.	
9	1276	Isabel de Lungeville	John of Braybrooke and his wife, Joan	Reasonable share of inheritance, because her sister took everything	3	<i>The Earliest English Law Report</i> , vol. 3, 46-47 / <i>Earliest English Law Report</i> , vol. 1, 97-98.	

10	1290	John du Boys and his wife, Agnes	Lucy of Heswall and Juliana	<i>Nuper obiit</i>	3	<i>Year Books</i> , vol. 2, 398.	
11	1278	Agnes	Joan	<i>Nuper obiit</i> : reasonable share of inheritance between a niece and her aunt	3	<i>The Earliest English Law Report</i> , vol. 3, 53-54.	
12	1285	Maud	Joan	<i>mort d'ancestor</i>	3	<i>The Earliest English Law Report</i> , vol. 235-244,	
13	1220	Roger de Sumervill	Idonea, Margery and Elizabeth (sisters), with their husbands	Intrusion of land	3	<i>CRR</i> , vol. 4, 268-269.	
14	1236	Cecily and her sister, Agatha,	Isabel	Reasonable share of inheritance	3	<i>Calendar of Kent Feet of Fines</i> , 137.	

15	1237	Isabel of Fleet and Gunnora of Fleet with their husbands	Isabel of Fleet and Gunnora of Fleet appeared with their husbands	Reasonable share of inheritance	3	<i>CRR</i> , vol. 16, n256.	
16	1284	Christine and her sister Joan	Henry de Somervill	<i>mort d'ancestor</i>	3	<i>The Earliest English Law Reports</i> , vol. 3, 133	
17	1293	Alice and her sister Joan	B	<i>mort d'ancestor</i>	3	<i>Year Books</i> vol. 2, 456-458.	
18		Isabel	Agnes	Reasonable share of inheritance	3	<i>Calendar of Kent Feet of Fines</i> , 48	
19	1259-1260	Isolda and Thomas	Hugh de Cardinan	Right to the land	3	<i>Cornwall Feet of Fines</i> , 88-89.	
20	1242	Katherine	William de Lykton	Dower vs Inheritance	3	<i>CRR</i> , vol. 17, n. 821, 159.	Christine and Bea Co-heiresses, w summoned as t warrantors

21	Prior to 1290	Alice, Joan and Margery	The Master of the hospital at Bedford	<i>mort d'ancestor</i>	3	<i>The Earliest English Law Report</i> , vol. 4, 511-512
22	Prior to 1290	Two sisters, the names unknown	The second husband of the plaintiffs' mother	<i>mort d'ancestor</i>	3	<i>The Earliest English Law Report</i> , vol. 4, 533-534.
23	1274	Robert de Bracy and his wife Maud	Hervey de Boreham	Rector to a moiety of the church	3	<i>The Earliest English Law Report</i> , vol. 1,19.
24	1211	Robert Maudit	Robert Morin	Married the eldest daughter without the lord's consent	3	<i>CRR</i> , vol. 6, 156.
25	1220	Maud	John	Disinherited by the guardian	3	<i>CRR</i> , vol. 9, 65.
26	1241	Matthew de Scotyny	Gilbert	Custody of an heiress' custody	3	<i>CRR</i> , vol. 6, n1573, 304-305.

27	1212	Ellis de Beauchamp and his wife, Constance	John de Wahull	Homage in <i>maritagium</i>	4	<i>CRR</i> , vol. 6, 354.	
28	1208	William Gulafre and Maud, his wife	Alice de Lundresford	<i>maritagium</i>	4	<i>CRR</i> , vol. 5, 207, 289-290	
29	1242	John de la Lee and his wife, Alice	Henry Crok and Beatrice	Reasonable share of inheritance vs <i>maritagium</i>	4	<i>CRR</i> , vol. 17, n. 585.	
30	1243	William de Pyrho and his wife Margery	Hervey Bude and Maud, his wife	Reasonable share of inheritance vs <i>maritagium</i>	4	<i>CRR</i> , vol. 17, n. 1191.	
31	1249	Parnel	Richard Cruc	<i>Maritagium</i> or the acquisition	4	<i>Civil Pleas of the Wiltshire Eyre</i> , 1249, n. 53.	
32	1249	Gilbert of Walcote and Agnes, his wife	William Bissop and Lucy, his wife	Inheritance vs <i>maritagium</i>	4	<i>Civil Pleas of the Wiltshire Eyre</i> , 1249, n. 374.	

33	1220	Elizabeth, wife of William de Rue	Philip de Ulecote and Maud de Coinness, John Chaplain, Oger le Daneys, Thomas le Dispenser and Reynold Reeve	Disseisin of the <i>maritagium</i>	4	<i>CRR</i> , vol. 9, 190-191.	
34	1249	William of Coleville	William of Bremhill	Disseisin of the land	4	<i>Civil Pleas of the Wiltshire Eyre</i> , 1249, n. 52, 42- 43.	
35	1259	Ralph of Ditton	Alan	The reversion of <i>maritagium</i>	4	C 260, Class of Recorda. TNA at Kew.	
36	1199	William de Cowley	Alice	Inheritance vs <i>maritagium</i>	4	<i>CRR</i> , vol. 1, 87.	
37		Robert of Skyteburn	Isabel de la Brome	Inheritance vs <i>maritagium</i>	4	<i>Civil pleas in Wiltshire</i>	

						<i>Eyre</i> , n. 314	
38	1284	Hugh le Deen	Simon of Londonthorpe and his wife Isabel	Reversion of <i>maritagium</i>	4	<i>Baker and Milsom Sources of English Legal</i> , 2nd edn., 47-48	
39	1304	Robert de Tony	Thomas of St Omer	Reversion of <i>maritagium</i>	4	<i>The Hungerford Cartulary</i> , pt. 2, n. 1001, 13.	
40	1231	Joan de Bosco	Ralph de Bray	Land in <i>maritagium</i>	4	<i>CRR</i> , vol. 14, n.1067.	
41	1301	R	Thomas Launf	Land in <i>maritagium</i>	4	<i>Year Books</i> , vol. 5, 493-494.	
42	1284	John	Geoffrey of Stapleford	<i>mort d'ancestor</i>	4	<i>The Earliest English Law Report</i> , vol. 3, 136-141.	

43	1294	A	T. le Charer and Joan, his wife	Jointure	4	<i>Year Books,</i> vol .2, 342-344.	
44	1249	Galiena	Gillian and Christian of Worth	<i>maritagium</i>	4	<i>Civil Pleas in Wiltshire 1249, n. 149.</i>	
45	1293	Margaret	Roger Barefoot	<i>maritagium</i>	4	<i>Year Books,</i> vol. 2, 620.	
46	1208	Hersenta and her husband, Reynold	Philip	Alienated <i>maritagium</i>	4	<i>CRR,</i> vol. 5, 289	
47	1201	Alice de Amundevill e	Jollan de Amundevill e	<i>Disseiein of maritagium</i>	4	<i>Feet of Fines in Lincolns hire, n. 37, 19- 20.</i>	
48	1206	Hugh de Polsted' and Hawise	Walter de Grant Curt	<i>Disseiein of maritagium</i>	4	<i>CRR,</i> vol. 4, 80-81, 102.	
49	1207	Remilda	Henry	Dower claimed in villeinage	5	<i>CRR,</i> vol. 6, 147.	

50	1200	Edith	Baldwin and Ralph	dower claimed in villeinage	5	<i>CRR</i> , vol. 1, 313.	
51	Prior to 1222	Agnes	Ralph	dower claimed in villeinage	5	<i>CRR</i> , vol. 10, 93.	
52	1244	Margery	Her late husband's tenant	dower claimed in villeinage	5	<i>CRR</i> , vol. 17, n349.	
53	1290	Emma	Robert de Vere	dower claimed in villeinage	5	CP 40/81, AALT, IMG 2862	
54	1203	Agnes	Richard de Gardino	dower claimed in villeinage	5	<i>CRR</i> , vol. 3, 58.	
55	1200	Gilbert Avenel and his wife, Amice	Matthew	Dower, with the consent of the late husband's father	5	<i>CRR</i> , vol. 1, 323	
56	1203	Euticia	Ralph de Sparkeford	Dower claimed being granted in front of the church	5	<i>CRR</i> , vol. 2, 87.	
57	1223	Hugelina	Nicholas Chese	Dower claimed being granted in front of the church with the consent of the late husband's father	5	<i>CRR</i> , vol. 15, n. 450.	

58	1200	Cecily de Bensinton	Thomas de Bensinton	The timing of endowing dower	5	<i>CRR</i> , vol. 1, 192.	
59	1243	Maud	Robert de Sunder	The timing of endowing dower	5	<i>CRR</i> , vol. 17, n. 1555.	
60	1212	Margaret		Arguing 'to-be-acquired land' as her dower	5	<i>CRR</i> , vol. 6, 345-346.	
61	1220	Nicholas and his wife Crecia	Robert Cotel	Arguing 'to-be-acquired land' as her dower	5	<i>CRR</i> , vol. 9, 368	
62	1225	Edith	Henry le Corviser	Arguing her dower was alienated after the marriage	5	<i>CRR</i> , vol. 12, n. 633.	
63	1212	Margaret	William	dower	5	<i>CRR</i> , vol. 6, 248-249.	
64	1292	Alice	Beatrice	dower	5	<i>Year Book</i> , vol. 1, 114.	
65	1284	Avice	Denise	dower	5	<i>The Earliest English Law Reports</i> , vol. 1, 163.	

	1238	Maud	Thomas Anand	Specific dower	5	<i>CRR</i> , vol. 16, n. 736.	Concerning the customs in the city of Lincoln
67	1292	Joan	William	Two dower on the same land	5	<i>Year Books</i> vol. 1, 114	
68	1217-1218	Robert de Newburgh	Alice de Mohun	An intrusion into dower land	5	‘Henry III Fine Rolls Project,’ n. 55, (1217-1218),	
69	1285	Thomas Malekak and his wife Alice	Gerard de Lisle and his wife Alice	Excessive dower	5	<i>The Earliest English Law Report</i> , vol. 3, 267.	
70	1221	Avicia	Clement	Excessive dower	5	<i>CRR</i> , vol. 10, 238.	
71	1211	Egelina de Curtenay	Richard de Camville and his wife Eustacia	Specific dower vs common law dower	5	<i>CRR</i> , vol. 6, 123.	
72	1272	Beatrice, Queen of Germany	Edmund, earl of Cornwall	Specific dower vs common law dower	5	<i>The Earliest English</i>	

						<i>Law Reports</i> , vol. 1, 21-22.	
73	1289	Edward of Wyke	John English and his wife Edith	Specific dower vs common law dower	5	<i>The Earliest English Law Reports</i> , vol. 4, 439-440.	
74	1233	Maud	Bartholome w and his wife	<i>unde nihil habet</i>	5	CRR, vol. 15, n. 539.	
75	1201	Agnes	Philip	The widow was accused of having invalid marriage	5	CRR, vol. 1, 41.	
76	1201	Cecily de Cressy	William de Cressy	The widow was accused of marrying her late husband in his bed of sickness	5	CRR, vol. 1, 63.	
77	1225	Alice	the bishop of Lincoln	The widow was accused of having invalid marriage	5	CRR, vol. 12, n. 705.	
78	1268	Geoffrey Fresel and Joan his wife	Herbert de Bexville	Asserted being 'divorced'	5	<i>The Earliest English Law</i>	

						<i>Reports,</i> vol. 1, 1.	
79	1300	William Paynel and Margaret his wife	Nicholas de Warwick	The widow was accused of living in adultery	5	<i>Women of the English Nobility and Gentry,</i> 61-63.	
80	1290	Maud	John de Tyngewykez and his wife, Roesa	The widow was accused of living in adultery / no dower from dower	5	CP 40/82, AALT, IMG 3529.	
81	1225	Margery	Roger	Capital message cannot be dower	5	<i>CRR,</i> vol. 12, 148.	
82	1225	Margaret	Roger de Aswell	Capital message cannot be dower	5		
83	1249	Christina	Edmund Silvestar	Dower was alienated by her late husband	5	JUST 1/776, AALT, IMG 5781.	Local customs Winchester
84	1249	Alice la Burgeise		Dower was alienated by her late husband	5	JUST 1/776, AALT, IMG 5777.	Local customs Winchester

85	1229	Eufemia	Richard	Dower was alienated by her late husband due to urgent need	5	<i>CRR</i> , vol. 13, n. 1153.	Local customs Winchester
86	1229	Eufemia	Andre	Dower was alienated by her late husband due to urgent need	5	<i>CRR</i> , vol. 13, n. 1153.	Local customs Winchester
87	1229	Alienora	Roger Wascel, William, Joberd and his wife Eva, Hugh de Budeford and John Kipping	Dower was alienated by her late husband without her consent	5	<i>CRR</i> , vol. 13, n. 2018.	Local customs Winchester
88	1229	Cristiana	Ailrich le Cordewaner	Dower was alienated by her husband due to necessity	5	<i>CRR</i> , vol. 13, n. 1154.	Local customs Winchester
89	1201	Emma	Robert	Dower	5	<i>CRR</i> , vol. 2, 31-32.	
90		Matilda	German	Dower was alienated by her late husband	5	<i>CRR</i> , vol. 12, 143.	
91	1276	Elizabeth de Pembridge	Roger de Mortimer	Dower was alienated by her late husband	5	The Earliest English Law Reports,	

						vol. 1, 59-61.	
92	1290	Alice	John	Dower was sold by her late husband	5	CP 40/41, AALT, IMG 2867.	Local customs Nottingham
93	1307	unknown	unknown	The two women's husbands purchased land jointly and alienated it jointly	5	<i>Year Books</i> , vol. 5, 512.	
94	1284	Thomas Russell and his wife Isabel	Leonin of Leake	Her late husband exchanged her dower land for another land	5	<i>The Earliest English Law Reports</i> , vol. 3, 152.	
95	1285	Andrew Sparrow and his wife Maud	Isabel of Panton	Dower was unjustly disseised	5	<i>The Earliest English Law Reports</i> , vol. 3, 223.	
96	1223- 1224	Petronilla	John de Gizorz	Her late husband bequeathed her dower to the defendant	5	<i>CRR</i> , vol. 16, n. 1625.	

97	1199	Alice	Hugh, Adam and Robert Walensis	The recovery of dower	5	<i>Women of the English Nobility and Gentry,</i> 115
98	1225	Alice	Simon	The recovery of dower	5	<i>CRR,</i> vol. 12, n. 352.
99	1292	Joan	Walter	The recovery of dower	5	<i>Year Books,</i> vol. 1, 148.
100	1225	Katerina	Roger de Subir	Dower was alienated by the husband	5	<i>CRR vol.</i> 17, n. 1585.
101	1292	A widow, name unknown	B and C his wife	Default by her late husband	5	<i>Year Books,</i> vol. 1, 106.
103	1293	Joan	Walter de Molcastre	Dower, leased by the plaintiff	5	<i>Year Books,</i> vol. 2, 406.
104	1303	A woman, name unknown	Her tenant, name unknown	Dower	5	<i>Year Books,</i> vol. 3, 458-460.

105	1221	Quenilla	Henry of Hodsock and his wife Alice	Dower, sold by the plaintiff	5	<i>CRR</i> , vol. 13, 50-51.	
106	1227	A woman, name unknown	The executors Ralph and Roger	Dower, sold by the plaintiff	5	<i>CRR</i> , vol. 13, n. 223.	
107	1238	William de Waleton	Giles and his wife	The plaintiff was disinherited by a gift to the religious house of the land held in dower	5	<i>CRR</i> , vol. 16, n789.	
108	1301	A woman, name unknown	Richard de Midd	Recovering her dower	5	<i>Year Books</i> , vol. 3, 458-460.	
109	1242	Henry	Godehold	Godehold was accused of making waste of the dower which caused disinheritance of the plaintiff	5	<i>Calendar of Kent Feet of Fines</i> , 165-166.	
110	1221-1222	Felicia	John de Beaumont	dower	5	<i>Rolls of the Justices in Eyre: Being the Rolls of</i>	

						<i>Pleas and Azzizes for Gloucester, Warwickshire and Staffordshire, 1221-22, pl. 257.</i>	
111	1283	Maud de Braose	Roger	dower	5	CP 40/50, IMG 1647; CP 40/62, IMG 4306; CP 40/51, IMG 7479; CP 40/62, IMG 4306; CP 40/62 IMG 4229. CP 50/51, IMG 7479	

112	1203	Euticia	Robert, abbot of Nutley	Dower	5	<i>CRR</i> , vol. 2, 87.	
113	1292	Alice		Dower	5	Year Books, vol. 1, 142.	
114	1294	A woman, name unknown		jointure	5	Year Books, vol. 2, 342	

Appendix 2: Index of Personal Charters

Number	Year	Name	Object	Chapter and page number	References	Notes
1	1130-1133	Matilda and her sisters	Equal division of the inheritance between the sisters	3	<i>Women of the English Nobility and Gentry</i> , 47-48.	
2	1198	Beatrice and Maud	The division of the inheritance of William de Say	3	<i>Women of the English Nobility and Gentry</i> , 100.	
3	1262	Grantors: Isolda and Thomas Grantees: Henry	gift	3	<i>Cornwall Feet of Fines</i> , 88-89.	
4	1242-1243	Margery, heiress of the Earl of Warwick	Promised the king she would not marry without his permission	3	<i>CRR</i> , vol. 17, n. 234.	
5	1248	Cecily and Joan	The grant of wardship	3	<i>Calendar of Kent</i>	

					<i>Feet of Fines, 205.</i>	
6	Early thirteenth century	Hawise, Countess of Gloucester	granting part of her <i>maritagium</i> at Pimperne, Dorset, to Nuneaton priory	4	<i>Women of the English Nobility and Gentry, 95-96.</i>	
7	Early thirteenth century	Simon Coc and Florence	Granting <i>maritagium</i> to others	4	<i>The Cartulary of Worcester Cathedral Priory Cartulary, n.374.</i>	
8	1232	Grantor: Walter de Lacy Grantees: Ralph and Parnel	Granting <i>maritagium</i> in frank-marriage	4	<i>The Hungerford Cartulary, pt. 2, n. 1001.</i>	
9	1200	Grantor: Helen (mother) Grantee: Agnes (one of the daughters)	Granting <i>maritagium</i> as <i>maritagium</i>	4	<i>Feet of Fines for the Reign of King John, 1199-1216, n. 5.</i>	

10	1232	Grantor: Parnel Grantee: Thomas of St Omer	Granting <i>maritagium</i>	4	<i>The Hungerford Cartulary, pt. 2, n. 1001,</i>
11	1180- 1182	Grantor: Thomas Basset (father) Grantee: Alan of Wycombe (younger son)	Granting <i>maritagium</i> as <i>maritagium</i>	4	<i>Basset Charters, n. 178.</i>
12	1249- 1250	Maud de Clare and Isabel de Forz	Transiting land to be <i>maritagium</i>	4	<i>Portraits of Medieval Women, 36.</i>
13	1220- 1257	Eustace Rospear and the monks of Rufford	Granting the wife's <i>maritagium</i> to a religious house	4	<i>Rufford Charters, n. 366.</i>
14	Prior to 1241	Grantor: Richard of Grafton Manor (father) Grantees: Petronilla (daughter) and Walter of Kingsford	Granted the rent from a tenement as <i>maritagium</i>	4	<i>The Beauchamp Cartulary 1100-1268, n. 133- n. 135, 81-83.</i>

15	In the early reign of Henry III	Walter the weaver and his wife's brother	Giving the wife's <i>maritagium</i> to her brother	4	<i>CRR</i> , vol. 1, 309, 317, 378	
16	Prior to 1241	Grantor: Richard of Grafton (father) Grantees: Petronilla (daughter) and Walter of Kingsford	The rent from a tenement as <i>maritagium</i>	4	<i>The Beauchamp Cartulary 1100-1268</i> , n. 133- n. 135, 81-83.	
17	Prior to 1241	Grantor: Petronilla (mother) Grantee: John (son)	Granting part of the rent from her <i>maritagium</i> to her son.	4	<i>The Beauchamp Cartulary 1100-1268</i> , n. 133- n. 135, 81-83.	
18		Grantor: Richard (father) Grantee: Emma (daughter)	Granting land in <i>maritagium</i>	4	<i>The Beauchamp Cartulary 1100-1268</i> , n. 133- n. 135, 81-83.	
19		Grantor: Emma (mother) Grantee: Alice (daughter)	Granting land in <i>maritagium</i>	4	The Hungerford Cartulary, vol. 1, n.1, n. 11.	

20	1138- 1150	Grantor: Robert Grantees: the monks at Stoke	Granting all his land to the monks, with the consent of his wife and his heir	4	<i>Women of the English Nobility and Gentry, 94.</i>	
21	Late twelfth century	Grantor: Hawise de Beaumont Grantee: the church of St James of Bristol	Granting one last burgage in the new borough of the meadow, namely the last one on the east side, free and quit of all service and custom as the earl her husband gave it to her.	5	<i>Women of the English Nobility and Gentry, 93.</i>	
22	Late twelfth century	Grantor: Hawise de Beaumont Grantee: Nuneaton priory	Granting part of her maritagium	5	<i>Women of the English Nobility and Gentry, 95- 96</i>	

23	Late twelfth century	Grantor: Hawise de Beaumont Grantee: Durford Abbey	Granting her land	5	<i>Earldom of Gloucester Charters</i> , n. 160.	
25	1276-1289	Grantor: Maud de Clare Grantee: the priory of Augustinian friars	Granting her land	5	<i>Women of the English Nobility and Gentry</i> , 199.	
26	Early thirteenth century	Grantor: Adam de Scadewell Grantee: some monks	Granting the land his mother held in dower	5	<i>The Cartulary of Worcester Cathedral Priory Cartulary</i> , n. 141.	The granted dower land might have been Alice's (Adam's wife) dower as well
27	1230-1233	Grantor: Alfred de Penhulle Grantee: some monks	Granting the whole of his lands with the services of those who held of him and his	5	<i>The Cartulary of Worcester Cathedral Priory Cartulary</i> , n. 141.	

			mother's dower			
28	1202- 1203	Walter, Walter's mother and Toke Dacun	Walter and his mother Emma granted the land of dower to Toke, and in return, Toke and his heirs should do the service of 1lb. of cumin and render yearly to Emma and Walter three quarters of corn, wheat, barley and rye, and 2s at the four usual terms	5	<i>Calendar of Kent Feet of Fines, 32.</i>	
29		Sibyl and Walter Mercator	Sibyl quitclaimed her dower to Walter Mercator	5	<i>Calendar of Kent Feet of Fines, 53.</i>	

			for 11s in return			
30	1236	Maud and Reynold de Comhull	Maud quitclaimed all her dower right, a moiety of 54-acre land in Stalesfeld to Reginald de Comhull, who in return would give Maud 4 seams of grain, one seam of wheat and one seam of barley at Michaelmas and 2 seams of barley at Easter every year for her life	5	<i>Calendar of Kent Feet of Fines</i> , 141.	
