1. Introd, n. 5: The closest that the developed classical law came to an impediment on cross-class marriages was the impediment of error of person, and this was not a prohibition of cross-class marriage but a rule designed to ensure that one knew what one was doing. See Ch 1.


3. Introd, n. 7: Nul besoin d’insister sur le fait que tout mariage était alors une affaire décidée, conduite, et conclue par le père et les ancêns du lignage.


6. Introd, n. 23: See *id*. 344–6; Luther, *Tischreden* 1:229–30, in *Werke* 62; preamble to Stat., 32 Hen. 8, c. 38 (1540); Council of Trent, sess. 24, *Canones super reformatione matrimonii*, c. 1 (Tametsi), in *Decrees of the Ecumenical Councils* 2:755–6. Luther’s objections were anticipated by Hugh of St Victor, even before Alexander. *De sacramentis* 2.11.6, in PL 176:488C–494A; Deferrari, trans., pp. 333–9. Considering that Luther and Hugh were both Augustinians, the former may have derived his objections from the latter rather than, as he says, from hearing confessions.


8. Introd, n. 26: On the sources of the Romeo and Juliet story, see Moore, *Legend of Romeo and Juliet*. Another striking English Renaissance literary example of an informal marriage entered into to avoid family pressure may be found in John Webster’s *Duchess of Malfi*.

9. Introd, n. 33: Most of the records reported in these two books contain marriage cases; some of them contain hundreds; a few, e.g., Cambrai, contain thousands.

10. Introd, n. 38: For a recent study of the literary evidence, with some provocative conclusions about the institution of marriage generally, see McCarthy, *Marriage in Medieval England*. For a remarkable study of some thirteenth-century marriage sermons, with a powerful argument that they did affect what people thought about the institution, see d’Avray, *Medieval Marriage Sermons*. His equally remarkable general study, *d’Avray, Medieval Marriage*, arrived too late for its findings to be fully incorporated in this book. It should be read in conjunction with this book. Both McCarthy’s book and *d’Avray’s* more general book contain extensive references to and appreciations of the current literature, making that unnecessary here.
11. Introd, n. 39: See, for example, the use that Hanawalt made of coroners’ rolls in Ties That Bound, and in a number of other works, or the use made of manor court rolls (rolls that frequently record administration as much as disputes) by a whole raft of scholars of whom Bennett, Women in the Medieval English Countryside, may be taken as an example.

12. Ch 1, n. 2: The outline given here refers for the most part to primary sources. Fuller accounts may be found in Brundage, Law, Sex, and Gaudemet, Mariage en occident, both with bibliographical references. For even more detailed accounts, the older works, Dauvillier, Mariage; Esmein, Mariage, and Freisen, Eherecht, are still valuable, though, in some measure, superseded.

13. Ch 1, n. 3: The Tancredian-Raymondid Summa survives in many manuscripts. As revised by Raymond, the work is quite unusual in its mixture of issues that concern the internal forum of the confessional and those that concern the external forum of the courts. It also treats of sponsalia de futuro only in passing, a characteristic also of the original work by Tancred.

14. Ch 1, n. 6: The Repertorium poenitentiarum germanicum should have references to the practice if it was widespread. I will not say that there are none there, but a rather careful examination of the first (1431–47) and fifth (1464–71) volumes did not reveal any.

15. Ch 1, n. 7: X et Y per verba de presenti seu per verba de futuro carnali copula subsecuta matrimonium ad invicem legitime contraxerunt. Later in the book I will call this the ’formula’ libel. E.g., Ch 2, n. 35; Ch 6, nn. 64–8, 163.

16. Ch 1, n. 10: This was the impediment of disparity of cult, the dispensability of which was not, so far as I am aware, discussed until after the council of Trent. See Esmein, Mariage, 2:378–9.


18. Ch 1, n. 12: The only such case with which we will deal in this book is Frothyngham c Bedale (Ch 5, at n. 100). Here, however, we are not dealing with consent but with the sexual intercourse necessary to form the marriage. The woman claimed that she was drunk at the time.

19. Ch 1, n. 13: Inter alia impedimenta matrimonii impossibilitas coeundi maximum obtinet locum quoniam ex su natura potius quam ex constitutione ecclesiae impedit matrimonium.

20. Ch 1, n. 17: That Alexander is citing Gratian is reasonably clear because he describes the rule as quod in Decretis habetur expressum.


22. Ch 1, n. 21: Si autem fuerit aetatis proxima, ut in undecimo vel circa XII annum, et cum suo assensu desponsata et cognita ab eodem viro, separari non debet, etc.

23. Ch 1, n. 23: si ita fuerint aetatis quod potuerint copula carnalis coniunxit, minoris aetatis intuitu separari non debet, etc.

24. Ch 1, n. 24: De muliere quae est invita tradita viro et detenta, quem inter vim et vim sit differentia et utrum postea consensus intercesserit noluit nihil postea expressisti, nihil certum unde tibi possimus respondere.

25. Ch 1, n. 26: Quam locum non habeat consensus ubi metus vel coactio intercedit, necesse est ut ubi consensus causas in quas matrimonium contraxit, materia repellatur. Matrimonium autem soluuntur consentio contrahit, et ubi de ipsa quaeritur plena debet securitate ille [most mss. omit] gaudere causae est animus indagandus ne per timorem dicat sibi placere quod odit et sequatur exilis qui de invitatis solet nuptias provenire. A similar sequestration order is given in X 2.13.8 (Ex transmissa, WH 495[a]), but there the fear is that the knight will harm the girl.
26. Ch 1, n. 27: secundae, nisi metu coactus qui possset in virum constantem cadere eam desponsaverit, ipsum adhaerere facias ut uxori.

27. Ch 1, n. 29: Index secundum diversitatem personarum et locorum indicabit quis sit metus et iudicabit matrimonium aliquod, aut nullum.

28. Ch 1, n. 31: Sane, iuxta verbum Apostoli, sicat in Christo Iesu neque liber neque servus est a scramentis ecclesiae removendus, ita nec inter servos matrimonia debent ulterius prohiberi. Et si contradicibitis domini et invita contracta fuerint, nulla ratione sunt propter hoc dissolvenda, debita tenem etc. consuetu servita non minus debent propriis dominis exhiberi. See Landau, “Hadrians Dekretale ‘Dignum est’”; Sahaydachny, De coniugio servorum.

29. Ch 1, n. 34: Si vero aliquis sub huiusmodi verbis iuramentum alicui mulieri praestiterit: ‘Ego te in uxorem accipiam, si tantum mihi donaveris’, reus periurii non habebitur si eam nolentem sibi solvere quod sibi dari petit non accepterit in uxorem, nisi consensus de praesenti aut carnis sit inter eos commixtio subsecuta.

30. Ch 1, n. 35: Si conditiones contra substantiam coniugii inserantur, puta, si alter dicat alteri: ‘contraho tecum si generationem prolis evites’, vel ‘donec inveniam aliam honore vel faculatibus dignam’, aut ‘si pro questu adulterandam te tradas’, matrimonialis contractus, quantumcumque sit favorabilis, caret effectu, licet aliae conditiones appositae in matrimonio, si turpes aut impossibles fuerint, debeant pro non adiectis haberi.

31. Ch 1, n. 40: E.g., Quinque Compilationes, p. 48 (1 Comp. 4.6.5, Continebatur. Super eo, WH 202[b]); id. (1 Comp. 4.6.3, Significatum est nobis, WH 962); id. (1 Comp. 4.6.4, Cum institisset apud nos, WH 263). According to Petrus Hispanus, Alexander himself did not regard this last decretal, which seems to say quite plainly that ordination to the subdiaconate is not an impediment to marriage, as binding. See Liotta, Continenza dei clerici, 275, 280, 305.

32. Ch 1, n. 43: ‘Eccussus sine licentia uxoris inter vos nullatenus recipiatur, quae integrae opinionis ita existat quod nulla merito sua sacriiffica velle migrare vel quod minus continentur debeat vivere; quae si tali exstiterit, marito eis in consortio vestro recepit, ipsa publice in conspectu ecclesiae continem tam professa in domo propria cum filiis suis et familia poterit permanere. Si autem tali fuerit quae suspicione non careat voto continentiae celebrato a saecularium hominum se conversatione removet et in loco religioso ubi Deo serviat perpetuo commoretur.

33. Ch 1, n. 45: votum non tenuet, unde ratione voti ad monasterium non tenetur redire; ulterius vero non poterit uxorem acceper. Promisit enim se non exigere debuit quod in eius potestate erat, et ideo quod hoc votum tenuerit. Non redere autem non erat in eius sed mulieres potestate. Unde Apostolus: ‘Viri non habet potestatem sui corporis, sed mulier’. WH found it odd that a marriage decretal should be addressed to an abbot. He may have been unaware that the abbot of Saint Albans had jurisdiction over an entire archdeaconry and provided first-instance justice there. See Sayers in Donahue, ed., Records 2, pp. 194–5.

35. Ch 1, n. 30: Licet autem in canonicis balbeatur ut nullus copuler matrimonio quam prius poluerat adulterio, et illam maxime cui fidem dederat uxore sua vivente vel quae machinata est in mortem uxoris, quia tamen praefata mulier erat inscua quod ille aliam habere et uxorem viventem, ne dignum est ut praecipias vivi, qui scierent contra canones serenat, lucrum de suo dolo reportet, consultationu tuae taliter responsum quod nisi mulier divortium petat, ad petitionem vero non sunt aliquatdnum separandi.

36. Ch 1, n. 51: As the gloss ad id. (Venice 1562), p. 869a, points out, this feature makes for a very curious matrimonial contract, binding on one side but not on the other. We are probably right to assume that the option given the woman is one-time. If she fails to petition for a divorce after she discovers her husband’s crime but has intercourse with him instead, she will be deemed to have waived the right. Hostiensis, Lectura, ad id. (Venice 1581), fol. 19va.

1 Taking the variant merito for marito.

2 quod minus continentur debeat vivere may be corrupt, but probably means what the translation says.
It should not be judged reprehensible if human decrees are sometimes changed according to changing circumstances, especially when urgent necessity or evident advantage demands it, since God himself changed in the new Testament some of the things which he had commanded in the old Testament. Since the prohibitions against contracting marriage in the second and third degree [This is not ‘degrees’, as in degrees of kinship, but ‘types’ (gradus). See at n. 62.] of affinity, and against uniting the offspring of a second marriage with the kindred of the first husband, often lead to difficulty and sometimes endanger souls, we therefore, in order that when the prohibition ceases the effect may also cease, revoke with the approval of this sacred council the constitutions published on this subject and we decree, by this present constitution, that henceforth contracting parties connected in these ways may freely be joined together. Moreover the prohibition against marriage shall not in future go beyond the fourth degree of consanguinity and of affinity, since the prohibition cannot now generally be observed to further degrees without grave harm. The number four agrees well with the prohibition concerning bodily union about which the Apostle says, that the husband does not rule over his body, but the wife does; and the wife does not rule over her body, but the husband does; for there are four humours in the body, which is composed of the four elements. Although the prohibition of marriage is now restricted to the fourth degree, we wish the prohibition to be perpetual, notwithstanding earlier decrees on this subject issued either by others or by us. If any persons dare to marry contrary to this prohibition, they shall not be protected by length of years, since the passage of time does not diminish sin but increases it, and the longer that faults hold the unfortunate soul in bondage the graver they are.

It was at one time decided out of a certain necessity, but contrary to the normal practice, that hearsay evidence should be valid in reckoning the degrees of consanguinity and affinity, because on account of the shortness of human life witnesses would not be able to testify from first-hand knowledge in a reckoning as far as the seventh degree. However, because we have learned from many examples and definite proofs that many dangers to lawful marriages have arisen from this, we have decided that in future witnesses from hearsay shall not be accepted in this matter, since the prohibition does not now exceed the fourth degree, unless there are persons of weight who are trustworthy and who learnt from their elders, before the case was begun, the things that they testify: not indeed from one such person since one would not suffice even if he or she were alive, but from two at least, and not from persons who are of bad repute and suspect but from those who are trustworthy and above every objection, since it would appear rather absurd to admit in evidence those whose actions would be rejected. Nor should there be admitted in evidence one person who has learnt what he testifies from several, or persons of bad repute who have learnt what they testify from persons of good repute, as though they were more than one and [i.e., or] suitable witnesses, since even according to the normal practice of courts the assertion of one witness does not suffice, even if he is a person resplendent with authority, and since legal actions are forbidden to persons of bad repute. [The point is that hearsay from many reported by one does not fulfill the two-witness requirement, nor is a person of bad repute reporting the statements of those of good repute a qualified witness.] The witnesses shall attest on oath that in hearing witness in the case they are not acting from hatred or fear or love or for advantage; they shall designate the persons by their exact names or by pointing out or by sufficient description, and shall distinguish by a clear reckoning every degree of relationship on either side; and they shall include in their oath the statement that it was from their ancestors that they received what they are testifying and that they believe it to be true. They shall still not suffice unless they declare on oath that they have known that the persons who stand in at least one of these degrees of relationship regard each other as blood-relations. For it is preferable to leave alone some people who have been united contrary to human decrees than to separate, contrary to the Lord’s decrees, persons who have been joined together legitimately.
40. Ch 1, n. 62: The potential of these extensions was large. At their simplest they referred to those who had sexual relations with the affine (second type) and those who had sexual relations with those who had sexual relations with the affine (third type). Another variation, never fully accepted by the canonists, would have extended the prohibition to the consanguines of an affine, making it impossible for two brothers to marry two sisters.

41. Ch 1, n. 63: One could take the position that such marriages are not impeded by affinity, since affinity only extends to marrying those who are related to those to whom one has previously been married. For those who took this position, see Dauvillier, Mariage, 146; cf. id., 151–2. The ancient canonists did not take this view, and so to hold it would have been a substantial departure from the past. E.g., C.35 q.2 cc.5–6; see Esmein, Mariage 1.418–20.

42. Ch 1, n. 64: Admittedly under somewhat unusual circumstances, X 4.14.1 (Ex litteris tuis quas tua, WH 436). It is not clear that the case would have come out the same way if the couple had been married publicly.

43. Ch 1, n. 65: Ibid. (1 Comp. 4.13.4, De adolescente illo, WH 331); id., p. 52 (1 Comp. 4.20.6, Mennonimus. Si aliquis, WH 649[b]); id., p. 49 (1 Comp. 4.13.2, Ad aures nostras perlatum, WH 48[a]); id., p. 50 (1 Comp. 4.13.5, Ex relazione I. lotor, WH 483); Decretales ineditae, no. 16, p. 29 (Ex tenore litterarum, WH 487[ab]); Quinque Compilationes, p. 53 (2 Comp. 4.7.1, Super eo quod nobis, WH 1013[a]); “Collectio Claustrobursebgensis,” p. 33 (Claustr. 37, Veniens ad nos R., WH 1069); X 4.1.12 (De muliere. Pteretere de, WH 336[c]); Quinque Compilationes, p. 96 (2 Comp. 4.13.1, Ad aures nostras noveris, WH 433); Decretales ineditae, no. 72, p. 126 (Ex litteris tu tuo facernitatis, WH 432[a]); X 4.13.2 (Venien ad nos P. lator, WH 1066); Decretales ineditae, no. 33, p. 56 (Licet mater puelle, WH 617); “Collectio Claustrobursebgensis,” p. 127 (Claustr. 316, Continentatur in litteris, WH 202[a]); Quinque Compilationes, p. 48 (1 Comp. 4.6.5, Continentatur. Super eo, WH 202[b]); Mansi, Concilia 22: col. 425 (Ap. 49.17–18, Eius qui modo tumult., Vir, WH 383[a]); Mansi, Concilia 22: cols. 324–5 (Ap. 12.3, Lator presentium cum, WH 690); Kanonistische Erg¨anzungen no. 187 (Lator presentium A., WH 599); Quinque Compilationes, p. 51 (1 Comp. 4.15.2, Quia nobis signifiatum, WH 807).

44. Ch 1, n. 66: Thomas’ point here is that an unconsummated present-consent marriage gives rise to affinity, but he may have been suggesting that illicit intercourse does not. So far as I am aware, that latter point was not seriously maintained until the Reformation and then only in Reformist circles. According to Wolfram, In-laws and Outlaws, 27–8, it was not clearly stated as a matter of English law until 1861 that affinity arises only by lawful marriage. It did not become the law for the Roman Catholic Church until the Code of Canon Law of 1917. Esmein, Mariage, 1.447–8.

45. Ch 1, n. 67: See X 4.13.6 (Discretionem tuam. Sane), X 4.13.8 (Ex litteris), X 4.13.9 (Veniens), X 4.13.10 (Tuae fraternitatis); cf. X 4.13.11 (Gregory IX, Iordanae mulieris).

46. Ch 1, n. 69: Et est scieendum quod super isto articulo variae fuerunt quodam opiniones et diversa iura emanaverunt quae diebant quod filii duorum compatrium nuncuparet insimul copulati, sive ante compateri(tum) esent genti sive postea. Aita ira dubeant quod post compateri(tum) tanta genti non possunt copulari. His ominibus praemtermissis est firmiter et sine aliqua dubitatione tenendum quod omnes filii duorum compatrium, sive ante compateri(tum) genti sive postea, possunt legitime matrimonialiter copulari excepta illa persona qua mediante ventum est ad compateri(tum).

47. Ch 1, n. 70: Can one marry two co-mothers, one after the other (“indirect spiritual co-paternity”)? “About this question various people have said various things and some things that are not worth telling, and even Gratian himself erred,” Tancred tells us (Super ista quaestione diversa diversa dixerit et quaead quae non sunt digna relatu, et etiam ipse Gratianus erravit). Tancred, Summa de matrimonio 21, p. 35. He goes on to adopt what Bernard of Pavia says (Summa de matrimonio 7, pp. 297–08) was the opinion of Rufinus and Johannes (?Faventinus) on the issue: that if the comaternity arose before the first marriage, then the second marriage was not forbidden but if it arose after, then the second was interdicted. The reason for this is that “[relationship] does not transfer from a subsequent union of the flesh to a previous union of the spirit (“quia per unionem carnis sequentem non transitor ad unionem spiris praeecedentem”).” Ibid. This is not, of course, a reason for the rule but a statement of it. It did, however, prove to be a way to limit the reach of indirect
spiritual co-paternity. Husband and wife are one flesh, but if they are not yet one flesh, they do not both become co-parents with the natural parent of the godchild.

Tancred offers another limit to the notion of indirect spiritual parenthood. If your wife is godmother to another's child, you cannot thereafter have the other as wife. But if your wife's child (not yours) is baptized, the godmother does become your co-mother. Tancred offers no citation for this proposition and suggests that the reason for the rule is that your wife did nothing to become the co-mother with the godmother of her child.

(For further arguments along these lines, see Dauvillier, *Mariage*, 154 [citing Hostiensis and Bonaventure].)

Perhaps the underlying reason is that Tancred is willing to allow spiritual relationship to be transmitted through the fleshly union of husband and wife, but spiritual relationship among the parents has a natural side and a spiritual side. To transmit the spiritual relationship that my wife has with the godmother of her child (not mine) to me would be to say that I am somehow the natural parent of my stepchild. Because so little of this makes sense (and, we suspect, did not make a great deal of sense at the time), we are given a mnemonic for remembering it all:

She who takes from the sacred font my child my wife cannot be,  
Nor she whose child from that same font my wife takes, you should see.  
But she who takes from that same font a child of my wife not mine  
May become my loving wife after my wife's off to th' divine.

*Quae mihi vel causae mea [sc. uxor] natum fonte levavit  
Hanc mea commater fieri mea non valet uxor*.

For possible application of the last ruling, see *Officie c. Heist en Vrancx* (14 v. 54), no. 613 (App e112, n. 2).

48. Ch 1, n. 73: To marry in the face of a specific interdict, such as, for example, one issued by a judge *pendente lite*, was also an impedient impediment. If the marriage was valid, the parties could be penalized for having done so, but the marriage could not be dissolved. See, e.g., X 4.16.2 (Alexander III, *Ex litteris venerabilis*, WH 439).

49. Ch 1, n. 73: *Quod nobis ex tua parte significatum est, ut de clandestinis matrimonii dispensare deberemus, non videmus quae dispensatio super his sit adhibenda*. Except for the first two words, this sentence is restored by Friedberg from earlier copies of the decretal; it is not found in the official edition of the *Liber extra*.

50. Ch 1, n. 75: Alexander does not quote the maxim here, but it seems pretty clear that that is what he has in mind. For contemporary references, see Kuttner, “*Ecclesia de occultis*.”

51. Ch 1, n. 76: That Alexander was maintaining in this period that clandestine marriages should not take place is clear from his letter to the archbishop of Upsala (Vice beati Petri, 1171 X 1172), PL 200:851: *clandestina et absque sacerdotali benedictione non debere contrahi coniugia*.

52. Ch 1, n. 77: “Since the prohibition against marriage in the three remotest degrees has been revoked [a reference to the previous canon, quoted at n. 58, which abolished the impediments of affinity and consanguinity in the fifth, sixth, and seventh degrees], we wish it to be strictly observed in the other degrees. Following in the footsteps of our predecessors [perhaps a reference to *Quinque compilations*, p. 46 (1 Comp. 4.4.4, Alexander III, *Solet frequenter*, WH 990), but cf. C.30 q.5 c.2 (ascribed to Hormisdas, pope, 514–23)], we altogether forbid clandestine marriages and we forbid any priest to presume to be present at such a marriage. Extending the special custom of certain regions to other regions generally [see, e.g., Statutes of Eudes de Sully, bishop of Paris (1196–1208), c. [98], in *Statuts synodaux franc¸ais I*, p. 89; Council of Westminster (1200), c. [11], *Councils and Synods I*, 2:1087; 1 Canterbury (1213 X 1214), cc. 53–4, in *Councils and Synods II*, 1:34.], we decree that when marriages are to be contracted they shall be publicly announced by the priests in the churches, with an adequate term fixed beforehand within which whoever wishes and is able may adduce a lawful impediment. The priests themselves shall also investigate whether any impediment stands in the way [of the proposed marriage]. When there appears a credible reason against the proposed union, the contract shall be expressly forbidden until there has been established from clear documents what ought to be done
about it. If any persons presume to enter into clandestine marriages of this kind, or forbidden marriages within a prohibited degree, even if done in ignorance, the offspring of the union shall be deemed illegitimate and shall have no help from their parents’ ignorance, since the parents in contracting the marriage could be considered as not devoid of knowledge, or even as affectors of ignorance (affectatores ignorantiae). Likewise the offspring shall be deemed illegitimate if both parents know of a legitimate impediment and yet dare to contract a marriage in the presence of the church, contrary to every prohibition. Moreover the parish priest who refuses to forbid such unions, or even any member who the regular clergy who dares to attend them, shall be suspended from office for three years and shall be punished even more severely if the nature of the fault requires it. Those who presume to be united in this way, even if it is within a permitted degree, are to be given a suitable penance (condigna penitentia). Anybody who maliciously proposes an impediment, to prevent a legitimate marriage, will not escape the church’s vengeance.”

53. Ch 1, n. 78: David d’Avray points out that the council did not require that a priest bless the union, or even that it take place in church (though the reference to marriages taking place in conspectu ecclesie might be taken as indicating a preference for the ceremonies, such as those in England and quite generally in northern Europe, that took place in facie ecclesie). D’Avray, Medieval Marriage, 105; id., “Marriage Ceremonies.”

54. Ch 1, n. 82: The one possible exception is Oxford (1322), cc. [22–3], in Wilkins, Concilia, 2:513; cf. Lyndwood, Provinciale 4.1.[1], pp. 270–1: “Marriage like the other sacraments should be celebrated with honor and reverence by day and in the face of the church, not with laughter and joking and contempt. Also when marriage is to be contracted, priests should always inquire of the people about the liberty of the bride and groom on three separate Sundays or feast days, in three proclamations. If any priest does not make these proclamations, he should not avoid the penalty recently laid down about this in the Council [4 Lateran]. Priests should also frequently prohibit, under pain of excommunication, those who wish to contract marriage that they not give faith of marriage to be contracted between them except in an open place before a number of people publicly called for this purpose.” (Matrimonium sicut alia sacramenta cum honore et reverentia de die et in facie ecclesiae non cum risu et ioco ac contemptu celebretur. In matrimonio quoque contrabando semper tribus diebus dominicis vel festis a se distantibus quasi tribus edictis perquirant sacerdotes a populo de immunitate sponsi et sponsae. Si quis autem sacerdos huissusi edicta non servaverit poenam super in Concilio super hoc statutam non evadat. Prohibeat etiam presbyteri frequentem matrimonium contrabere voltentibus sub poena excommunicationis ne dent sibi factum mutuo de matrimonio contrabando nisi in loco celebrat coram publicis et pluribus personas ad hoc convocatis.) The excommunication authorized here was never, so far as I am aware, interpreted as being automatic. Indeed, it may not even apply to the contracting parties, but the priest who fails to promulgate the prohibition.


56. Ch 1, n. 93: Si mulier petit aliquem in virum vel econtra, licet secundum consuetudinem quarundam ecclesiarum non porrigatur libellus, melius tamen est et honestius ut libellus detur, etc. Tancred’s reference shows that he is opposing some contemporary practices. What follows argues that the requirement of a libel, which Tancred derives from Gratian and X 2.3.1, is a general one that should admit no exception in marriage cases.

57. Ch 1, n. 94: [A]liud obtrinet de iure si quis dicat aliquem sponsam de futuro, aliud si dicat eam de praesenti, et alid si petitur tamquam secum cognita, quae omnia debet continere libellus.

58. Ch 1, n. 95: Item nota quod per libellum evidenter ostenditur an ille qui agit velit intentare petititorium vel possessiorem, id est, an mulier dicat aliquem suum esse maritum, quia contraxit cum ea et petat eum adjudicari in maritum, quo agere petititorio et quasi agat de proprietate; an vero eum petit sihi restitui tangam inustae sit ab ea quae eum eam de maritate, et hoc est agere possessiorio, quoniam petit possessionem qui siti adjudicis de qua dicit se inustae expulsam. Note the ambiguity of the word contraxit and the shift from a male to a female plaintiff.
59. Ch 1, n. 105: X 4.1.16 (Alexander III, Praeterea de muliere, WH 336[c]) (dissolution of sponsalia on the basis statement of a witness who feared for his life if he testified publicly); X 4.14.2 (Urban III, Super eo) (dissolution on the basis of fames).

60. Ch 1, n. 108: The decretal deals with a situation in which the separated man had publicly gone out and married another. Tancred would have us generalize it to any case in which the husband "does not wish to live continually."

61. Ch 1, n. 110: The summary that follows is derived from Donahue, "Proof by Witnesses," 130–1, and adds some material not found in the Summa de matrimonio, but which is found in his Ordo.

62. Ch 1, n. 116: Tancred's statement (id., p. 108) that the custom iuris canonici et legalis magisterium et primatum obtinet may mean that sometimes secular judges in Bologna took cognizance of divorce cases, but it may just be a statement of the role of approbata consuetudo.

63. Ch 1, n. 121: X 4.20.6 (Innocent III, Nuper a nobis); X 4.20.7 (Innocent III, Per vestras litteras); X 4.20.8 (Gregory IX, Donatio quae constante), though even the last named recognizes the possibility of contrary custom or agreement.

64. Ch 1, n. 122: The ambiguity here is not an ambiguity about whether the crime itself was a potential subject of public accusation; bigamy, adultery, and spousal murder were all ecclesiastical crimes (though the last was normally tried in the secular courts). The ambiguity was about whether any qualified member of the public could accuse the subsequent marriage of invalidity on the ground of these crimes. They probably could, though I cannot recall ever having seen a case of it.

65. Ch 1, n. 123:4 Lateran (1215), c. 68, in Decrees of the Ecumenical Councils, 1:266, ordered that Jews and Saracens were to wear distinctive dress, so that Christian men and women would not mistakenly "intermingle" (commisceantur, a word with sexual connotations) with Jewish and Saracen men and women. This injunction was repeated (with some modifications) in Oxford (1222), c. 47, in Councils and Synods II, p. 121. At that council a deacon who had apostatized "for love of a Jewess" was degraded by the council and burned by the secular authorities. See Maitland, "The Deacon and the Jewess."

66. Ch 2, n. 2: 'Ego Willelmus habebo te Aliciam in uxorem quamdiu ambo vixerimus et ad hoc do tibi fidem meam', et illa respondit, 'Et ego Alicia habebo te in virum et ad hoc do tibi fidem meam'.

67. Ch 2, n. 3: 'Ego Willelmus accipio te Aliciam in uxorem si sancta ecclesia permittet et ad hoc do tibi fidem meam' et Alicia respondit per hec verba, 'Et ego Alicia habebo te in virum et tenebo ut virum meum'.

68. Ch 2, n. 9: Le Neve, Fasti (Revised), 6:11; see also Brother Thomas [Salkeld] bishop of Chryspopolis (Chrysopol, Christopolitan) c William de Emeldon of Durham diocese (1357), CP.E.57 (Adam as papal judge delegate); Rolle c Bullok (Ch 4, at n. 162) (Adam as official of the archdeacon of Richmond); Marray c Rouclif (Ch 4, n. 49) (Adam as special commissary of the official of York); Mr Adam of York rector of Marton in Craven c John de Newham (1363), C.P.E.244.

69. Ch 2, n. 10: The phrase is a quotation from a decretal of Alexander III, where this finding is said to create a "violent presumption" that the couple had sexual intercourse. X 2.23.12 (Litteris tuae fraternitatis).

70. Ch 2, n. 11: This account elaborates on that found in Helmholz, Marriage Litigation, 64–5, and is derived from what I said in "A Legal Historian Looks at the Case Method," 20–8. Helmholz's account puts the marriage of John and Joan in 1418. That is possible on the basis of the deposition of the first witness to it but not on the basis of the second. On balance, it seemed better to read back the clear "xvi" of the second deposition into the unclear "xii" of the first.

71. Ch 2, n. 13: Robert: [!]dem Robertus dictam Johannam . . . per manum dexteram cepit et ubi dixit post sub hac forma: 'Johanna ego volo habere vos in uxorem meam et ad hoc do vos fidem meam'. Cui quidem Roberto eadem Johanna, ut dicit, ubaque aliquo intervallo respondens dixit sub hac forma: 'Et ego volo habere vos Robertum in maritum meum et ad hoc do vos fidem meam'. Et manus suas traxerunt et adinvicem osculabantur. Alice: [!]dem Robertus Esyngwald dictam Johannam per manum dexteram cepit et tenebat ac eidem primo dixit sub hac forma: 'Johanna ego volo habere et conducere te in uxorem meam et
ad hoc do vosis fidem meane'. Quae quidem Johanna [ms. Johannes] tunc ibidem alisque aliquo intervalllo respondens dixit: 'Et ego volo habere vos Robertum in maritum meum et ad hoc do vosis fidem meane'. Et manus suas tunc traxerunt et adinvicem osculabantur.

72. Ch 2, n. 14: [N]uillum tamen, ut dicit, reclamacionem in ea parte fecit quia credidit pro firme quod si aliquam reclamacionem contra busiusmodi solemnizacionem fecisset nullum cepisset effectum eo quod matrimonium inter eum in persona et Eleonam per plurum annos tunc elapsos post solemnizacionem in ea parte impetraturum. This may mean that the reading “twelve” for the marriage of John and Joan is right. See n. 11.

73. Ch 2, n. 15: Robert Kerll of York, tailor, with whom Robert Dalton was serving at the time of the informal marriage of John and Joan is right. See n. 11.

74. Ch 2, n. 16: Only one item in the record requires explanation if we are to view this case as uncontested, or, to put it less politely, a case of wife swapping. Why does John Middleton’s proctor appeal to the Apostolic See? The explanation probably lies in the practice of the York court in the later Middle Ages. Appeals to the Apostolic See are common, not only in contested cases but also in ones that are hardly contested. Denials of apostoli are also common. In many contested cases, we may suspect that the appeal is intended to produce a delay, for rarely do we find evidence that the appeal was ever pursued. In uncontested cases, particularly marriage cases, the purpose of the appeal seems to be somewhat different. As is well known, there can be no final judgment in a marriage case in canon law. But one can come close to a final judgment; one can appeal and have the apostoli denied. This makes the judgment as final as it can be. If this is right, then John’s purpose in taking the appeal was not that he wanted another hearing (which he could have gotten much more easily by appealing from the commissary general to the official), nor even because he wanted delay, but rather in order to make the judgment by consent as final as it could be, granted the state of the law.

75. Ch 2, n. 19: In 1401, four men of that name were enrolled as freemen of the city (Register of Freemen, 104): two mercers, John and William (John is perhaps to be identified with the chamberlain of the city of the same name in 1423 [id., 131]; he was sheriff of York in 1432, and his will was proven in 1439 [Testamenta Eboracensia II, 90n. Index of York Registry Wills, 59; “Some Early Civic Wills,” 164]: the John, styled “gentleman,” who was enrolled in the right of his father in 1461 may be this John’s son [Register ofFreemen, 182]; a moneymaker also named John (whose will was probated in 1431 [Testamenta Eboracensia II, 16]), and a sherman, also named William. In 1402, a William de Esyngwald, butcher, was enrolled. Register of Freemen, 105. His son Thomas, a clerk, was enrolled as a freeman in the right of his father in 1437. Register of Freemen, 152. The will of a Henry Esyngwald, goldsmith of York, not otherwise recorded, was probated by the Dean and Chapter’s Court in 1403. Index of Dean and Chapter Wills, 22. Mr Robert Esyngwald, clerk, was enrolled as a freeman in 1404. Register of Freemen, 108. He is almost certainly to be identified with the Robert Esyngwald who is the proctor for the defendant Robert Easingwold in our case. He had a distinguished career as a proctor of the York Consistory, but died childless in 1446 (Testamenta Eboracensia II, 90–2; Index of York Registry Wills, 59); his wife Havisa having predeceased him in 1420. (Her will, dated 1420, was probated in the same year by the Dean and Chapter’s Court. Index of Dean and Chapter Wills, 22.) A Roger Esyngwald who was enrolled without a style in 1406 may be the same Roger who was commissary general in our case, although this would cast doubt on the suggestion that Roger the commissary general was the son of Nicholas Esyngwald the proctor of the York court who was enrolled as a freeman in 1386 and ceased practice in the 1390s. See Dasef, Lawyers, 45–6. A Thomas Esyngwald is recorded as a chamberlain of the city in 1407. Register of Freemen, 110. This is probably the same Thomas who is mayor in 1423 and whose will is probated in 1428, and perhaps the same Thomas, sherman, who was in enrolled in 1382. “Some Early Civic Wills,” 162–4. His will makes a legacy to his brother John then living in Easingwold and to John’s children, and the names leave little doubt that this is the same John, the mercer, who was admitted as a freeman in 1401. On the other hand, a Thomas Esyngwald, brewer, who is enrolled in 1413, has no apparent connection with these others. Register of Freemen, 120. Neither do John Esyngwald of York whose will was probated by the Dean and Chapter’s Court in 1419, or John Esyngwald, rector of St Mary Cestlegate, York, whose will was probated in the archbishop’s court in 1427. Index of Dean and Chapter Wills, 22; Index of York Registry Wills, 59. Finally, a Robert Esyngwald, tailor, is enrolled as a freeman in 1423, the same year that Thomas Esyngwald was mayor. Register of Freemen, 132. It would fit fairly nicely with the chronology of the case if
this Robert were identified as the defendant of the same name, though he is described in the case as being of Poppleton.


77. Ch 2, n. 23: In his positions and articles, Walter says that they had been married fifteen years. The witness William Sturgis says thirteen years and more; the witness Agnes Payge says fifteen years precisely. Henry's name means “dyer.”

78. Ch 2, n. 24: Actually he appointed two, William Snawes and William Otryngton. But the latter ends up being the only one to render judgment.

79. Ch 2, n. 25: quadam die circa festum sancti Michaelis archangeli duobus annis post primam pestilenciam elapsis et non amplius erat presens in domo dicti Ricardi Hare in Willesthorp’ quando vidit et audivit dictus Henricus precontractum matrimonium cum eadem et ipsam carnaliter cognoscit ante quodcumque matrimonium solemnizatum inter ipsam Agnetem et Walterum predictum et ad hoc fuit contumeliose inducit per Matildam Surgis suor eum matris ipsius Agnetis. There is some ambiguity as to what she was “craftily induced” into: the contract with Henry, intercourse with him, the solemnization with Walter (the most immediate referent), or all three.

80. Ch 2, n. 26: Hic accipio te Agnetem in uxorem meam si sancta ecclesia hoc permittit et ad hoc do tibi fidem meam et tradit eam tunc per manum suam dexteram.

81. Ch 2, n. 29: audivit dictam Agnetem pluries ante presentem litem motam dicere et fateri quod dictus Henricus precontractum matrimonium cum eadem et ipsam carnaliter cognoscit ante quodcumque matrimonium solemnizatum inter ipsam Agnetem et Walterum predictum et ad hoc fuit contumeliose inducit per Matildam Surgis suor eum matris ipsius Agnetis. There is some ambiguity as to what she was “craftily induced” into: the contract with Henry, intercourse with him, the solemnization with Walter (the most immediate referent), or all three.

82. Ch 2, n. 30: et credit ut dicit quod dicti articuli sunt veri quia numquam erat vita bona inter dictos Walterum et Agnetem a tempore matrimonii solemnizati inter eosdem sed semper contendebant adinvicem et ipsa quampluries fugiebat et divertebat se a consortio suo et proles habuit aliunde ut dicebat.

83. Ch 2, n. 31: The sentence is not dated; its formal redaction was not sealed until 18 April 1368. The acta on the dorse of the libel suggest that the sentence was rendered on 5 August 1367.

84. Ch 2, n. 32: There is some inference here because we lack a document in Agnes's name in this period. The citation issued by the official of York states that Walter is planning on marrying one Imania of Newton le Willows and is addressed to the vicar of the place. It is possible that the official was proceeding ex officio (on the complaint of Agnes), although the next document that we have is in the form of exceptions by Walter to Agnes's suit. Smith, CP York, 1301–1399, 38, identifies Newton le Willows as Newton Kyme, but they are not the same place. The latter is in YW near Tadcaster; the former in YN near Bedale. If the latter is to be believed, Walter was putting quite a bit of distance between himself and Agnes. Smith is correct, however, that the normal documentation of an appeal is not found in this case.

85. Ch 2, n. 34: That Henry was still alive is, however, relevant to the possible application of the rule in Alexander III's decretal Propositum est, X 4.7.1, that one could not obtain a divorce on the basis of one's own bigamy, if the previous spouse was dead and the subsequent spouse was unaware of the bigamy at the time that it was committed. That rule should not apply in this case, however, because it was Walter who was seeking the divorce.

86. Ch 2, n. 35: Henricus Lattester?adhib superstes tempore dicti contractus et dicta Agnes matrimonium per verba mutuum consensus de presenti exprimencia et sponsalia per verba de futuro carnali copula inter easdem postmodum subsecuta admissum legitime contractarunt. Seu or sive is more common than et before sponsalia. For the use of this formula in marriage litigation at Ely, see Sheehan, “Formation,” 55.

87. Ch 2, n. 36: “Berwick on Tyne” in the deposition must be Berwick on Tweed. There is no Berwick on Tyne, a remarkable testimony to the ignorance of Northumberland geography in Yorkshire.

88. Ch 2, n. 38: 4 Lateran (1215), c. 60, in Decrees of the Ecumenical Councils, 1:262, had prohibited, in most instances, abbots from hearing marriage cases. The wording of the canon suggested that such cases were reserved to bishops, and a canon of the legate council of London of 1327 (c. 23, Councils and Synods II,
of Settrington c John Beleby of Scagglethorpe (1415), CP.F.126; John Preston bower of York c Elena Hankoke (Hancock) of Sutton upon Derwent, widow and executrix of John Cook(s) (Coke) of Sutton upon Derwent (1434–5), CP.F.114; Isabella Thwaites (Thwaite) alias Hastyngs daughter of Alice Thwaites deceased of York c Henry Thwaites of Little Smeaton, parish of Birkby in Allertonshire (1490–3), CP.E.301; John Hutchinson of Whixley c John Hogeson of Milby, parish of Kirby Moor (1492), CP.E.294; John Gray (Grey) of Barton and Alice wife of John Gray, daughter of John Norman of New Malton c John Norman of York executor of John Norman deceased of New Malton (1495–6), CP.F.286. We have, however, included Hiliard c Hiliard (Ch 4, at nn. 264–8) because that case, although it was begun as a dower action in the king's courts involves, at York, the validity of the marriage.

89. Ch 3, n. 2: Palmere c Braune and Sutton (Ch 4, at n. 191); Mytyn and Ostell c Lutryngton and Lutryngton c Dryngboys and Dryngboys (Ch 4, at nn. 213–14); Elycnygton c Elycnygten and Penwortham (1431), CP.E.101. The last bears the closest resemblance to Ingoly, but one of the partners in one of the alleged marriages is dead, and the court ultimately rules against the plaintiff.

90. Ch 4, n. 47: Once more we need to make some inferences. CP.E.95/8 is a copy of CP.E.95/7, the commission of the archdeacon's official to William Otryngton, endorsed with the name of Walter's proctor and a note that he exhibited it in the court of York in November of 1367. That much was clearly before the court in the autumn. All the rest of the documentation in the archdeacon's court probably was as well, because in the spring, rather than sending a full processus, the court simply sends a notarized copy of the sentence CP.E.95/6.

91. Ch 3, n. 2: Palmere c Braune and Sutton (Ch 4, at n. 191); Mytyn and Ostell c Lutryngton and Lutryngton c Dryngboys and Dryngboys (Ch 4, at nn. 213–14); Elycnygton c Elycnygten and Penwortham (1431), CP.E.101. The last bears the closest resemblance to Ingoly, but one of the partners in one of the alleged marriages is dead, and the court ultimately rules against the plaintiff.

92. Ch 3, n. 3: It also, at least notionally, included the Scottish see of Whithorn, but no records from that diocese have been discovered for our period. See Donahue, ed., Records 2, 22, 108.

93. Ch 3, n. 4: Thomas Arundel, archbishop from 1388 to 1396, when he was translated to the see of Canterbury, served as chancellor for periods during the reigns of Richard II and Henry IV; John Kemp, archbishop from 1425 to 1452, when he too was translated to the see of Canterbury, served as chancellor for periods in the reign of Henry VI; Thomas Rotherham, archbishop from 1480 to 1500, served as chancellor for periods during the reigns of Edward IV, Edward V, and Henry VII.

94. Ch 3, n. 5: For the archive and its general classes, see Smith, Guide; Smith, Supplementary Guide. The fourteenth-century files under discussion here are classed as C.P.E., and are calendared in Smith, CP York, 1301–1399. The fifteenth-century files are classed as C.P.E. and are calendared in Smith, Court of York, 1400–1499. For statistical purposes, I have grouped some cases that are in separate files and separated some cases that are in the same file, but the references offered in the notes are all to existing file numbers in the two series. The categories that I employ are a bit different from those that Smith used in CP York, 1301–1399, pp. vi–vi, and there have been some changes in the contents of the C.P.E. series since he wrote, but the results are substantially similar.

95. Ch 3, n. 6: Appendix e3.1: The Business of the Court of York, 1300–1500 in Detail (see Tables e3.App.1 and e3.App.2).

96. Ch 3, n. 7: This definition excludes cases that deal with marital property, but do not, so far as we can tell, deal with the marriage itself. It also excludes cases involving sexual offenses. As we shall see (at n. 9), the York court, in marked contrast to many other ecclesiastical courts in this period, did little business in sexual offenses. It did do some business in marital property. E.g., Percy c Coleyle (Ch 4, at nn. 269–70), involves the enforcement of an agreement to pay a *maritagium*, and we classified it in Table 3.1 as a breach of faith case (though it may have been before the court because the agreement in question had been the subject of a recognizance before the court). The fifteenth century sees a number of breach of faith or testamentary cases that involve the payment of marriage portions: *Emmota wife of William Clyberowe* (Clitheroe, Clyderowe) of Settrington c John Beleby of Scagglethorpe (1415), CP.F.126; John Preston bower of York c Elena Hankoke (Hancock) of Sutton upon Derwent, widow and executrix of John Cook(s) (Coke) of Sutton upon Derwent (1434–5), CP.F.114; Isabella Thwaites (Thwaite) alias Hastyngs daughter of Alice Thwaites deceased of York c Henry Thwaites of Little Smeaton, parish of Birkby in Allertonshire (1490–3), CP.E.301; John Hutchinson of Whixley c John Hogeson of Milby, parish of Kirby Moor (1492), CP.E.294; John Gray (Grey) of Barton and Alice wife of John Gray, daughter of John Norman of New Malton c John Norman of York executor of John Norman deceased of New Malton (1495–6), CP.F.286. We have, however, included Hiliard c Hiliard (Ch 4, at nn. 264–8) because that case, although it was begun as a dower action in the king's courts involves, at York, the validity of the marriage.
### Table 3.App.1. York Cause Papers by Decade and Type of Case (Fourteenth Century)

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*Includes 11 jurisdiction, 6 pension, 5 finding of a chaplain, 4 mortuary, 3 dilapidations, 2 oblations, 1 each of rights in a hospital, trespass to a cemetery, contributions to repair of a chancel, violation of sequestration, rights of chantry chaplains in a church, payment of royal concession, and 2 of uncertain subject.

*Includes 1 assault on a prioress, 1 clerical fornication.

**Notes:** Assiduous devotees of the literature on the court of York will note that having published two analyses of the subject matter of the surviving fourteenth-century York cause papers, I have once more changed my mind. Donahue, “Roman Canon Law,” 659; Donahue, “Institutional History from Archival History,” 45. I now believe that the number of cases is best described as 257, and results from the exclusion of some cases that turned out not to belong to this court in this period and some that have been newly discovered to so belong. This recalculation slightly changes the previously published overall percentages, but, fortunately, not very much.

Source: York, Borthwick Institute, CPE, CPF.
### Table 3.2: York Cause Papers by Decade and Type of Case (Fifteenth Century)

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<td>14</td>
<td>37</td>
<td>313</td>
<td>100.0</td>
</tr>
</tbody>
</table>

*a Includes 1 each of appeal from unjust excommunication, appeal in an office matter, destruction of charters, and fornication, and 5 other cases involving appeals (the substance being unclear).

*b Includes 7 mortuary, 4 repair of a church, 3 pension, 3 jurisdiction, 3 status of a chapel, 2 finding of a chaplain, 2 dilapidations, 1 each of oblations, cutting trees in a prebend, abduction of a nun, salary owed a chaplain, dues owed a chaplain, dues owed an infirm canon, burial rights, office of parish clerk, and one of uncertain subject.

*c Includes 1 each of clerical fornication, office proceedings for incest defamation and conspiracy, complaint of witchcraft, and prosecution for violence against a process server.

**Notes:** The numbers here differ from those that can be derived from Smith, *Court of York 1400–1499*, for the following reasons: To the 301 cases that Smith reports, I have added 21 cases, principally from the notes of them that are found on the dorses of documents that otherwise concern different cases. The effect of this addition was, for the most part, to add to the number of cases of unknown substance. I have treated as a single case 3 matrimonial cases, 1 testamentary and 1 pension case, each of which Smith has in 2 separate files, and 1 case involving dues owed a chaplain, which Smith has in 2 separate files. While the parties involved in the separate files differ from each other, the cases all have common parties and seem to involve the same or similar issues. Finally, I have treated as a single case a defamation case and a matrimonial case that Smith has in separate files, because of my belief that the witnesses in the defamation case are testifying to exceptions to the witnesses in the matrimonial case.

**Source:** York, Borthwick Institute, CPE; CPE.
unlikely, however, that a great deal more information will be recovered from the last two decades of the fifteenth century with the two act books that survive from this period. It is personnel of the court were losing their grip. More could be done by comparing the surviving cause papers may be because more reliance was being placed on act books that are now lost, or it may be because the documents from this period onward. There are also relatively few sentences from this period. See n. 73. This of the fifteenth century endorsement practice changed radically; relatively little is found on the dorse of the more information than could have been learned from the cause papers themselves. Sometime in the middle with. From the last two decades of the fifteenth century tend to be carefully endorsed with the names of the proctors and the date, sometimes also with the failure of married persons to live up to their obligations (adultery, informal separation, etc.).

98. Ch. 3, n. 9: For marriage cases, see Doncaster c Doncaster (1351), CPE.69 (ex officio proceedings to enforce judgment in an instance case); Office c Baker and Barker (1339), CPE.828 dorse (ii) (appeal from ex officio inquiry into possible false testimony in an instance case); Office c Gregory and Taptop, CPE.123 (1343–8) (appeal from archdeacon of Nottingham in a case that began as an ex officio inquiry into fornication and turned into a marriage case). The fourteenth-century cause papers contain seven office cases in non-marriage matters. Five of them are appeals, and two are promoted office cases that are virtually indistinguishable from instance cases. Bridlington (prior) v Harkley (1318), CPE.11; see Skelton c Carlisle (bishop) (1340–2), CPE.48; Skelton c Carlisle (vicar general) (1397), CPE.225; Lampton c Durham (bishop) (1397), CPE.229; Sutton, Harlyngton, Norton and Houton c Oxenford and Baile (1397–8), CPE.230 (appeals); Grayngham c Hundmanuty (1351), CPE.73; Nostell (prior) c Pecche and Bakkebose (1369), CPE.51 (ex officio promotio).

99. Ch. 3, n. 10: Mary, the defendant in this case, was the widow of William Hilton, Lord Hilton (Hylton, Durham) and was herself an heiress. Smith, Court of York 1400–1499, 41. The alleged marriage took place in Newcastle upon Tyne. Let me record an impression for which I do not yet have, and which may never have, numbers to support: As the distance from the city of York increases, so does the wealth of the litigants.

100. Ch. 3, n. 12: Pedersen, Marriage Disputes, 185–93. Pedersen is cautious. I have made more guesses about status and have not broken down the fifteenth-century records in the way that Pedersen does for the fourteenth.

101. Ch. 3, n. 11: The following is a typical entry from a session of the court of the commissary of the bishop of Hereford, held at Weobley on 8 October 1442. Willelmus Hattley de eadem [i.e., Weobley] fornicat cum Estiana Matthew. Uterque comparet et fatetur delictum et quod contraxerunt matrimonium per verba matrimonialia, matrimonium autem non est solempnizatum inter eosdem inter eodem [sic]. Et uterque habeat duas insignaciones circa ecclesiam suam parochialam demulatus ad panos lineos cum uno cereo dimidii libri in manu. Et montis sunt ut supra. Et uterque habeat ex prelacione ut supra [i.e., montis sunt ad comparandum in proximo ad videndum de conversacione sue]. Hereford County Record Office, Court Books – Acts of Office – Box 1 – Book 1 – 1442–3. This tells us more than many such records do. The couple claimed to be married, but whether they were to do penance for failing to have their marriage solemnized or having intercourse without having had their marriage solemnized or having intercourse before they were married or because the commissary did not believe what they said, the record does not say. Nor do we have any idea what their story really is. A full analysis of a large number of these records (which are quite extensive) would probably tell us more, but it would take a lot of time and patience. A selection of records from two similar courts has recently been published in a fine edition: Lower Ecclesiastical Jurisdiction. One of these courts, that of the dean and chapter of Lincoln, had jurisdiction over marriage cases (id., pp. xix–xx). Both heard cases involving the failure of married persons to live up to their obligations (adultery, informal separation, etc.).

102. Ch. 3, n. 16: My total for ‘appeals from lower courts’ includes such cases as Merton c Mideleton (Ch 2, n. 4, and passim) and Tiryngton c Moryc (Ch 2, n. 22, and passim), which were begun in a lower court and begun again in the court of York without any evidence that an appeal was formally taken. It does not include internal appeals, e.g., from the commissary general of the court of York to the official.

103. Ch. 3, n. 17: Cause papers from the second half of the fourteenth century and the first decades of the fifteenth century tend to be carefully endorsed with the names of the proctors and the date, sometimes also with acts. Where the case can also be found in the act books (see n. 18), the act book rarely gives much more information than could have been learned from the cause papers themselves. Sometime in the middle of the fifteenth century endorsement practice changed radically; relatively little is found on the dorse of the documents from this period onward. There are also relatively few sentences from this period. See n. 73. This may be because more reliance was being placed on act books that are now lost, or it may be because the personnel of the court were losing their grip. More could be done by comparing the surviving cause papers from the last two decades of the fifteenth century with the two act books that survive from this period. It is unlikely, however, that a great deal more information will be recovered.
104. Ch 3, n. 18: Two fragments of act books with entries bearing dates from 1371 to 1375 survive in the archives of York Minster. York Minster Archives and Library, M2/1b and M2/1c. These fragments are interesting, but they contain little of relevance to the subject of marriage litigation. But see Ch 10, at nn. 53–64. The main series of Consistory Court Act Books is at the Borthwick. There are five of them for the fifteenth century: Cons.AB.1 (1417–20), Cons.AB.2 (1424–7), Cons.AB.3 (1428–30), Cons.AB.4 (1484–9), and Cons.AB.5 (1497–1508). Thus, the middle decades of the fifteenth century, which are relatively poor in cause papers, also have no surviving act books.

105. Ch 3, n. 21: Multiparty practice was well established in the York court so far as defendants were concerned; it was much less well established so far as plaintiffs were concerned. Many cases involving competitors proceed in tandem but independently of each other, sometimes even resulting in totally independent sentences.

106. Notes for Table 3.2:

a. Grounds: fourteenth century – affinity (3), crime (1), force (2, one also involving nonage), impotence (2), servile condition (1), uncertain (2, one involving litigation over alimony and costs); fifteenth century – affinity (1), consanguinity (2, one also involving force), force (1), impotence (4), servile condition (1), uncertain (1).

b. Fourteenth century: Dower (1), separation (3): 1 restoration of conjugal rights followed by an uncertain claim for separation, 1 probable restoration of conjugal rights followed by claim for separation on the grounds of adultery and cruelty, 1 claim for separation on the ground of cruelty; uncertain claim (1); fifteenth century: action to recover payment for registration of marriage sentence (1), letter certifying freedom from marriage (1), suit against bride's father for impeding solemnization of marriage (1), probable separation actions (4: adultery only [1], adultery and cruelty [1], cruelty only [1], adultery or cruelty [1]), uncertain actions (4). The fourteenth-century York numbers do not include one case in which two knights are suing each other over a marriage portion. See at n. 269.

The figures given in Helmholz, *Marriage Litigation*, 58–9 and nn. 115–16, and on p. 74, are based, as the author admits, on an incomplete count and should be ignored. In particular, there is no evidence of an increase in suits for nullity and a decrease in multiparty actions in the fifteenth century.

107. Ch 3, n. 25: I have excluded the separation actions (classified as “other”) from both sides of the equation because it is uncertain how many of these actions were originally brought as actions for restoration of conjugal rights (a type of “marriage enforcement” action). For the difference in these proportions in the fourteenth as opposed to the fifteenth century, see at n. 62. For the reader who is persuaded (as I am, see App c3.3) that the surviving York marriage cases are an unbiased sample of all York marriage litigation in the relevant period, I can offer the following guidance for proceeding from these sample statistics to estimates of the overall population: Confidence intervals for proportions are broader in the middle of the distribution than they are in the tails. Thus, at a confidence coefficient of .9, the 78% figure given in the text is valid within approximately plus or minus four percentage points (and the same is true of its opposite 22%). As we approach 50/50, the interval widens to plus or minus five or six percentage points; as we go toward 90/10 or vice versa, the interval narrows to about three percentage points. With a sample of this size, we should be reluctant to say much at all about any proportion more extreme than 90/10, except that it is large (or small).

108. Notes for Table 3.3:

a. Includes claims in annulment cases; excludes defenses in such cases (e.g., dispensation) except defenses to precontract; excludes replications to defenses (e.g., presence); excludes separation and ‘other’ cases entirely.

b. Percentages for the fifteenth century equal the number because the number of cases is exactly 100.

c. Includes one fourteenth-century case of prior bond, i.e., former spouse still living at time of subsequent contract, and one fifteenth-century abjuration case (on appeal).

d. Cases with more than one defense of this type are counted as one.

e. Excludes cases that involve a more specific denial listed in the table but includes some cases where the denial says more than just “I deny” (e.g., words insufficient to form a contract).

f. Includes 2 fourteenth- and 2 fifteenth-century divorce cases.

g. Includes 1 fourteenth-century divorce case.

h. Includes 3 fourteenth- and 3 fifteenth-century divorce cases.

i. Includes 1 fourteenth-century divorce case on ground of precontract.

j. Includes 1 fourteenth-century divorce case.
On appeal to proceedings in a lower court; includes 3 abjuration cases.

Includes 1 fourteenth- and 1 fifteenth-century divorce case.

All divorce cases.

Drunkenness, Frothyngham c Bedale (Ch 5, n. 100). Counting as one the cases where more than one type of defense is raised, 2 (fourteenth century) and 16 (fifteenth century) 2-party enforcement cases reveal no defense. 16 'other' cases (5 in fourteenth century, 11 in fifteenth century) and 3 divorce cases (1 fourteenth century, 2 fifteenth century) of uncertain grounds are excluded from the table.

109. Ch 3, n. 26: It is logically possible that a marriage-and-divorce action could be brought on the ground not of precontract but of post-contract, with the prior marriage being attacked because of another impediment to it. There is one fifteenth-century case in which such an issue is raised, Elvyngton c Elvyngton and Penwortham (n. 2). Even here, however, the ground for the invalidity of the concededly prior marriage is precontract with a person other than the plaintiff.

110. Ch 3, n. 27: For similar reasons all the divorce cases that raise issues that might also be raised in a marriage-enforcement action (e.g., consanguinity) may be said to involve the same legal issue as the corresponding marriage-enforcement actions.

111. Ch 3, n. 28: Myton and Ostell c Lutryngton and Lutryngton c Myton and Drynghous and Drynghous (Ch 4, at nn. 213–14) involve a standard competitor action in which one of the male competitors apparently prevails; eighteen months later the rea in the first action brings a matrimonial and divorce action against another man and his wife and a divorce action against her new husband on the basis of a precontract with the former man; Thorp and Sereby c Stibbottall (Ch 5, at no. 25–32), involves defenses to both marriages as part of the competitor case, but it is unclear whether the defendant is raising these defenses or whether each competitor is raising them against the other. Alice Skelton of Burnby and Margaret Dalton of Burnby c John Warde servant of John Birdesall (Bridsall) of Burnby (1431–2), CP.F.200, and it is not alone, involves a defense to the prior marriage on grounds other than the other one.

112. Ch 3, n. 29: I define a "formal" marriage as one that takes place publicly at a church in the presence of a priest. (Banns should have been promulgated for such a marriage, and many cases mention them, but some do not.) All other marriages are classified as "informal."

113. Ch 3, n. 30: Table 3.4 shows that both claims and defenses of a formal marriage were more common in marriage-and-divorce cases than they were in competitor cases.

114. Ch 3, n. 34: This number cannot be calculated from Table 3.3 because of the overlap in the categories. The precontract, denial, and force categories contain 63 separate fourteenth-century cases and 85 fifteenth-century cases.

115. Ch 3, n. 38: If we classify the abjurations as de futuro marriages, as technically they are not (see literature cited in n. 49), the figures become 183 (70%), 31 (12%), and 48 (18%).

116. Ch 3, n. 39: I have excluded from this calculation the abjuration cases and the divorce cases brought on grounds other than precontract. The reason for excluding the abjuration cases is given in n. a to Table 3.4. Of the 22 marriages involved in the cases of divorce on grounds other than precontract, 13 were formal, 2 were informal, and 7 were of an indeterminate formality.

117. Notes for Table 3.4:

d By its nature the exchange of consent in an abjuration case was formal, but the fulfillment of the condition was normally highly informal. Includes 1 fifteenth-century case that is defended on the basis of 2 precontracts.

d Defense column includes 2 fifteenth-century cases and 1 fourteenth-century case in each of which 2 formal marriages were sought to be dissolved on the basis of an informal marriage prior to either of them.

d Includes 1 fourteenth-century ‘interlocking’ competitor case in which the rea seeks to avoid the suit of both actores by claiming a precontract with a third man (who is himself married to another woman).

d Gives first the marriage claimed as precontract; then the marriage from which the annulment is being sought.
a. Gives first the marriage from which the annulment is being sought.

b. I.e., excluding annulment on grounds other than precontract and “other” (which includes separation).

c. I.e., all marriages claimed or defended in cases not annulment “other” or separation.

d. I.e., all marriages not uncertain or abjuration claimed or defended in cases not annulment or “other.”

118. Ch 3, n. 42: The records avoid using the word “judgment” (iudicium), perhaps because judgment is reserved for God. They use instead the word ‘sentence’ (sententia, and its verbal forms). Because ‘sentence’ has become associated with criminal cases in modern English, we have preferred the less literal ‘judgment’.

119. Ch 3, n. 43: For example, even if we assume that every case that has no judgment was abandoned or compromised by the plaintiff because the case was going badly for him or her (something that strikes me as highly unlikely granted the vagaries of the survival of the records and the possibility of favorable compromise), plaintiffs still received favorable judgments in 65% (56/86) of all actions brought.

120. Notes for Table 3.5:

a. This table is based on what the records tell us about who initiated the action or who brought the first in a series of actions. In some instances it may not reflect what actually happened. Thus, Scot c Deroine (1349), CP.E.237, is treated as an action for separation by the wife, although it may well have been begun as an (unrecorded) action for restitution by the husband. See Ch 10, at n. 21. Further, and perhaps more important, the system does not reflect the complexity of some of the multiparty actions (e.g., Normandy c Fentrice and Browc [1537–61], CP.E.77, Myton and Ostell c Latryngton and Latryngton c Myton, Drynhouse and Drynghouse [1386–9], CP.E.138, 161), or the fact that one case (Office c Baker and Barker [1339], CP.E.82/8) was an appeal by the man from an ex officio proceeding in Durham. Chapter 4 gives the details. The numbers given here differ slightly, but not radically, from those given in Pedersen, Marriage Disputes, 196–7, which are, in turn, said to differ slightly from those in an unpublished Copenhagen master’s thesis that I have been unable to examine. Id., n. 77. Pedersen deals only with the fourteenth century and does not give the statistics for judgments.

b. In this type of case, a sentence for defendants is automatically a sentence for both a man and a woman. I have treated it as a sentence for the defendant whose gender is opposite that of the plaintiff.

c. In this type of case, a sentence for one plaintiff is automatically a sentence for the defendant against the other plaintiff. This classification overstates plaintiffs’ success, but classifying the case as a sentence for both plaintiff and defendant obscures the reality. See at n. 53.

d. See discussion in n. 53.

e. These figures are different from what I have previously published on this topic. Donahue, “Female Plaintiffs,” 193–6. The reason for the difference is that I have gone through the cases more carefully and have found more judgments for male plaintiffs. The consequence of the difference will appear shortly: It is less clear that female plaintiffs were more persistent than male plaintiffs in fourteenth-century York marriage litigation. There is, however, some evidence that they were, and there is decidedly evidence that they were more persistent than male plaintiffs in fifteenth-century York marriage litigation. See at nn. 53–6.

121. Ch 3, n. 44: Two cases might be excluded from the list of plaintiffs’ victories in this type of case. In Brerelay and Sandesbend c Bakester and Brerelay (Ch 4, at nn. 200–201), a woman, successfully apparently, brings a two-party enforcement action against man. Another woman then sues the new couple in a marriage-and-divorce action on the basis of the man’s precontract with her. In Palmere c Brunne (1333) (Ch 4, at nn. 191–2), a woman sues her former husband and his new wife in a marriage-and-divorce action on the ground that the witnesses that she (the plaintiff) had produced in a prior divorce proceeding had been suborned. In both of these cases, the plaintiff’s victory reflected in Table 3.5 was not a victory in the marriage-and-divorce part of the action, and in both cases we should be cautious about indulging in a presumption that the results in the prior action are going to be confirmed in the new one. If we take these cases out, plaintiffs’ success rate in marriage-and-divorce actions goes down to 71% (37/53).

122. Ch 3, n. 45: This cannot be seen in Table 3.5 because we classified separation actions as ‘other’. The case is Nesfeld c Nesfield (Ch 4, at n. 262), in which the actrix fails to secure a separation she sought from her husband. To this should probably be added Hadilstay c Smalwood (Ch 4, at n. 260), a case of restoration of conjugal rights won by the male plaintiff. The documentation is skimpy, but we know that the wife defended
the case, though the defense has not survived. It probably asserted grounds for separation because the evidence of the existence and validity of the marriage is solid.

123. Ch 3, n. 47: Topclyf c Erle (Ch 4, at nn. 86–8). To this we should probably add one of the two de futuro cases where the defendant prevailed. In Roll e Bullok and Massham (Ch 4, at nn. 162–5), the defendant alleged a marriage subsequent to the promise of marriage plus intercourse that the plaintiff alleged. The defendant’s allegation (which seems to have been conceded) probably made the judge more careful in evaluating the plaintiff’s case.

124. Ch 3, n. 48: As we noted at n. 28, it is rare that the defendant in a competitor action contests both actions. Normally, the defendant concedes one of the actions and contests the other. This leads to the suspicion that in some of these cases one of the plaintiffs is ‘friendly’ to the defendant. In the following competitor actions, there is evidence that one of the plaintiffs was favored by the defendant: Wright and Birkys c Birkys (Ch 4, at nn. 170–8) (second actrix appears only on appeal after rea has lost the action in lower court; no result on appeal); Douison and Roger c Brattwetl (Ch 4, at nn. 207–9) (rea confesses second actor’s action, and they prevail); Garthe and Neuton c Waigen (Ch 4, at nn. 205–6) (rea confesses first actor’s action, and they prevail); Sprot and Gillyn c Hornby (Ch 4, at nn. 187–90) (reus and second actrix join in appeal and obtain a reversal); Scegill and Robinson c Park (Ch 4, at nn. 127–28) (second actor does not appear until rea appeals, and they obtain a reversal); Deue and Scarth c Mirdeu (Ch 4, at nn. 203–4) (first actor’s action may have been confessed and it prevails); Graystanes and Barraycastell c Dale (Ch 4, at nn. 179–80) (second actrix intervenes in appeal; her action is confessed; no result on appeal).


126. Ch 3, n. 50: “Straightforward”: Penesthorp c Waltegrave (Ch 4, at nn. 237–8) (force); Paynell c Cantilupe (Ch 4, at nn. 240 (impotence); Aungier c Malake (Ch 4, at nn. 235–6 (nonage); Lambird c Sandirson (Ch 4, at n. 241) (impotence). Uncertain: Talkan c Bryge (Ch 4, at n. 252. Affinity: Nutle c Wode (Ch 4, at n. 244).

127. Ch 3, n. 52: These numbers are slightly different from those given in Pedersen, Marriage Disputes, 196 and nn. 70–1. The differences illustrate the difficulties of trying to do historical statistics with medieval litigation records. Pedersen is dealing with 89 cases rather than 86 because he includes one case in which the fathers of the couple are suing each other over a marriage settlement (Percy c Colhyte (Ch 4, at nn. 269–70), and twice he divides proceedings that I have combined (Brelereay and Sandeshend c Bakeester and Brelereay (Ch 4, at nn. 200–1); Myton and Ostell c Latryngton and Latryngton c Myton and Drynhouns and Drynhouns (Ch 4, at nn. 213–214)). In a couple of cases I do not think that he has the correct gender for the party who brought the original litigation (e.g., Toft c Mayncaryng (Ch 4, at nn. 45–6), but this is not always certain, particularly when we lack the original pleadings. E.g., Scot c Devone (Ch 4, at n. 21). The important thing is that for statistical purposes his results and mine are very close.

128. Ch 3, n. 53: The z-score of the difference between these two proportions is 1.75, which is significant at .05. (The z-score is, among other things, a way of testing whether the difference between two proportions in a sample is likely to reflect a real difference in the underlying population or whether it is more likely that the difference was produced by “the luck of the draw.” In this case there is a 92% chance that the success rates of male and female plaintiffs are different; i.e., if the underlying population success rates were the same between male and female plaintiffs, a difference this size can be produced “by the luck of the draw” only about 8% of the time.)

The problem is that there are a number of ways of calculating a “success rate.” The one used in the text ignores the cases that have no judgment and calculates the percentage of cases won out of the total number of cases in which there was a judgment. An alternative way of calculating it is found in the margin of Table 3.5: the percentage of cases won of all cases brought. Here, the difference between female and male plaintiffs is not nearly so great: 64% (39/61) vs 68% (17/25) (z = .3594, significant at .28.) We can argue whether we should accept as statistically significant for historical purposes a number that has a chance as high as 30% (or even 49%) of being the result of random variation in the sample, but one that has a 72% chance of being so is clearly not statistically significant for any purpose.) The former method of calculation of the success rate
ignores the possibility that plaintiffs may have dropped cases that they saw were going badly; the latter method ignores the possibility that some cases may have settled favorably to plaintiffs or that a judgment may be lost.

Both methods of calculation are sensitive to the way we characterize the three-party competitor cases. What is given in the text characterizes them as we did in Table 3.5, a victory for the plaintiff who won, ignoring the plaintiff who lost. If we include the five male plaintiffs who lost competitor actions, their success rate (under the first method of calculation) becomes 74% (17/23), lower than the women’s, but the women’s rate goes down too if we include the five female plaintiffs who lost such actions (72%, 39/54) (z = .18, significant at .14, i.e., not statistically significant), but not so much because there are so many more other kinds of women’s actions. The first method of calculating the success rate in competitor cases overemphasizes plaintiff’s success because it ignores the failure of the other plaintiff; the second rate overemphasizes defendant’s success both because it gives undue weight to this type of case (it makes it seem like two cases, whereas it is in fact only one) and because it suggests that the victory for the plaintiff who won was also a victory for the defendant who won against the other plaintiff, which was not always the case. A compromise would count plaintiffs’ victory in such cases as one and plaintiffs’ loss in such cases as one-half a victory for defendants (F: 76% [39/51]; M: 81% [17/21]; z = .48, significant at .37, i.e., not statistically significant). Ignoring the competitor cases, the female plaintiffs’ success rate is 77% (34/44) and the male plaintiffs’ success rate is 92% (12/13) (z = 1.52, significant at .87).

Readers familiar with statistical analysis in other fields may be surprised at my willingness to accept significance levels less than .95 or .90. There are two reasons: (1) The consequences here of rejecting the null hypothesis are not nearly so serious as they are in, to take the polar opposite, biomedical statistics (these people are already all dead), and (2) the possibility that exists in most modern statistical research of drawing another sample with more examples does not exist. Hence, we will fairly regularly call a finding significant if it has less than a .25 probability of being the result of random variation in the sample (significance level of .75) and will occasionally do so (with caution expressed) if it is more likely than not that the sample result reflects a real one in the underlying population (significance level of .5). Since judgments will vary on this topic, we will always give both the z-score and the significance level whenever we are asking the reader to accept an inference as statistically significant.

129. Ch 3, n. 54: This calculates the success rate in the way that we did in the preceding sentence. If we calculate the rate in a way that counts the losses of the other plaintiff in a competitor case as half a victory for the defendant (see n. 53), the numbers are 9.7 and 5.0, respectively. If we ignore the competitor cases, the numbers are 3.5 and 3.0, respectively.

130. Ch 3, n. 55: z = .77, significant at .56. Hence, it is more likely than not that this difference is not the result of random variation in the sample, but there is a 44% chance that it is.

131. Ch 3, n. 56: Another way of putting this is that the ratio of successful female plaintiffs to all plaintiffs considers only the victories, not the losses, whereas the success ratios consider both victories and losses.

132. Ch 3, n. 58: A well-known paper (Priest and Klein, “The Selection of Disputes”) argues that success rates will approach 50% unless there is a disparity between the parties in expected outcomes. Curiously, the results that we see here suggest that for both the women and the men who pursued the litigation, the outcome that they sought was worth more to them than it was to the defendant. Priest and Klein’s model, however, depends on the cost of settlement being less than the cost of pursuing the litigation. That may not be the case in all situations here, and when we get to courts in which more cases were pursued ex officio, it will become even less likely.

133. Ch 3, n. 59: Clifton c [. . .] (Ch 4, n. 59); Trayleweng c Jackson (Ch 4, at n. 62); Hopton c Brome (Ch 4, at n. 47); Carnaby c Mounceaux (Ch 4, at nn. 60–1).

134. Ch 3, n. 65: There is one other difference in the types of cases that may be important. There were substantially fewer abjuration actions (10% vs 2%). This difference is significant at the .98 level (z = 2.31). No statistical test can be totally reliable for a sample as small as the one that we have for abjuration cases (z is better than many because it does take into account the overall size of the sample). In this case, however, the statistics are confirmed in a literature that has searched more widely and deeply. See n. 49.
for female plaintiff) and
138. Ch 3, n.74: Classified with ‘other’ in Table3.6; the cases are matrimonial action of indeterminate type (140. Ch 3, n.81:
139. Ch 3, n.78: (force); (1432–3), CP.F.104 (absence; exceptions to witnesses); Wikley c Roger (1464), CP.F.203 (absence);
Schirburn gives any indication of a defense: dispensation). All that survives in
and women dropped more cases in the fifteenth century than they did in the fourteenth, or whether more
141. Ch 3, n. 84: “So far as we can tell” is important here. As already noted, the quality of record keeping
anything. we should wait until we examine the cases more carefully before we conclude that the numbers are telling us anything.
137. Notes for Table 3.6:
(1410–11), CP.F.169; (1427–8), CP.F.186 (absence and disparity of wealth); Haryngton c Sayvell (1445–6), CP.F.263
(impotence); Haryngton c Sayvell (1443), CP.F.263 (force); Henlyson c Helmesley (1410), CP.F.59 (servile condition); Kygleye c Younge (1462), CP.F.202; Ask c Ask and Ask (1476), CP.F.258; Schirburn c Schirburn (1451–2), CP.F.187 (all consanguinity or affinity; only Schirburn gives any indication of a defense; dispensation). All that survives in Wymbly c Scot (1410–11), CP.F.125/dorse, is a draft of acta on appeal from the favorable sentence for the divorce.
140. Ch 3, n. 81: Rausel c Skathebloc (1429–33), CP.F.111 (impotence); Haryngton c Sayvell (1443), CP.F.263 (force); Henlyson c Helmesley (1410), CP.F.59 (servile condition); Kygleye c Younge (1462), CP.F.202; Ask c Ask and Ask (1476), CP.F.258; Schirburn c Schirburn (1451–2), CP.F.187 (all consanguinity or affinity; only Schirburn gives any indication of a defense; dispensation). All that survives in Wymbly c Scot (1410–11), CP.F.125/dorse, is a draft of acta on appeal from the favorable sentence for the divorce.
136. Ch 3, n. 73: See n. 17. The decades that have the lowest percentage of surviving marriage cause papers are the 1470s (8%, 10/129) (tied with 1440s), 1480s (4%, 5/129), and 1490s (6%, 8/129) (see Table e3.App.2). The number of surviving judgments as a percentage of cases goes down dramatically as the century progresses, as can be seen from the following list of the proportions of judgments to cases by decade: 00: 91% (10/11), 10: 76% (16/21), 20: 73% (11/15), 30: 61% (14/23), 40: 60% (6/10), 50: 55% (6/11), 60: 27% (4/15), 70: 10% (1/10), 80: 40% (2/5), 90: 50% (4/8).
135. Ch 3, n. 70: See nn. 66–8. For consanguinity/affinity, $z = 1.17$, significant at .74; impediment of crime, $z = 2.03$, significant at .96; vows, orders, drunkenness, $z = 1.01$, significant at .36. The decline in claims of the impediment of crime is supported in the literature; such claims are rare, and their success even rarer. See Helmholz, Marriage Litigation, 78 n. 14. For the rest, the statistical differences are sufficiently doubtful that we should wait until we examine the cases more carefully before we conclude that the numbers are telling us anything.
judgments have been lost. What is important here is the gender difference, and that is unlikely to have been affected by the quality of the record keeping.

142. Ch 3, n. 88: If we could arrive at a plausible estimate of the overall litigation rate in the relevant population, we could make a start on an hypothesis as to which is at stake. Such a number may be calculable; Michael Sheehan calculated one for Ely in the fourteenth century ("Formation," at 231–4), with considerable difference granted the uncertainties about the population figures and the possibility of overlapping jurisdictions. These same difficulties are multiplied when we try to calculate such a number for the York province in the fourteenth and fifteenth centuries. The time frame is much wider, the area much larger, and the competing jurisdictions more complicated. See Pedersen, *Marriage Litigation*, 177–83.

143. Ch 3, n. 89: Transfer of knowledge would tend to equalize the proportion of men and women bringing certain types of cases. It could affect the overall proportion of men and women who chose to litigate at all, but this is less likely. Granted how malleable the categories and the relative ease with which plaintiffs could put together different types of cases (for example, turning a two-party case into a three-party case), it is more likely to have affected how one sued than whether one sued. Transfer of knowledge certainly will not explain what happened in straight divorce cases and in two-party *de presenti* enforcement cases. In the former case, fifteenth-century women plaintiffs sued out of their proportion as plaintiffs in the overall population of litigants (67% vs 62%, \( z = .39 \), significant at .30, i.e., not statistically significant because of the small sample size \( n = 14 \)), and in the latter case women defended well out of their proportion in the overall population of women defendants (49% vs 38%, \( z = 1.18 \), significant at .76).

144. Ch 3, n. 90: The social and economic generalizations in this and the succeeding paragraph can be pursued in any of the standard books: e.g., Hatcher, *Plague, Population*; Dyer, *Standards of Living*. For varying assessments of the differential effects of these changes on women and men, see Goldberg, *Women, Work*; Mate, *Daughters, Wives and Widows*.

145. Ch 3, n. 91: The situation of the single woman without capital is more complicated. Her comparative situation depends on whether the wage of "women's work" rises comparably to that of men's. My impression, however, is that the typical woman plaintiff in the court of York is not one without capital, however small that capital may have been. (And, of course, in many cases that capital would have been human capital.)

146. Ch 3, n. 92: In particular, there are many assumptions about life cycles buried in the argument. This is a complicated topic, though I believe that what I have said here can be reconciled with the more recent work on the topic. See, e.g., Smith, *Land, Kinship and Life-Cycle*. We will return to the sharp distinction that Jeremy Goldberg makes between rural and urban in Appendix e3.2 and Chapter 5, but what he says about life cycle throughout *Women, Work*, particularly in ch. 8, seems to support what is suggested here on that topic.

The suggestion made here does seem to conflict with the overall findings of Goldberg, *Women, Work*, chs. 5, 8 (although this book was published before Donahue, "Female Plaintiffs," it was published after I wrote the article). Goldberg views the later fourteenth and early fifteenth centuries, at least in York, and perhaps in other towns as well, as times of increased economic opportunity for women, at least those women who were willing to migrate to towns in search of work. They were, therefore, less dependent on marriage than they had been previously. This changed, he argues, in the late fifteenth century, when the economic decline once more made women dependent on the earnings of their husbands. As we will see in the following chapters, there is, as Goldberg found, substantial evidence of independent women in the York cause papers in the period in which he finds them, evidence that reinforces the substantial evidence that Goldberg finds in other sources. Whether the cause papers support the finding of a decline in the number of independent women (prescinding from the other evidence of such a decline) is, in my view, more problematical. As Table e3.App.2 shows, the proportion of marriage cases does go down in the last decades of the fifteenth century, but they do not disappear, and they seem to revive in the 1490s. Goldberg carried his study into the first two decades of the sixteenth century. I would be reluctant to derive much in the way of statistical information from the sixteenth-century cause papers granted how problematical is their sorting and calendaring.

Maevis Mate, on the basis, among other things, of my previous article on the topic, takes issue not with Goldberg’s overall findings but with what conclusions we should draw from them about women’s attitudes
toward marriage. The fact that a woman could exist economically independent of a husband in the later fourteenth century does not mean that such a woman would prefer this existence if it involved a lot of hard work for low pay. Rates of marriage and struggles to get married, she points out, can also be affected by gender imbalances in the underlying population, and York towns do seem to have had more women than men in the later fourteenth century. Ultimately, however, she seems willing to concede that Yorkshire may have been different from East Sussex, on which her study is focused. Mate, Daughters, Wives and Widows, 38–41. (She was misled by my overemphasis on the persistence of women in litigation in the previous article. Our revised findings on this topic do not provide so much support, though they do provide some, and they may point to the danger of generalizing on the basis of gender and small samples.)

147. Note for Table 3.7:

The totals in the table exclude 3 fifteenth-century cases where it is impossible to tell the gender of the original plaintiff. These are included in those ratios that do not require the gender of the original parties, as is one of these cases that has a judgment for a man. Because of the aggregate nature of the statistics, no attempt is made to adjust the success rates to account for the problematical competitor cases.

148. Ch 3, n. 96: There are 21 cases in this period; the gender of the plaintiff can be determined in 20. The male/female ratio of the plaintiffs is 60% (12/20). There are six recorded judgments, all for male plaintiffs (although two of them are in competitor cases, and thus the other male plaintiff lost).

149. Appendix e3.2: The Chronological Imbalance in the Surviving York Cause Papers

The chronological bias in the surviving York cause papers may be seen most clearly in Table e3.App.3. Two points stand out from this data: First, both the total number of cases and the number of marriage cases peak in the years from 1380 to 1440, but the peak in the number of marriage cases comes later than that in other kinds of cases, and the decline in the number of marriage cases in the latter part of the fifteenth century is not so sharp as it is in other types of cases. The overall decline in the latter part of the fifteenth century may be more apparent than real. As we note in the text, the York court seems to have made more use of act books for record-keeping purposes in the fifteenth century than it did in the fourteenth. Nonetheless, it is hard not to see a connection between this decline and the overall decline in York’s economy in the latter part of the fifteenth century. If this is correct, the gentler decline in marriage litigation may be an indication that medieval marriage litigation was less subject to economic fluctuations than were other kinds of litigation, although we have argued at the end of this chapter that some aspects of marriage litigation may be related to economic trends.

Second, the total number of cases increases at the very end of the fifteenth century. The increase is quite dramatic in the 1490s. As Table e3.App.2 shows, the 1480s have the smallest number of surviving cases from the century (14, of which 5 marriage, 36%). The decade of the 1490s, however, has 37 cases, of which 8 are marriage (22%). Although analysis of the sixteenth-century cause papers at York is still in its infancy, it is clear that their numbers are of a different order of magnitude from those of the fifteenth century. (More than three thousand file numbers are in use.) It has been suggested that marriage litigation did not participate fully in the general increase in litigation that all courts in England, both secular and ecclesiastical, experienced in the sixteenth century, and the results from the last decade of the fifteenth century at York suggest that these phenomena were already occurring.

Jeremy Goldberg noticed the decline of marriage cases in the second half of the fifteenth century and drew some conclusions from that fact that may not be warranted. The softer evidence that he used to support those conclusions will be dealt with at the end of Chapter 5. We deal here only with numerical evidence. Goldberg divides the cause papers into two groups, ‘rural’ and ‘urban’. One can argue about the categories

1 See E. Miller, “Medieval York,” 84–106. While this generalization has been challenged, a recent review of both the literature and the evidence concludes that it is true. The review points out, however, that this decline was one shared by many communities in the north and east of England, that the York decline was severe because York had experienced remarkable economic growth in the later part of the fourteenth century, and that the evidence is by no means all in due to the fact that we lack solid comparative studies of towns that were primarily engaged in inland trade. Goldberg, Women, Work, ch. 2.

2 E.g., Helmholz, Marriage Litigation, 165–8; id., Canon Law and Ecclesiastical Jurisdiction, 364, with references.
Table e3.App.3. York Cause Papers – Actual Versus Expected Proportions of Marriage Cases (1300–1499)

<table>
<thead>
<tr>
<th>Period</th>
<th>MM</th>
<th>Total</th>
<th>%M</th>
<th>XM</th>
<th>%XM</th>
<th>XT</th>
<th>%XT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1300–19</td>
<td>3</td>
<td>14</td>
<td>21</td>
<td>38</td>
<td>57</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>1320–39</td>
<td>11</td>
<td>29</td>
<td>38</td>
<td>22</td>
<td>38</td>
<td>57</td>
<td>10</td>
</tr>
<tr>
<td>1340–59</td>
<td>15</td>
<td>47</td>
<td>32</td>
<td>22</td>
<td>38</td>
<td>57</td>
<td>10</td>
</tr>
<tr>
<td>1360–79</td>
<td>20</td>
<td>51</td>
<td>39</td>
<td>22</td>
<td>38</td>
<td>57</td>
<td>10</td>
</tr>
<tr>
<td>1380–99</td>
<td>37</td>
<td>116</td>
<td>32</td>
<td>22</td>
<td>38</td>
<td>57</td>
<td>10</td>
</tr>
<tr>
<td>1400–19</td>
<td>32</td>
<td>104</td>
<td>31</td>
<td>22</td>
<td>38</td>
<td>57</td>
<td>10</td>
</tr>
<tr>
<td>1420–39</td>
<td>38</td>
<td>75</td>
<td>51</td>
<td>22</td>
<td>38</td>
<td>57</td>
<td>10</td>
</tr>
<tr>
<td>1440–59</td>
<td>21</td>
<td>41</td>
<td>51</td>
<td>22</td>
<td>38</td>
<td>57</td>
<td>10</td>
</tr>
<tr>
<td>1460–79</td>
<td>25</td>
<td>42</td>
<td>60</td>
<td>22</td>
<td>38</td>
<td>57</td>
<td>10</td>
</tr>
<tr>
<td>1480–99</td>
<td>13</td>
<td>51</td>
<td>25</td>
<td>22</td>
<td>38</td>
<td>57</td>
<td>10</td>
</tr>
<tr>
<td>Total</td>
<td>215</td>
<td>570</td>
<td>38</td>
<td>215</td>
<td>38</td>
<td>570</td>
<td>100</td>
</tr>
</tbody>
</table>

Notes: Gives by 20-year period the number of marriage cases (MM), the number of all cases (Total), the ratio of marriage cases to total cases in the period (%M), the expected number of marriage cases (assuming that they were evenly spread over the 200-year period) and their expected percentage (%XM), and the expected total number of cases and the expected percentage of the grand total (%XT).

Source: York, Borthwick Institute, CPE, CPF.

and the inclusion of particular cases within them, but, again, we will not do that here. We accept here the proposition that cases where the parties come from Beverley, Doncaster, Kingston upon Hull, Newcastle upon Tyne, Pontefract, Ripon, Scarborough, Wakefield, Whitby, and York are “urban,” and all the rest are “rural.” (The classification of the smaller towns makes relatively little statistical difference because the overwhelming majority of the “urban” cases come from York.) He examined 134 sets of Consistory Court cause papers and 3 from the audience of the Dean and Chapter with dates in the fourteenth and fifteenth centuries and categorized them as is shown in Table e3.App.4. Since the proportions did not seem quite to correspond to those that we have given in Table 3.2, we divided the cases that Goldberg had indicated that he used between urban and rural according to the same system that he used, categorizing them by type of action (Table e3.App.5). The difference in the total number of cases is not great and is largely the product of the fact that I have not included the three Dean and Chapter cases. This difference, however, is not large enough to account for the substantial differences in the proportion of cases in the two tables: 31% more two-party marriage-enforcement actions (76 vs 58), 14% fewer three-party marriage-enforcement actions (51 vs 59), and 38% fewer actions for divorce *a vinculo* (21 vs 34). I suspect that what happened here is that Goldberg’s focus on the depositions misled him as to the nature of the underlying cases, which is best determined from the pleadings. Depositions in a marriage-enforcement case that is defended on the ground of force, for example, will look very much like depositions in a case of divorce in which force was the principal claim. I also suspect that Goldberg classified some two-party marriage-enforcement actions defended on the ground of precontract as three-party actions, even though, so far as we can tell, the person with whom the precontract was alleged to have been made never appears. The end result, however, is that we cannot rely on the inferences (which are not essential to his argument) that Goldberg draws between “rural” and “urban” on the basis of the differences in types of actions.

Pursuing the question of the rural/urban distinction, it seemed appropriate to code the cases with which Goldberg did not deal on the same basis. For many purposes, of course, the presence of a substantial set of depositions is crucial. If, however, we simply seek to divide rural from urban and classify

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3 For the source of this, see the notes to the table.

4 I have not examined two of the Dean and Chapter cause papers that he lists, but one of them, *Agnes Fauconberge of York v John Elys of St Mary Bishophill Junior, York, goldsmith* (1417), D/C-CPR 1417/2, is a two-party marriage enforcement action.
### Table e3.App.4. PJPG’s Classification of York Marriage Cause Papers (1300–1499)

<table>
<thead>
<tr>
<th>Enforcement</th>
<th>Marriage &amp; Divorce</th>
<th>Divorce</th>
<th>Separation</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Urban</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13/1</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>13/2</td>
<td>7</td>
<td>11</td>
<td>1</td>
<td>20</td>
</tr>
<tr>
<td>14/1</td>
<td>9</td>
<td>13</td>
<td>7</td>
<td>32</td>
</tr>
<tr>
<td>14/2</td>
<td>8</td>
<td>0</td>
<td>0</td>
<td>8</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>24</strong></td>
<td><strong>26</strong></td>
<td><strong>8</strong></td>
<td><strong>64</strong></td>
</tr>
<tr>
<td><strong>Rural</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13/1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>9</td>
</tr>
<tr>
<td>13/2</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td>30</td>
</tr>
<tr>
<td>14/1</td>
<td>12</td>
<td>14</td>
<td>4</td>
<td>30</td>
</tr>
<tr>
<td>14/2</td>
<td>10</td>
<td>6</td>
<td>5</td>
<td>24</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>34</strong></td>
<td><strong>33</strong></td>
<td><strong>26</strong></td>
<td><strong>93</strong></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>58</strong></td>
<td><strong>59</strong></td>
<td><strong>34</strong></td>
<td><strong>157</strong></td>
</tr>
</tbody>
</table>

**Notes:** All types of two-party marriage-enforcement actions are listed in the first column, competitor and marriage-and-divorce cases are combined in the second column, the third contains cases of divorce a vinculo, and the fourth contains actions for separation a mensa et thoro.

**Source:** See Goldberg, *Women, Work*, 252, for the table; 376–8, for the list of files.

### Table e3.App.5. PJPG’s Classification of York Marriage Cause Papers (1300–1499), Revised

<table>
<thead>
<tr>
<th>Enforcement</th>
<th>Marriage &amp; Divorce</th>
<th>Divorce</th>
<th>Separation</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Urban</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13/1</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>13/2</td>
<td>9</td>
<td>9</td>
<td>0</td>
<td>19</td>
</tr>
<tr>
<td>14/1</td>
<td>11</td>
<td>14</td>
<td>4</td>
<td>31</td>
</tr>
<tr>
<td>14/2</td>
<td>7</td>
<td>0</td>
<td>0</td>
<td>7</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>30</strong></td>
<td><strong>23</strong></td>
<td><strong>5</strong></td>
<td><strong>62</strong></td>
</tr>
<tr>
<td><strong>Rural</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13/1</td>
<td>8</td>
<td>4</td>
<td>2</td>
<td>14</td>
</tr>
<tr>
<td>13/2</td>
<td>12</td>
<td>6</td>
<td>7</td>
<td>25</td>
</tr>
<tr>
<td>14/1</td>
<td>10</td>
<td>11</td>
<td>5</td>
<td>27</td>
</tr>
<tr>
<td>14/2</td>
<td>7</td>
<td>7</td>
<td>2</td>
<td>25</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>46</strong></td>
<td><strong>28</strong></td>
<td><strong>16</strong></td>
<td><strong>91</strong></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>76</strong></td>
<td><strong>51</strong></td>
<td><strong>21</strong></td>
<td><strong>153</strong></td>
</tr>
</tbody>
</table>

**Source:** York, Borthwick Institute, CPE; CPF; Goldberg, *Women, Work*, 252, 376–8.

types of actions by this category, a less full record frequently gives us the information that we need. Table e3.App.6 is based on all the fourteenth- and fifteenth-century marriage cause papers divided between urban and rural according to Goldberg’s method. (I took the liberty of classifying Durham and Nottingham as ‘urban’ and puzzled about, but finally classified as ‘rural’, the one case from Newark on Trent.)

The effect of including these other cases is somewhat to reduce the proportion of urban cases in the sample (37% vs 41%). It is not surprising that urban residents, the vast majority of whom lived in York, would have been able to pursue litigation to the point where depositions were redacted in slightly greater numbers than were their rural counterparts. More important, however, is the fact that the decline of urban, as opposed to
rural, marriage cases in the second half of the fifteenth century is maintained. The second half of the fifteenth century saw only 14% of the urban marriage cases (as opposed to 48% in the first half of the century and 29% in the second half of the fourteenth). The rural cases are much more evenly spread out (26%, 33%, and 26%, respectively).\(^5\)

Thus, Goldberg’s most important statistical finding holds up. There is a decline in urban marriage litigation in the York consistory court in the second half of the fifteenth century. The question is what to make of this fact. In the first place, we should be reluctant to generalize from this finding to posit a general decline in marriage litigation in the second half of the fifteenth century. That proposition may or may not be supported from findings elsewhere, but it is not supported by the evidence of the York cause papers.\(^6\) The number of rural marriage cases in the York consistory court in the second half of the fifteenth century is the same as what it was in the second half of the fourteenth century; it is smaller than what it was in the first half of the fourteenth century, but the difference is not great.\(^7\) The most obvious explanation for the decline in urban marriage litigation is the economic decline of York, which provided the vast bulk of the urban cases in the

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\(^5\) The proportions of urban cases for the four half centuries are 27% (14/1), 39% (14/2), 47% (15/1), and 24% (15/2). Comparing the second half of the fifteenth century to the proportion of urban cases occurring in the previous three half centuries yields \(z = 2.3\) (15/2 vs 14/1), significant at .01; \(z = 1.62\) (15/2 vs 14/2), significant at .05; \(z = 2.63\) (15/2 vs 15/1), significant at .01.

\(^6\) Evidence that it did is contained in Helmholz, *Marriage Litigation*, 166–7 (Canterbury, Rochester, Hereford). But Helmholz also notes that marriage cases account for about 20% of the cases litigated in the Lichfield Consistory in 1463–8, and Houdbrooke, *Church Courts*, 64, n. 36, and App 2, notes that they represent 33% of the cases at Winchester and 22% of those at Norwich in sample years in the 1520s. All of these ratios are lower than our mean figure of 38% for York (Table e3.App.1), but that same table shows substantial fluctuations in the proportions over two centuries. Cf. Wunderli, *London Church Courts*, 119–21, who notes an increase in marriage cases in the London commissary court after the turn of the sixteenth century. He speculates that these are cases that formerly would have been heard in the consistory court. Some such shift of jurisdiction may be involved in Helmholz’s finding about Hereford (Hereford had an active commissary court). It is less likely but possible in the cases of Canterbury and Rochester.

\(^7\) 34 cases (26%) in both 14/2 and 15/2; 42 cases in 15/1 (33%); \(z = 1.24\), significant at .2. Hence, while the decline from 15/1 to 15/2 may be statistically significant, it does not seem to be ‘significant’ in the colloquial sense of the term. For reasons suggested in T&C no. 146, I would be reluctant to carry the argument into the sixteenth century.
litigation rates are notoriously dependent on the pace of economic activity; litigation rates about marriage are, perhaps, less so, but litigating in the court of York cost money, and if the litigants had no money, they would find other ways of resolving their disputes.

I would be reluctant to conclude from this evidence, however, that we have any indication that the decline of York's economy precipitated a situation in which women lost control of their marriages and became more dependent on arranged marriages. Goldberg argues, and there may be something to the argument, that rural women in Yorkshire had less control over their marriages than urban women did. Some evidence for this may be found in the depositions themselves, just as evidence for independently arranged marriages may be found in the depositions from urban areas. This is an issue to which we will return at the end of Chapter 5. I do not think that we can conclude, however, simply from the fact that the rate of urban litigation about marriage declines in the second half of the fourteenth century that rural women were becoming more like their country sisters. Even assuming that rural marriages were more controlled by parents and relatives, they still managed to produce a substantial amount of litigation about marriage, and they continued to produce it in the second half of the fourteenth century. The decline of urban marriage litigation in the second half of the fourteenth century could equally well be explained by a decline in urban population, greater use (perhaps provoked by economic necessity) of alternative methods of disputes resolution, fewer disputes (perhaps caused by the fact that urban couples learned the necessity of publicizing, if not solemnizing, their marriages quickly or by the fact that potential litigants got better at predicting what the court would do if they litigated), or even fewer marriages. Admittedly, if urban women were more independent economically than rural women, a proposition for which Goldberg has independent evidence, and if the number of women in the York population declined in the late fifteenth century along with a general decline in the population, a proposition that cannot quite be proven but can be suspected, then fewer women would be getting married in the independent urban fashion and there would be less urban litigation about marriage (and about everything else). The two phenomena would be related because they are both related to the independent variable of population, but the urban litigation rate about marriage would not be going down because of any change in the nature of urban marriage. One may be able to speculate about the nature of marriage from extremes in litigation rates. We will try to make such an argument in Chapter 12. What we have here, however, is far too subtle to allow us to draw any conclusions about a change in the nature of marriage. For this, we have to burrow deeper.

150. Appendix e3.3: The Surviving York Cause Papers as an Unbiased Sample

An examination of the surviving act books from the two centuries confirms what one might have expected, that the surviving cause papers represent but a small fraction of what there once was. On the basis of the act books, I estimated that the court of York probably heard each year between 50 and 100 cases that would have produced cause papers over the course of the two centuries. Extrapolating that figure over two centuries gives us between ten and twenty thousand cases. We have surviving cause papers from 570 cases, 3%–6% of our estimated total. The extent to which we can make meaningful generalizations about the whole and not just about the portion that has survived depends on the surviving records' being fairly typical of the whole. The extent to which we can make meaningful statistical statements about the whole (as we have attempted to do in some of the notes to this chapter) depends on much more: The surviving records must be a random, or, at least, an unbiased sample of the whole.

In the process of trying to determine whether the surviving cause papers are a random or unbiased sample of all the cause papers filed at York, I have convinced myself that the surviving papers are, at least, 'fairly typical' of the whole. Nothing that I have found in act books would lead one to believe that any type of case was systematically culled from the cause papers or that any given type of case has been preferred...
for selection. Thus, most of the statements made in this chapter about the general nature of York jurisdiction and about marriage cases in particular seem to be valid when judged against the criterion of ‘fair typicality’.

In some places, however, we have gone further, particularly where we attempted to trace change over time in the nature of marriage litigation over the course of the two centuries. For these arguments to be valid, the surviving cause papers must be a random sample of what once was, or, at least, an unbiased sample with regard to the issue at hand (principally, in this chapter, the gender of the plaintiff). That they are cannot be irrefutably proven. The records of the underlying population have been lost, and however the records were kept, their preservation clearly did not depend on the use of a random number table. The randomness of the sample must be shown, if at all, from inferences drawn from the nature of what has survived and what we know about the history of how the records were kept. We are also helped by the fact that surviving act books from the fifteenth century confirm, in most cases, the proportions that we derived from the cause papers for that century.5

Two hypotheses as to why these particular records survived come immediately to mind. The process by which the other records have been lost could be an essentially random one. Damp, fire, dust, casual loss, and random destruction (for example, throwing out all of the records on the top of randomly assorted piles) could have taken their toll over the centuries until we are left with what we have now. Alternatively, someone at some period could have made selections from the papers for whatever purpose and destroyed the rest. The two possibilities are not mutually exclusive; various combinations of haphazard and conscious processes could have resulted in the loss or destruction of those records that do not survive.

The nature of the records today lends support to the notion that their survival is the result of haphazard, if not random, processes. Most of the fourteenth-century cause papers were written on parchment, and parchment is tough stuff. But the more than 600 years that separate us from the fourteenth-century papers have taken their toll. When I first looked at these records (more than thirty years ago and before they had been systematically cleaned and repaired), there was no evidence of fire visible on the records but there was some evidence of damp and a great deal of evidence of dust, perhaps coal dust. This dust had reduced many of the records to a fragile state, some to the point of illegibility. It was hard not to imagine that some of the original sets of records had simply disintegrated over time. Further, there was considerable evidence of rough treatment. Many of the records were torn, particularly on the edges, and virtually all of them had been folded or rolled many times, processes that led to cracking and further disintegration as the parchment dried out.

Over the course of the fifteenth century, the records were increasingly kept on paper. It was rag paper, of good quality when compared with much of the paper in use today, but even the best of paper is not as tough as parchment, and it is probable that more individual elements in the files are missing from the fifteenth century than from the fourteenth. The increasing use of paper had another curious effect on record keeping in the court of York. There is no difference in the writing surface of the recto and the dorse of a sheet of paper as there is with parchment, particularly the cheaper parchment that was used for most of the York records, and so the temptation to reuse a paper document by writing on its blank dorse was stronger than it was with parchment. Also, paper was cheaper than parchment, and hence many documents, particularly depositions, were written on a full sheet of paper, which sheet was not cut down to fit the size of the final document. It was thus tempting to reuse the unused portion of the full sheet of paper. Neither temptation was resisted. Hence, we have for the fifteenth century more records of cases that contain only a draft of a document in the case,4 and more cases about which we can determine little of the substance. We must be careful, therefore, as we have tried to be when we compared the fourteenth with the fifteenth centuries, to take account of the different nature of record keeping in the two periods.

None of this, however, biases the sample of the records for the purposes for which we have used them, and nothing in the surviving records shows any indication that they were consciously selected for preservation as part of a general housecleaning in which other records were discarded. There is no perceptible pattern in the persons, places, or legal issues involved in the cases. Unusual cases and routine cases, files containing more

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3 See App c3.3.
4 I suspect that in the fourteenth century, drafts were done on slate.
than 50 documents and files containing just a single document are jumbled together in a seemingly haphazard fashion.5

What little is known of the history of these records also tends to support the notion that the survival of these particular cause papers was the product of an essentially random process. At some time, probably quite early on, the cause papers found their way into the keeping of the York diocesan registrar, where they were kept with a much larger set of records. The glimpses we have of how the diocesan records were kept are depressing to the archivist but encouraging to the historical statistician looking for evidence of a random process of survival. Thomas Jubb, the diocesan registrar in the early eighteenth century, reports:6

In the search made from the Restauration till 1714 when Mr. Maude dyed and I Thomas Jubb was made Registrar for the Dean and Chapter of York the following things are to be observed.

1. That when I entered upon the said office every thing was in great disorder and confusion and so indeed Mr. Mawde found that Office at Mr. Squire’s death.

The “great disorder and confusion” was probably the result of the siege and occupation of York by Cromwell’s troops. Indeed, in the same report Jubb notes that during the “Troublesome Times” the registry office was gutted and loose papers destroyed.7

The first director of the Borthwick Institute, the Reverend Canon J. S. Purvis, speculated that Jubb himself culled the cause papers around the year 1740, preserving those that he thought would be useful as precedents and discarding the rest.8 Purvis did not report the evidence on which he based his speculation. This is a shame, for if some such culling occurred, it would be fatal to our hope of finding in the medieval records a random sample and seriously damaging to our hope of finding an unbiased one. As it is, I find it highly unlikely that Jubb’s culling, if it happened, reached as far back as the fourteenth- and fifteenth-century records. Purvis himself seems to have thought that Jubb's efforts focused on the post-Restoration records (as is suggested by his report just quoted).9 Had he culled the medieval records in this way, we would surely find more evidence than we do of his work.10 The contrast with the Canterbury records is instructive: There we do find evidence of systematic culling with a purpose in mind.11

The potential for loss and destruction through essentially random processes did not stop with Jubb. In his contribution to the First Report on the Public Records in 1800, the then-deputy registrar, Joseph Buckle, notes, perhaps overly optimistically, that the records were secure from fire and damp, but that certain classes of older records were dirty, injured, and mutilated.12 Purvis himself reports on the condition of the records prior to World War II:

5 I omit here the argument that I made in “Stubbs vs Maitland,” at 709, that there is no evidence that anyone endorsed the record between the time when they were originally endorsed (roughly contemporaneously with the records themselves) and when they were reendorsed in the nineteenth century. There are some endorsements that considerably postdate the records, though evidence of systematic sorting does not come until the nineteenth century. I also omit, in the interests of space, the arguments that I made in id., at 709–11, rejecting the arguments that the fact that one file (now C.P.E.107, E.165, F.360) contained three cases about the same jurisdictional dispute, that one file (C.P.E.241) contain a miscellany of documents in a number of different cases, and that for a brief period in the 1380s most of the surviving files contain the names of one or both of two proctors indicated serious biases in the sample. A similar argument to that regarding C.P.E.241 could be made about the former F.31 and F.32, both of which seem to have been put together at the time that the documents were given their modern classification in order to house documents that contained drafts concerning, in most cases, a number of different cases on a single document.

6 Quoted in Purvis, Archives, 6.

7 Ibid.

8 Id., 5.

9 Id.: “He therefore took a large number of files or bundles of papers, mainly of the second half of the seventeenth century . . . and destroyed the rest of the files or bundles.”

10 This judgment is shared by Pedersen. Marriage Disputes, 23.

11 Introd., at n. 34.

12 Purvis, Archives, at 7.

13 Id. at 8.
The conditions of storage left very much to be desired; in general, files were roughly bound up in brown paper, and many documents were rolled, crushed or folded into bundles, and thrust much too closely together on the shelves; a large number suffered damage, either from damp or from nearness to the heat of the pipes which warmed the Strong Rooms in winter, or from the rough folding or the constriction of the strings with which they were tied; all suffered severely from dirt, the accumulation of a thick coat of fine black dust. Old files of which the strings had burst, allowing the members to be scattered, had been gathered up hastily and made into bundles and thrust away into any handy nook on the shelves, where they remained unwanted and undisturbed for year after year. As documents steadily accumulated, the congestion became worse, and there was never time for any systematic arrangement or even inspection by the Registry clerks, and the contents of the Registry became more and more unknown.

Another possible source of essentially random loss is moving. Prior to the removal of the records to the Borthwick, there are two recorded moves, one in 1790, the other around 1840. The custody of the records, moreover, was the personal responsibility of the registrar, and during the earlier period before there was a formal registry office, they may well have been kept in his house. Each transfer from old to new registrar would have been an occasion for loss.

In sum, while the evidence is not completely conclusive, it does point to a random process of survival of these records. The reader who accepts this argument should also be warned, however, that establishing that a sample is unbiased does not necessarily mean that it is large enough for all purposes. Many of the tables in this chapter have cells in which the number is quite small. That number may legitimately be compared with the rest of the cells to make a statistically valid statement that in comparison with the total of the rest of the cells, it is small. It may not, however, be reliably compared with cells that are also small. Hence, for example, comparison of the different types of divorce claims made in the fourteenth century with those made in the fifteenth is not statistically reliable (Table 3.2). The comparison that comes closest to reliability is the proportion of divorces for precontract as opposed to divorces for other reasons over the course of two centuries (10/21, or roughly 1/2). Even here the size of the precontract cell should make us cautious.

151. Appendix e3.4: What Can We Learn from the York Act Books?

We noted in this chapter that where entries in the act books survive for cases for which there are cause papers, these entries can be used to fill in the story of how the litigation proceeded. We also noted that where the entries do not have corresponding cause papers, the act books are not much use even for the relatively simple statistical purposes of this chapter. The reason for this is that the act books, more often than not, do not tell us what the case was about. Occasionally, we will get a note that the case was a *causa matrimonialis*, or *matrimonialis et divorci*, or *divorci*, but for the most part not even this basic information is recorded. How serious this problem is may be seen by comparing the cause papers that bear dates from 1417 to 1430, years that are well represented in the act books, though there are gaps. There are 27 sets of matrimonial cause papers in this period; 22 of them have corresponding entries in the act books. Of the ones that are not in the act books, all have dates that fall within, or could fall within, the periods for which the act books are deficient. In addition, one of these cases is represented only by a draft in what may never have been a contentious matter. We are probably safe in concluding that during this period, all cases that are represented in the cause papers had, at one time, corresponding act book entries. Of the 22 cases that are in the act books,

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14 *Id.* at 7.
1 See at nn. 18–19.
2 Ibid.
3 *Slyer v Claxton* (1420–2), CP.E.132 (last six months of 1420 and all of 1421 and 1422 missing); *Carpenter v Burgh* (1421), CP.E.129 (year missing); *Astell v Louth* (1422), CP.E.146 (year missing); *Radcliffe v Kynge and Coke* (1422), CP.E.133 (year missing); *Frauncys v Kelham* (1422–3), CP.E.140 (both years missing); *Hurton* (1430), CP.E.99/5 (last three months of year missing). In addition, *Thropland v Richardson* (1428–32 [DMS 1432]), CP.E.396 is represented only by the *re visitation* of a proctor, but the active period of litigation in the court of York in this case may well date after 1430.
4 *Hurton* (n. 3) (draft letter concerning the freedom from marriage of a man dwelling in Selby monastery).


<table>
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<tr>
<th>Type of Claim</th>
<th>No.</th>
<th>%TOT</th>
<th>%Instance</th>
<th>FP</th>
<th>MP</th>
<th>%F</th>
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<td>44</td>
<td>50</td>
<td>17</td>
<td>16</td>
<td>32</td>
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<tr>
<td>Three-party actions</td>
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<td>8</td>
<td>2</td>
<td>3</td>
<td>40</td>
</tr>
<tr>
<td>Causa matrimonii et divorci</td>
<td>21</td>
<td>28</td>
<td>32</td>
<td>15</td>
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<td>79</td>
<td>89</td>
<td>34</td>
<td>24</td>
<td>59</td>
</tr>
<tr>
<td>Causa divorci</td>
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<td>11</td>
<td>6</td>
<td>1</td>
<td>86</td>
</tr>
<tr>
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<td></td>
<td></td>
<td></td>
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<td>5</td>
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<tr>
<td>Total</td>
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<td>100</td>
<td>40</td>
<td>25</td>
<td>62</td>
<td></td>
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</table>

Notes: No. = number of cases; %TOT = percentage of total number of cases; %Instance = percentage of instance cases (total less ex officio and noncontentious); FP = female plaintiffs; MP = male plaintiffs; %F = percentage of female plaintiffs to total plaintiffs.

Source: Smith, Court of York 1400-1499.

However, only 4 of them are noted as to their subject matter. What there is, is accurate, as far as it goes, but clearly the markings as to subject matter cover only a small fraction of the cases that could have been so marked.

Of the completeness of the entries in the later act books we may have more doubt. There are six matrimonial cases in the cause papers that bear (or could bear) dates in the 1480s for which act books also survive and one from 1497 for which a partial act book survives. All but one of these cases has act book entries, and the one that is missing has been dated only approximately. One of the cases that does have a surviving act book entry, however, is troublesome. All that survives in the act book is one of the plaintiffs’ constitution of a proctor, whereas we know from the cause papers that depositions were taken in the case and a sentence rendered during the period for which act books survive. We cannot exclude the possibility that the later act books are incomplete. As is the case with the earlier act books, the marking of the subject matter of the cases is haphazard. Only one of the seven cases is noted as “matrimonial,” although this description is accurate.

The question remains whether we can make any use of the 61 cases from the earlier period and the 16 cases from the later period that are marked as having matrimonial subject matter. Clearly, these numbers tell us nothing about the amount of matrimonial litigation that took place in the court of York in these periods, but we may be able to make use of the skimpy indications of the types of litigation, coupled with the names of the parties, to serve as a cross-check on the numbers that we derived from the cause papers about the various types of matrimonial litigation that took place at York in these periods (see Table e3.App.7).

A word is in order about how the numbers in the table were derived, because there is admittedly some guesswork. The first case (in chronological order) marked matrimonial in the fifteenth-century York act books is calendared as “Grene (Green), Peter (del), of Boynton c. Matilda Whitehow(e) of Boynton [1417–18] matr. 1/22r, 23r, 25r, 25v, 26v, 28r, 31v, 33v, 35v, 36v, 39r, 43r, 47v, 51v, 68v, 74v, 86r (Grene c. Whitehowe and Tantelion). See also Tantelion; Whitehow.”

1 Pulayn c Neuby (1423–4), CP.E.137; Kirkby c Helwys and Newton (1430), CP.E.99; Ingoly c Middleton, Easingwold and Wright (1430), CP.E.203; Russel c Skatbellock (1430), CP.E.111.

2 Pulayn c Neuby (n. 5) and Kirkby c Helwys and Newton (n. 5) are marked as “matrimonial.” The former is a two-party matrimonial case, similar to Dolling c Smith; the latter is actually a matrimonial and divorce case, as can be seen from the listing of the parties in the act book. Ingoly c Middleton, Easingwold and Wright (n. 5) is marked as “matrimonial and divorce” and is, in fact, one of the most spectacular such cases in our records. Russel c Skatbellock (n. 5) is marked as “divorce” and is, in fact, a case of divorce for impotence.

3 Remond c Thewels (1480 X 1520), CP.E.315 (dating based on script and style; Smith, York, 1400-1499, does not date it at all).

4 Watson and Cooper c Anger (1489), CP.E.273. The sentence in this case is dated in November of 1489, and depositions were taken in October. The act book has entries running through 1 December 1489.

5 Smyth c Dalling (1484–5), CP.E.268 (a two-party matrimonial case).

6 Smith, Court of York, 1400-1499, 103.
entries as causa matrimonialis, appears in Cons.AB.1 on the referenced folios, the last folio adding the name “Tantelion” to the case. The cross-referenced entries read: “Tantelion (Tantelyon) c. Matilda Whitehow [1418] matr. 1/57v, 58r, 62v (c. Whitehow and Peter Grene), 63r (ditto), 63v (ditto), 64r (both), 67v (c. Whitehow and Grene), 68r (ditto), 68v. See also Grene, Peter; Whitehow.”11 “Whitehow(e) c. Tantelion and Peter Grene [1418] 1/65v. See also Tantelion, Grene, Peter.”12 It will be noted that were it not for the correspondence of the names, we would never know that the Whitehow entry had anything to do with a matrimonial case.

We lack a Christian name for Tantelion, but it would be bizarre for a woman to be suing another woman in a two-party matrimonial case (as in the first entry under the name), and so we must assume that he is a man. The fact that he joins Grene in his suit later on is not at all surprising. The one entry that shows Whitehow suing the two men is also not surprising. She may have raised an exception that was applicable to both of them, or the clerk may just have got the parties reversed. (For his purposes, identifying the case so that he can record the entry, it makes no difference which name comes first.) Hence, we are probably safer in assuming that this is what some of the records call a competitor case, two male plaintiffs against a female defendant.

The fact that the clerk sometimes gets the names of the parties reversed is more troublesome in the next pair of entries: “Lucas, John, c. Isabel Gardiner [1418] 1/57v, 57v (called Richard Lucas). See also Gardiner, Isabel.”13 “Gardener (Gardiner), Isabel c. Lucas [1418] matr. 1/57v, 58r. See also Lucas c. Gardener.”14 This is pretty clearly a two-party case. The fact that neither party is named as the husband or wife of the other makes it unlikely that it is a divorce case.15 We are, thus, reasonably safe in classifying it as a two-party marriage-enforcement case, but the information given does not allow us further to subdivide it as to type. Whether Gardener was suing Lucas or vice versa is harder to tell. I have assumed in Table e.3.App.7 that the person named first in the first entry in the case (in this case Lucas) is the plaintiff, and the fact that the names of the parties are reversed in some of the subsequent entries indicates either that Gardener was called upon to do something in those entries (such as reply to the libel) or that she brought some kind of exception or cross-action, such as defamation.16

Classification problems abound when we are working with such skimpy records. I have assumed that both Waldyng, Emmota, p. 169, and Holtby, John, p. 111, are competitor cases or potential competitor cases because the named parties were cited for having objected to the publication of the banns between two other named parties. It is possible, however, that the objection was founded on some other ground, such as consanguinity. I named the parties were cited for having objected to the publication of the banns between two other named parties. It is possible, however, that the objection was founded on some other ground, such as consanguinity. It is possible, however, that the objection was founded on some other ground, such as consanguinity. I

...
action against a woman’s father for impeding her marriage to the plaintiff.20 It is also possible, however, that the clerk got Johannes and Johanna mixed up, and so it seemed best to leave it out entirely. Margaret Pachet and William Adam appear in what is described as a causa matrimonialis et divorcii. I have listed it as such, but have not included the parties in the list of plaintiffs by gender because the very first entries in the case have both Margaret suing William and William suing Margaret.

Despite these difficulties, Table e3.App.7 is encouraging. The sample of matrimonial cases drawn from the act books is a sample clearly drawn from the same world that we saw in the cause papers. Two-party claims to enforce a marriage constitute 50% of the instance cases in the act books; they constitute 50% of the cases in the cause papers (Table 3.2). Of the instance actions in the act book sample, 40% are three-party actions; they are 38% of the actions in the cause papers. Of the actions in the act books, 11% are divorce actions; they are 12% of the instance actions in the cause papers.21 Women are plaintiffs in 62% of the actions in the act books; they are plaintiffs in 62% of the actions in the cause papers (Table 3.6).

The one major difference between what we see in the act books and what we see in the cause papers is the percentage of competitor actions as opposed to marriage-and-divorce actions. The former constitute 19% of the actions in the cause papers, but only 8% of the instance actions in the act books, while the latter are 11% of the actions in the cause papers and 32% of the instance actions in the act books.22 The difference in the numbers is statistically significant, but it may reflect the vagaries of the coding, rather than any difference in the underlying reality of the litigation. The difference between the two types of action is subtle. In a competitor action, two people of the same gender seek to establish their marriage to a third-party defendant. In a marriage-and-divorce action, the plaintiff seeks to divorce an existing marriage and establish his or her marriage with one of the parties to the other marriage. In competitor actions, one of the competitors will frequently style his or her pleadings as being against both the defendant and the competitor. If the clerk of the act books took the style of the case from the first pleading, it would be indistinguishable from a marriage-and-divorce case in the act books. Frequently in competitor actions, the defendant does not contest the action of one of the plaintiffs, and relatively little survives in the way of documentation of the uncontested action. If this were the case, there would be no particular reason for the clerk to change the style of the case in the act book. Hence, I suspect that there are a number of what we could call competitor actions buried in the marriage-and-divorce classification from the act book sample, actions that we would see clearly for what they are if we had the cause papers.

In addition to confirming the validity of many of the numbers with which we have been working, the sample from the act books also allows us to see a side of the York court that we do not see, or see only dimly, in the cause papers. The York court did not do much office business (it did not, for example, so far as we can tell, regularly process routine fornication cases), but it did do more than we see in the cause papers. The York court, for example, issued a warning to a man to live with his wife, took an oath from a couple to conduct themselves as married, heard the confession of a couple that they had married and imposed a penance on them, heard the confession of a priest that he had solemnized the marriage between a couple whose marriage was being contested in the court (and referred their penance to the archbishop), absolved a couple from excommunication incurred by clandestine marriage, and issued a warning to a couple who seem to have been engaged in marriage litigation.23 What is involved in these cases is best dealt with when we deal with the act book of the court of Ely, which gives us more information about such cases.24 The act books also allow us to see the court handling noncontentious business that involved marriage. One couple obtained a certification of their marriage from the official; another declared their marriage before the court; a third confessed their marriage before the court; a marriage to which their parents had not consented, and

20 Lematon c Shirwood (1467), CP.F.244.
21 The difference may be greater than what the numbers show because we have classified as divorce actions cases in the act books that may be separation actions, while the latter are kept separate in Table 3.2.
22 z = 2.26, significant at .98 (competitor); z = 3.28, significant beyond .99 (marriage-and-divorce actions).
23 Richard Roderham, in Smith, Court of York, 1400–1499, 144; John Hedon and Ellen his wife, id., 107; Agnes Louth and William Halton, id., 124; Peter Hamondson, id., p. 105; John Stokhall and Joan Herisson, id., 159; William Wilbore c Joan Keynes, id., 175.
24 Ch 6.
a fourth, so far as the entry tells us, appeared before the court with regard to a marriage contract. Why the couple whose parents opposed their marriage wanted a court record of it is easy enough to see, and there are at least hints of the reason why the couple who declared their marriage before the court thought it necessary to have such a record. The man is described as *ducheman*, the woman as of York. Either they had married abroad or they were planning on going abroad. In either situation the court record might prove helpful.

The office and noncontentious cases combined represent about 11% of the cases before the court, but they certainly did not take up 11% of its time. All of these cases have only one entry, whereas litigated cases almost always have more than one entry, and some of the entries for litigated cases run into the dozens.

152. Ch 4, n. 1: This combines the 24 cases where the claim is clearly of *de presenti* marriage with the 3 in which it is of uncertain type. If we add the *de futuro* cases the number is 36, and the abjuration cases bring it up to 45, but we will deal with those types of cases separately. Two of the cases of uncertain type and one *de presenti* enforcement action will also be dealt with under Other Types of Actions, because their surviving documentation is more concerned with marriage dissolution or with procedural irregularities in lower courts than with marriage formation.

153. Ch 4, n. 3: Johanna, *hic accipio te in uxorem meam legitimam tenendam et habendam omnibus diebus vitae mei si sancta ecclesia permiserit, et ad hoc do tibi fidem meam*. Goldberg, *Women, Work*, 238, notes that this is the earliest surviving mention of this formula at York. The formula also appears in the thirteenth-century cases from Canterbury, without the conditional (“if holy church allow it”). E.g., *Robert Norman c Emma Prudfot* (Buckingham Archdeacon’s Court and Court of Canterbury, 1269), *Select Canterbury Cases*, C.2, p. 104. The use of this conditional may have been more the custom in the northern province than in the southern, but it does appear in the account of one of the witnesses in *Dolling c Smith* (Ch 2, at n. 3). It would, of course, not have appeared in the formulae found in liturgical manuscripts because these would only have been spoken after holy church had allowed it, i.e., after promulgation of banns or a licensed waiving of them. Goldberg also reports that he has never seen the gender-specific formula in which the woman promises obedience, nor have I.

154. Ch 4, n. 4: Andrea, *hic accipio te in virum meum legitimum tenendam et habendam omnibus diebus vite mei pro meliori et peiori, turpiori et pulchriori, et ad hoc do tibi fidem meam*.

155. Ch 4, n. 5: Johanna/Andrea, *hic accipio te in uxorem meam legitimam tenendam et habendam omnibus diebus vite mei si sancta ecclesia permiserit, et ad hoc do tibi fidem meam*.

156. Ch 4, n. 8: In Merton c Medelton, the witnesses say they saw an exchange of consent through a window; see also *Schipin c Smith* (at n. 121), *Thomson c Wilson* (Ch 5, n. 9), *Walker c Kydde* (Ch 5, n. 19).

157. Ch 4, n. 11: Though the standard response in this situation seems to have been for the witness to say that he had received nothing to testify “beyond the viatica” (*nec aliquod recepit nec recepturus est ultra viatica pro testimonio suo*). E.g., *Harwood c Sallay* (1396), CP.E.275 (first witness).

158. Ch 4, n. 13: See Helmholz, *Marriage Litigation*, 138 (suggesting on the basis of the few numbers that we have that 3s and a green hood would have been too much for expenses).

159. Ch 4, n. 14: The relevance of this may be related to Alexander III’s decretal *Propositum est*, X 4.7.1 (Ch 2, n. 34), which prohibits a party from suing for a divorce on the basis of a precontract with a person who is now dead, though I cannot recall ever having seen that rule applied in a case of marriage formation as opposed to one of divorce.

160. Ch 4, n. 15: See Helmholz, *Marriage Litigation*, 134 and n. 81, who laments, as we all must, that this is normally the only kind of record that we have of the extended legal arguments that we know took place in these cases, even in relatively low-level courts.

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25 Thomas Payntour and Margaret Baron, *id.*., 137; Laurence Berebruer and Joan Tolows, *id.*., 67; John Lome and Margaret Otes, *id.*, 123; John Wetuang and Agnes de Howe, *id.*, 173

26 Berebruer and Tolows (n. 25).
161. Ch 4, n. 17: *Hic accipio te, Margareta/Andrea, in meam -um uxorem/virum tenendum -um et habendam -um omnibus diebus vite mee, et ad hoc do tibi fidem meam.*

162. Ch 4, n. 21: One witness even notes how seriously she takes the offense of false testimony, and if this statement is genuine, as it may be because it is not usual, it shows how convinced she was that the testimony was perjured, even if she had to fabricate a story to show that it was.

163. Ch 4, n. 22: See Helmholz, *Marriage Litigation*, 191–5, for a rather full selection of transcribed documents from this case. The only recorded placename in Ryedale wapentake that is even close to the spelling here is Drakedale in Ampleforth. Place-names North Riding, 56.

164. Ch 4, n. 27: The only thing that might have stood in the way is the curious doctrine that we find in some writers on the topic that conditional marriages must be expressed in the future. If a condition is added to a present-consent marriage, it will be interpreted as a cause and not a condition. See *id.*, 52 and n. 96. For a nice summary of the range of views, see Weigand, *Bedingte Eheschliessung*, 2:3–21.

165. Ch 4, n. 29: A Simon Lovel, almost certainly the same man, served as knight of the shire for Yorkshire at the Westminster parliament of July of 1321. *Cal Close R* (1318–23), 486. The beginning years of Edward III see three separate orders to the sheriff of Yorkshire to replace Simon Lovel as coroner of the county because he is “insufficiently qualified.” *Cal Close R* (1327–30), 196 (22.i.28), 246 (25.i.28), 514 (23.i.30). That suggests that Simon may have ended up on the wrong side of the politics of Edward III’s deposition. That, in turn, may have something to do with Robert Marton’s reluctance to become associated with the family. Robert himself has not been found, unless he is the Robert de Marton accused of having burned the mill of a king’s yeoman at Thirskleby (ER) in 1323. *Cal Pat R* (1321–24), 316.


167. Ch 4, n. 31: Pedersen, *ibid.*, suggests that this was the case, and he may be right, but that interpretation is hard to reconcile with Thomas’s insistence in the positions that the contract with Elizabeth was conditional and his assertion in open court that he had precontracted with Ellen. I do find plausible Pedersen’s suggestion that Thomas raised the issue of the conditional nature of the contract in order to force the case from the informal tribunal at Hovingham to the court of York.

168. Ch 4, n. 33: Pedersen, *Marriage Disputes*, 114–15, suggests that while Lady Margaret was hardly running an informal tribunal, she was clearly engaging in informal dispute resolution, perhaps with the view to establishing that there was a case to be answered before a more formal tribunal.

169. Ch 4, n. 36: This document is damaged, and the date of death is missing. It may be relevant to the possible issue of the impediment of crime. See n. 38. The document does say that Thomas died at Stoke G[. . .], which is probably Stoke Gifford, about five miles northeast of Bristol.

170. Ch 4, n. 38: On the basis of these facts, Helmholz, *Marriage Litigation*, 96, suggests that the impediment of crime was involved in this case. That it could have been involved is certainly possible, particularly if we believe the testimony of one of Alice’s witnesses to an exchange of consent six years previously. Robert’s defense, however, seems to be the more straightforward one of bigamy. Helmholz also suggests (155 and n. 66) that this case involved the testimony of persons of servile status. Here, the reference seems to be mistaken; he may have been thinking of Wright and Birkys c Birkys (at nn. 170–8).

171. Ch 4, n. 40: Latin in Helmholz, *Marriage Litigation*, 202; the libel, portions of the depositions, and the archdeacon’s official’s sentence in this case are printed in *id.*, 201–4.

172. Ch 4, n. 43: Indeed, Helmholz, *ibid.*, suggests that his failure to do so explains the ruling of the archdiocesan court against him, i.e., that a failure clearly to dissent leads to a presumption of consent. No result in York is recorded.

173. Ch 4, n. 44: One of them defies any attempt to tell a story from it. *Henrison c Totty* (1396), C.P.E.223, is an appeal from the official of the archdeacon of Richmond in a de presenti marriage case where the only surviving documents concern the appeal and procedural objections to the processus before the archdeacon’s official. We have, however, added one case, *Wetherby c Page*, that we classified in Table 3.2 as a two-party
case involving a marriage of uncertain type because it raises issues similar to those in *de presenti* marriage cases.

174. Ch 4, n. 46: Pedersen, *Marriage Disputes*, 198, has some interesting details about the complaints that the defendant made when he first appeared in the court of York. To these we can add that he complained not only about the alimony awarded by the lower court but also about the costs (*sumptus lites*), and he claimed that he could not pay them.

175. Ch 4, n. 47: This case has produced more than its share of confused references in the literature. Helmholz, *Marriage Litigation*, 50, cites it as a case of a man who believed his union was invalid because of force and who married again, with the result that there was a multiparty lawsuit. That is clearly not this case; the reference is probably to *Fogblir and Barker c Weyrnton* (n. 234). Later (p. 90), he cites it as an example of a father who told his daughter he would "break her neck" unless she agreed to the young man he favored. That is also not this case; nor is it, so far as I am aware, any case in the York cause papers, though I am sure that it exists somewhere in Helmholz's wide data set. Pedersen, *Marriage Disputes*, 16, tells us that this is a dispute about the validity of vows exchanged under duress between a young widow and her guardian's 10-year-old son. On p. 121, the boy has lost three years and become 7. (There is a reference to his being ten, in the first set of depositions, though the testimony seems to be hearsay.) On p. 160, we learn that "internal court documents" (e.g., the articles in this case) do not contain the phrase *affectio maritalis*; on pp. 162–6, we learn that the articles in this case do contain the phrase. Constance's positions do contain the phrase, and it is also found in the depositions.

176. Ch 4, n. 48: Helmholz, *Marriage Litigation*, 19, suggests that the case may have been quite close because the judge called the witnesses back for reexamination. I'm not sure that that is so because the repetition of witnesses was probably caused by the fact that Alice filed an exception (technically a duplication) to Robert's replication to her exception of force. Hence, at least one witness, Richard Belamy, testified three times, once on each of the pleadings. That the case was close is, however, indicated by the fact that the commissary general personally examined both Robert and Alice before rendering sentence. I agree with Goldberg, *Women, Work*, 255–6, that Alice was probably quite young; I cannot agree with him, however, that the threats were made by her father. Richard Belamy, who is alleged to have made the threats, describes himself as the uncle of Alice's father. Although he gives his age as 50, one of the witnesses describes him as *antiquus*, thereby, perhaps, implying that he could not have carried out the threats, at least in the presence of stronger, younger men. Richard's testimony on three separate occasions about the force that he threatened may have led the commissary general to think that the Belamys were now trying to break up the marriage of stronger, younger men. Richard's testimony on three separate occasions about the force that he threatened may have led the commissary general to think that the Belamys were now trying to break up the marriage for reasons unrelated to the force that may or may not have been applied at the time of the marriage. This is certainly suggested by one of the interrogatories that Richard submits (unfortunately difficult to read on film) in which the witnesses are to testify whether Alice was "induced" (*inducta*) to reclaim her consent to the marriage.

177. Ch 4, n. 49: The role of the proctor who served as Alice's *curator ad lites* in this case deserves more examination. It may be that what this case is really about is a quarrel among Alice's relatives about the desirability of the match with John. Pedersen, *Marriage Disputes*, 128, 133, notes that a Sir Brian of Rawcliffe, whom he was unable to identify but who may have been related to Alice's deceased father, seems to have precipitated the litigation by forcibly removing Alice from the house of her erstwhile husband John.

178. Ch 4, n. 50: Helmholz, *Marriage Litigation*, 69, points out that this was a case of restitution of conjugal rights, which "blurred" into a petitory action when the court allowed Alice's *curator ad lites* to raise the nonage and force defenses. The account in Pedersen, *Marriage Disputes*, 126–33, of the depositions in this case suggests at least ambiguity on Alice's part, if not more willingness to be married than not. I agree with Goldberg, *Women, Work*, 224, that this case illustrates that cases of underage marriage in the later Middle Ages are largely confined to the substantially landed (though the parties in *Brantice c Crane* [at n. 39] were not that) and are rare. There is, however, more than one such case "between the Peasants' Revolt and the accession of Henry VIII." To *Tweynge c Fedryston* (1436), CP.E.119, which Goldberg mentions, we should add *Rillerton, Harlbyngton and Hartbyngton c Langdale* (1424), CP.E.154 (nonage issue indicated by the interrogatories); *Threpland c Richardson* (1428–32), CP.E.96, and *Morehouse c Inseclif* (n.d., s15/2), CP.E.334. There are
no indications of social status in the last named (which is evidenced only by the exception of nonage). The first defendant in Rilleston is described as ‘donzel’ and the actrix ‘father as ‘esquire’; in Threpland property features prominently in allegations of the parties, and the rea ultimately appeals to the Apostolic See, and apostoli are granted.

179. Ch 4, n. 52: Dicit x-eciam-xˆtamen iste iuratus quod credit quod dicta Alicia matrimonium non contraxit cum Willelmo predicto nec in eum tamquam / virum suum consensit nisi unde [read super] bec afsisset consensus parentum suorum et dicit ulteriorius iste iuratus ut credit confessio / predicta coram custode emissa ut promittitur facta fuit propter minus et terrores dici Willelmi Whitheved qui dixit edem Alicie quod si non fatheretur coram dicto Castode quod matrimonium cum ipsu contraxisset et ipsam carnaliter cognovisset ipsum cum cultello suo interficerit. I assume that the clerk got the mood of the first verbs wrong and that we should probably read contraxerit and consensierit.

180. Ch 4, n. 55: Chapelayn c Cragge (at nn. 2–21) (enforce); Lovell c Marton (at nn. 22–31) (both); Whitheved c Crescy (at n. 51) (break up); Wright c Ricall (at n. 64) (enforce); Romunedly c Fischelake (at n. 68) (break up); Drifeld c Dalton (at n. 74) (enforce); Acclum c Carthorp (at n. 75) (enforce); Godewyn c Roser (at n. 78) (break up); Rayner c Wilyamson (at n. 80) (break up).

181. Ch 4, n. 57: Helmholz, Marriage Litigation, 122, notes that this is a case in which a party asks for summary process but still submits quite standard formal documents. Pedersen, Marriage Disputes, 172–3, has the positions of the parties reversed. It is John who is attempting to defeat Alice’s action on the basis of her precontract with William. What Pedersen has to say, however, about the use of the term affectio maritalis in the depositions is quite correct.

182. Ch 4, n. 61: Pedersen, Marriage Disputes, 124–6, suggests that John dropped the case because the last entry records a conclusion in the case as a result of the continuance of the actor. He is mistaken in his suggestion that this means that the case was dismissed, debate would follow conclusion and sentencing after that, but it is significant that this is the last entry. He then goes on to suggest that Joan eventually married John because her testament, probated in 1420 (when she must have been at least 70), asks that she be buried next to her husband, John, in the church of Carnaby. The testament that Pedersen cites (Probate Register, vol. 2, fol. 495r) is not the testament of Joan but of one John Mounceaux, probably a relative, whose testament was probated in 1426. The testament of a Joan Mounceaux is found in Part 1 of the Register of Archbishop Bowet (Reg. 18, fol. 377v), probated 18 December 1420 (the testament having been made on 13 November 1420). Cf. Testamenta Eboracensia, 398. She describes herself as uxor quondam Johannis Mounceae domini de Berneston. She says that she wishes to be buried next to her husband in the northern part of the church of All Saints’ Barmston. The only mention of Carnaby is a legacy of two torches to the church (along with similar legacies to other local churches). Assuming that this is the same woman as the one involved in our case (she mentions only an Alexander and a Robert as her sons, but William could have predeceased her), the John mentioned here is almost certainly the former husband of the case. Pedersen does have a point, however, when he wonders why Joan defended the case on the ground of disparity of wealth rather than, or in addition to, the ground of force. Not only does her son William testify that John and his men broke into her manor house when they are alleged to have exchanged present consent, but a seemingly unrelated witness from the parish of Leven also testifies that he saw John’s witnesses venire cum eodem Johanne ad manerium de Berneston cum armis et cultellis extractis minando servientibus eiusdem domine Johanne quod nisi tacerent eos occiderent. Pedersen is correct that this is the only fourteenth-century case in the cause papers which a woman defends on the ground of disparity of wealth. There is also one such case in the fifteenth-century papers, Wilyke c Roger (Ch 5, n. 17) (also defended on the ground of absence).
184. Ch 4, nn. 65, 66: Helmholz, *Marriage Litigation*, 132, notes that Alice custodiebat peccora sua [i.e., Willelm] and wonders what the relevance of that might be (suggesting that the evidence was prejudicial). As suggested in the next paragraph, the relevance seems to be that she *ipsi Willelmo deser*? v*ivit sicut viro suo in vendicione vel *collectione bladorum suorum et in alia*.

185. Ch 4, n. 67: Goldberg, *Women, Work*, 245 (miscited as F.84), 246, notes that this case does not fit well with his pattern of rural marriages arranged by parents. As Alice’s father testifies in this case (William does not allege this), when William asked him if he could marry Alice, he said that if she was pleased, he was pleased. It makes more sense if we assume that both parties were somewhat more mature.

186. Ch 4, n. 72: Helmholz, *Marriage Litigation*, 136, with reference to this case, points out that inconsistent pleading was legally possible in medieval church courts, as it is today in American courts, but one must imagine that, like today, so too in the fourteenth century, such pleading cannot have made a good impression on the judge.

187. Ch 4, n. 73: Goldberg, *Women, Work*, 213, points out that this is one of a number of cases in which marriages were contracted around Pentecost, the time at which contracts of service expired. His other references to the case (*id.*, 219, 160, 240, 273–4) are accurate.

188. Ch 4, n. 76: He has a page boy at the time of the illicit relationship sixteen years previously, and a man, one of the witnesses, who takes his boots off for him and gets him and his mistress food and drink. He must be at least 32 for it to have been plausible that he had this relationship so long ago, and Joan is the great-granddaughter of the *stipes*, whereas the woman with whom he had the alleged relationship is only the granddaughter.

189. Ch 4, n. 77: Helmholz, *Marriage Litigation*, 78 nn. 12–14, notes that John’s pleading of the relationship is deliberately unspecific *in tercio gradu et infra quartum gradum consanguinitatis attingente*, that the distinction between consanguinity and affinity is firmly maintained in these records, and that he has not seen (nor have I) an English case in which a divorce is granted for the impediment of public honesty. Pedersen, *Marriage Disputes*, 77–8, cites this case as illustrating a sophisticated stratagem to get an annulment of a current marriage. The problem is that this is not an action for annulment. Goldberg, *Women, Work*, 258, suggests that the force in this case was applied by John’s parents. For reasons suggested in the text, I think it far more likely that it was applied by Joan’s relatives.

190. Ch 4, n. 79: Goldberg, *Women, Work*, 250, discusses this case in the context of rural cases where there was inadequate parental supervision of young people. He notes that forced marriages could be invalidated, and then proceeds to sympathize, with Idonea, Alice’s mother, for having raised her objections. One can, indeed, sympathize with Idonea, but only so far. Her allegation of the relationship between Alice and Agnes was, so far as we can tell, specious.

191. Ch 4, n. 81: Helmholz, *Marriage Litigation*, 83 n. 25, suggests that it is the former, and he is probably right. All the witnesses rely on Thomas’s statements; none actually saw the intercourse or anything suggesting it, though one seems to suggest that Emmota admitted having been known by both men.

192. Ch 4, n. 86: Topclyf alleges that Grenhebode accused him of being a wastrel in order to impede his marriage to Emmota. Emmota was previously married (one witness describes himself as the godfather of her child, another as the wife of the nephew of her former husband); hence, the case has elements of type four.

193. Ch 4, n. 87: According to the first witness, John took her by the hand and said “I give you my faith and I will (velo) have you as wife if you will consent to this.” She said “Gramercy Shyrre.” (Goldberg, *Women, Work*, 218, has her saying this to the wrong man.) The second witness says that Emma said that she wanted to consult with her friends, and that she wished to have further deliberation. When asked expressly if Emma had ever given any sign that she consented even though she did not express it in words, the witness said that that was not how it appeared to her (*non prout iste iurate apparuit*). Rather, it appeared to her that she dissented rather than consented.

194. Ch 4, n. 89: *Brantice c Crane* (at nn. 39–43); *Tofte c Maynswaryng* (at nn. 45–6) [probable]; *Hopton c Brome* (at n. 47); *Thomeson c Belamy* (at n. 48); *Marryes c Rouclif* (at nn. 49–50).
Alice by one John Warner, who may be the same as John Boton, but the details of this case cannot be recovered.

Ch 4, n. 115: Probably connected with this case is a defamation suit brought in the same year against

Joan Pyrt of Yanwath and William de Bridsall, who was by his own admission a pauper and a beggar. The question is whether

Acclum c Carthorp (at nn. 64); Foston c Lofhouse (at nn. 32–8); Wetherby c Page (at nn. 56–7); Clifton c [. . .] (at n. 59); Carnaby c Mounceaux (at nn. 60–1); Trayleung c Jackson (at n. 62); Barneby c Fertlyng (at n. 63); Wright c Rical (at n. 64). To these we might add Hopton c Brome (at n. 47), which we classified with the arranged marriages, and Topclyf c Erle (at nn. 86–8), which we will classify with types one, two, and three.

Ch 4, n. 100: Chapelayn c Cragge (at nn. 2–21); Romundeby c Fischelake (at n. 68); Tailour c Beek (at n. 69); Drifeld c Dalton (at n. 74).

Ch 4, n. 105: Sentence for female plaintiff: Brantice c Grane (at nn. 39–43); Tofte c Maynswaryng (at nn. 45–6). Sentence for male plaintiff: Thomeston c Belamy (at n. 48); Marayss c Rose (at nn. 49–50). No sentence, male plaintiff: Hopton c Brome (at n. 47).

Ch 4, n. 106: Sentence for female plaintiff: Wright c Rical (at n. 64); Foston c Lofhouse (at nn. 32–8); Barneby c Fertlyng (at n. 63). No sentence, female plaintiff: Wetherby c Page (at nn. 56–7). No sentence, male plaintiff: Clifton c [. . .] (at n. 59); Carnaby c Mounceaux (at nn. 60–1); Trayleung c Jackson (at n. 62).

Ch 4, n. 107: One can never be sure with any given case that this happened, but when we get a number of cases of given type without sentences, we can suspect abandonment or compromise. The question, then, is whether the compromise is likely to have been favorable or unfavorable to the plaintiff. Suffice it to say here that there is nothing in these cases that suggests that the plaintiff had put enough on the record that he was likely to obtain a favorable compromise.

Ch 4, n. 108: No sentence, female plaintiff: Acclum c Carthorp (at n. 75); Romundeby c Fischelake (at n. 68). Sentence for female plaintiff: Scheravode c Lambe (at nn. 82–3); Chapelayn c Cragge (at nn. 2–21); Tailour c Beek (at n. 69); Drifeld c Dalton (at nn. 74); Godewyn c Roser (at nn. 78–9); Bernard c Walker (at nn. 84–5).

Ch 4, n. 112: As Pedersen, Marriage Disputes, 183 n. 20, points out, John also objects in the lower court that one of the witnesses is a procress. This allegation is abandoned on appeal, as is the allegation that one of the witnesses is under age, apparently because John could find no support for them.

Ch 4, n. 113: Agnes Waller of Durham c Richard de Kyrkeby tailor of Durham (1355–8), C.P.E.263, and Joan Pytt of Yamwathe (Carlisle diocese) c William son of Robert Houson of Stockbridge (Carlisle diocese) (1394), C.P.E.213.

Ch 4, n. 115: Probably connected with this case is a defamation suit brought in the same year against Alice by one John Warner, who may be the same as John Boton, but the details of this case cannot be recovered from the surviving documentation: Warner c Redyng (1367), C.P.E.93. Pedersen, Marriage Disputes, 70–3, has a full account of the exceptions taken against the witnesses in Redyng c Boton, particularly those taken against William de Brudall, who was by his own admission a pauper and a beggar. The question is whether he was also an alcoholic and mentally defective. I am less confident than is Pedersen that we can tell that he was, nor am I as confident as Pedersen that we can tell that he was not ‘coached’ before he gave his testimony. Goldberg, Women, Work, 248, notes that the woman in this case seems to have been of low status (but he misses the exception taken against her that she was of servile status). He regards the case as an exception to the general rule that marriages of rural women were arranged by their parents: “daughters of poorer families, who could contribute little in terms of land or wealth, may often have enjoyed greater freedom.” We will return to this issue at the end of Chapter 5.

Ch 4, n. 119: Neither deposition is completely legible on film, but what the witnesses seem to testify to is: Cecilia, volo habeare te in uxorem meam et ad hoc do tibi fidem meam si vis michi concedere quicquid a me petieritis. Blackstone, 346, points out, that Blackstone contends that the witness was already married and therefore the marriage was not valid.

Ch 4, n. 120: In 1410, a Cecily Wyvell of York obtained a separation from Henry Venable, donzel, her husband of thirteen years. C.P.E.56 (Ch 10, at nn. 43–5). This may be the same woman; the surname is not that common. If our guesses about the later case are right, Cecily was very young when the events alleged in this case happened.

Ch 4, n. 123: I agree with Pedersen, Marriage Disputes, 63–5, that this case shows that the parties and the witnesses knew that words could create a binding marriage, particularly if followed by intercourse, and the Canterbury case printed in Helmholz, Marriage Litigation, 198–9, that shows on occasion, the courts could
side with the woman in these circumstances. I am more skeptical than is Goldberg, Women, Work, 249, that anything like this actually happened, and the absence of a sentence suggests, at least to me, that the court shared this skepticism.

207. Ch 4, n. 126: For a full discussion, see Helmholz, Marriage Litigation, 172–81. Our discussion here and in Chapter 3 will confirm Helmholz's conclusion of a long-term decline in the institution of abjuration sub pena nubendi and his suggestion that the decline was caused by legal and moral doubts about the practice.

208. Ch 4, n. 128: The sentence mentions the production of witnesses, and a document survives in which Matilda, on appeal, asks for such production, but the only document for the defense on appeal attacks the testimony in the lower court on the ground of inconsistency.

209. Ch 4, n. 132: Pedersen, Marriage Disputes, 88–9, 149, 151, suggests that we cannot take seriously Hugh's argument about the abjuration, that it must have been a ruse to get the case before the York court while he was assembling his real defense. This ignores the fact that Hugh's first group of witnesses testify both to the nature of the proceedings at Beverley and to his absence from the proceedings when he was supposed to have confessed (not to precontract, as is said on 89, nor absence from the place where he is supposed to have had intercourse, as is said on 149). As suggested in the text, I am inclined to think that there was probably something even to the first argument.

210. Ch 4, n. 128: See Helmholz, Marriage Litigation, 208–12, prints some of the documents. He discusses the impediment of crime issue both at 208 and at 96 and n. 81; the defense to the abjuration is discussed at 179.

211. Ch 4, n. 137: Helmholz, Marriage Litigation, 176, cites this case as one in which the man confesses to having confessed the intercourse to his parish priest, but in which the woman fails of proof and so the man receives a favorable sentence. That is not this case.

212. Ch 4, n. 139: Both Helmholz, Marriage Litigation, 177, and Pedersen, Marriage Disputes, 14, suggest that the jurisdiction of this commissary was challenged. I cannot quite see that in the surviving documentation, though some of the questions put to the clerk of the commissary's court and a notary who happened to be in attendance suggest doubts about the jurisdiction. (There is a document that demands an official version of the commissary's proceedings, which does seem to have been supplied.) The ultimate result in the case necessarily implies that the commissary could take the abjuration. Whether the commissary could order the solemnization need not be decided because that is ordered by the court of York on the basis of John's confession.

213. Ch 4, n. 140: On the basis of the depositions, Helmholz, Marriage Litigation, 179–80, argues that the justification for allowing the abjuration was that ultimately it was voluntary.

214. Ch 4, n. 141: The other two references to this case in Pedersen, Disputes, are mistaken. The challenge to William Alman, official of the archdeacon of Northumberland, as a bigamist (p. 15 n. 38) occurs in Gudefelawe c Chappeman (at n. 255). I do not know of any case in the York cause papers in which a woman is alleged to have threatened to murder her husband while he was asleep (pp. 197–8 and n. 80). It is not this case, and it is not any of the separation cases. Palmere c Brunne (at nn. 191–3) does contain an allegation that a woman tried to poison her husband with arsenic.

215. Ch 4, n. 143: Helmholz, Marriage Litigation, 175–6, suggests that the sentence was ultimately for the defendant. For reasons suggested in the text, I do not think that this is right. He is correct, however, that before the archdeacon, John defended on the ground that Joan had appeared in his bed chamber on two occasions and he had fled, not wanting to have intercourse with her.

216. Ch 4, n. 144: The witnesses to the defendant's exceptions to the plaintiff's witnesses in this case are more honest than is usual in that they testify to the generally good character of the plaintiff's witnesses, although they also testify to the plaintiff's witnesses' firm commitment to her cause. See Helmholz, Marriage Litigation, 174, for the suggestion that this case, like others, illustrates the proposition that it requires more than just fornication, but something, as here, more like concubinage, to precipitate an abjuration order.
217. Ch. 4, n. 146: Much depends on how strictly the court interprets the eyewitness requirement. In other cases, seeing the parties together in bed seems to be enough. At worst, what we have here are indicia, circumstantial evidence, plus fama, and that may be enough.

218. Ch. 4, n. 148: [the lines of the document are clipped at the end]: quaedam nocte de quo certo non recolit infra mensem post abjuracionem buusmodi prefata Alicia [...]. Ad domum patris sistus intravit et intravit domum predictam; cum sic intravit ute inquitus dixit ["Quid facis tu hic", et ipsa sibi respondit "Hic volo esse"]. Cui dixit Johannes dixit 'Vade viae [...] / pro certo hic non esset', et dicit quod dicta 'Alicia tunc rogavit 'eo quod posset recedere per hostium [...] / dicte domus propter visum vicinorum in vico existincium / et dicit quod cepit eam per humeros et expulsit eam a dicta domo et clausit bosium post eam. See Helmholz, Marriage Litigation, 175–6 and n. 42. The account in Pedersen, Marriage Disputes, 89, 149–51, ignores John’s own testimony, which I am inclined to think was crucial. There is confusion among the witnesses as to when the abjuration took place, but John confesses that the incident at the door occurred after the abjuration.

219. Ch. 4, n. 151: Ecce Alicia de Harpham !concluseum est inter me et iustum Aliciaem de Welwyk, etc. . . . Ac ipsa Alicia de Welwyk magistrat tua velit quod ego faciam securitatem super promissis tibi nomine suo. Et sic volo ego te [read te] Aliciae de Harpham !attestare hic fidem meam quod ego ducam illum Aliciaem de Welwyk in uxorom meam si contingent eam concipe et habere prolem de me. Alternatively we could read: tibi nomine suo et sic velo ego. Tu Alicia de Harpham acipe hic fidem meam, etc.

220. Ch. 4, n. 152: Pedersen, Marriage Disputes, 78 n. 40, dates this interrogation three weeks after the official rendered sentence, but it is quite clearly dated 13 October 1359. The commissary general’s sentence does not come until 11 December 1359, and that of the special commissary of the official is dated 9 March 1360. On pp. 80–1, he has the sequence right. We need not argue about whether he added a minim to the date (14 October vs 13 October) or I left one out.

221. Ch. 4, n. 153: See Helmholz, Marriage Litigation, 51 and n. 92, who suggests that the fact that such conditional contracts continued to be made indicates “the tenacity of many people’s belief in the freedom to regulate their own matrimonial arrangements.” Pedersen, Marriage Disputes, 79 and n. 42, notes that Robert seems to have been aware of this legal rule; hence, the form of his promise was to Alice de Harpham, rather than to Alice to Welwyck herself.

222. Ch. 4, n. 158: Hostiensis, Summa aurea, tit. de sponsibilibus et matrimoniis and tit. de matrimoniiis, does not expressly discuss the problem, but what he says there supports the conclusions drawn here.

223. Ch. 4, n. 161: This is not far from the conclusion of Helmholz, Marriage Litigation, 66 and n. 139: “some judges appear in some cases to have bent the law to fit their normal, and sensible, prejudices.” Our account, however, suggests that this case did not require that much bending. Goldberg, Women, Work, 249, cites the case as an example of the dangers encountered by rural women who made matrimonial plans without parental supervision. The problem with this characterization is that Alice lived in her own house in Beverley, which Goldberg classifies as “urban.” He is even further from the mark when he cites this case as one of a number in which there is “clearest evidence of parental involvement” where “established unions were threatened by supervision. The problem with this characterization is that Alice lived in her own house in Beverley, which Goldberg classifies as “urban.” He is even further from the mark when he cites this case as one of a number in which there is “clearest evidence of parental involvement” where “established unions were threatened by parental involvement.” The parental involvement in this case, to the extent that it exists, is on the other side. Alice seems to have been an orphan, a fact indicated by the fact that her “best friend” is the canon of Warner, and, of course, she loses.

224. Ch. 4, n. 162: Helmholz, Marriage Litigation, 40 n. 57, suggests that the length of time that it took to decide this case indicates its difficulty.

225. Ch. 4, n. 163: T2: Si aliquam mulierem ducerem in uxorom te ducerem. T3: Si quam ducerem in uxorom te ducerem. T4 (quoting John): promissi de ducere si aliquam ducerem. T6: si quam duceret ipsam duceret. The other witnesses are more ambiguous or vague, and even these have qualifications.

226. Ch. 4, n. 164: For a full discussion in the context of this case, see Helmholz, Marriage Litigation, 40–5. He misses the confirmatory sentence of the official and subsequent appeal to the Apostolic See.

227. Ch. 4, n. 165: Helmholz, Marriage Litigation, 45 and n. 73, citing a Canterbury diocesan case of 1373. Lowell e Marton (at n. 23), suggests the contrary.
228. Ch 4, n. 167: Helmholz, *Marriage Litigation*, 195–8, prints one of the depositions, summaries of others, and one of the sentences in the case with an introduction outlining the quite-limited circumstances in which a marriage could be inferred absent direct proof of consent.

229. Ch 4, n. 169: *Pace* Pedersen, *Marriage Disputes*, 192, that a Fossard family was enfeoffed of property in the city by the earl of Mortain does not mean that a woman with that surname was necessarily “of a wealthy York family.”

230. Ch 4, n. 171: *Johannes ego timeo michi quod tu vis decipere me et nullatenus contrahere mecum matrimonium nec me ducere in uxorem.*

231. Ch 4, n. 172: *sic certe volo et bene vides quod ego non traho me ad aliquam aliam mulierem et non timeas quia ego volo habere te in uxorem meam et nullam aliam mulierem.*

232. Ch 4, n. 173: *ego volo ducere te in uxorem meam quam cicerius ego potero propter matrem meam.* Helmholz, *Marriage Litigation*, 48 n. 85, notes that this might have been taken as a conditional contract, but it made no difference because intercourse followed.

233. Ch 4, n. 174: *Johannes dixit quod numquam voluit desponsare dictam Ceciliam, que Cecilia tunc respondit et dixit ‘adhuc nescis’.*

234. Ch 4, n. 175: Helmholz, *Marriage Litigation*, 154–5 and n. 62, notes with reference to this case, among others, that the practice of deferring exceptions to witnesses until after their testimony had been heard meant that many people who were arguably incapable of testifying, in fact, testified. Pedersen, *Marriage Disputes*, 183 and n. 20, 189 and n. 37, argues that John’s servile status was proven. I do not see that, but it need not have made any difference in the result if it had been. Cecily was not arguing that she should be freed from John because of the impediment of error. More surprising is the fact that the court holds for Cecily despite the uncontradicted testimony of the brother-in-law’s servile status. See Donahue, “Proof by Witnesses,” 147 and n. 89.

235. Ch 4, n. 177: Goldberg, *Women, Work*, 255, focuses on this second marriage, which, he argues, I think correctly, was arranged by John’s relatives. (I suspect, however, that the house in which the marriage took place was that of John’s grandmother rather than his aunt, if she was anything like the 80 years of age that she described herself as being.) Whether the dynamics of the situation are quite as he describes them we may have more doubt. The marriage in question seems to be described as having taken place around Michaelmas of 1368, which would have been after Cecily had brought her case in the court of York (March, 1368). Cecily’s interrogatories specifically request that the witnesses to the marriage be asked if they knew about the pending litigation. It is hard to imagine that they did not.

236. Ch 4, n. 178: Smith, *CP York, 1301–1399*, 41, speaks of appeals from sentences of both the special commissary and the commissary general. I can find only one sentence, that of the special commissary, but the style of the *acta* on the back of Cecily’s libel is more like what we find in an archidiaconal or decanal court than like what we find in the consistory court. It is possible that there was an earlier appeal from a lower court, an appeal that was initially heard by the commissary general and his special commissary.

237. Ch 4, n. 180: My account of this case is less circumstantial than that of Pedersen, *Marriage Disputes*, 63–9, basically because I am not sure that it is possible to read all that Pedersen seems to have read in the *processus* from Durham. (I have not tried to read it under ultraviolet light.) What he publishes of the exchange reported by Emma Cokfield, Thomas’s aunt, between Thomas and Margaret is substantially accurate (pp. 66–7 nn. 21–2). The problem is what the *processus* says where he does not quote. The dates are crucial in this case, and he seems to have most of them wrong. Thomas was not cited to appear before the bishop of Durham in “late 1394.” The whole process was transmitted to the York court on 3 July 1394. The citation in the *processus* is dated December 139[...]([ms. clipped at edge]), and later dates in the *processus* suggest that this must be 1392 [a suggestion that is confirmed by the fact that the letter just before the tear in the ms. looks very much like an s]. One *actum* in it is dated in April of 1393 (dating with reference to the [dominica in qua] cantatur officium ‘Quasi modo geniti anno Domini mccc’ nonagésimo tertio [13.iv.1393], before the witnesses were produced), and the sentence is probably dated late in 1393 (reference to die maris proximo post conceptionis Marie [9.xii.1393]).
one date in the depositions in the processus that I can read is “the fifth week after Easter in the same year” (quinta septimana post Pascha eodem anno). This is the second exchange between Margaret and Thomas in which she asks him if there is anything “stykking” in his heart that was repugnant to their contract, and he swore that there was not. The first exchange took place before that, probably in Lent or perhaps earlier, in 1392. (If it had been Easter of the current year, Emma certainly would have said so.) The negotiations that led to the dowry agreement between Emma Cory and Thomas are expressly said in the depositions taken at York to have taken place “on the eve of the feast of St Cuthbert in autumn next to come, two years previously” (in vigilia sancti Cuthberti in autumno proximo futura erunt duo anno). Since these depositions are taken on 27 July 1394, the date being referred to is almost certainly 3 September 1392, not 20 March 1394 (wrong feast of St Cuthbert and ignores the “two years previously”). The solemnization of the marriage, however, did not take place until “Wednesday ... after the octave of Easter last past” (die mercurii ... proximo post octavam Pasce ultimo preteritas) (29 April [not 10 April] 1394). When the banns were published in the church of Staindrop is not clear. One witness says “around Michaelmas (29 September) then next to be” (circum festum sancti Michaelis proximo tunc futurum), and one says “around Martinmas (11 November) then next to be” (circum festum sancti Martini proximo tunc futurum), in both cases apparent references to 1392, the year most recently mentioned. I suspect that it happened in 1393, and the chaplain of Staindrop’s refusal to proceed with the solemnization, leading to the solemnization at dawn in an unnamed church by an unnamed priest, may be connected with Thomas’s complaint in the court of York on 13 July 1394 that the chaplain of Staindrop was iniquitously trying to execute the sentence of the Durham official and force Margaret and Thomas to solemnize.

Hence, we are probably correct in concluding that there is nothing about the second marriage that ought to impede the first. Whether there is enough proof of the first is, as Pedersen recognizes, a much closer question. I am inclined to think that that placeat me habere te in uxorem or that placeat mihi habere te in uxorem meam is enough for present consent, and much depends on what the second witness, whose testimony I find virtually illegible, had to say. He certainly said enough to cause Thomas and his kin concern; otherwise, they would not have gone through the elaborate process to set up the marriage with Emma Cory. The account of the dowry negotiations in Goldberg, Women, Work, 245–6, is accurate as far as it goes, but it fails to do justice to the quite unusual nature of the circumstances.

238. Ch 4, n. 183: As Helmholz, Marriage Litigation, 182, points out, the Latin for John’s consent to Alice is given as O mulier per fidem meam plenarie contentor anglice ‘I am fully payd’. He suggests that the defendant insisted on including the vernacular, and that is possible (the English is interlined in the first deposition), but his general point is that the increasing use of the vernacular in the fifteenth century made it easier for judges who, by and large, did not examine the witnesses personally. Goldberg, Women, Work, 244, notes that Matilda was living with her father at the time of the contract. The depositions do not say this, but the contract certainly took place at his house; some say in his ‘hayhouse’. Alice seems to have been living by herself, but the depositions in her case suggest that she sought her brother’s consent to the marriage. Alice may have been considerably older than Matilda and perhaps than John; she has a daughter who describes herself as 20.

239. Ch 4, n. 185: Hic accipio te Elenam in uxorinem et ad hoc do tibi fidem meam, etc. ... Hic accipio vos in maritum meam et ad hoc do volo fidem meam.

240. Ch 4, n. 186: Both Pedersen, Marriage Disputes, 107–8, and Goldberg, Women, Work, 232, 261, make much of William’s status as an apprentice and suggest that the problem in the case arose because he could not solemnize his contract with either woman before he completed the apprenticeship. I am not sure that Isabella’s one reference to waiting until William obtained Roger’s beneplacitum will quite sustain those inferences, but it is possible. Certainly, as Pedersen suggests, both Roger and one of Ellen’s female witnesses, Cecily de Hessay, seem to have been engaging in some informal dispute resolution before the case got to court, and Goldberg is quite correct in suggesting that in neither case was there a formal ‘family’ contract, although the master and Cecily may have been acting somewhat in loco parentum.

241. Ch 4, n. 188: If we are reading it right, what leads up to this is a bit odd: Thomas said to Marjorie accipiendo eam per manum ‘vos tu licenciate me ad accipiendum uxorinem ubi cumque volo?’ To which she replied: volo. Then he said: ego volo habere te in uxorinem meam. And she replied: ego volo habere vos in
It is possible that they thought that it was necessary for Marjorie to release Thomas from any previous promises, so that his consent on this occasion be totally free.

242. Ch 4, n. 190: Goldberg, *Women, Work*, 261–2, uses this case to illustrate how romance could develop between male and female servants working together in the same household. Clearly, that is the case. He seems to miss, however, the substantial byplay in the case that may have divided the saddlers of York, and his notion that Marjorie intervened to break up Thomas's contract with Beatrice is undercut by the fact that she first complained about him to the dean of Christianity on 5 November 1393, while the exchange of consent with Beatrice took place on 26 November of the same year.

243. Ch 4, n. 192: *si vobis constiterit eos per iudicium ecclesiae non fuisse legitime separatos ecclesiamque deceptam, ipsos faciatis sicut virum et uxorem insimul permanere.*

244. Ch 4, n. 193: The case has provoked considerable commentary in the literature because it has such clear evidence of the corruption that we suspect in other cases. Helmholz, *Marriage Litigation*, 65–6, makes the law perhaps a bit clearer than it was. He uses the case again (at 162) to raise the point of how difficult it was to prevent this kind of collusion. Pedersen, *Marriage Disputes*, 140–2, suggests that the vicar of Scally, who testifies for Alice, or the court personnel of the archdeacon of East Riding advised Alice to take this course of action after she had confessed to the archdeacon’s official that she had attempted to poison her husband. He is wrong when he suggests that the vicar is the only witness who testifies to the involvement of Alice’s father in the collusive lawsuit, but his transcription of the vicar’s testimony (141 nn. 3–5) is accurate, and one can draw one’s own conclusions. Goldberg, *Woman, Work*, 256, emphasizes the role of the father, while Helmholz and Pedersen both emphasize Alice’s agency. In fact, what the record says is that both Alice and her father promised that they would pay Ralph Fowler five shillings if he would allege that he precontracted with Alice (*eadem Alicia et pater eiusdem Alicie, T1; prefata Alicia una cum Gilberto Palmere patre sui, T3*).

245. Ch 4, n. 196: *eum deliquerit in dicto tempore autumnalii in sua magna necessitate auxilio suo destitutum.*

246. Ch 4, n. 197: *Lucia est vera uxor dicti Willelmi . . . et quod matrimonium inter eosdem publice in ecclesia bannis prius editis fuit celebratum nullo reclamante quod [?read quaed] ipsum testis scit vel uncquam audivit nisi a tempore primum quaestio de dictis Willelmo de Fentrice et quod dictus Willelum de Fentrice precontraxit cum quadam Alicia de qua in proposicione nominatur et bene audet dicere in iuramento suo quod huiusmodi precontractus est fictus et in falsis modo fabricatus per maliciam dicti Willelmi licet idem testis alias in ipsa causa eadem contrarium assseriat et dicbat de quo multum dolet ut dicat.*

247. Ch 4, n. 198: *Johanna, si velis expectare usque finem termini mei apprenticiatus, volo te ducere in uxorem.* Goldberg, *Women, Work*, 249, cites the case as an example of the dangers encountered by rural women who made matrimonial plans without parental supervision.

248. Ch 4, n. 200: *As Pedersen, *Marriage Disputes*, 15 n. 38, 89 n. 16, points out, Agnes’s father was William Cawod, an advocate of the court of York, and the events described took place in his house and in his presence. Those facts increase the likelihood that this was a ‘strike suit’.*
It is possible that hospicium is to be taken here in a more formal sense, i.e., that Alice was running an inn.

253. Ch 4, n. 209: Helmholz, *Marriage Litigation*, 126 n. 52, cites this case as an example of inconsistent pleading. Alice's exception, it is true, does allege both that she did not marry Dowson, but engaged in marriage negotiations with him, on the day described by his witnesses and that she was absent that day. The inconsistent allegation of absence is, however, crossed out of her articles and her witnesses are not questioned about it. Pedersen, *Marriage Disputes*, 73–7, 106, describes Alice as an innkeeper and one of her witnesses as a priest. I do not see that in these depositions. (What is said in T&C no. 252 may indicate the former, but need not.)

254. Ch 4, n. 211: Testimony of Margaret Medelham for William: Johanna, hic accipio te in uxorem meam et ad hoc do tibi fidem meam. (I did not transcribe the formula on the other side, simply noting that it was the same; Joan may have used the vos form.) Testimony of Thomas de Lagfeld for John: vis me habere in maritum tuum et ipsa Johanna...[‘sic’, et Johannes] dixit et ego solo habere te in uxorem... et ipsa respondebat dicent ‘Johannes et ego solo habere [vos or yt]’, etc. The testimony of Walter Bakester for John is even harder to read, but in addition to the fact that he seems to be testifying to events at a different time and place, he also seems to be testifying to the ‘license’ formula that we noted in T&C no. 241.

255. Ch 4, n. 212: This case is quite similar to *Topclyf c Erle* (n. 86), except that in that case the person with whom the precontract is alleged to have taken place is not admitted as a party to the case.

256. Ch 4, n. 222: Pedersen, *Marriage Disputes*, 36–7, argues that litigation was precipitated by Simon's attempt to force Agnes to consent to the alienation of her ancestral lands. That is certainly suggested, though not quite proven, by the testimony he reports. I am inclined, moreover, to think that just as Pedersen is justifiably skeptical about the marriage claims that some of the witnesses in this case make, so, too, we need to be somewhat skeptical about the claims that some of the witnesses make about the relations between Simon and Agnes. The witnesses are, after all, trying to justify her nonappearance in court on the ground that she feared for her safety or to justify her having left Simon on the ground of his cruelty.

257. Ch 4, n. 224: Pedersen, *Marriage Disputes*, 55, suggests that Simon and Agnes were reconciled and that they had another child. I find the evidence for that thin. It is more likely (id.) that Agnes was dead by 1357, because in that year, a Simon de Munketon of York and his wife Isolde conveyed land and rents in *Earswick* to a priest who had been the rector of Huntington. That one of the rents consisted of a pound of cumin is, however, pace Pedersen, not evidence that Simon had become an apothecary.

258. Ch 4, n. 226: Pedersen, *Marriage Disputes*, 195–6 n. 69, notes, this is an example of a woman engaged in ‘self-divorce’, a behavior that Helmholz suggests was confined to men.

259. Ch 4, n. 227: As Pedersen, *Marriage Disputes*, 195–6 n. 69, notes, this is an example of a woman engaged in ‘self-divorce’, a behaviour that Helmholz suggests was confined to men.

260. Ch 4, n. 228: Pace Helmholz, *Marriage Litigation*, 77, there is no evidence that William was a captive in Scotland; indeed, there is considerable evidence that he was not.

261. Ch 4, n. 229: The examiner was unimpressed with this witness because he shifted his accent from southern English to northern English to “the manner of the Scots speaking the English language.” See Helmholz, *Marriage Litigation*, 130 and n. 64, with a full transcription.

262. Ch 4, n. 230: The suggestion in Helmholz, *Marriage Litigation*, 160 at n. 87, that this case involves servientes may not take into account the probability that we are dealing here with life-cycle servanthood.

263. Ch 4, n. 231: The purpose of this testimony is to establish that Richard was alive at the time of John and Joan's marriage, perhaps also to explain why he does not appear. It also means, as Goldberg, *Women, Work*, 257, points out, that Joan cannot remarry unless she can prove that Richard is dead. Whether that makes her quite the victim that Goldberg suggests is a matter about which we may have more doubt. She certainly seems...
to have consented to this divorce, and the brother’s testimony may be the beginnings of an attempt to establish a presumption that Richard is dead.

264. Ch 4, n. 232: Helmholz, *Marriage Litigation*, 76 and n. 6, points out that in this case the man was alleging his own precontract. Alexander III’s decretal *Propositum est*, X 4.7.1 would not have allowed him to do this if the woman with whom he is alleged to have precontracted was dead and his current spouse innocent. Although Helmholz does not mention it, the other woman in this case does seem to have been dead, and it is perhaps for that reason that he suggests (at 96) that the case involved the impediment of crime. He notes there, however, that the depositions are too damaged to determine whether all the elements of that impediment were proven. He does not note, but it is in fact the case, that a divorce was granted, at least at one level of court. It is unclear whether his citation of the case at 164 n. 104 is intended to refer to Marion’s refusal to swear that she did not know of the existence of Isabella Brigham when she married John. Her refusal to swear may be in the *acta* of the case (which are none too clear), though I rather doubt it, but perhaps Helmholz’s point is that Marion would have had a better case if she had so sworn. What can be made out of what survives suggests that she did not defend the case with any vigor.


266. Ch 4, n. 236: Helmholz, *Marriage Litigation*, 199–200, suggests that the difference in result may be explained by the fact that William Aungier acted quickly upon reaching his fourteenth year to sue for divorce. Pedersen, *Marriage Disputes*, 121 n. 12, argues that nonage rather than force was the ground for the judgment here, but at 128, he seems to distinguish this case from *Marrays c Rouclf* (at nn. 49–50), on the ground that force was a factor in this case. I think that his first statement is more likely correct than his second.

267. Ch 4, n. 238: For this reason, I find the account of this case in Goldberg, *Women, Work*, 249 and n. 160, unlikely. He basically accepts the testimony of the second witness and ignores that of Richard and his servant. He also suggests that Richard and Elizabeth had agreed on this course of action. They may have, but that is not what Richard says; he says that he found out about John from others. Helmholz, *Marriage Litigation*, 92–3 and n. 74, may go a bit too far in the opposite direction. (He prints Richard’s and the servant’s depositions on 221–3.) Pedersen, *Marriage Disputes*, 121–4, prints a substantial extract from the second witness’s deposition and perhaps does not fully appreciate what is at least the ambiguity of Richard’s position.

268. Ch 4, n. 239: As the previous discussion of this case notes, the court in that case may have been suspicious of the testimony about force.

269. Ch 4, n. 240: Details in Pedersen, *Marriage Disputes*, 30 n. 10, pp. 88, 145–8, 189–90, 208. Pedersen is probably correct in his suggestion (147 and 145 n. 15) that Nicholas Camplipe’s death at Avignon less than two years after the official rendered sentence was during the course of Nicholas’s pursuit of an appeal. Helmholz, *Marriage Litigation*, 92 and n. 62, is mistaken in thinking that the allegations of force in this case have to do with the circumstances of the marriage, rather than with preventing Katherine from seeking a divorce. Goldberg, *Women, Work*, 223, is mistaken in what seems to be his suggestion that nonage is an issue in this case. His description at 229 is more accurate. Further work in the records might reveal how it is that the case, which seems to have begun in Lincoln, ended up before the consistory of York. It might also reveal how the official was able to render the sentence that he did without the evidence of an inspection. It is possible that an unrecorded examination by matrons determined that the woman was a virgin; it is also possible that he relied on the consanguinity that was charged but, so far as I have been able to tell from the surviving records, not proven. Cf. Haryngton c Sayvell (Ch 5, at nn. 58–66).

270. Ch 4, n. 241: For the procedure, see Helmholz, *Marriage Litigation*, 87–90, who notes that he can find no evidence of its use after 1450. For the details of this case, see Pedersen, *Marriage Disputes*, 115–18. I share Pedersen’s skepticism (117 n. 19) that the women who conducted these examinations were regularly prostitutes, but the examination described in Russel c Skatellock (1429–33), CP.E.111, printed in translation in *Women in England*, 219–22, may be an exception. None of the women in that group is described as married; one of them lived in an area that was known to be a haunt of prostitutes and had been prosecuted three times for fornication. Goldberg, *Women, Work*, 151 and n. 269, 154 and n. 293. (The case that Goldberg cites in n. 269, in which he says that another woman of questionable reputation served as a juror in an impotence case,
is not an impotence case.) A number of the women who appear in an impotence case in which the man ‘passed’ the exam were married or widows. In 

Barley c Barton (1433–4), CP.F.175, one of them testifies: “The rod of William [Barton] was of better quantity in length and thickness than her husband's ever was.” Helmholz, 89 n. 54, with transcription. I have not been able to analyze in detail the testimony in 

Gilbert c Marche (1441), CP.F.224, where the man seems to have failed an examination conducted on what may have been two different occasions. One of the witnesses who conducted an examination, Joan Savage, of the parish of St Maurice, seems remarkably knowledgeable about sexual matters for an 18–year-old. She may appear in the Dean and Chapter Act Book. No sentence survives. The only other impotence case in the cause papers, 

Selby c Marton (1410), CP.F.40, does not have depositions, but the names of what may be the witnesses appear on the dorse of one of the documents. See generally Brundage, 

Law, Sex, 457, with references.

271. Ch 4, n. 243: The record is contained on a flattened roll of three membranes that was reused in another case.

272. Ch 4, n. 244: Helmholz, Marriage Litigation, 86 and n. 39, suggests that the ground of the sentence was that the dispensation did not fit the facts of the case. That may be the situation; the depositions are damaged and faint, but I am inclined to think that the issue is as described in the text.

273. Ch 4, n. 245: Helmholz, Marriage Litigation, 180 n. 62, mistakenly lists this as an abjuration case.

274. Ch 4, n. 248: Helmholz, Marriage Litigation, 100 and n. 99, saw the case before related documents were joined to it and so was unaware that sentence was rendered for the defendant. Pedersen, Marriage Disputes, 189 n. 37, cites this case as one in which the servile status of the defendant was proven, but at 194 he gets it right. This is not, however, the only case (at 212) in which the free or unfree status of someone who appeared in court was of “concern.” Goldberg, Women, Work, 219, cites this as a case in which a witness of unfree status was admitted. One was, but it made no difference since there were eight others who were free.

275. Ch 4, n. 250: Helmholz, Marriage Litigation, 96 and n. 79, thinks that the Carlisle court held against the plaintiff. It may have; the processus is hard to read at the end, and the appeal was taken by the plaintiff. There is certainly no sentence in the York court. Helmholz’s general discussion of the impediment (94–8) suggests that it was systematically underenforced in the English courts. We have seen that there is one case in the York cause papers (at n. 91) where it may have been applied and in which Helmholz seems to have missed the fact that there was a sentence, 

Elme c Elme (at n. 232). But the impediment is only one possible ground for the sentence in that case. Helmholz’s tentative suggestion and the reasons for it (both a fear of the consequences of the impediment in the rather large number of partially innocent bigamy cases, like Elme, and the fact that the impediment was one of positive law only) remain, in my view, quite plausible. He makes similar suggestions about the more extended degrees of consanguinity and affinity (77–87), suggestions that we will be able to confirm in Chapter 11.

276. Ch 4, n. 251: See Reg Melton 2:135. On the basis of the entry in Melton’s register, it seems likely that the underlying divorce action was a mena et thoro, brought by Margaret on the ground of adultery. The action involved in this case, however, may have been an action by Thomas for restoration of conjugal rights. Pedersen, Marriage Disputes, 18 n. 45, 198, should be qualified on this basis.

277. Ch 4, n. 256: The common law of the church attempted to confine jurisdiction over marriage cases to bishops and their officials, but there were numerous exceptions, archdeacons and their officials being perhaps the most common, particularly in the northern province. See Helmholz, Marriage Litigation, 141–7. The argument made here is different, and not one for which I have found support in canonistic writing. It is that the judge of a marriage case should be in major orders, or at least capable of being promoted to major orders. That would exclude “bigamists,” i.e., clerks who had married more than once (even if the first wife had died, as seems clear from the testimony in this case). A similar argument is raised against the official of the archdeacon of Cleveland in 

Thyne c Abbou (at n. 143), but there it was simply that he was married. Helmholz, 146 at n. 26.

278. Ch 4, n. 257: Helmholz, Marriage Litigation, 146 and n. 30, notes that this is one of few instances where an ecclesiastical judge is accused of venality. Such charges against witnesses are considerably more common (157–8). Pace Pedersen, Marriage Disputes, 183 n. 20, this case does not involve exceptions to witnesses, not
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does the fact (188 n. 32) that Juliana (actually her father) was someone’s tenant mean that she was of low status. Every landholder in England, except the king, was someone’s tenant.

279. Ch 4, n. 258: Smith, CP York, 1301–1399, 89, has the appellant and appellee reversed. The document is difficult to read. I cannot vouch for the account in Pedersen, Marriage Disputes, 191 and n. 81, but it may be correct.

280. Ch 4, n. 261: It is, of course, possible that she alleged that the marriage was invalid. All that the sentence says is: tradita per partem ream quadam proposcione in scriptis contestando litem incontinenti admissa eataeae quatenus de ure fuerat admittenda terminaque ad prolana contencta in dicta proposcione dicte parte ree assignato quo termino nichil probato, and again: ipsamque partem ream materiam et intentionem suas in dicta proposcione non probasse set in probacione buusmodi totaliter defecisse. Normally, however, at York where a spouse has grounds (or thinks he or she has grounds) to claim the invalidity of the marriage, he or she sues as plaintiff. All the cases for restoration of conjugal rights that have defenses are defended by allegations that would support a separation.

281. Ch 4, n. 259: See Normanby c Fentrice and Broun (at nn. 195–9); Huntyngton c Munkton (at nn. 215–18); Colvyle c Darell (at n. 251). The first two raise issues that might have led to a separation on the ground of cruelty, the last on the ground of adultery. No man raises issues that might have led to a separation.

282. Ch 4, n. 259: Helmholz, Marriage Litigation, 131 and n. 89, with transcription, cites this as an example of the introduction of irrelevant and possibly prejudicial evidence.

283. Ch 4, n. 266: These should be balanced against the witness cited in Helmholz, Marriage Litigation, 84, who says that there is talk of consanguinity only because the couple have the same surname.

284. Ch 4, n. 267: The assumption here seems to be that Rome is for sale, but the price is high. The Repertorium poenitentiariae Germanicum suggests that by the mid-fifteenth century that may not have been the case: This dispensation (third- and fourth-degree affinity) could be obtained relatively cheaply and almost routinely. E.g., id., 6:2:375–7 (listing 182 entries involving third- or third- and fourth-degree consanguinity or affinity, and 421 involving fourth degree during the pontificate of Sixtus IV [1471–84]; the vast majority of these are dispensations of a couple). With this in mind, we might suggest that Helmholz’s alternative explanation of the chaplain’s remark may be closer to the mark. It shows that he was trying to excuse his ineptitude, rather than that such dispensations were difficult to obtain and not available to ordinary people. Marriage Litigation, 86 and n. 40.

285. Ch 4, n. 269: This case is not included in Table 3.2. For Percy, see Cartularium Whiteby, 2:706 and n. 2, and passim; for Colvyle, “Pedigree of Colville.”

286. Ch 4, n. 270: The account in Pedersen, Marriage Disputes, 160–2, suggests that the obligation may have been dependent on their cohabiting or beginning marital life together. He may be right. The deposits are damaged, and it is difficult to figure out what a defense is going to be when it is not made. He is not right about the sum that Colvyle is alleged to owe Percy, which is a hundred and four score (180) marks.

287. Ch 4, n. 272: The case is remarkable in that it involves a referral from the king’s court in a period in which we are told that the central royal courts were avoiding such referrals by putting the question of marriage vel non to a jury. See Maitland, History of English Law, 2:374–85. Had the central royal courts retained jurisdiction, the issue for the jury probably would have been whether the ceremony that the witnesses describe would have counted as ‘endowment in the face of the church’. The nature of the ceremony is also relevant for the church court, as the text shows, but for an entirely different reason.

288. Ch 5, n. 7: Thomas’s witnesses, all men, also seem slightly more respectable than some whom we find in exceptions of absence. One describes himself as 40, another as 39, though the other two are 20 and 24.

289. Ch 5, n. 7: inter spinas et vepres sub uno duvio prope unam seapem. This quotation combines the testimony of the two witnesses, but both use the otherwise unrecorded word duvio. I take it to be related to French doive. See Latham, s.v. duive.
290. Ch 5, n. 12: Most plaintiffs seeking to establish a marriage manage to get in some testimony, even though it is frequently hearsay, that the couple had had discussions with each other prior to the alleged marriage or had told others of it after it had happened. My speculations about their relative ages are based on the age of Robert’s witnesses and that of Marjorie’s brother’s friends.

291. Ch 5, n. 14: Helmholz, *Marriage Litigation*, 157, in describing this case, reports that Pontefract is eighteen miles from York, as if one of the witnesses had said this. He may have found something that I missed. The mileages are usually given in such testimony.

292. Ch 5, n. 16: As Helmholz, *Marriage Litigation*, 158, notes, there is also testimony that Margaret’s witnesses were paid 6s 8d to testify, clearly too much for expenses.

293. Ch 5, n. 20: Haldesworth c Hunteman (no date, mid-fifteenth century), CP.E.333; Baxter c Newton (no date, mid-fifteenth century), CP.E.48; Roslyn c Nesse (1456), CP.E.196 (Thomas Nesse looks as if he has a winning case; monks of Selby testify to his presence at the monastery the day he is supposed to have married Joan); Joymonte c Jakson (1467), CP.E.241 (not completely clear that this is a two-party marriage case); [..] c [..] (1470), CP.E.246 (not completely clear that this is a two-party marriage case, though it is likely; witnesses testify that Margaret More daughter of Richard More of Wistow, de qua articulatur, was queen of the ‘somergame’ at Wistow all the day in question and therefore could not have been in William Barker’s house; Margaret was probably a witness previously produced in a marriage case).


295. Ch 5, n. 23: See at n. 17. One of the plaintiff’s witnesses, whom the others say they do not know, testifies that he was staying in Alice’s house for the night, and one of her witnesses testifies that he was to meet a third party at her house. When he found it closed, he put his horse in the stable *alterius hospicii*. I cannot agree with the suggestion in Helmholz, *Marriage Litigation*, 160 at n. 86, that this case involves “agricultural workers and peasants of no particular note or property,” although that accurately describes some of the witnesses in the case.

296. Ch 5, n. 24: Two of his witnesses also seem to be lying when they say that they do not know the third. Alice’s exceptions accuse them of lying in this respect, and one of her witnesses says that he was, in fact, Wikeley’s first cousin. If that is right, then that leaves only one unrelated witness, and he is an older man (age 50) who does not come from the community. (He is from Kirkby Overblow, about fifteen miles to the north of Adwalton.)

297. Ch 5, n. 26: The reference in Helmholz, *Marriage Litigation*, 157, to these depositions seems to be mistaken.

298. Ch 5, n. 30: The fact that another proctor substitutes for Driffield in the final sentence is not evidence to the contrary. Substitution of one proctor for another on a day when the first could not attend court was quite common at York.

299. Ch 5, n. 32: We should also recall that we lack the testimony on John’s replication to Agnes’s exception of absence. He could have introduced convincing witnesses to her presence, particularly at the event of 29 November.

300. Ch 5, n. 34: Waller c Kyrkeby (1355–8), CP.E.263, and Tailour c Beek (1372), CP.E.121.

301. Ch 5, n. 39: *pure et libere ac absque compulsione seu coactione quacumque quatenus ipse iuratus nosvit aliquidier vel perceptit*.

302. Ch 5, n. 41: As Helmholz, *Marriage Litigation*, 93 and n. 73, notes, there was also testimony that she had consistently opposed the marriage, threatening at one point to run away and at another to abandon her parents rather than have Thomas for a husband. For cases in the fifteenth century that raise somewhat different issues about force from those in the fourteenth, see at nn. 58–97.
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304. Ch 5, n. 48: Lévy, Hiérachie des preuves, 122–7; see generally id., 22–31, 67–130. For a case that has two witnesses who seem quite weak but who are supported by a number of half-proof, see Horsley c Cleveland (at nn. 121–5); for a case in which there is only one witness to the exchange of consent, but that witness is supported by testimony to circumstances and following events that allow one to infer that consent was exchanged at that time, see Porter c Rake (at nn. 163–5).

305. Ch 5, n. 49: That the dean himself did not testify may be due to the fact that he is described as the former dean, i.e., that he may have left York. But if, as is possible but not certain, that John Schafforth, the ex-dean, is the same as John Shefford, the examiner of the court of York in this case, then he may have told Ascheburn that nothing like this happened. That should, of course, have been on the record, but there is much about the documentation in this case that suggests that the court was proceeding fairly informally.


307. Ch 5, n. 53: Agnes: Vos scitis bene quod certis vicibus quando me instanter ad carnalem copulam excitasti promisisti mihi quod si vellem vos permetterete me carnaliter cognoscerem ducereretis me in uxorem vestram. William: Hoc fatero bene et quicquid tibi ante hoc tempora promissi bono animo adimplebo. The Latin syntax of Agnes’s accusation is somewhat more tortured than that of my English translation. I am assuming that there were two “woulds” in what Agnes said, and that the clerk chose to render one with vellem and the infinitive and the other with an imperfect subjunctive.

308. Ch 5, n. 55: Hence, there is not only the ambiguity that in modern English is sometimes resolved by distinguishing between ‘I shall’ (future) and ‘I will’ (emphatic), but also the ambiguity in the Middle English word ‘wed’, the not-yet-forgotten base meaning of which is ‘pledge’.

309. Ch 5, n. 56: This seems to differ from Horsley c Cleveland (at n. 121), where the court was willing to render a judgment in favor of the marriage when one of the witnesses testified to volo habere te and the other to ducam te (intercourse had concededly followed).

310. Ch 5, n. 59: He is called vicar general of Richmond in the record, but Fasti Revised has him as archdeacon of Richmond from 1442 to 1450. I am inclined to think that it is the record that is mistaken.

311. Ch 5, n. 61: See Donahue, “What Causes Fundamental Legal Ideas.” Indeed, the absence of charters might have helped Christine, for in this period charters, also called ‘jointure’, were sometimes used to limit the amount of property a widow might claim.

312. Ch 5, n. 62: In Thomeson c Belamy (1362), CP.E.85, a threat by the defendant’s great-uncle that he would put her in a fountain or a well was apparently deemed insufficient; in Marrays c Rouclif (1365), CP.E.89, both physical threats (again, “I’ll put you down a well”) and property threats (deprivation of dowry) were alleged, but the court may not have believed them. See Ch 4, at nn. 48–55.

313. Ch 5, n. 64: Schirburn c Schirburn (1451–2), CP.F.187, comes close, but the principal issue in that case was not force but consanguinity.

314. Ch 5, n. 68: I have not seen these depositions and am relying on the transcription in Helmholz, Marriage Litigation, 93 n. 72. See id., 92–3.

315. Ch 5, n. 72: One witness says 37 other men, i.e., that the party consisted of 40 men. Two other witnesses put the number at 14, and I suspect that the clerk who recorded the first witness made an aural mistake. The story makes more sense if it was only 14.

316. Ch 5, n. 74: Alicia quid facitis hic? Estis vos in voluntate habendo Thomam Peron in maritum vestrum?  

317. Ch 5, n. 75: Per fidem meam ego volo habere istum Thomam in maritum meum... non requisito vel non adhibito consenso parentum meorum vel alcuis alterius.
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318. Ch 5, n. 76: *sub proteste et gubernacione Thome et eidem in hac parte adherencium*.

319. Ch 5, n. 79: C.36 q.2. (The text has considerable complexities that we must pass over in order to save space. Suffice it say that it is not completely clear that in this situation the choice of the woman, as opposed to that of the father, makes any difference.)

320. Ch 5, n. 81: I have been unable to find a contemporary discussion of this issue. In the sixteenth century, Tomás Sánchez argued that even if the *rapta* was not released, she could still freely consent, but he recognized that others argued differently under the pre-Tridentine law. Sánchez, *Disputaciones de matrimonio*, 7.12 no. 42, p. 255a–b. He was, however, writing after Trent, sess. 24, *Canones super reformatione circa matrimonium*, c. 6, in *Decrees of the Ecumenical Councils*, 2:758, had, in his view, restored the old rule found in Gratian’s C.36 q.2, that the *rapta* had to be released in order for her consent to be valid.

321. Ch 5, n. 85: On Thornton’s duplication to Dale’s replication to the *factum contrarium* that both he and Agnes put in, and on his exception to Dale’s witnesses to his exception against Thornton’s and Agnes’s previous witnesses.

322. Ch 5, n. 86: Dale’s libel, replication, and triplication are all missing, although we know that they existed. We also know that there were witnesses on all three because Agnes and John file an exception against them.

323. Ch 5, n. 87: The lament, for example, that she is alleged to have said to them (“Oh men, what are you planning to do with me. Alas, that I left the city of York today. Alas, that I arose from my bed today. [Alas, that] my father begot me or that my mother brought me into the world.”) strikes me as more likely to have been something that she wished she had said on the occasion, rather than what she did say. Latin in Helmholz, *Marriage Litigation*, 7 n. 2.

324. Ch 5, n. 89: This could be a divorce action brought by Alice, but both the fact that it seems to be in the York court as a matter of first instance and the way in which Alice’s witnesses tell her story suggest that this is a defense to action for restoration of conjugal rights.

325. Ch 5, n. 90: The dating in this case is unusually confused. I am assuming that the witnesses got it right and the clerk got it wrong, or at least confused, but this may not be so.

326. Ch 5, n. 94: According to one witness, she said: “Cosyn I am getyn fro Roger Talbot now and I beseke you for his love þ at dyd on yode f[raud] for to convey me to Sir John’ Pudsay. For I will never com in his felship ageyn to dye for it.”

327. Ch 5, n. 95: One of them, for example, says that dawn came at five in the morning on a January day in Lancashire. One does not need to consult an almanac to know that that cannot be right.

328. Ch 5, n. 97: The case was heard by summary procedure, and the witnesses on William’s case in chief may have been heard after Esota had put in her *factum contrarium*.

329. Ch 5, n. 99: According to Helmholz, *Marriage Litigation*, 90 n. 56, the marriage was celebrated in facie ecclesie. I do not see that in these depositions, but it may be in others.

330. Ch 5, n. 101: *hic accipio te Johannem in maritum meum si permittam te de cetero me carnaliter cognoscere si unquam habeam aliquem virum in maritum meum et ad hoc do tibi fidem meam*.

331. Ch 5, n. 102: Because records from the lower-level ecclesiastical courts have survived (there is, for example, a quite full record of the dean and chapter’s peculiar jurisdiction from this period), we have a tendency to think that all such courts kept records that have now been lost. The testimony here, and the Beverley cases of the fourteenth century (*Merton c Madelton* [Ch 2, at nn. 9–10]; *Routh c Strie* [Ch 4, at nn. 131–3]), suggest that that was not necessarily the case, or that the record, like the clerk’s recollection, was only of the names and penances imposed. The *processus* has been read under ultraviolet light, and it seems unlikely that there was enough space in the illegible places for the clerk to have confirmed that Matilda made the drunkenness claim.

332. Ch 5, n. 103: As noted, portions of the *processus* are illegible, but it looks as if Matilda asked that Mr Robert Ragenhill, an advocate who happened to be present in court, be assigned to her as her advocate.

333. Ch 5, n. 105: Helmholz, *Marriage Litigation,* 176–7, suggests that the defense was legally valid, and he cites a manuscript treatise in the Inner Temple (n. 77) that supports him. He has not got the end of the case right, however; the composition for a money payment to which he refers (177) took place in the court of the dean of Christianity before the proceedings in the court of York.

334. Ch 5, n. 109: This may be the first time that the words the parties exchanged are given in English. This was once considered a common practice in the second half of the century.

335. Ch 5, n. 111: He may have been thinking about it. His ordination took place in the Minorite convent. We will suggest, however, that it is more likely than not that the relationship was consummated.

336. Ch 5, n. 112: Consent was necessary (and under some versions of the rule, entry into the religious life by the consenting party), if one of the parties to a marriage wished to espouse the religious life after the marriage had been consummated. No statement of the rule that I know of would have allowed the man to take orders as a secular cleric, either unilaterally before intercourse or, with consent, after it.

337. Ch 5, n. 120: These cases have some parallels to *Fossard c Calthorne* (Ch 4, at nn. 168–9), but it is far less plausible that that case revealed wrongdoing by Calthorne, a York proctor.

338. Ch 5, n. 122: T1: Thomas: *per fide_m meam volo habere vos in uxorem meam et ad hoc do vobis fidem meam.* Agnes: *hic accipio vos magistrum Thomam in maritum meum et ad hoc do vos fidem meam.* T2: Thomas: *hic fides mea ducam vos in uxorem.*

339. Ch 5, n. 123: *si non habebo te nunquam habebo aliquam mulierem in uxorem . . . si contingat me ducere aliquam mulierem in uxorem ducam te.*

340. Ch 5, n. 125: We may wonder why Thomas admitted to the intercourse. (He tried not to. To the first two allegations of intercourse in Agnes’s positions, he replies *dubito.* Then there is one to which he replies *inopportune est superfluum tunc credo.* Three more occasions receive the answer *superfluum.* But a final charge meets with the response: *inopportune et obscurum tunc credo.* This was apparently enough of a concession, because Agnes introduced no testimony on the issue, and the sentence in her favor pretty clearly depends on a finding of intercourse.) We have suggested in some cases that such an admission had an element of machismo about it. In Thomas’s case, I suspect either that even his conscience would not allow him to deny it, or that he knew that the evidence of it was so powerful that if he put Agnes to proving it, it would just make him look worse.

341. Ch 5, n. 129: *dicta Katerina in faciem predicti magistri Ricardi vultu tristi respexit cui ipse Ricardus protinus respondebat ’coniugatus postest uti capucio et tabardo penulatis’.*

342. Ch 5, n. 134: Whithewerd c Crescy (Ch 4, nn. 51–3) clearly does not involve an arranged marriage, nor do the four abduction cases in the fifteenth century (at nn. 70–97), with possible exception of *Oddy c Donwell* (at nn. 96–7).

343. Ch 5, n. 135: Excluding the abjuration cases, but adding to the numbers given in Ch 4, at nn. 54–5, the two-party *de futuro* cases and those involving an uncertain form of marriage, none of which show any evidence of third-party involvement. Caution: These percentages should not be cumulated with those for the force and nonage cases; that would involve a considerable amount of double counting. Indeed, in the case of the fourteenth century, the overlap is virtually complete.

344. Ch 5, n. 137: These numbers almost certainly underestimate the number of such cases for the fifteenth century, granted the more skimpish nature of the documentation in that century and the presence of cases (discussed later) where the behavior of the parties can only be explained if we assume that outsiders were attempting to influence their marital choice. The cases for the fifteenth century are (1) arranged marriages: *Porter c Ruke* (1418–20), CP.F.64; *Astrid c Louth* (1422), CP.F.46 (2); *Palwyn c Neuby* (1423–4), CP.F.137 (3); *Webster c Tape* (1425–6), CP.F.159; *Threepland c Richardson* (1428–32), CP.F.96; *Thweyng c Fedyrston* (1436), CP.F.119; *Berwick c Frankis* (1441–2), CP.F.223; *Garforth and Blayke c Nobb* (1449–50), CP.F.184, 185; *Chew c Cosyn* (1453–4), CP.F.189; *Inkersale c Beley* (1466), CP.F.242; *Pereson c Pryngill* (1474), CP.F.354; *Sutbell c Gascoigne*
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does not seem likely in the period from 1468 to 1476. They are not identified with the West Riding, and a rise from 'yeoman' to 'gentleman' may have answered all the positions with non credit ut ponitur.

A possible exception is 'Wesbery', which if it is Westby, Yorks, WR, is near Gisburn (now Lancs), on the other side of Pennines, but the identification is uncertain, and it is possible that Thomas Popely also had lands closer to Soothill.

Pilkington was a favorite of Edward IV, first described in the records as 'king's esquire' and then as 'king's knight'. (He may previously have been in the service of Edward's father, Richard of York.) He appears continuously in the Chancery rolls for Edward's reign, from Edward's accession in 1461 to his (Pilkington's) death in 1479. He received a number of grants of forfeitures from the king, served on numerous royal commissions, purchased the reversion of the office of forest and steward of Wakefield, and was JP for the West Riding for almost the entire period. See CPR (1467–77), p. 20 (royal grantee as king's esquire of a forfeiture of lands in Yorks, 24.vii.67); id., p. 261 (now a knight, granted the reversion of the office of constable of Sandal, master forestor of Wakefield, and steward of Wakefield, by the feuffeys of Richard late duke of York, 5.vii.71); id., p. 198, 221, 408, etc. (various commissions); id., p. 638, id., (1477–85), p. 580 (JP for Yorks, WR); CPR (1471–85), p. 151, no. 450 (writ diem clausit extremum issued 31.xii.79). Stapleton was not so prominent, but is equally easy to identify. He appears in inquisitions post mortem in the reign of Henry VII as a feeor of various persons of lands in Yorkshire, the feuoffments having been made during the reign of Edward IV. During that reign he witnesses deeds of the Fairfax family of Yorkshire lands. He held lands in Cumberland of the Lord Dacre and in Westmoreland of Ralph de Graystoke. He served once as a commissioner of array in YW during the reign of Edward IV. See, e.g., CIPM (1485–97), no. 165, p. 77 (feoffey in 1476); no. 541, p. 225–6 (same, 1478); no. 998, p. 420 (same, 1477); CCR (1468–76), no. 1114, p. 306 (witnesses deed of Thomas Fairfax, 27.xi.73); id. (1476–1485), no. 597, p. 169 (witnesses deed of Guy Fairfax, 26.xi.1476); id., p. 731, p. 214 (same, 4.xii.78); CIPM (1485–97), no. 157, p. 69 (land in Cumberland of Lord Dacre); id., no. 432, p. 183 (in Westmoreland of Ralph de Graystoke); CPR (1467–77), p. 190 (comm’t of array in Yorks, WR, 2.xi.70).

Woodroff died on 20 October 1487. His inquisition post mortem (which describes him as "esquire") shows that he held both the manor of Woolley and that of Langbathwa (Yorks, WR) of the king as of the duchy of Lancaster, and he had substantial other land holdings. His heir, Richard, was 40 when his father died. CIPM (1485–97), no. 256, p. 113. That means that his statement in his deposition (taken in 1474) that he is 53 is probably accurate. John, too, served on various royal commissions and as JP in the West Riding; he is once mentioned as escheator for the county of York. CPR (1467–77), pp. 190, 408, 490 (commissions); p. 638 (JP); p. 103 (escheator).

In 1475, Nevill, along with Sir William Stapleton, the mayor and recorder of York, received a royal commission as justices for the city and county of York to survey the waters of the Ouse, the Humber, and a number of other rivers concerning the weirs, mills, stanks, piles, and kiddles and to hear and determine things according to the statute passed in the previous Parliament. Id., p. 572. He served as commissioner of array in the West Riding in 1480, and is probably to be identified with the John Nevill, kt, who received similar commissions in 1484 and two appointments as JP for the West Riding. Id. (1476–1483), pp. 214, 397, 492, 580.

On 18 October 1468, a Thomas Gascoigne late of Hovingham in Ryedale, Yorks, yeoman, along with John Gascoigne late of the same, barker, Agnes Gascoigne of the same, widow, and William Gascoigne of the same, husbandman, were pardoned for outlawry for failure to appear before the Common Bench to answer a plea of trespass. CPR (1467–77), p. 74. It seems most likely that these people were all related to one another; they are not identified with the West Riding, and a rise from 'yeoman' to 'gentleman' does not seem likely in the period from 1468 to 1476.
350. Ch 5, n. 157: *Id.* p. 144 (9.x.1469) does have William Gascoigne called a knight in a Yorkshire debt case. I think this is probably the same man, but I'm inclined to think that it is an instance of 'hype'. The appointment documents are more reliable in this regard.

351. Ch 5, n. 159: *Id.* p. 204. The places mentioned are 'Harwood' (probably, Harewood, Yorks, WR), which contained within it a now-lost Towhouses (probably the 'Thhouse' of the record) and a now-lost Gawthorpe Manor. Place-names West Riding, 4:180–3; Lofthouse (in Rothwell, Yorks, WR), and Wyke (in Bardsey and Harewood, Yorks, WR). Neither the editors of the Patent Rolls nor I can identify ‘Wardeley’; it may be a corruption of West Ardsley, Yorks, WR. The Harewood holdings are close to Lazencroft, while the more southern holdings are close to Soothill.

352. Ch 5, n. 160: Which of the two depends on whether “I will have” is taken as the equivalent of *volo habere* (normally taken as *de presenti*) or *habebo* (always taken as *de futuro*).


354. Ch 5, n. 165: *Ego vos ibenter habere vos in maritum meum ita quod vultis me subere et tunc ducere in dominum meam progrem hic in villa de Thurn.*

355. Ch 5, n. 168: *dictus Nicholaus post promissa dicte Johanne unum nobile auri ut uxori sue tradidit et liberavit, que quidem Johanna huusmodi nobile a dicto Nicholao ut a marito suo receptit et babait in usus suos pro suo libito voluntatis convertit.*

356. Ch 5, n. 169: *dictus Nicholaus prefate Johanne de visu et noticia ipsius iurati dedit et liberavit unum nobile dicens eadem Johanne huusmodi nobile recipere recessunti sub hac forma 'Johanna istud nobile vobis do tamquam secoci mee quia [quod] est meum est vestrum et si vixeret vos habetis centum plura'.*

357. Ch 5, n. 171: Helmholz, *Marriage Litigation*, 48-9 and n. 86, suggests that the nonperformance of the dotal contract was an issue in the marriage case, and he uses it to illustrate the proposition that the marriage contract is not conditional on the performance of the property agreement unless it is expressly so made conditional. He may be right, but since we lack any defense or anything on behalf of the second actor, it is hard to tell what the real issues were.

358. Ch 5, n. 174: *ipse iuratus a predicto Rogero quesivit per fidem in corpore suo an potuit invenire in corde suo habere istam Katerinam ibidem presentem in uxorem suam.*

359. Ch 5, n. 175: *vis tu tunc habere istam Katerinam in uxorem tuam – vis tu habere istum Rogerum in maritum tuum – ipse iuratus fecit potum eis deferri et ipsos Rogerum et Katerinam in signum huiusmodi contractus simul bibere – ex communi consensu ipsarum partium et principalium amicorum suorum banna inter ipsas partes in ecclesia sua parochialia ut moris est fuerunt publice edita, etc.*

360. Ch 5, n. 180: *infames infamia irris et facti ac tales qui de iure intestabiles sunt ac nota infamie notorie sunt respersi pro eo et ex eo quod ipsi fuerant et sunt publici ministralii et publici Joculatores ac huiusmodi ministralorum et Joculatorum officium mercedis causa et inobnesto exercerent et exercerent, etc.*

361. Ch 5, n. 181: The base text is D.3.2.2.5, qualified by D.3.2.3, 4pr–1. D.3.2.2.5 v° definit (Lyon, 1604), col. 341, says flatly: *omnes sociolatores sunt infames, scilicet ipsio iure.*

362. Ch 5, n. 184: Helmholz, *Marriage Litigation*, 133, suggests the former; I am inclined to think that it is the latter. Helmholz is also convinced that Agnes's parents were the third parties involved. That is, of course, possible, but they are not mentioned, and Agnes's status as a widow makes it somewhat less likely that it is her parents, as opposed to her amici, who are involved.

363. Ch 5, n. 187: There are a number of Biltons, but the one meant here is probably the one near Kirk Hammerton. William's father came from Whixley, which is close by.

364. Ch 5, n. 192: This can work both ways: In *Cook c Richardson* (1407–8), CP.F.28, William Richardson's father is alleged to have said that he'd sooner kill William than have him have Agnes Cook as his wife.
365. Ch 5, n. 193: Helmholz, *Marriage Litigation*, 86, suggests there was a dispute about this dispensation. I do not see that in this record.


367. Ch 5, n. 215: *Interrogatus insuper ob quam causam buiusmodi contractus fuit tam diu conceletas di[cit]
quia predictus Ricardus ab ipso iurato instanter desideravit ut quan
diu posset premissa s[i]b[i] conservare vellet,
ne ad aures certorum consanguineorum et amicorum predicte Margarete in contrario laborare volentium perveniat.

368. Ch 5, n. 217: The case he has in mind is *Lematon c Shirwod* (n. 233), the only case, urban or rural, in the cause papers in which the would-be husband found it necessary to sue his prospective father-in-law. But that is not the only case in which urban parents can be found opposing their daughter’s marriage. *Astlott c Louth* (n. 227) is another example, and whether it was parents or relatives who were opposing Agnes Nakier’s marriage to John Kent in *Thorpe and Kent c Nakier* (n. 179) we cannot tell, but certainly someone connected with Agnes was. But the important point is that obvious opposition is not the only way that we can tell that parents and other social superiors are involved in marriage choice. See Table 5.1, and the following discussion.

369. Ch 5, n. 218: Of course, as we have previously argued, that does not mean that they were not there. But the records are sufficiently full that it is unlikely that they are lurking in the background of most of the cases, perhaps not even in a substantial proportion.

370. Ch 5, n. 219: *Romundebry c Fischelake* (Ch 4, at n. 68); *Chapelayn c Cragge* (Ch 4, at nn. 2–21); *Layremouth and Holm c Stokton* (Ch 4, at nn. 164–46) (including a discussion of Goldberg’s views on the case); *Spuret and Gillyn c Hornby* (Ch 4, at nn. 187–90) (including a discussion of Goldberg’s views on the case); *Scargill and Robinson c Park* (Ch 4, at n. 212); *Garthe and Newton c Waghen* (Ch 4, at nn. 205–6); *Huntynge c Munkton* (Ch 4, at nn. 215–24).

371. Ch 5, n. 220: *Berwick c Frankiss* (at nn. 38–41); *Haryngton c Sayvell* (at nn. 58–66); *Foghler and Barker c Werynton* (n. 234).

372. Ch 5, n. 228: Ella, Kirk, East and West, are today in the suburbs of Hull on the west. Since Beverley is almost due north of Hull, it seems a bit odd that this would have been the way to get to Ella in the Middle Ages, but perhaps we should imagine a leisurely Sunday stroll. Agnes’s activity is suggestive of how rural and urban blend in late medieval Yorkshire.

373. Ch 5, n. 229: The word normally means ‘weaver’, and one does not think of medieval weavers as being men of substance, though it is possible that he did fancy weaving, as in weaving of tapestry. Latham, s.v., also reports a confusion of *textor* and *tector*, in which case we might imagine that he was a roofer or thatcher.

374. Ch 5, n. 230: This sister is a bit of a puzzle because elsewhere we are told that Agnes is an only child and stands to be her father’s heir. Perhaps the sister was a half sister. See n. 232. Goldberg, *Women, Work*, 274, has John promising to bring Agnes’s father a goose for dinner in order to win him over to the contract. The only goose that I can find in these depositions is the one that John, his mother, and stepfather ate at their dinner on the day of the contract at ‘Beverylegate’.

375. Ch 5, n. 231: John would seem to have been a dealer in onions and garlic (*sepas et allium*), though, once again, it is hard to see how one could have acquired a fortune as considerable as is attributed to him in that business.

376. Ch 5, n. 232: As Goldberg (*ibid.*) concedes. The account of this case in Helmholz, *Marriage Litigation*, 32–3 and n. 33, emphasizes that people thought of the exchange of present consent as being only an “engagement.” The point is well enough taken and could have been reinforced by the fact that what Agnes was seeking before John went abroad was not an exchange of present consent, as Helmholz has it (they had already done that), but solemnization. The case is not in the act books, but in 1426 in ConsAB.2, fol. 81v, an Agnes Louth and William Halton confess a clandestine marriage and do penance for it. This may be a different Agnes Louth. In the following year, a John Astlott sues a John Louth and Alice, widow of John Vile of Kingston upon Hull, in a testamentary case. ConsAB.2, fols. 86v, 87v, 90v, 92v, 94v, 94v; York Minster Archives, M/2(1) e, fol. 28r,
28v. This certainly looks as if our John Astlott is suing Agnes’s parents, and the most obvious reason why he would be doing so in a testamentary case would be that he had succeeded in marrying Agnes. That, in turn, suggests that though Agnes is called Louth, she may have been the daughter of John Vile, with John Louth being her stepfather.

377. Ch 5, n. 233: As Goldberg, Women, Work, 247, 262, 274, recognizes. He emphasizes that the case is late and that it is the only urban case. It is certainly the only such case (rural or urban) in the York cause papers that employs this form of action. It is certainly not the only urban case where a couple encountered parental opposition, as an examination of the preceding cases shows. It may be the most blatant example of such opposition, but, then again, rural cases like Wistow v Couper (at nn. 191–3) are also rare.

378. Ch 5, n. 234: Two of the depositions in Barker’s case are printed in Helmholz, Marriage Litigation, 224–8, from the former CP.F.127. Helmholz was unaware of the related depositions and sentence in CP.F.74, but he rightly inferred from the act book that sentence was rendered against Barker. Cf. id., 92, 221.

379. Ch 5, n. 236: Goldberg, Women, Work, 260, contrasts this case with rural marriage-and-divorce actions where an established partnership is at stake. Had he distinguished between competitor actions and marriage-and-divorce actions, he would have seen that the latter can also be found in an urban context. E.g., Kirkby v Helways and Newton (at n. 246). His statement that the marriage with Foghler was subsequent to that with Barker and with Baune’s approval is, so far as I can tell, simply wrong.

380. Ch 5, n. 238: eadem Agnes ad excitationem certorum inimicorum ipsius Roberts subtraxit cor suum ab ipso Roberto ac noluit servare pactum inter eos.

381. Ch 5, n. 239: innanum [sic, ?read invanum] laboraret si spem haberet de ducendo ipsam in uxorem suam quo [read either quia or ex eo quod] uxor fuit Johannis Skippenbek Cordwener et eum vellet habere in maritum suum ac nomine arrarum contractus matrimonialis habiti inter eos ut dixit eadem Agnes receptit et habuit ex donacione ipsius Johannis dimidium quarterium frumenti.

382. Ch 5, n. 240: For the questionable nature of this officer’s jurisdiction over marriage cases, see Helmholz, Marriage Litigation, 177. What happened here, however, if it happened at all, seems to have been informal.

383. Ch 5, n. 241: Tuncque ut dicit predictus Robertus Lede respondens dixit quod exquo predicta Agnes dixit et affirmavit se esse uxor Johannis Skirpenbeck non esset nec est intensionis sue quoquomodo desiderare uxorem alterius etideo ut ade Robertus asseruit noluit super huiusmodi materia ulterius laborare sed eam totaliter dimittitere prode dixit.

384. Ch 5, n. 243: ipse fuit apud monasterium beati Petri Elor et ibidem fuit inventum et declaratum quod eadem Agnes fuit mulier libera et soluta ab omni contractu matrimoniali pretioso habito cum Roberto Lede ita quod possit contrahere matrimonialiter aliunde ad placitum suum.

385. Ch 5, n. 244: quibus sic dictis ipse uturus et dictus Johannes Hagas executores testamenti Willelmi Miton supra mariti ipsius Agnetis defuncti tunc ibidem dixerunt et monstravunt Agneti quod nisi caperet in maritum suum Johannem Skippenbek ipsi executores facerent ipsam incurrire detrimentum xxii marcarum.

386. Ch 5, n. 246: Goldberg, Women, Work, 219, reports that one witness made a deathbed confession that he was suborned. It might be better to say that Alice’s brother says that the witness made this confession, and since the witness was now dead and no one else was in the room, it was quite safe for the brother to say so. Alice Ness, the other witness, does not confess to having been suborned. She does not appear. Again, the brother says that she confessed to having been suborned, and two witnesses testify to a payment of 40 shillings (not pence, as Goldberg would have it) made on her behalf, which is at least consistent with the subornation story.

387. Appendix e5.1: Elizabeth daughter of John Suthell (Sothell) junior of Lazencroft c Thomas Gascoigne, gentleman

(i) In primis ponit et probare intendit dictus procurator1 nomine procuratorio quod per diem aliquot ante contractum matrimonialenum inimium inter prefatos Thomam Gascongnum generosum et Elizabetham

1 No proctor has been named, suggesting that this is a copy of a document without the heading.
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Suthell filiam naturalem et legitimam Johannis Sothell junioris de Lasyngecroft idem Johannes veniebat ad dictum Thomam Gascongne usque villam de Cawthorn desiderans ab eo tot annos sibi ab ipso concedendos in firma certarum terrarum et tenementorum inter eosdem Johannem et Thomam tunc specifcatos quos concessos a patre dicit Thomae prius obtinuit unum de feodo a patre sibi concesso pro collectione certarum firmarum. x-Pars rea fatetur.x Responsio: Fatetur adventum Johannis Sothell ad villam de Cawthorn et desiderium eius de firma terrarum. Desiderium tamen feodi negat.

(ii) Item ponit quod Thomas firmiter promisit se locaturum et ad firmam dimissurum predicto Johanni eadem terras et tenentia pro tot annis post paternum mortem quos a patre concessos habuit in terris et tenentia que ab eodem Johanne ad tunc erant specificata et feodum eiam memoratum sepedicatum [quod] Johannis concessit post patris mortem ut prius in vita annuatum persolvendum. Responsio: Non credit ut ponitur.

(iii) Item quod incontinenti post promissiones et concessiones predictas prefatus Johannes nomine arrarum praddid dicit Thomae viginti denarios. Responsio: Fatetur recepcionem xx d. de promissione et concessione factis nomine arrarum non credit.


(v) Item quod adtunc dicit Thomas asserebat se in tantum diligere predictam Elisabetham quos posui cum ipsa quam cum aliqua alia muliere maritari affectatam. Responsio: Non credit.

(vi) Item quod mox post prolacionem verborum ultimo dictorum idem Thomae et Johanne concordati erant ad sibi invicem obviandum apud domum Agnetis Tonget vidue de Birstall pro communicacione inter eos habenda de matrimonio inter prefatos Thomam et Elisabetham contrahendo. Responsio: Non credit ut ponitur-x.

(vii) Item quod in eadem occasione predictus Johannes interrogat dictum Thomam an adtunc erat prout prius in proposito contrahendi matrimonium cum Elisabetha antedicta. Responsio: Non credit ut ponitur.

(viii) Item quod postquam ut prefertur idem Thomas interrogatus erat ipsae Thomas incontinenti respondit se velle matrimonium contrahere cum prefata Elisabetha et cum nulla alia muliere. Responsio: Non credit.

(ix) Item quod item ponit quod idem [sic, read idem] Johannes immediate post eorum verborum prolationem dedit prefato Thome xx d monete anglie. Responsio: Credit recepcionem denariorum sed non credit conditionem.

(x) Item quod incontinenti post dictam interrogacionem idem Thomas incontinenti post dictum inter festos sancti Martini in hyeme ad annum ultimo elapsum et festum purificacionis Beate Marie proximo tunc sequens prefatur Thomae Thomas affectione maritali accessum habuit frequentem continuatim ad domum habitationis predicti Johannis vocant Lasyngecroft in eadem domo ad suum beneplacitum pluris pernoctando. Responsio: Credit accessum non tamen affectationem maritalem et non credit aliqualem pernoctationem infra idem tempus.

(xi) Item quod Alicia mater naturalis et legitima predicti Elizabethe durante tempore accessus sui predicti pretatur Thomam sic fat allocuta: “Cosyn Thomas my husband has told to me that he made motio unto you for matrimony to be had between you and Elizabeth my dochter and I besich you plainly tell my [sic] hou my said dochter pleseth you in that behalf and wheder ye intend to hir to your wyfe or no.” Responsio: Non credit.

(xii) Item quod idem Thomas incontinenti post dictam interrogacionem idem Alicia respondefbat sub hac verborum forma: “I lyke her well and by þe’ trough in my body I shall wed hir if ever I wed any woman.” Responsio: Non credit.

(xiii) Item quod eadem Alicia incontinenti post prolacionem verborum ultimo predictorum donavit idem Thome xx d sub ea conditione quod dictam Elisabetham acciperit in uxorem. Responsio: Credit donacionem denariorum absque conditione.3

2 The thorn looks more like a y, but a thorn must be intended; later transcriptions of thorns look much more like thorns.
3 m. 2 begins here; a start on the number xiiii is found on the dorse of m. 1.
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(xiv) Item quod idem Thomas ab eadem Alicia dictos denarios sub dicta condicione ?gratuite [ms. may read gratuiter, but that would be a very unusual form] accepit. Responsio: Credit receptionem absque condicione.

(xv) Item quod quadam die circiner festum exaltacionis sancte Crucis ultimo preteritum prefatus [Thomas] ex mero motu suo absque requisicione aut rogatu prefati Johannis aut Alicie uxoris sue memorare venit ad manerium vulgariter vocatum Sotherellh ubi adtrunc manebit Johannes Sotherall avus dicte Elizabethe cum quo avo adtrunc prandebat idem Thomas. Responsio: Credit ut ponitur.

(xvi) Item quod prando prodicto finito prefatus Johannes Sotherall avus prefate Elizabethe prefato Thome verba protulit subsequencia: “Cosyn Thomas I understand by relacion of my son John þe and ye have had in communicacion for matrimoniy to be had betwene you and my cosyn his daughter Elizabeth, and if it so pleas you and hir fader it shall cost me? C marcas of myn own purs rather or your purpose and pleser therin be broken.” Responsio: Credit ut ponitur.

(xvii) Item quod ad dicta verba prefatus Thomas respondebat ut sequitur: I trow we shall agre. Responsio: Non credit.

(xviii) Item quod die martis proximo ante festum sancti Michaelis ultimo preteritum venit dictus Thomas ad domum dicti Johannis patris Elizabethe predicte et ubi promisit ad obviandum eidem Johanni apud Wakefeld die veneris proximo ante dictum festum Michaelis pro conclusione matrimoni contractu dicto, ubi de facto obviaverunt ipsi duo cum alius generosis, viz. Johanne Nevill de Lewerseth, Johanne wodroff de Wolely, Thoma Lacy de Cawiswell Bothom cum certis alius generosis ubi promiserunt iterum obviare die iovis proximo runc sequente apud manerium vocatum Sotherellh ad finaliter concludendum super dicto matrimonio et ceternis omnibus illud matrimonium concernentibus. Responsio: Credit obviam ibidem, non tamen credit causam obvicte ut ponitur et credit promissum de obvia habenda die iovis positio.

(xix) Item quod post huiusmodi obviacionem factam apud Wakefeld et assignacionem diei iovis sequentis qua die convenerunt apud Sotherellh interim misit dictus Johannes Sotherall dicto Thome Gascoigne quendam vocatum Robertum Wilson servientem eiusdem ut diceret dicto Thome in nomine dicti Johannis quod non veneret nisi vellet perimplere suum promissum super matrimonio predicto finaliter concludendo. Responsio: Non credit.

(xx) Item quod eodem die iovis adveniente venit dictus Thomas ad Sotherellh predictum et ibi promisit cum Johanne Sotherall Seniore et dicto Johanne Sotherell filio eiusdem cum Johanne Wodroff, Thoma Lascy, Henrio rokley de Ledes Thoma Popely de Wesbery et multos alius generosis qui eodem die prando finito inter concilium sub quadam sequente extra portas dicti manerii de Sotherellh ubi adtrunc communicacionem et tractatum de matrimonio inter predictos Thomam Gascoigne et Elizabetham contrahendo adinimicam habuerunt. Responsio: Credit ut ponitur.

(xxii) Item quod finitis communicacione et tractatu predictis prefaturi Thomas Gascoigne et Johannes Sotherell Junior promiserunt ibde sua media data in manus dicti Johannis Wodroff ad firmiter standum ordinacioni et arbitrio octo Generosorum de et super feoffamento dictae Elizabethe et pecunie summa dicto Thome danda cum eadem/viz. domini Johannis Pilkynighton militis Johannis Wodroff Thome Lascy et dominii Johannis Kent vicarii de Bristol pro parte dicti Johannis Sotherell Juniori et dominii Willelmii Stapleton militis Nicholai Mare generosi Ricardi Gascoigne et domini Willelmii Wawen capitani pro parte prefati Thome Gascoigne. Responsio: Credit quod electe fuerunt persone de quibus ponitur non de et super feoffamento predicto sed de et super matrimonio contrahendo ut cicius manus eorundem evaderet ad effectum ut ultra solus cum eisdem non haberet communicacionem. 11

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4 = ‘that’.
5 = ‘said’.
6 Possibly an et here, but probably just a connector.
7 Milley (Nully).
8 /concernens.
9 Reading uncertain.
10 The use of the virgula suspensiva (marked with /) here and in a number of places to follow seems significant.
11 Unclear; could be officium.
12 Unclear; could be vel.
13 Probably corrupt. I cannot make much sense of this after the first ut.
Item quod expletis promissis pretati Generosi reversi fuerunt in manerium de Sothelhall predictum ad quandam perluram in cuius partibus dictus Johannes Sothell avus stans in eadem parlura dixit prefato Thome Gascoigne: “Stand ner Cosyn Thomas.” Et incontinenti dixit ad Elizabetham: “Stand ner Cosyn Elizabeth.” Quibus Thoma et Elizabetha ad eum tunc pariter venientibus idem Johannes avus dixit ad pretatum Thomam: “Cosyn Thomas are ye in will to have this gentilwoman Elizabeth to your wyf?” Cui idem Thomas sic respondit: “Ya, by þe faith of my body, I will.” Responsio: Non credit ut ponitur sed credit de aliis verbis viz. quod Johannes Sothell dixit, “Thomas Gascoigne may ye fynd in your hert to have Elizabeth’ Sothell to your wyf,” cui idem Thomas “I may fynd in your hert to have hir with counsell and advyse of my frendes.” Et ille Johannes Sothell prefate Elizabethe asseruit: “Elizabeth’ may ye fynd in your hert to have Thomas here to your husband” et credit quod bassa voce dixit quod “sic.”

Item quod incontinenti post dictum responsum idem Johannes Sothell Senior prefate dixit Elizabethe sub hac forma: “Elizabeth will you have this gentilam Thomas Gascoigne to yr husband,” cui illa respondit “Ya sir.” Et tunc idem Johannes ad eam dixit: “if yu wilt have him to yr husband say by þe faith of yr body þou wilt have him to yr husband.” Et tunc illa respondit “Ya by þe faith’ of my body will I” et tunc Johannes Wodroff dixit prefato Thome Gascoigne: “take hir sir and kys hir and I pray god it be in the best tyme of the yere,” et fecit sic et tunc simul biberunt. Responsio: Non credit verba ut ponitur sed credit osculum.

Item quod istis perimpletis dicto Thome Gascoigne ascendenti equum et equitanti a dicto manerio de Sothelhall versus locum ubi intendebat pernoctare quidam secum equitans deliberavit unum silk ryban missum sibi a dicta Elizabetha ante istum contractum ut premittitur factum et completum et sibi oblatum sed non receptum ab ipso adtunc dicente se illud adhuc nolle recipere. Sed post contractum ut premittitur completum recept gratanter equitans portatori dicti Ryban’ sic alloquendo “Ya now I will take it with a good will and were it for his [i.e., my] luf.” Responsio: Credit oblacionem sed non credit receptionem.

Item quod premissa sunt vera publica notoria et manifesta in villis et locis predictis et aliisque locis circuminstanciis et super hiis ante presentem litem motarunt laborarunt et laborant publica vox et fama. Responsio: Credit de creditis non credit de negatis.

388. Ch 6, n. 2: See Donahue, ed., Records 2, 165, and sources cited there. Although I have had reference to the book itself and to a film of it, the compilation of the statistics in this chapter would not have been possible had I not had to hand Stentz, Calendar, in both microform and, through the kindness of Dr. Stentz, digital form. Dr. Stentz is preparing an edition of this book for the Ames Foundation. The pioneering study of the marriage litigation in this register is Sheehan, “Formation.” Considerable use is also made of it in Aston, Arundel; Helmholz, Marriage Litigation, and Brundage, Law, Sex.

389. Ch 6, n. 3: The nature of the case is frequently missing from the first entry, perhaps because Foxton wrote the beginning of the entry before the parties had appeared and before he knew the nature of the case.

390. Ch 6, n. 4: For example: Isabella nuper uxor Johannis Pryme de Trippelowe citata ad dictos diem et locum coram nobis.. officiali Elien’ ad instanciam Thome Band de Chestreford’ in causa matrimoniali. And the next entry: Band. In causa matrimoniali coram nobis mota inter Thoamam Band de Chestreford, partem actricem ex parte una, et Isabellam nuper uxorrem Johannis Pryme de Trippelowe, partem remam ex altera, etc. Band c Pryme (13.ii.76 to 3.vii.76), fol. 39v–50v, fol. 39v, 41v. The full (normally first) citation to cases in the Ely act book gives the first and last dates on which the case was heard, and a reference to the bracketing folios, followed, where appropriate, by the folio(s) being discussed. Virtually all cases are continued from session to session of court. Because it is the best guide to the register, the names correspond to those in Stentz, Calendar, even where alternatives seem preferable. Hence, the relatively common surname in the book that

14 At bottom of sheet: Vertitur. What follows is on the dorse.
15 j silk ryban miss’. The problem with the extensions, of course, is that the gender of ryban is indeterminate.
16 circum’cins.
Stentz transcribes as “Andren” is so given, even though “Andreu” (modernized “Andrew”) seems the more likely reading. Where I have cited Sheehan, “Formation,” and he gives a different reading, I have placed it in parentheses. For a careful analysis of the libel in the Band case, see id., 59–60.

391. Ch 6, n. 5: A few begin with an ex officio citation of the appellant, ordering him either to proceed with the appeal or risk having the case remitted to the judge a quo. These citations were probably prompted by the appellee, though the entries do not say so.

392. Ch 6, n. 6: In France, these cases are called matters of ‘gracious jurisdiction’ (juridiction gracieuse), though this is not a term for which I have found warrant in the records.

393. Ch 6, n. 9: There is one more such revocation that is combined with the record of a case. Gilbert, Plumbery, Harant and Hykeney c Podyngton (27.ix.79 to 24.ii.80), fol. 121r–131r (fol. 127r: Harsent and Hykeny revoke a proxy to which they say that they never consented). Many more of these proxies could be combined with records of cases, but the book is not yet indexed, and a search for the matching case records did not seem to be worth the time.

394. Ch 6, n. 11: Cf. Office c Gritford; Gritford c Hervy (10.vi.80), fol. 140r, where a woman successfully sues her accuser in defamation after she has purged herself on an adultery charge before the bishop. See at n. 236.

395. Notes for Table 6.1:
   a. Substance indeterminate.
   b. Includes 25 ‘straight’ tithes cases.
   c. 1 lost goods, 1 theft, 2 usury.
   d. Includes 2 where the classification is doubtful.

396. Ch 6, n. 12: Different judgments as to what constitutes a ‘case’ is almost certainly the principal cause of the discrepancy (which is not great) between the numbers given here and those given in Sheehan, “Formation,” 44 and n. 18: 122 marriage “cases” out of 519 “separate items.”

397. Ch 6, n. 13: A word of caution here: I have examined the marriage cases more carefully than the cases of other types. It is possible that a more careful study of the other types of cases would result in more consolidations than I have made here.

398. Ch 6, n. 17: A fifth case, Rolf and Myntemor c Northern (n. 75), begins with an ex officio citation of both the reclaimer and the couple, but is otherwise indistinguishable from the other four. Sheehan, “Formation,” 46, counts 12 cases all told that arose on reclamation of banns.

399. Ch 6, n. 18: In one, Page c Chapman (n. 49), the reclaimer is not named in this case (it is put in the passive voice); the couple are cited but not the reclaimer, and the rector of the church where the reclamation is made is commissioned to conduct an ex officio investigation of the matter. The other, Borewell c Bileye (at nn. 152–6), begins simply with the citation of the couple before the consistory after reciting the results of the banns. Other reclamation cases will be treated as office cases, e.g., at nn. 218, 229.

400. Notes for Table 6.3:
   a. As in the case of York, so too here, the analysis attempts to get at the core of the claim, rather than simply what is claimed in the libel or the ex officio article. The numbers differ somewhat from Sheehan, “Formation,” 69, where 60 instance suits and instance appeals are reported (as opposed to 51). The difference is almost certainly accounted for by the fact that we have treated all three-party actions as one “case.” Sheehan’s count of 12 for the number of actions in which the plaintiff sought to invalidate a marriage (as opposed to 3 here) is probably to be ascribed to the fact that Sheehan treated appeals from judgments of the archdeacon’s court that a marriage existed as suits to invalidate. Id., 71. We may reconcile his count of appeals (collateral, as opposed to direct, attacks on judgments of other courts are not included here as appeals) as follows: Sheehan, “Formation,” 43 n. 14, reports that 11 matrimonial cases were appealed from the official of the archdeacon and 1 case that involved an ex officio investigation into a sentence of the archdeacon. His count misses one instance case: Furblisshor c Gosselyn (17 iii.79 to 22 ix.79), fol. 112r–120r; three office cases: Office c Bette and Malton (24 iii.75 to 6 iv.75), fol. 24r–26r; Office c Chaundeler and Hostiler (22 ix.79 to 13 x.79), fol. 120r–121v (a seemingly straightforward adultery case that might not be classified
as 'matrimonial'); Office c Galton and Phelip (at nn. 223–7) (two appeals, both counted in the table, to be consolidated in later discussions), and a collateral attack on the judgment of the archdeacon's official in an impotence case (not included in the count in the table): Office c Poynaunt, Swan, Goby and Pybbel (at nn. 248–54). The remaining appeals in matrimonial cases are from officers other than the archdeacon: one from the sacristan of the cathedral (Sergeaunt c Clerk [22.vi.75 to 3.iv.76], fol. 26v–44v) and three from commissaries of the official of Ely: Durant and Cakebred (6.vi.76 to 25.x.80), fol. 48r–144v; Anegold and Schanbery c Grantesden (24.iii.74 to 16.iii.80), fol. 5v–133r (which also involved an appeal from the archdeacon's official and will be consolidated in later discussions); Roisse c Smyth (15.iii.80 to 12.xii.81), fol. 135v–155r. For another case that probably involves an internal appeal, see Pecke and Pyron c Dronge (n. 95).

b Only appeals from courts outside the Ely consistory are recorded here. They are all appeals from what were instance cases in the lower court except for the appeal in the adultery case, the appeal in the case of divorce on the grounds of precontract, and one of the two-party marriage cases 'of uncertain form': Office c Chaundeler and Hostiler (n. a), Office c Galion and Phelip (n. a), Office c Bette and Multon (n. a). One instance abjuration case and one instance marriage-and-divorce case involve internal appeals within the consistory court, as does one of the cases that was also an appeal from the official of the archdeacon.

c I.e., the complaint alleges that the couple contracted either by words of the present tense or by words of the future tense followed by intercourse, and the rest of the case does not tell us which was at stake. Sheehan, "Formation," 55, reports that the register contains 30 such 'formula' marriage allegations.

d Includes all cases in which allegations are made that could have led to a decree of divorce on the ground of precontract, even though in the ex officio cases, some of the charges are for illegal solemnization (of the second marriage).

e Includes cases where the action is one of restoration of conjugal rights that is defended by raising issues of separation.

401. Ch 6, n. 21: In addition to the three cases listed here, there are two cases where a couple are cited for having contracted marriage informally followed by sexual intercourse (Office c Heneye and Baldok [15.x.77], fol. 72r; Office c Wolron and Leycestre [2.x.76], fol. 55Ar). They confess the intercourse and deny the contract and are ordered to abjure each other sub pena nubendi. Abjuration is also ordered at the beginning of Seustere c Barbour (10.iii.76 to 29.xv.78), fol. 39v–91v, when Thomas Barbour concedes his longtime sexual relationship with Joan Seustere, although he seemingly denies the contract. (He ultimately loses.) See Sheehan, "Formation," 67: "This almost Draconian form of contract was not used lightly; it occurs six times in eight years of the register." We have found no other examples.

402. Notes for Table 6.4:

a For an explanation of the categories, see Table 3.5. In that table we reduced the numbers in the subtotals to reflect cases in which more than one defense was made; here we reduced the numbers at the end. The numbers given here are somewhat different from those given in the table in Sheehan, "Formation," 75, though they are close. Since Sheehan did not reproduce his data set, we can only speculate as to the cause of the discrepancies. He tells us, for example, that he did not include all the ‘bigamy’ cases among the precontract cases, unless the claim of precontract was specifically made. Id., 74 n. 141. We have included all the cases in which two marriages were claimed on the theory that the priority of the contracts has to be an issue. In other cases, Sheehan may have missed an indication of a defense in an entry, and in some cases we may have. Sheehan’s report, however, of the defenses in his subsample of 60 instance cases and instance appeals (id., 69–70) greatly understates both the number of claimed precontracts and the number of denials. His summaries of the issues in the cases he discusses are, for the most part, accurate, but some of the numbers in Sheehan’s subsamples could mislead a reader who was not being careful. For example, he reports (id., 49) that five cases arose from objections to banns on the basis of affinity by illicit intercourse. One needs to look at the table (id., 75) to realize that that is not the total number of cases that raise issues of affinity. Indeed, Sheehan’s count in the table of instance and instance appeal cases raising issues of affinity and consanguinity (14) corresponds to ours.
One case alleges the impediment of public honesty. In two cases, one an abjuration case and another a de futuro case, the man alleges that he did not intend marriage when he had intercourse. (In neither case is this latter claim successful.)

403. Notes for Table 6.5:

a. The categories are the same as those in Table 6.3. The numbers in some of the cells are small and the aggregates are far more reliable than some of the individual cells. The office/instance cases are the same as those in Table 6.3; the appeal cases are treated as instance cases except for Office c Galion and Phelip (at nn. 223–7) and Office c Bette and Multon (T&C no. 400, n. a). These are omitted. In neither case is it possible to tell who is pursuing what, though in the Galion case it is clear that the principal issue is whether Richard Galion contracted with a woman not his now-wife twenty-seven years previously. In Office c Poynaunt, Swan, Goby and Pybbe (at nn. 248–54), an office/instance case involving a collateral attack on a divorce rendered by the archdeacon for impotence, I somewhat arbitrarily decided that the man was the moving party, although the ultimate sentence invalidating the divorce is not listed as a victory for any of the parties. I have more confidence that Office c Bocher (n. 185) should be treated as a case with a female plaintiff and the sentence a victory for her, even though she was not cited and does not appear. She did not have to because Bocher confesses all.

b. Sheehan, “Marriage Formation,” 69, understates (18 vs 22) the number of judgments in instance and instance appeal cases favoring a marriage. Id., 70, also understates the number of judgments opposed to a marriage (11 vs 18). When he says, however, that 20 cases “saw the claimant fail to vindicate his marriage,” he is counting all the cases that have no judgment as a failure by the claimant. That seems unwarranted considering the possibility of compromise or settlement favorable to the claimant. Sheehan’s numbers also fail to take into account the considerable difficulties in dealing with judgments in three-party cases. For example, the five judgments for defendants in the marriage-and-divorce cases are also judgments in favor of a marriage, that of the defendants, while the six judgments in favor of competitors are also six judgments against the marriage claimed by the other competitor.

404. Ch 6, n. 23: Sheehan, “Formation,” 61. Considering the number of cases (principally, but not only, appeal cases) in which we are not told the circumstances of the marriage, the number of “unions, real or alleged” that were clandestine is almost certainly understated.

405. Ch 6, n. 24: Ibid. Perhaps wisely, Sheehan did not attempt to count contracts made by words of the present tense as opposed to those made by words of the future tense. Our attempt to do so is indicated in Table 6.3.

406. Ch 6, n. 25: fourteenth century: z = 1.04, significant at .70; fifteenth century: z = .31, significant at .24. Readers familiar with statistics might well ask why we are employing a statistical test used to compare proportions that appear in samples to compare York, which we have argued is a sample, to Ely, which in many ways is not. After all, we have pretty good evidence that Foxton recorded all the cases that came before the court in his period. There are two answers to this objection, neither of which may be totally satisfactory. The first is that the z-score is also a good statistic to use to test whether a proportion in a sample drawn from a population with a known proportion is likely to be a true sample. One might think of the question being posed as: How likely is it that the York sample was drawn from the Ely population? The answers just given are that in the case of the ratio of female plaintiffs in the fourteenth century, there is a 30% chance that it was; in the case of the fifteenth century, there is a 76% chance that it was. The other answer is that the Ely numbers are, in some sense, a sample (though one highly biased chronologically and geographically) of all fourteenth-century English marriage litigation. If the Ely proportion of female plaintiffs and that at York are not significantly different (as, by most measures of significance, they appear not to be), we cannot accept the proposition that women in fourteenth- and fifteenth-century England tended to bring more marriage cases than did men, but we cannot reject the proposition either, as we could if the difference in the proportions were significantly greater.

407. Ch 6, n. 28: Female plaintiffs, however, fared, at least by one measure, better at Ely than they did at York in either century, gaining 71% of the plaintiff-favorable judgments (vs. 70% and 61% at York). This is higher than their proportion in the population of plaintiffs (71% vs 64%), while at York their proportion of
favorable judgments approximately equaled that in that population (70% vs 71%, 61% vs 62%). Conversely, granted that the overall success rate of all plaintiffs was lower at Ely than it was at York, the proportion of successful male plaintiffs was lower at Ely than it was at York (29% vs 36%, Ely; 30% vs 29%, York fourteen; 39% vs 38%, York fifteen).

The lower overall success rate (measured in terms of wins and losses) of plaintiffs at Ely affected both male and female plaintiffs in comparison to York. Female plaintiffs had an overall 60% success rate at Ely (55% in instance, 65% in office/instance cases) as opposed to 80% and 74% at York. Once more the men did worse (by most measures) than the women at Ely (57% success rate overall: 58% in instance and 57% in office/instance) and far worse than their brothers at York (94% and 81%, respectively).

408. Ch 6, n. 29: The larger differences are obviously statistically significant, and we need not report the results exhaustively here. (E.g., the difference between the overall female plaintiff persistence rate at Ely (89%) is significantly different from that in fifteenth-century York (61%), well beyond the .99 level \( z = 4.01 \).) The difference between the overall female persistence rate at Ely (89%) and that at fourteenth-century York (80%) is significant at the .83 level \( z = 1.36 \), that between the male instance persistence rate at Ely (75%) and that at fifteenth-century York (57%) also at the .83 level \( z = 1.38 \). Two other relatively small differences have significance levels greater than .5: the female instance persistence rate at Ely (83%) and the male (75%) \( z = .64 \), significant at .53, and the office/instance male persistence rate at Ely (60%) and the female instance rate in fourteenth-century York (72%) \( z = .80 \), significant at .58. The closer comparisons are not statistically significant, however one defines significance. (E.g., the instance female persistence rate at Ely [83%] compared to the female persistence rate in fourteenth-century York [80%] yields a \( z \)-score of .37 [significant at .29].)

409. Ch 6, n. 32: We cannot, of course, exclude the possibility that the ultimate source of the publica fama was the eventual plaintiff herself, but it is probable that if she were the sole source of it, at least by the time the fama reached the court, the official would simply have told her to bring the case herself.

410. Ch 6, n. 36: Helmholtz, Marriage Litigation, 39 and n. .52, notes that the pleadings and result in this case suggest that Ego volo habere te in uxorem were normally taken as words of the present tense, but he adds that the case was appealed. The case was defended, however, on the ground that the contract was conditional on Joan's parents' consent, and as is true in all the Ely cases, we do not know what the witnesses said. As Sheehan, "Formation," 58-9, notes, this case involved a pledge of faith made not by the couple in each other's hands but in the hands of a third party. It may be significant that the only other case in which this is mentioned (Bradenham c Bette, a tn . 111: fide hincinde data in manu media) also contains an allegation that the marriage was conditional.

411. Ch 6, n. 41: The only other appeal case in this group, Deynes c Seustere (8.i.77 to 25.ii.78), fol. 61r–89v, takes almost a year to obtain the processus from the official of the archdeacon. Then nothing is said against it. The court confirms the sentence of the lower court, which had apparently been for the rea.

412. Ch 6, n. 49: For the details, see Sheehan, "Formation," 50 and nn. 40, 56, 58: The clandestine marriage ceremony involved classic words of the present tense and a ring, and it seems to have taken the couple two years to have the bans proclaimed.

413. Ch 6, n. 51: E.g., fol. 5v: quia dictor [JK] pars actrix est extra patriam, nescitae ubi sed et dicitur mortius [sic] est, deo pendecet causa. Maintenance of continuity in a technical sense, as it occurred in the central royal court in this period, may be at stake in some of the routine entries like this. (Here, the court could have been doing it on behalf of an actor, who could, though there is no evidence that he did, have essoined himself as being “beyond the seas.”) On a more mechanical level, these entries allowed Foxton to see at a glance, in a book that did not have a running index, at what stage the case was if someone should happen to appear and want to make a move. In this case, there is another possible reason. If, as we suspect, John was bringing a marriage-enforcement action against Annora, she ought not marry during the pendency of the case. When Foxton dropped the case from the book, that may have given an informal license to Annora to marry another. Compare Office c Andren and Andren (n. 227).

414. Ch 6, n. 52: We have classified this case as office/instance, even though it begins with an instance citation, because of the ex officio witness at the end.
415. Ch 6, n. 54: As Sheehan, “Formation,” 73 n. 133, reports, the issue in this case was whether John had previously contracted with two other women.

416. Ch 6, n. 55: Sheehan, “Formation,” 53–4, describes the litigation. He also points out (55 nn. 60, 57) that the form of citation employs the ‘formula’ and that the words that John confesses are ambiguous as to whether they are de presenti or de futuro (volo te habere). (See Ch 1, at n. 9; Ch 5, at n. 52–3.) He may, however, go too far in suggesting (69 and n. 111) that this was an ex officio attempt to enforce a de futuro contract, and his suggestion (63 and n. 90) that this is what we have called an ‘interlocking competitor’ case is misleading; Martyn is not resisting Alice’s claim.

417. Ch 6, n. 56: As Aston, Arundel, 104 and n. 4, suggests, Richard may be related to William Molt of Wendy, who figures prominently in Bonde c Yutte (at nn. 199–200). She also suggests (id., 141) that Saffrey may have been the man who attacked the property of one William Malt (?Molt) five years later during the Peasants’ Revolt.

418. Ch 6, n. 63: We will have occasion to explore this possibility in a more formal fashion. See, e.g., the discussion of Anegold and Schanbery c Grantesden (at nn. 95–8).

419. Ch 6, nn. 67, 69, 70:1 [fol. 55Bv] Johannes Everard de Ely et Johanna commorans cum Roberto Beneyt de eadem citati coram nobis . . Officiali Eliensi ad diem lune proximo post festum Omnium sanctorum in ecclesia sancte Trinitatis Eliensis super contractu matrimoniali inter eosdem fama referente inito seu facto utrique comparentes personaliter coram nobis et de veritate dicendo iurati ac super dicto contractu requisiti, dictus Johannes fatebatur ac propositum et allegavit quod ipse et prefata Johanna matrimonium in uxoralem legitimam ipsum Johannem in virum legitimum sententia et definitione adiudicari; dicta vero Johanna super predicto contractu requisita fatebatur quod contraexerat sub forma predicta et non alio modo: dictus Johannes quesitum ab eadem sub ista forma, ‘vis tu habere me in virum?’ et ipsa respondit ‘sic’ et quod placuit sibi.2 Fatetur eciam dicta Johanna quod postea procuraturn hanc e dicte ecclesiis. Unde eisdem Johanni et Johanne diem crastinum loco quo super ad proponendum causam rationablem si quam habeant quare tuxta dictas confessiones adiudicatori non debeat pro matrimonio inter eos prehigram et assignamus. Quibus die et loco paritibus prediccis coram nobis Thoma de Gloucestre domini . . Officialis Eliensis Commissario personaliter comparentibus proponitur per dictam Johannem quod idem Johannes tempore dicti contractus, ante, et post, fuit et adhibuit servos et nativos et servilis condiciones quoadque suum ignorans condicionem sic ut prefertur cum eo contraexerat aliter non contracturus [sic]; allegate eciam quod a tempore quo de dicta condicione servii sibi constiteri, statim penitet et contradixit et dissensit et in presenti penitet contradixit et dissensit; dictus insuper Johannes fatetur se servus et servilis condicionem sed dicta Johanna novit2 eum pro servio diei ante dictum contractum et post; iuratis paritibus hincinde de calumpnia et de veritate dicenda et de malicia datus est dies in proximo consistorio in ecclesia sancti Michaelis Cant. partibus predictis proposita per eum.

[fol. 55Bv, 13 November, 1376] In causa matrimoniali mota inter Johannem Everard de Ely partem actricem ex parte una et Johannam commorantem cum Roberto Beneyt de eadem partibus coram nobis per procuratores suos comparentibus nullis testibus per dictos Johannem et Johannam seu eorum alterum productis datus dies in proximo ad secundo producendum.

[fol. 58v] In causa matrimoniali mota inter Johannem Everard de Ely partem actricem ex parte una et Johannam commorantem cum Roberto Beneyt de eadem partibus coram nobis per procuratores suos comparentibus nullis testibus per dictos Johannem et Johannam seu eorum alterum productis datus dies in proximo ad secundo producendum.

[fol. 58r] [Officialis predicto in ecclesia sancte Trinitatis civitatis Eliensis] die mercurii post festum sancte Lucie virginis personaliter comparentibus nullis testibus per dictas partes seu eorum aliquam productis sed factis per nos pro informatione conscientie nostre eisdem paritibus quibundam posicionibus [fol. 59v] videlicet dicto Johanni an

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1 Another transcript in Helmholz, Marriage Litigation, 213–14.

2 As Sheehan, “Formation,” 48–9, points out, there is some ambiguity as to whether these count as words of the present tense. The court seems to assume, however, that they do, after Joan’s substantive defense fails.

3 no
tunc fuit et nunc est servus et nativus ac servilis condicionis, dicteque Johanne an tempore dicti contractus per eos confessi scivit ipsum Johannem fore servilis condicionis, iuratis dictis Johanne et Johanna de veritate dicenda in hac parte ac supradictis positionibus requisitis dictus Johannes fatetur quod tunc fuit et nunc est servus et servilis condicionis, dictaque Johanna fatetur quod tempore dicti contractus ante et post scivit ipsum esse servilis condicionis et quod non obstante dicta condicione sic ut premittitur adinvicem contraxerunt et banna matrimonialia in facie ecclesie inter eos publice edo fecerunt, factaque per nos conclusione in dicta causa eo quod dictae partes nichil effectuale proponunt quare pro matrimonio inter eos non debat adiudicari parribus predictis horum tercie pulsationis post prandium huiusmodi diei loco quo supra ad audendum sententiam in dicta cause diffinitivam prefigimus et assignamus. Quibus hora et loco parribus coram nobis . . . Officiali predicto personaliter comparentibus et requisitis iterato an quidquam sciant ?sonale4 proponere quare pro matrimonio non debat adiudicari iuxta confessiones suas coram nobis iudicialiter emissas dicunt se nescire quidquam proponere nisi duntaxat quod iam mutarunt suam voluntatem quia credunt quod se invicem non diligent proper resistenciam per dictam Johannam factam. Auditisque per nos et intellectis meritis cause matrimonialis supradicta, rimato et investigato toto processu in dicta causa habito et deliberacione sufficienti super eodem de consilio iurisperitorum nobis assidencium Christi nomine primitus invocato ad sentenciam diffinitivam in hac parte ferendam procedimus in hunc modum. In dei nomine amen. Quia invenimus dictum Johannem intencionem suam in hac parte deductam bene et sufficienter fundasse et probasse nec aliquod canonicum obstare impedimentum ipsum Johannem eidem Johanne in virum legitime et ipsum Johannam eidem Johanni in uxorem legitimente et diffinitive adiudicamus in his scriptis decrentes matrimonium fore inter eos in facie ecclesie solemnizandum pro loco et tempore opportunis.

420. Ch 6, n. 71: John also probably got some advice. His initial ‘proposition’, even allowing for Foxton’s translation, suggests the advice of someone more experienced than he. Following the entry of the session on 4 November, Foxton records the constitution of proctors by both parities on the same day (fol. 33Av).

421. Ch 6, n. 72: It is probably significant that their failure to appear on 4 December is not recorded. The official knew where to find them, and he may have been doing them a favor by not insisting that they pay proctors for a second appearance.

422. Ch 6, n. 73: She may even have thought that so long as she had not had intercourse with John, something that she seems quite careful to avoid admitting, she would be able to get out of the contract. As we have seen, she may have had a case on the basis of the words spoken. An affirmative response to vis me habere is not always taken as words of the present tense. But she does not know how to make the argument when called to do so. Helmholz, Marriage Litigation, 33 n. 33, suggests that the remark that they no longer love each other indicates a popular belief that sponsalia de presenti unaccompanied by intercourse were dissoluble. That is possible, but considering this particular couple and what had happened between them, it may not be a good illustration of that proposition.

423. Ch 6, n. 74: That they may have been quite young is suggested both by Joan’s residence with Robert Beneytt (though she is not said to be his servant) and by the rather charming naiveté of their final responses.

424. Ch 6, n. 77: Fol. 129r: quod ipsa consenicit eidem ita quod esset fidelis. I take this to mean that she consented to him in order that he would be faithful to her. Obviously, he was not. The Latin could mean that she consented to him in such a way that she would be faithful to him. That did not happen either, but under the reconstruction of the facts given in the text, her infidelity is more understandable.

425. Ch 6, n. 78: This is not the only possible reconstruction of the facts. It is possible that Margaret concocted the story of Thomas in order to escape from her marriage to William. My judgment that that is not the case here is based on the fact that Margaret’s account of the marriage with Thomas is circumstantial (rather than formulaic) and that there was independent evidence, known to the court, of her relationship with Thomas.

4 ito fera with le interlined. The word is otherwise unrecorded. Perhaps personale was intended, but it is not clear what that would mean. Helmholz (Marriage Litigation, 214) reads rationabile, which certainly makes sense but does not seem to be what it says.
426. Ch 6, n. 79: “...invenimus dictam sentencionem afflictivam temere et inique et a non competente iudice latam utpote non habentem potestatem de sure ac sine probacionibus legitimis neconon contra ius et in preudicum alterius matrimonii inter ipsum Matildam et Johanne Alderford initi et confessi et alias contra euris debitum iuris processum, etc. Fol. 126v; et quia invenimus dictum Walterum contractum matrimonii inter ipsum et dictam Matildam minus sufficienter fundasse et probasse abstante matrimonio inter predictos Johannem et Matildam inito et clare probato, ipsum Matildam ab impettione et instancia dicti Walteri per hanc nostram afflictivam sententiam dimittimus et absolviimus, cetera eorum consciencis relliquentes.

427. Ch 6, n. 81: For an even more dramatic example, see Office c Chilterne, Neve and Spynnere (at nn. 231–3). We may also have serious doubts about the quality of the judging in Clopton c Niel (5.ii.77 to 17.i.82), fol. 63v–159v, discussed at length in Aston, Arundel, 102–3.

428. Ch 6, n. 82: Sheehan, “Formation,” 60 and n. 70, transcribes portions of John’s libel and notes its emphasis on the informal publication of the marriage.

429. Ch 6, n. 108: This procedure, though unusual, is followed in two other cases, always with the consent of the party or parties whose confession is being revealed. It is done with the consent of both parties (apparenty both their confessors are involved) in Branuche c Dellay (at n. 108). It is also done twice in Office c Poynaunt, Swan, Goby and Pybbel (at n. 248). In one instance, it is a single penitent who is authorizing his confessor to reveal the contents of his confession; in the other, two parties authorize it.

430. Ch 6, n. 86: For the bishop’s role, see Aston, Arundel, 39–40. Sheehan, “Formation,” 46 and n. 20, specularizes on the basis of this case that the access of the well-to-do to the bishop’s audience leads to their underrepresentation in the consistory. The fact, however, that the bishop turns this case over, in essence, to the consistory suggests that, at least in contested cases, he preferred the consistory to his audience, which may not have been a formalized body at this time. See Aston, Arundel, 41. Cobbe is described as having land in several Cambridgeshire villages when he was implicated with involvement in the Peasants’ Revolt. Id., 142.

431. Ch 6, n. 87: The ambiguity here lies in the fact that the first mention of a missio to London suggests that Margaret is to be examined in her residence (suggesting either that she is of very high status or that she is ill). The second mention of a missio to London calls for an examination of a woman named Franceys (no Christian name is given), and it is to take place in Milk Street church. Without much confidence, I would suggest that two missiones are involved and that the second is to examine Eleanor herself. (This would mean that Eleanor is not residing with her husband in Wimpole.)

432. Ch 6, n. 88: Fol. 104v: ipsumque Johannem in expensis per ipsos Galfridum et Elianoram in dicta causa seu causis legitime factis eisdem refundendis propter ipsius temerariam fatigacionem et vexacionem miustam condemnamus.

433. Ch 6, n. 89: On the bishop’s order, see Aston, Arundel, 41.

434. Ch 6, n. 99: For a shorter account of this case focusing on the illegal solemnization, see Sheehan, “Formation,” 54 and n. 56–7. Sheehan does not mention the claim of a previous judgment that Gobat and atte Moore were not related, and I am pretty sure that he misread Peretsen’s name (Perreue).

435. Ch 6, n. 91: Aston, Arundel, 122–4, has a full account of the proceedings in 1377–9 but misses the follow-on in 1380. Sheehan’s account (“Formation,” 46 n. 27, 52 n. 24, 61–2 and nn. 85, 88) focuses on the illegal solemnization proceedings, and he, too, misses the follow-on in 1380.

436. Ch 6, n. 93: Aston, Arundel, 124; suggests that the reason for the bishop’s personal involvement may be that the archdeacon was the rector of Wilburton church and that it was at the time held in farm by Hugh Candelesby, for whom see at nn. 168–9.

437. Ch 6, n. 94: Fol. 85v: multum gaudium habeant adinvicem. The chaplain Robert Mustell’s version of the reclamation strikes me as much more likely to be accurate: mirabile est quod mulieres ita variant; si fuisset fidelis fuit ut mea (fol. 85r).

438. Ch 6, n. 95: Also discussed at nn. 191–7 and in Aston, Arundel, 99–100. As will become apparent, I cannot agree with Aston that the case “was not exceptional in its duration,” nor do I believe that we need
take the final appeal seriously. As Sheehan, “Marriage Formation,” 70 n. 115, points out, this is one of three cases in which a judgment in favor of a current marriage is upset on appeal on the basis of a precontract. The others are Welle c Joly and Worlich (29.vii.78 to 15.iii.80), fol. 96v–133v (discussed in Aston, Arundel, 100–1), and Pecke and Pyron c Drenge (24.iii.74 to 2.vi.75), fol. 5v–23v. The latter is not coded as an appeal in the tables because it begins before the register begins and the final sentence does not mention the appeal. It was probably an internal appeal from a commissary to the official.

439. Ch 6, n. 97: The final sentence is appealed (fol. 133r), but I suspect that this is a formality. Anegold appeared at the hearing by a proctor, and the proctor probably appealed just in case Anegold wanted to pursue an appeal. I doubt that he did.

440. Ch 6, n. 98: Richard Scrope is the same Richard Scrope who later became archbishop of York and was executed for treason in 1405. Nothing that is known of his life would suggest that he was a compassionate man.

441. Ch 6, n. 100: See Sheehan, “Formation,” 71, describing the case as one that has “an unpleasant odour” about it. He puts Malyn c Malyn (2.v.81), fol. 150r, in the same category.

442. Ch 6, n. 104: The reason for the doubt is that there is an entry in the last recorded session in the book in which the production of the witnesses for reexamination is once more ordered. This is, however, the kind of entry that Foxton continued from session to session when a case had in fact been dropped.

443. Ch 6, n. 107: F. 132r: partes predicte consentiunt quod predicti vicarius et capellanus examinantur et deponant in dicta materia eciam super confessatis sibi in foro anime; petitur eciam per partem dicte [JD] missione [corrected from missione] ad admittendum et examinandum in partibus testes quosquid et quos producere voluerit, eciam cappellanos si qui sint necessarii super confessatis sibi in foro anime tangentibus dictum contractum cum non speretur aliter veritatum eruere; buius[modi] missionem de consensu parciarum dictarum decernimus [faciendum et committimus, etc.

444. Ch 6, n. 109: F. 135v: Dictus [AS] fatetur quod sic ut premittitur adiuvicem contraxerunt. Fatetur etiam quod post buonos modis contractum ipsam [RR] carnaliter cognovit. Excipiendo tamen allegat quod antequam ipsam carnaliter cognovit, protestabant se non habere in uxorem. Sheehan, “Formation,” 66 n. 102, notes that in both this case and in Pikerel c Bacon (n. 110), the abjuration is said to be iuxta forma constitutionis, although the synodal constitutions that he cites are not provincial and do not come from Ely diocese. There probably was an Ely diocesan constitution about it that has not yet been discovered.

445. Ch 6, n. 110: The other instance abjuration case, Pikerel c Bacon (16.xii.79 to 15.iii.80), fol. 125v–135r, results in a judgment for the defendant in quite short order. Thomas Bacon confessed the contract and denied the intercourse, which Isabel Pikerel, apparently, was unable to prove. See Sheehan, “Formation,” 67–8.

446. Ch 6, n. 112: Fol. 144r: [JB] dicit quod confissit matrimonium fide hincinde prestita in manu media non tamen simpliciter ut proponitur neque pure sed sub ista condicione si Hugo Bradenham frater ipsius Margerie daret eis in maritagio medietatem unius placee quam inhabitat in Swaves’ vel centum solidos quam conditionem non curat adimplere nec a dicta condicione aliquid est recessum.

447. Ch 6, n. 114: For this jurisdiction, see Aston, Arundel, 84–6, who suggests that the sacristan may have had archidiaconal jurisdiction in the Isle and/or in churches belonging to the prior and chapter of Ely Cathedral.

448. Ch 6, n. 115: Fol. 44v: Quia invenimus dictum sacristam Elion’ indicem in ea parte competentem de consuetudine vel de iure in dicta causa debite processisse, etc.

449. Ch 6, n. 118: Fol. 13r: propostita per partem appellantem quadam propositione sive exceptione nullitatis totius processus. Fol. 18r: propostitum per partem dicte Isabelli naturens quod licet magister Thoma de Glouc’ fuerat commissarius officialiis archadacomi prout in processu transmissi cavetur et in eodem processu non liquet de teneors commissorios ut de sua postetate poterit apparere, tamen in rei veritate fuerat commissarius legitime deputatus petitiumque per partem dicte Isabelli se admissi ad probandum dictam commisionem.

Fol. 22v: quia procurator dicti Nicholai dictum exceptionem proponens recusavit expresse turare quod non maliciose proposat, idem dictam exceptionem reicimus. The matter is made more complicated by the fact that it would seem that Mr Thomas was also serving as Isabella’s proctor in the appeal case.
450. Ch 6, n. 119: ante suscepcionem sacri ordinis cuiuscumque ac predicte religionis ingressum omnemque professionem in dicta religione seu prioritate predicto factum tacite vel expresse, ac ante quamcumque admissionem ordinis, habitus seu tonsure buusmodi, dicti Johannes et Alicia matrimonium admissuncem per verba de presenti mutuum consensu eorumdem exprimencia seu saltum per verba de futuro carnali copula subsecuta precontraxerunt. Sheehan, “Formation,” 70, suggests that Alice was successful. I do not see that on this record.

451. Ch 6, n. 120: Had he been successful, he would have avoided the considerable difficulties that someone who wished to leave the religious life encountered in this period. See Logan, Runaway Religious.

452. Ch 6, n. 122: That the Newton here is the Newton in the very north of the county is shown by the fact that the vicar of Elm is commissioned to take the testimony. The other case that has interlocking elements is Taillor and Snerles c Lovechild and Taillor (at n. 172), but here the woman who seems to be the plaintiff in the first case is the defendant in the second.

453. Ch 6, n. 123: Fol. 123v: Quia nos Johannes de Potton’ . . . invenimus dictum [KD] matrimonium inter ipsam et prefatum [EN] instittum et contractum ac consanguinitatem inter prefatum [JP] et eandem [KD] neconon instittum metum in contractu pretioso inter prefatos [JJ] per ipsam [KD] deductum et alias exceptiones in hac parte propositas sussicentier probasse dictumque [JJ] matrimonium inter ipsam et eandem [KD] instittum fore minus sussicentier fundasse et probasse sed in probacione eisdem defectasse, obstasitanus matrimonio inter eisdem [EN] et [KD] ac consanguinitate et metu predicti, pronunciamus et declaramus per hanc nostram definitivam sentenciam matrimonium inter prefatos [JJ] et [KD] de facto contractum quin verius extortum non possis subsistere nec valere, obstasitanus impedimentos supradictis . . . et pro matrimonio vero et legitimo inter eisdem [EN] et [KD] legitime contracto pronunciamus et declaramus, etc. John Newton witnesses Potton’s sentence; so whatever the reason for his commissioning Potton to render it, it was not because he was going to be absent from the session in which it was supposed to be rendered.

454. Ch 6, n. 125: Further indication that the result is a foregone conclusion is the fact that Isabel is styled “wife of Hugh” at the very beginning of the case. Whether she is the wife of Hugh is, of course, the issue in the case.

455. Ch 6, n. 126: Sheehan, “Formation,” 71, also expresses doubts about the Bakersbyt case but seems ultimately to come to conclusion, as do we, that the story is plausible.

456. Ch 6, n. 127: Sheehan, “Formation,” 63 and n. 92, notes that this is one of four bigamy cases in the register in which two different dioceses are involved. There are actually only three such cases, but they do “reveal a remarkable degree of mobility among the principals involved” (ibid.). Brodyng c Tailor and Treses (26.vi.78 to 23.vi.80), fol. 94v–143v (suit conceded by male reus); Office c Galion and Phelip (at nn. 223–7) (Sheehan has this as two separate suits, but both involve the same man who is alleged to have married a woman of Norwich diocese 27 years previously).

457. Ch 6, n. 129: Fol. 67v: Dictus vero Johannes fatetur quod ante omnem contractum matrimonialis inter ipsam et prefatum Katerinam instittum seu factum contraxit cum dicta Alicia per ista verba: ‘Volo te habere in uxorem’ et postmodum eam carnaliter cognosvit.

458. Ch 6, n. 130: Sheehan, “Formation,” 61 n. 82, asks why in this case the court did not accept the confession of the parties, whereas in Office c Bury and Littlebury (n. 212): it did. The answer is that in cases involving the rights of third parties, more evidence than the confession of the couple was required. See Ch 1, at n. 102.

459. Ch 6, n. 132: As Sheehan, “Formation,” 59 and n. 76, notes, Alice’s allegation in the second case that her contract was one that “uterque eorum . . . in alterius et aliorum fide dignorum presencia fatetratur et recognovit, publicavit, innovavit” was pretty clearly common form. That it is not always common form is indicated by his account of the Stistede case (n. 160). Id., 59–60; cf. id., 61, 64–5, 70. As Sheehan also notes, Alice’s proctor appealed from the second definitive sentence, but there is no evidence that she pursued the appeal.

460. Ch 6, n. 135: The record (fol. 99v) says: propositis per partem ream quousdam excepcionibus contra processum habitum coram . . . officiadi domini archidiaconi Estriding. The pars rea is technically both John and Alice, but it is unlikely that John took part in raising the exceptions. Everything else in the record indicates that John is supporting Matilda’s suit.
461. Ch 6, n. 136: The witness seems to be John Hostiler who had previously been Matilda’s proctor. Getting testimony on the record as to the second marriage (and its time) would seem to be a formality. It might be necessary if there were suspicion that Alice was colluding in obtaining the judgment, but all the evidence suggests that she was not.

462. Ch 6, n. 137: Matilda was also on the move. Her marriage to John was adjudicated by the archdeacon of East Riding, but she is now resident someplace in Lincoln diocese. Unfortunately, the record does not tell whether that was in the portion of that large diocese just south of the Humber (and just south of East Riding) or in the portion of the diocese that adjoins the diocese of Ely. By the time she is cited ex officio, she is resident in Chesterton.

463. Ch 6, n. 138: What the record says (fol. 113v) is: *proposita et exhibita per partem dicti [JB] quadium litera patens sub nomine et sigillo officialis domini archidiaconi Eleni’ super te indicata in eadem causa.*

464. Ch 6, n. 141: Sheehan, “Formation,” 53, has the date of the initial proceedings wrong. His subsequent discussion of the case (id., 61–2; 69 nn. 111, 112; 70 n. 116) does not quite capture the full complexity of the story.

465. Ch 6, n. 142: Fol. 48r: petitque dicta Agnes quod in dicta causa procedatur summarie et de plano sine strepitu et figura iudicii iuxta novellas constituciones. That her petition was granted may be inferred from the speed at which the subsequent proceeding followed.

466. Ch 6, n. 144: Fol. 138r: *Agnes proposuit quod Henricus Walter de Orewell et ipsa ante omnem contractum inter ipsam et Johannem initum fuerant concordes de matrimonio inter eos contrahendo et post contractum inter ipsas Johannem et Agnetem initum eciam post sententiam diffinitivam in ea parte latam et non ante predictus Henricus et Agnes matrimonium adiuvum contraxerunt, etc.*

467. Ch 6, n. 146: See Sheehan, “Formation,” 62 n. 87, and n. 134. Cf. Rede c Stryk (19 iii.72 to 25 x.80), fol. 67r–44r (testimonial), where the procedure is followed with less apparent success.

468. Ch 6, n. 147: Fol. 39v: *Thomas Barbours de parochia sancti Benedicti Cantebr* et Johanna Seustere quam diu tenuit concubinam citat i... super contractu matrimoniali inter eosdem [am publica referente intto et carnali copula subsecuta, etc.]

469. Ch 6, n. 148: Fol. 39v–40r: predictus Thomas huiusmodi contractum inter eos initum for negavit expressis; fatebatur tamem quod cum ea contractit prout sequitur, predictus Thomas ante festum Exaltacionis Sancte Crucis ultimo preteritum volens eam dimittere premissit eam quod nonuerit plus habere facere cum ea et postmodum audito quod dicta Johanna voluit recessisse et se divertisse ad alia loca, dictus Thomas tantum dolorem inde concepit quod seipsum voluit perimisse. Tandem predictus Thomas anto festum predictarum nundinarum predictum tempore predictarum apud Sterebrugg[e] [the Stourbridge fair, at which Joan had alleged they had contracted (for the fair see Samantha Letters, Online Gazetteer of Markets and Fairs in England Wales to 1516 http://www.history.ac.uk/cmhl/az/camb/html/cmcam [last visited 25 July 2007]) accesssit et lacrimabiliter eidem Johanne dixit ista verba, ‘Johanna, si velis morari in partibus, volo te affidare’, et dicta Johanna respondebat se velle morari et tunc dixit Thomas dicta Johanne, ‘His securo tibi fidem meam quod volo te habere’ et dicta Johanna respondebat incontinenti, ‘Placet michi’. Fatebatur insuper dictus Thomas quod post dictum tempus et ex ante prefatam Johannam carnaliter cognovit, dixit tamen quod non esse intencionis seu quod ipsam duceret in uxorem, sed dumtaxat quod ipsam diteret in concubinam ait prieus detinuisset, etc. Sheehan, “Formation,” 67 n. 104, transcribes from dictus Thomas circa, somewhat missing at least one of the points, though one might guess them from his accurate summary in the text at 66–7.

470. Ch 6, n. 149: Her first witness is said to have been produced ex habundantibus, but she was apparently advised not to risk asking for judgment on the basis of Thomas’s confession and what that one witness said. Possible arguments for Thomas include that his formula of promise (T&C no. 465) was not sufficient for future consent (a ‘promise to promise’ rather than a promise), that the court was unwilling to apply the de iure presumption of present consent when intercourse followed a de futuro promise in these circumstances, and, perhaps least likely, that Thomas’s psychological state when he promised was such that his will was not his own.
471. Ch 6, n. 151: A Master Edmund de Alderford, M.A., appears voluntarily in the first session; on fol. 46v, Joan asks compulsion of the rector of St Benet's and five others, which she obtains. The rector and four others ultimately appear and testify on her behalf.

472. Ch 6, n. 153: In edicione bannorum inter Thomam Biley de Cantebr et Aliciam Borewell compertum est per reclamacionem in ea factam, quod Thomas Clerk de Bernewell, prefatum Thom Biley in gradu consanguinitatis prohibito attingens ante omnem contractum matrimonialem inter prefatos Thomam Biley et Aliciam inittum, ipsum Aliciam carnaliter precognovit.

473. Ch 6, n. 154: Quia per confessionem Thome Clerk et Aliac predictorum coram nobis iudicialiter emissam, licet dicta Alicia nollet a dicto Thoma Biley separari sed summe affectat ipsum habere in virum, ac per famam vicine et aliis legitimis probacionibus coram nobis ministratae luctulent constat, predictam Thomam Clerk esse consanguineum predict Thome Biley in quarto gradu vel infra consanguinitatis attingentem, ac ipsum Thomem Clerk, ante ommem contractum matrimonialeum seu sponzalium inter prefatos Thomam Biley et Aliciam initum, predictam Aliciam precognovisse carnaliter, nos, que dicta sunt plene rimantes et intelligentes presertim cum predicta non dicantur occulta sed quia predicantur a pluribus manifeste, sentencialiter et diffinitive in his scriptis decernimus et declaramus ipsos Thomam Biley et Aliciam ex predictis causis matrimonialiter coniungi non posse, etc. Helmholz, Marriage Litigation, 72n. 100, cites this case as an example of a court ordering an ex officio divorce against the parties' wishes. That it was against Alice's wishes is clear enough; I doubt, however, that it was against Thomas's wishes.

474. Ch 6, n. 155: My guess that the Castellacres are his cousins is based on the fact that witnesses to consanguinity are normally relatives of the people whose consanguinity they are supposed to prove. That Ralph Castellacre is a Cambridge scholar, as opposed to a scholar somewhere else, seems overwhelmingly likely considering where we are.

475. Ch 6, n. 157: The case is discussed in Sheehan, “Formation,” 49, 72, and Aston, Arundel, 40, who notes the bishop's presence at the publication of the depositions and speculates that the judgment was his decision. Compare Geoffrey c Myntemoor (at nn. 119–21).

476. Ch 6, n. 160: Stistede c Borewell (29.v.77 to 18.vi.77), fol. 73v–75r. The couple are cited for contract of marriage known by publica fama; John Borewell defends on the ground that the consent was conditional on parental consent. Since the intercourse is admitted, this is an easy case because the intercourse waives the condition. Sentence for the marriage on the basis of their confessions, with an order to solemnize; John absent. See Sheehan, “Formation,” 59–60.

Roberd c Colne (6.ii.82 to 7.ii.82), fol. 161r. The couple are cited for contract of marriage; Thomas Colne, ploughwright, defends on the ground of force. Isabel Roberd produces three male witnesses, who apparently put paid to Thomas's exception of force. He ultimately admits that he cannot prove it, and a contract of marriage de futuro followed by intercourse is confessed. Sentence for plaintiff. See Sheehan, “Formation,” 55.

Reesham c Lyngewode (30.x.81 to 5.xi.81), fol. 154v. The couple are cited for contract of marriage; they confess both the contract and intercourse. John Lyngewode defends on the ground that the contract was conditional on the good behavior of Joan, servant of John Reesham, but he ultimately concedes. Sentence for plaintiff and the marriage, based on the confessions. See Helmholz, Marriage Litigation, 54–7, for a full discussion of the canonic effect of the condition alleged in this case. Considering the ultimate result in the case, the court probably did not feel it necessary to get into these complexities.

Clifford c Lungedon (30.x.77), fol. 71v. The couple are cited for contract of marriage followed by intercourse. John Lungedon defends on the ground that Margaret Clifford of Blisworth (Northants) precontracted with one Eli Ballard of Easton (Easton Neston, Northants). Margaret basically concedes the precontract. The one independent witness, a priest, does not provide an airtight case. (He does not, for example, testify that Eli was still living at the time of Margaret and John's contract.) Sentence against the marriage contract, which is declared void on the basis of Margaret's precontract. See Sheehan, “Formation,” 58, for a discussion of the conditional form in which consent was phrased: si sis libera ab omni viso or ab alio.

Howse c Lyngewode (27.vi.76), fol. 50r. The couple are cited concerning a contract of marriage followed by intercourse, known by publica fama. They confess to the intercourse (for which they undergo canonical
correction). Matilda Howe, tavern keeper of Alice Tiryngton, alleges a contract, which John Lyngwode, Wright, denies. Matilda admits she has no witnesses. Sentence for John for lack of proof; the matter is left to their consciences.

Bugges c Rigges (8.vii.74 to 2.viii.74), fol. 8r. The couple are cited for contract of marriage followed by intercourse known as publica fama. Katherine Bugges admits a contract that John Rigges, clerk, denies. He is silent about the intercourse. Katherine alleges she has no proof, and the court (fearing collusion) orders her to find proof. She fails to reappear, and sentence is rendered for John. As Sheehan, “Formation,” 61, points out, the words John is alleged to have said, *Hic est fides mea; habebo te in uxorem et nullam alicui*, illustrate “those all-too-fragile agreements followed by sexual union.”

477. Ch. 6, n. 163: Fol. 93v: “those all-too-fragile agreements followed by sexual union.”


479. Ch. 6, n. 164: See Helmholz, *Marriage Litigation*, 220–1. It is also possible that the court took John’s confession of subsequent intercourse, if that is what it was, as ‘purging’ the force and converting the consent into an unforced present consent.

479. Ch. 6, n. 165: Margaret Gerthmaker of Ely and Roger servant of Roger Hundreder of Ely were cited before the commissary of Ely on 7 April 1377 concerning a contract of marriage. *Gerthmaker and [. . .] c Hundreder* (7.iv.77), fol. 67v–68r. Margaret alleges a ‘formula’ marriage. Roger denies it. Margaret admits she has no proof, and the case is dismissed. The same day (the record does not say the same day, but the entry appears right below the previous one, and the same judge is involved), Katherine [. . .] residing in Haddenham and Roger are cited before the same judge for the same thing. Katherine alleges a ‘formula’ marriage. Roger alleges, apparently, a *de futuro* contract followed by intercourse. The result is a foregone conclusion. They are adjudged married and ordered to solemnize. The only question that this record leaves is why the court did not put Katherine and Roger to their proof. *For fear of collusion,* as records in other cases say. (E.g., *Bugges c Rigges* [n. 160], fol. 8r: *quia verissimiliter timemus de collusione et malicia dicte Katerine, ideo fecimus dictam Katerinam iurare ad sancta dei Ewangelia quod apponet omnem diligenciam quam poterit ad probandum dictum contractum.* The conclusion that we might draw from this record, and it will prove relevant in other cases, is that a competitor has to have some proof of her claim before she can demand that a couple who confess that they are married prove theirs.

On 5 February 1380 Margaret daughter of John Wronge of Barnwell and John Hankyn of Barnwell appear to answer charges of having contracted marriage. *Wronge and Foot c Hankyn* (3.i.80 to 5.iv.80), fol. 129v–136v. They admit to contracting *de presenti*, though they deny intercourse. John is also charged with having precontracted with Marion Foot of Trumpington. He denies the charge, and Marion is ordered cited. It takes some doing to get her to come to court. When she arrives on 5 April, she says that she has no proof of the contract. She takes an oath that she is not doing this collusively, and John is absolved of her suit (which was not much of a suit). (Sheehan, “Formation,” 64–5 and nn. 97–8, cites this case as an example of the court’s endeavoring not to be manipulated by the parties. That it was trying is clear; whether it was successful is a matter about which we may have more doubt.)

The following case was also not much of a suit: Joan Gibbe was cited before the commissary general of the official for 15 January 1377 in Holy Trinity, Ely, to propose why she reclaimed the banns of John Dany of March and Alice Lenton of March in the chapel at March (in the parish of Doddington in the fen country). *Gibbe c Dany and Lenton* (15.i.77), fol. 61v, discussed in Sheehan, “Formation,” 46, 61, 65. Joan appears personally and says that she objected because she and John had contracted a ‘formula’ marriage. John, under oath, denies the contract. The court dismisses John from the suit because Joan has no witnesses, and so no proof. The matter is left to their consciences.

John son of William Halpeny Cloke of Wisbech and Katherine Dennyfeld of Wisbech were cited before the official for 26 July 1375 in Wisbech church concerning a clandestine contract of marriage, followed
by intercourse, which had been brought to the court’s attention by publica fama. Gibbe c Halpeny Cloke and Denyfield (26.vii.75), fol. 29r. They appear personally and admit that they contracted de presenti four years previously, followed by intercourse, and pledged to solemnize the marriage. (As Sheehan, “Formation,” 50 and n. 40, notes, the couple’s attitude toward solemnization was at best “nonchalant.”) Matilda Gibbe of Wisbech then appears and asks that John be adjudged her husband because one year previously they contracted marriage, followed by intercourse. Sworn and questioned, John says that this is true. Matilda claims to have no witnesses. Sworn about collusion, malice, and to tell the truth, John, Katherine, and Matilda speak as they had before. Once again, the result is a foregone conclusion. Even if everything that Matilda says is true – and it may well be – she has no case in the light of the precontract of John and Katherine, and the court so rules.

The absence of witnesses for Matilda is critical. If she had had witnesses, the court would probably not have allowed the confession of John and Katherine alone to defeat her claim. See Ch 1, at n. 102. Compare Borewell c Russel and Selvald (at nn. 128–33).

Candelesby was clearly what is called today in American slang ‘an operator’. See n. 93; Aston, Arundel, 59.

He was also a vigorous defender of the prerogatives of the archdeacon, and his defense probably went beyond what was regarded as legitimate. See id., 125–6. His ultimate downfall seems to have come about when he, along with others of the archdeacon’s staff, participated in the violence of 1381. Id., 142–3.

There is a more sinister possibility: Agnes did have a case, but by the time she got to court she had been persuaded, bribed, or forced not to present it. That such things could happen in late fourteenth-century England is clear enough. But if something like that had happened (and if it had, it probably would have been known or suspected), I doubt that Candelesby would have been accepted back among the personnel of the court as quickly as he was, if at all.

As a legal matter, solemnization would probably entitle the couple to the presumption that attaches to possession, though the distinction between proprietary and possessory is not much in evidence in actions to establish a marriage in the later Middle Ages. More vaguely, it would force those attacking the marriage to come up with more powerful proof under the principle clandestina manifestis non praeiudicant. All of this is true, and it probably explains a number of the dubious solemnizations that appear on the Ely record, but in Candelesby’s case I’m more inclined to the explanation offered in the text.

Sheehan, “Formation,” 52–3, argues that he did this in order to strengthen his case against Agnes. As a legal matter, solemnization would probably entitle the couple to the presumption that attaches to possession, though the distinction between proprietary and possessory is not much in evidence in actions to establish a marriage in the later Middle Ages. More vaguely, it would force those attacking the marriage to come up with more powerful proof under the principle clandestina manifestis non praeiudicant. All of this is true, and it probably explains a number of the dubious solemnizations that appear on the Ely record, but in Candelesby’s case I’m more inclined to the explanation offered in the text.
sibi quod accedat ad feretrum Sancte Etheldrede’ ob illum causam ‘tantum et quod vadat [ad] pedes ab ista parte ville de Wychford’ per totem villam et sic usque feretrum et offerat ibidem quatuor denarios, et pro absolutione pontificum a sententia excommunicativa in constituente Humana concupiscencia in ipsum in ea parte lata ad dominum episcopum Elsen’ accedat, etc. (The last sentence may be corrupt: tantum (or tamen, tm) is odd, though perhaps the meaning is that he is to make the trip for this purpose only; we certainly would expect some kind of preposition with pedes, and no pars of the town is previously mentioned from which he is to go to the shrine.) This was not the first time that Grebby had been cited for contempt. See Office c Grebby (12.vii.75 to 15.xi.75), fol. 28r–32r.

485. Ch 6, n. 173: Fol. 137v: ‘mulier fatetur quod contraxerunt adinvicem matrimonium per ista verba:’ Ego accipio te in uxorem meam, et Ego accipio te in virum meum, ad festum translacionis Sancte Etheldrede anno domini millesimo trecentesimo septuagesimo nono, quare peciit pro matrimonio adiudicari etc. Dictus Johannes fatetur quod ipse dixit eidem Tille ista verba: Volo te habere in uxorem meam, et quod ipsa consensit. Fatetur eciam quod procuravit banna edi inter eos in facie ecclesie; alia negat. I cannot accept the version of the pleadings reported in Sheehan, “Formation,” 50 and n. 40. He may have gotten the case mixed up with another one. His analysis of the ambiguity of the words that John confesses (id., 56–7) is, however, well taken.

486. Ch 6, n. 174: Meaning that she admitted the charges. A litis contestatio can be either affirmativa or negativa. If it is the former, there will not be an automatic judgment for the plaintiff if, as here, the rights of third parties are involved.

487. Ch 6, n. 177: I am inclined to agree with Sheehan’s suggestion (“Formation,” 73 and n. 136) that this seems to be a case in which a husband refused to live with his wife because of his subsequent discovery of an impediment of affinity. It is hard to explain his change of position otherwise, unless it is the product of a carefully designed strategy to rid himself of both women.

488. Ch 6, n. 180: ‘Tenant by military service below the rank of knight’, OED s.v., meaning 3, as opposed to a common soldier’, id., meaning 2.

489. Ch 6, n. 181: This, of course, assumes that ‘Spinere’ is an occupation rather than a surname, but that seems likely. Matilda is well endowed with other surnames, and two of her witnesses are described as ‘spinners’. For ‘Wereslee’, ‘Warde de Hokyton’ may indicate that she was previously married to a man named ‘Ward’ of one of the numerous Houghtons, though the record does not say that she was a widow. She may have migrated to Cambridge to pursue her craft. Christine’s surname ‘Wafrer’ also suggests a trade (‘maker of wafers’); see Reaney, s.n.), although in her case we have no evidence that she or anyone in her immediate family plied the trade.

490. Ch 6, n. 182: See Sheehan, “Formation,” 74. Helmholz, Marriage Litigation, 69, cites this case as an example of a suit for restoration of conjugal rights that was turned into a petitory action when Joan was allowed to raise her impotence defense. The reality may be more complicated. The case begins with a citation of Joan for not cohabiting; i.e., it may have begun ex officio rather than as an instance possessory action, though I have not classified it as ex officio in the next section. Further, the official in the first session orders the couple to cohabit and to attempt to have intercourse, and there is no indication that Joan resisted that order. Hence, the case might be regarded as one in which the possessory action succeeded and then became a petitory one for divorce.

491. Ch 6, n. 183: Fol. 121v: Parre [JM] non comparente personaliter ut habuit diem ideo ex communica et volcandus et demuncandus in partibus Hunt in proximo ad idem.

492. Notes for Table 6.7: In 3 cases the reclamer is cited; in 1 case the couple is cited and not the reclamer; in 1 case the couple appears and no citation is mentioned; in 1 case the reclamer is cited for impeding the marriage, and in 1 case the priest is cited for refusing to solemnize the marriage. In all cases, however, it becomes immediately apparent that the source of the problem is something that was said by way of reclamation of banns.
b In one case (not counted), no citation is issued to the official of the archdeacon because he is known to have left the diocese. The count does, however, include one case in which he makes an ex officio inquiry into a sentence of divorce issued by the archdeacon.

c The case was appealed from the archdeacon, but the bigamy citations were issued by the official of the consistory court.

Sheehan, “Formation,” 71, reports 39 “inquiries into marriages that became suits in which an effort was made . . . to prove that a valid marriage existed.” This corresponds quite closely to the total of the first four rows (38). I may have missed one, or Sheehan may have double-counted one. It seems most likely, however, that he counted a case in which the citation was for ‘intercourse’ and which is listed in the table under ‘formication’, but which rapidly turned into an inquiry into the possible marriage of the reus with three different women (Wafer, Wereslee and Dallynge c Savage, at nn. 178–81). The six ‘inquiries into failure to cohabit’ (id., 73) are in fact four citations for refusal to obey a court order to solemnize, one citation for nonresidence with the spouse (Pynocete c Maddynge, at nn. 182–3), and one for failure to treat the spouse with marital affection (Puf c Puf and Benet, at nn. 103–4; combined with nonresidence in the table).

493. Ch 6, n. 184: In order: Office c Basingbourn (vicar) c Gilbard (at n. 207), Office c Slory and Feltonwell (at n. 191), Office c Chilterne, Neve and Spynnere (at n. 231), Office c Galon and Phelpe (at n. 223), Office c Bourn (vicar), Stanhard and Molt (at n. 228), Office c Symond and Page (at n. 229), and Office and Andren and Edyne c Andren and Solsa (at nn. 218–19).

494. Ch 6, note 185: Bradenbo c Tailor (n. 36). In Office c Bocher (26.viii.74), fol. 11v, Henry Bocher was cited super contractu matrimoniali . . . clandestine into fama publica referente, a formula that approaches the barefoot boy with shoes on. It may be significant, however, that the word clandestine is inserted with a carat and that he confesses a contract with Alice Warde. They may have publicized a contract that was initially clandestine, or it may be that clandestine is being used in one of its more nonliteral meanings, e.g., a marriage about which banns had not been proclaimed.

495. Ch 6, n. 186: This fact was first pointed out by Sheehan, “Formation,” 61–2. The situation at Rochester in the same period was different, though how different is a matter of debate. Compare Finch, “Parental Authority,” with Donahue, “Clandestine” Marriage.”

496. Ch 6, n. 187: See Korpiola, Between Betrothal and Bedding, p. vi. On some of the recto leaves that Foxton signs he has added a number: “5 shillings,” “8 shillings,” etc. This may be the sum of the fees in the cases recorded, but I doubt it. The number seems (I have not examined them all because they are not all visible on the film) always to be a round number, whereas we would expect shillings and pence if this were a sum of fees, and it seems more likely that it represents Foxton’s fee for making the entries. Even if it does represent a sum of court fees, it is no help in figuring out what the fees for each act of court were.

497. Ch 6, n. 188: The issue is raised in Scammell, “Freedom and Marriage.” Since then, the debate has turned more to seigneurial control and the payment of merchet. See Searle, “Freedom and Marriage”; Scammell, “Wife-rents and Merchet”; Searle, “Seigneurial Control”; Brand, Hyams, Faith, and Searle, “Debate.” I think that it is unnecessary to pursue that debate here because, as we will argue, relatively few of the litigants before the Ely court would have been subject to the payment of merchet. See at n. 263.

498. Ch 6, n. 189: The constitution reads in its entirety (Latin text follows):

“Human concupiscence, always inclined to evil, frequently more ardently desires what is prohibited than what is permitted. For this reason various people who cannot lawfully join in marriage on account of consanguinity or affinity or other lawful impediments oftentimes desire it de facto, so that hidden under the veil of marriage they can more freely accomplish the wicked and impermissible work of the flesh. They know that their impediments are known in the parishes in which they live, [and] since they do not find their parish priests ready to solemnize marriage between them on account of notorious impediments of this kind or on account of the vehement fama of impediment, they take themselves off to foreign places, and particularly to cities and populous towns, and there at one time or another, with banns not promulgated publicly, nor at appropriate hours or times, frequently in churches, sometimes in chapels or oratories, they succeed in having a de facto marriage solemnized between them. Living there, or afterwards returning to their own parts, and cohabiting
with each other like spouses, since the ordinations of these places and other people for fear of vexation or costs do not wish or do not dare to bring suit against them for their illicit intercourse or make their crime public by denouncing them, they remain illicitly coupled to each other to the destruction of their souls. We, therefore, wishing to extirpate this common vice / by the authority of the present council enact that from henceforth those who contract marriages and have them solemnized between themselves, knowing that any canonical impediments exist in the matter or having a likely presumption of them, and also priests who hereafter knowingly perform solemnizations of prohibited marriages of this sort or also of licit marriages between other than their parishioners, not having obtained special license of their bishops or those who have care of their souls, also those who hereafter have clandestine marriages solemnized by force or fear in churches, oratories or chapels and those who knowingly are present at the solemnization of marriages of this sort, [such people] incur ipso facto a sentence of major excommunication. [And we also decree] that those generally excommunicated be denounced in public four times a year and that they nonetheless be constrained by law by the other penalties laid down against those celebrating marriages, banns not having been issued, or otherwise in a clandestine manner.

“Truly, because the constitution of Simon Meopham, the late archbishop of Canterbury of good memory, our next predecessor, which begins 'Item Quia ex contractibus', [Council of London, 1328, c.[8], in Lyndwood, Provinciale 4.3.[1], pp. 273(misnumbered 266)-274; cf Wilkins, Concilia, 2:554] according to a superficial reading of its words seems, in the opinion of many, doubtful or obscure, wishing to make that constitution not doubtful for the future, we declare, the council approving, that it is thus to be understood: that any priest, secular or religious, who presumes to assist the solemnization of a marriage outside a parish, church or a chapel, which has parish rights pertaining to it of old shall undergo poenam in ea latam subeat ipso facto.”

499. Ch 6 n. 189: “Humana concupiscentia, semper ad malum procliva, quod est prohibiturum frequentuer ardentius appetit quam quod quid licet. Unde personae variae, quae propter consanguinitatem vel affinitatem suae alia impedimenta legitima matrimonialiiter adinvincere de iure nequeant copulari, multolores desiderant id de facto, ut sub matrimonio contrecti velamine possint carnis operam perniciosam et illicitam libere adimplere. Qui sua scientes impedimenta notare fore in parochiis in quibus deget, quia parochiales presbyteros, propter huissusmodi impedimenta notoria seu tamam impedimenti vehementem, ad solennizandum matrimonium inter multorum in sui fine videtur dubia seu obscura, ipsam constitutionem reddere pro futuro cupientes indubiam, eam sic intelligere volentes, et praesens auctoritate concilii statuimus quod exnunc matrimonia contrahentes et ea inter se solennizata facientes, quaecumque impedimenta canonicum in ea parte scientes aut praesumptionem verisimilem eorumdem habentes, sacerdotes quoque qui solennizaciones matrimoniorum prohibitorum huissusmodi seu etiam licitorum inter alios quam suos parochians in posternum scienter fecerint, dioecesanorum vel curatorum ipsorum contrahentium super hoc licentia non obtenta, clandestina etiam matrimonium in ecclesias, oratorios vel capellae sancti inveli matrimoniorum praedicatorum huissusmodi solennizationi interessentes, conciis praemissorum, maioris excommunicationis sententiam incurrunt ipso facto. Et quod quarter aniss singularis in genere excommunicati publice nuncuintur poenissque alius contra celebrantes matrimonia, bannis non editis, vel alia clandestinis statutis a iure nihilominus acceunt.

“Sane quia constituto bonae memoriae Simonis Mephame quondam Cantuarisenisc archiepiscopi praecedessoris nostri proximi quae incipit 'Item. Quia ex contractibus' iuxta verborum suorum corticem opinione multorum in sui fine videtur dubia seu obscura, ipsam constitutionem reddere pro futuro cupientes indubiam, eam sic intelligendam fore, hoc approbantes concilium, declaramus quod quivis sacerdos, sacellaris sive regulares, qui solemnizations matrimonii extra parochiariam ecclesiam vel capellam habentem iura parochialis sibi competenter ab antiquo interesse praesumpserit poenam in ea latam subeat ipso facto.”

Council of London 1342, c. 11, in Lyndwood, Provinciale 4.3.[2], pp. 275-7 (cf Wilkins, Concilia, 2:707; the part up to the slash (/) is from Wilkins).
500. Ch 6, n. 190: John Anegold may be related to William Anegold of Chesterton in Anegold and Schanbery (n. 95). The name is not a common one. There is also at least one case (Gobat and Pertesen c Bygor [n. 89]) in which a violation of Humana concupiscencia is mentioned without there being a citation for it. Sheehan’s count of 10 (“Formation,” 51) either overstates or understates depending on what one is counting.

501. Ch 6, n. 192: Fol. 108v: cum in generali concilio proinde sit statutum ut cum matrimonia sint contrahenda in ecclesiis per presbyteros publice proponatur competenti termino prefinito ut infra illum qui voluerit et valuerit legitimum impedimentum opponat et ea solemnizari facientes impedimenta legitima scientes aut suspicionem labentes verisimilem eorumund, huissque matrimoniorum solemnizacioni interessentes maiors excommunicacionis sentencia a constitucione provinciali in proximo articulo superius recitata [probably reference to the citation of the constitution in the previous entry] fuerint et sint ipsos facto damnumulter involviti, etc.

502. Ch 6, n. 193: The account of this case in Sheehan, “Formation,” 51, is marred by the fact that Sheehan has Andren’s gender wrong and by his failure to realize that the proceedings here are ancillary to the Slory case.

503. Ch 6, n. 194: Fol. 108v: predicti tamen [JAne] et [JAnd], predicti venerabilis patris et nostri in hac parte subditi et subiecti, sue salutis inmemores, scientes impedimentum predictum fore propositum et propterea predicti matrimonii inter eodem contrahentes extra dioecesis Eliei et ecclesiam suam parochalem in loco tamen ubi dicta constitucio artabat et artat, curatorium suorum licencia non optenta scientes de huiusmodi impedimento et interdicto fieri procuravit et fecerunt seu saltim solempnizationem huius matrimonii interfuerunt, sentenciam maioris excommunicacionis predictam ipso facto damnumulter incurriendo, etc.

504. Ch 6, n. 195: Fol. 110r: iniungimus cuilibet eorum quod circumeant ecclesiam parochialen de Chestretton coram processione eiusdem depositis vestibus suis usque ad camisios deferendo cereos in manibus suis et quod sacerdos ipsos sequatur cum virga in manu sua, etc.

505. Ch 6, n. 201: A full account of this litigation is given in Aston, Arundel, 103–4. William Molt was also charged with violation Humana concupiscencia and does penance, but, of course, ultimately emerges victorious, by what machinations it is perhaps best not to inquire. For the possible connection between him and Richard Molt in Saffrey c Molt, see n. 56.


507. Ch 6, n. 212: Thomas Humbeldon of [St Benet’s] Cambridge, tailor, and Agnes Fowl FY of [St Benet’s] Cambridge were cited to appear before the official (Scrope) concerning intercourse, long continued, and a clandestine contract of marriage. (17.xii.75, fol. 35r.) They appeared and admitted that they contracted marriage in present words of mutual consent followed by intercourse. When asked whether they knew any reason why they should not be judged married, they proposed nothing; indeed, they swore that they were free

John Wylicosess of St Benet’s Cambridge and Agnes, daughter of John Hare residing in Barnwell, also of St Benet’s Cambridge, were cited before the official (Scope) concerning a clandestine contract of marriage and subsequent intercourse. (11.i.76, fol. 35.) The case proceeded exactly as the Humbelton case, just described. Robert servant of Richard Leycestre, parishioner of Holy Trinity, Ely, and Mariota servant of Richard were cited before the commissary (Gloucester) in Holy Trinity, Ely, concerning a contract of marriage, followed by intercourse. (2.x.76, fol. 55c.) They admitted that they promised to become husband and wife; afterwards they had intercourse often. With their consent, they were pronounced married; they swore to solemnize the marriage before the church within the next six weeks. (Cf. Office c Wolron and Leycestre [n. 21; at n. 220], for another case brought the same day involving other servants of Richard’s.) As the transcript of the confession in Sheehan, “Formation,” 55 n. 59 (Leicester), makes clear, we are dealing here with words of the future tense followed by intercourse. The six-week period is unusual; usually the court orders solemnization pro loco et tempore opportunam (id., 62). In this case, however, the short time period may indicate the eagerness of the couple rather than of the court.

Robert de Bury, tailor, residing in Cambridge, and Leticia Littelbury of Fordham, taverne of Lucy Lokyere of Cambridge, were cited before the commissary (Gloucester) concerning a contract of marriage. (17.iv.77 to 30.iv.77, fol. 69r–71v.) They admitted words that could either be de presenti or de futuro, but the tense was irrelevant because intercourse followed. Leticia asked that they be judged husband and wife on the basis of their confessions. Robert was given two weeks to propose why they should not be adjudged husband and wife. He failed to do so, and they were pronounced husband and wife (solemnization is not mentioned). Robert appealed to the provincial court. (This case could be regarded as office/instance, except that Robert proposed so little that it is hard to see that there was any issue. Unless he knew of an undisclosed impediment, the result seems to be a foregone conclusion.)

507. Ch 6, n. 213: Fol. 25r: fatebantur quod vir dixit mulieri ista verba, “Vit tu esse uxor mea?” et ipsa respondit quod ‘sic’. Et tunc dicit [AW] affidavit dictum [IW] quod ipsum duceret in uxorem et strinxerunt manum in manu et fatentur quod dictus [AW] dedit eidem [IW], videlicet, unum flamulum et unum loculum. Transcript also in Sheehan, “Formation,” 56. Sheehan notes the ritual elements in the description of the ceremony (I am inclined to think that loculus is more likely to be a purse than a little chest and would hesitate to call the gifts an “endowment” when they might be a “pledge”), and his overall conclusion (at 57) is perceptive: “the form of words and ritual acts are described, but it is not clear whether the joining of hands related to a promise to marry or to a plightment of troth de presenti.” This uncertainty must have been fairly widespread where unsophisticated men and women, moved by who knows what desires and pressures, tried to establish a relationship within the categories and the procedures demanded by a custom which, in part, was the debris of a culture that no longer existed and, in part, was a ritual statement of a new and vastly different view of marriage.” Cf. id., 58–9, 61.

508. Ch 6, n. 214: Helmholz, Marriage Litigation, 35 and n. 38, seems to take this as a case of enforcement of a de futuro contract unaccompanied by intercourse. (It is the only case that appears on both the folios that seem to be a foregone conclusion.) He may be right from a legal point of view; certainly there is no enforcement order here.

509. Ch 6, n. 216: John Newton, alone among the Ely officials, was willing to take the case to where the parties and their witnesses were in order to get it resolved. See, e.g., Taillor and Smerles c Lovechild and Taillor (n. 172).

511. Ch 6, n. 217: This may be the only case where the woman is ordered to do penance for fornication and the man is not. Usually, either both are so ordered or neither is so ordered. The ruling in this case may be explained by the fact that Adam was not present at these proceedings. Sheehan, 46 and n. 19, notes that in three cases of affinity by illicit intercourse where the objection was successful, penance was not assigned. Page c Chapman (at n. 49); Anegold and Schanbery c Grantseden (at nn. 95–98, 197; the latter more relevant to this issue); Boorseswell c Bleyce (at nn. 152–6). The accounts of the latter two cases suggest reasons why penance for the fornication was not ordered.
512. Ch 6, n. 218: Sheehan, “Formation,” 74–5 and n. 141 (Andrew), separates the adultery claim from the plotting claim, but both were necessary for the impediment of crime. See Ch 1, at n. 49.

513. Ch 6, n. 219: Helmholz, Marriage Litigation, 78 n. 14, reports that he found no English case in which a divorce was granted on this ground, and this is one of the very few cases in which the impediment is even alleged.

514. Ch 6, n. 227: Something along the same lines may have been happening in Office c Andren and Andren (24.iii.74 to 25.v.80), fol. 5r–144v: An entry in the first session recorded in the book tells us that they did not appear and are to be cited to hear the definitive sentence. We cannot be sure that this is a divorce case, but it probably is. This entry is, in essence, repeated 88 times until the case finally drops from view in October of 1380. See Sheehan, “Formation,” 72–3 (Andrew). Sheehan suggests that this was a marriage enforcement action. He seems to have missed the entry on fol. 28r that describes it as a divorce case.

515. Ch 6, n. 228: Sheehan, “Formation,” 47 and n. 31, points out that this case probably would not have come before the court had the couple not complained about the vicar’s refusal, and he suggests that in many cases couples would have simply dropped their plans to marry in the face of reignactions like the ones the vicar describes.


520. Ch 6, n. 242: It is worth mentioning, at least in a note, that the relationship may have been innocent. Both the vicar and woman purge themselves, and the fact that the vicar promises to remove the woman from his house suggests that the court was concerned with scandal as much as with reality.
521. Ch 6, n. 247: Fol. 140r: [RF] *citatus coram dicto venerabili patre in ecclesia conventuali de Chateris super eo quod ipse pessime pertractavit uxorem et enormiter fregit sibi tibiam et alias enormes lesones sibi intulit in case a iure non permisso*. Chatteris was the site of an ancient convent of Benedictine nuns. Knowles and Hadcock, 253, 257. The case is discussed in Aston, Arundel, 41.

522. Ch 6, n. 248: All the parties in this case came from Thriplow, which is about seven miles south of Cambridge and close to the Essex border.


524. Ch 6, n. 256: I did not code the Ely for ‘parental involvement’ in the way that I did the York cases in Table 5.1. I have the impression that the proportion of such cases is considerably lower than it is at York, but we should recall that much of our evidence for parental involvement at York comes from the depositions, which we lack for Ely. Putting the impressionistic evidence for Ely together with the more precise evidence for York, it is safe to say that there is no reason to believe that the proportion of cases with parental involvement at Ely was any higher than it was at York (average of 37%), and it may well have been lower.

525. Ch 6, n. 257: So long as the person was subject to the bishop’s jurisdiction (as all of these clearly were), the writ *de excommunicato capiendo* would be issued to any sheriff in whose area the person might be found. Multiple addressees of the writs are not uncommon. See Logan, Excommunication, 93–5.

526. Ch 6, n. 259: The modal number of parties is, of course, two. As we have seen, there are also three-party instance cases and one four-party instance case. The total is brought down by the fact that a number of the office cases have only one defendant. Where two toponyms are given I have chosen the one that is the “residence” address. I have also assumed that husbands and wives (and the one couple in a concubinage relationship) were living together. Further speculation about the 14 who do not have toponyms may be found in subsequent paragraphs.

527. Note for Table 6.8: The following places are represented by only one party: Abington Pigotts, Barley (Herts), Blisworth (Northants), Coton, Elysworth, Exning, Girtom, Gedney (Lincs), Haddenham, Hildersham, Horseheath, Lincoln diocese (not further specified), Malmesbury (Wilts), Orwell, Pampisford, Study, Tournay, Wherwell (Suff), Whatelyn, Wincham, Whittlesey.

528. Ch 6, n. 261: I have some doubts about “Halpeny Cloke,” and a few of the parties have surnames that look like their current toponym, e.g., Agnes de Emneth, who pretty clearly was currently resident in Emneth (Agnes daughter of Henry Jake of Emneth and Agnes daughter of John de Emneth c William Alcok of Emneth (3.ii.79 to 25.x.80), fol. 109r–144v).

529. Ch 6, n. 262: There are, of course, names derived from French, as the list indicates, but they are derived from a French that was rapidly becoming, if it had not already become, English in the fourteenth century (like “Ostler” and “Butcher”).

530. Ch 7, n. 6: Another clerk is mentioned, Roland le Roy. He is never, however, called *scriba officialitatis*, as is Villemaden, and it is probably significant that two of the three entries that he signs are ones in which Villemaden played a different role. (The third is a sentence, and the maintenance of the register of sentences may have been a different responsibility.) This points to another difference with the Ely register. Although Foxton did not physically write all of the register, he seems to have written most of it. A number of hands are at work in the Paris register.

531. Ch 7, n. 8: Curia Parisiensis episcopi. *Anno Domini. Anno Domini. Rothomagensis. Anno Domini. Jovis. Preoccupemus. Registre de Paris, col. 1, n. 1. I have no idea what the references to Rouen and Thursday are intended to signify. Preoccupemus may be a shorthand for *Preoccupemus faciem eius [sc. Domini] in confessione, a line from the Vulgate Psalm 94, sung every morning before the beginning of Matins. In the sixteenth century, the Paris archdeacon’s court was keeping two registers that roughly correspond to our categories of civil and criminal. Donahue, ed., Records 1, 107–8. Pett, who did pioneering work in the surviving records of the medieval French officialities, probably assumed that the substantial runs of records...*
from the fifteenth century that survive from the dioceses of Châlons-sur-Marne and Troyes were ‘criminal’ and that the ‘civil’ registers had been lost. We will have occasion to question that assumption. See Ch 8, at n. 36; Ch 12, at n. 5; Donahue, ed., Records 1, 97–8, 112. That such a division was not inconceivable in the fifteenth century is shown by the surviving records of Carpentras, but that is an area with a substantially different legal tradition from that of the north.

532. Ch 7, n. 9: I am not suggesting that this is a complete explanation for the inclusions and omissions. Villemaden clearly included some matters (mostly ex officio) for which we have no evidence of a fee for recording, and he may well have missed some entries for which a fee was paid. Also, we cannot be sure that even in instance cases a fee was always charged for an entry because many of them have no indication of a fee. He may have indicated the fee only when it was not paid on the spot.

533. Ch 7, n. 11: More analysis of the ‘criminal’ category in the Paris court would reduce this number somewhat (and correspondingly increase the category of delictual obligations), but not substantially. Excluding the Paris cases where the substance is unknown, we get the following percentages: obligation 44%, court 3%, ecclesiastical 14%, miscellaneous 1%, matrimonial 31%, and testamentary 8%.

534. Ch 7, n. 12: It is least accurate for 1384, but relatively little survives from that year (portions of the last two months of the year). Those months were extraordinary ones. The official, Guillaume de Boudreville, was dying. On 5 December he was replaced by a locum tenens because of his illness; on 17 December the court was not in session because of his funeral. The new official, Robert de Dours, took office on 9 January 1385. It is possible that the unusually large amount of litigation recorded for 1385 is the result of the fact that a backlog had built up during Guillaume’s last year in office. This might – we can be less sure of this – have affected the proportion of marriage cases because a number of marriage cases at Paris, like those at Ely, seem to have been begun with an ex officio citation.

535. Ch 7, n. 14: These numbers should be compared with those published (with considerable hesitation) by Lévy, “Valorisation de Paris.” Lévy’s count of cases involving the enforcement of marriage is very close to ours (250 vs 254). His count of separation cases is somewhat higher (120 vs 102). I suspect that what happened here is that Lévy classified as two cases, those in which a couple first appear before the official and are told to try to make up their differences, and then reappear somewhat later when they cannot do so. What I cannot reconcile is Lévy’s count of marriage and separation cases with his overall count of approximately 600 cases that deal with “family questions” in the broad sense, 460 with marriage, 160 with guardianship of minors and similar family related topics, and 80 that cannot be firmly classified. There are 70 cases that deal with the guardianship of minors (an actual count), 4 cases of emancipation (again, an actual count), and 32 (extrapolated from the 1385 sample) that deal with testamentary matters other than guardians. Again, I suspect that in the days before computers, Lévy was misled by cases that disappear from view and then reappear, sometimes with a somewhat different form of the parties’ names and frequently without much information as to what the case was about. While the Paris record is sufficiently ambiguous that no firm count of cases can be had, I believe that the count offered here is more accurate than Lévy’s.

536. Ch 7, n. 15: The Ely and York fifteen comparisons are significant at the .96 level (z = 2.05 and 1.93, respectively), that with York fourteen at the .99 level (z = 3.38). For a discussion of the legitimacy of using a z-test with records like those of Paris and Ely, see Ch 6, n. 25 (T&C no. 406).

537. Ch 7, n. 16: The number of cases in which we do not know who the moving party was is particularly high in remission and separation cases, where there is reason to believe that the couple had agreed upon a result before they reached the court. It is also high in the straight ex officio cases, of which 18 are brought against a man alone, 3 against a women, and 2 against a couple. All of these have judgments against the defendants. One may surmise that at least in the 8 cases of wife beating and the four of paternity, the judgment against the man was not unwelcome to the woman.

538. Ch 7, n. 17: Here we can add the judgments that we know favored or went against the espousals even though we don’t know the gender of the parties, and we can count the jactitation judgments (all of which favored the plaintiff) for what they are, a judgment against the espousals.

539. Ch 7, n. 18: Once more we can add the cases where we know that a judgment for divorce or separation was entered, even though we do not know the gender of the moving party. There are no judgments against a
divorce or separation. The denominator here is the number of cases brought. Granted the state of the record, we have almost certainly understated the number of divorces or separations actually granted.

540. Ch 7, n. 19: Comparantibus Johanne Oriall, actore in causa matrimoniali, et Mariona, filia Symonis Malice, rea, ex altera, actio proposuit sponsalia per verba de futuro, re integra, res [sic] negavit totum et detulit actio, dicens se nullis testes habere, iuramentum ree, que rea iaravit se nunquam contraxisse alicub sponsalia aut fideidationes habuisse cum actore; et hoc mediante ream absolvimus, etc., dantes licentiam utrique etc.; viii d, reus ii s. In reporting case names from the Paris register, I have used the French form of the Christian name (even where it resulted in the creation of a French name that is not used today, e.g., Agnesotta for Agnesotta, Asselotte for Asselotta) but have left the surname as it is in the record (sometimes French, more often Latin), except in the cases of toponyms used as surnames, where Petit identified the toponym in the margin. I have used accent marks in the surnames only where they appear in the record. The column reference is to the Petit edition, with an additional number indicating where the entry begins on the column (starting with the first full entry). Parish names and street names that sometimes appear in the title are all in Paris; other placenames are identified to département in parentheses. Variant forms (sometimes several) are confined to the Table of Cases.

541. Ch 7, n. 20: That this is the formula is strongly suggested by Maître Guillaume Lot alias de Luca e domoisselle (domicella) Jeanette fille du défunt maître Jean Corderii (23.viii.86), col. 354/2 (a remission case that spells it out in full). Maître is magister in the Latin, a title that may, but need not, indicate a university connection. That domicella is an indication of higher status is clear enough, though its precise significance is unclear in both the Paris and the Cambrai records. E.g., Ch 9, at n. 36. I have not found in either the Paris or the Cambrai records the male equivalent, domicellus, which is found in some of the York records ("donzel").

542. Ch 7, n. 21: The variation about which I am least sure that there is no significance is found in Champenoys c Cadivio (1.vii.87), col. 490/4, where the actio alleges sponsalia (no mention of de futuro or re integra), and the rea swears that she did not contract sponsalia or pledge faith to him (ipsam affidasse). That some of these cases may involve ambiguous contracts or even de presenti contracts is considered later.

543. Ch 7, n. 22: E.g., Berchere c Gaulino (16.v.85), col. 119/2; Lymosin c Vaillante (11.i.85), col. 244/5; Fouquet c Noble (2.vi.85), col. 127/1; Sorle c Monachi (23.vi.85), col. 142/2; Touperon c Brandee (4.i.86), col. 241/3.

544. Ch 7, n. 23: In some cases the word is in the singular, consciencie. This might suggest that it is the conscience of the oath-taker that is at stake were it not for the fact that the singular is grammatically appropriate if the license is given (as it normally is) to utrique.

545. Ch 7, n. 27: non detur licentia contrabendi alibi et ex causa. This case also leaves the matter to the defendant's conscience (sue consciencie).

546. Ch 7, n. 29: Col. 115/1: actio proposuit sponsalia per verba de futuro et fideidationes et quod tradiderat dicte ree unam virgam argenti nomine matrimonii, rea confessa fuit quod dictus actio ipsum requisitit ut esset uxor sua, etc., et quod ipsa respondit sibi quod bene volebat si placuerit patri suo et amisit et quod receptit dictam virgam sub conditione predicta et non aliter, et bodie dictus pater comparuit dixit quod sibi non placuit nec placet etc., et hodie dictus pater comparuit et dixit quod ipsa respondit sibi quod bene volebat si placuerit patri suo et amisit et quod receptit dictam virgam sub conditione predicta et non aliter, et bodie dictus pater comparuit dixit quod sibi non placuit nec placet etc., et hodie dictus pater comparuit et dixit quod ipsa respondit sibi quod bene volebat si placuerit patri suo et amisit et quod receptit dictam virgam sub conditione predicta et non aliter, et bodie dictus pater comparuit dixit quod sibi non placuit nec placet etc., et hodie dictus pater comparuit.

547. Ch 7, n. 42: Col. 481/7: actio proposuit sponsalia de futuro re integra, rea confessa fuit quod idem actio ipsum requisitit et sibi locatus fuerat de matrimonio contrabendo, que tunc respondit quod faceret illud quod placuerit patri suo et amisit, cetera negando; qui actio detulit iuramentum ree, que iaravit se nunquam contraxisse cum dicit actore et super pater dixit quod non placuit nec placet sibi, etc., et idio ream ab impetitione actoris absolvimus, dantes licentiam utrique etc., quilibet xii d. The formula in Autreau c Doublet (n. 37) is the same, except that the woman swears that she never contracted nor had marital promises, except in the aforementioned way (nis modo predicto).
would not be heard later to claim that he was unaware of the nonsuit if he had been called at the declared
we might speculate, in order to establish a place at which a default could be declared. A nonsuited plaintiff
always the plaintiff who does so. (choosing a domicile, both for purposes of service of process and to establish jurisdiction. In fact, it is almost
It is also, from a modern point of view, odd, because we would expect that the defendant would be the one
558. Ch 7, n. 60: This procedure is quite common in the Paris records, though it is by no means invariable.
auri et duobus paribus linteaminum audita confessione dicti viri. – Nota; Forestarii
idem reus absolutus, etc.; quilibet ii s.
contraxerat cum dicta actrice nec eam affidaverat, et quia delato sibi iuramento per actricem, hoc iuravit
554. Ch 7, n. 53: Col. 320/3: 
absolvimus, dantes licentiam etc., cetera relinquentes conscientie, etc.; quilibet ii s.
sponsalia aut fideidationes cum ipso actore habuit, etc., et hoc mediante ream absolvimus, etc., dantes licentiam
matrimonio contrahendo cum ipsa filia, ipsa nunquam hoc consentiit neque aliqua
556. Ch 7, n. 57: How substantial is discussed when we try to make sense of the fees that the court charged.
Esveill´ee c Bontrelli
pater dicte filie de
actore, nec amis sui sibi dixerunt quod eis placeret nec sibimet placuit, etc.

548. Ch 7, n. 43: This case is like Coesmes c Poulain (n. 29) in that it takes two sessions to resolve. Unlike Coesmes, however, there is no mention of the actor being condemned to pay costs.
549. Ch 7, n. 44: Col. 201/1: pater dicte ree comparuit et dixit quod sibi non placet nec dicta filia sua sibi
unquam super hoc locutus fuit, etc.
550. Ch 7, n. 45: Col. 297/2: rea confessa fuit quod idem actor ipsum ream requisiverat et quod respondit quod
faceret illdum quod placeret amicis suis, cetera negando; . . . iuravit se nunquam contraxisse cum dicto
actore, nec amis sui sibi dixerunt quod eis placeret nec sibimet placuit, etc.
551. Ch 7, n. 47: Col. 320/3: [rea] iuravit quod licet ipse actor locutus fuisse eidem patri dicte filie de
matrimonio contrahendo cum ipsa filia, ipsa nunquam hoc eam balbut neque in hoc consentiit neque aliqua
sponsalia aut fideidationes cum ipsos actores babuit, etc., et hoc mediante ream absolvimus, etc., dantes licentiam
utraque etc., cetera relinquentes conscientie, etc.; quilibet ii s. The entry in Bourges c Lombardi (7.ix.87),
col. 518/4, tells us less but probably involves the same fact-pattern: actor proposuit quod pater dicte filie
ipsum dicto viro concesserat in uxorem et quod ipsa in hoc consentire, re integra etc.; rea negavit etc. et duxit
actor iuramentum ree, quae iuravit se nunquam contraxisse nec in eo consensisse etc., et hoc mediante ream
absolvimus, dantes licentiam utrique, etc.
552. Ch 7, n. 49: rea confessa fuit quod quidam frater suus magister in theologia, sibi loquitus [sic] fuit ut
dictum actorem vellet recipere in sponsum, que semper respondit quod non placebat sibi nec unquam placuit,
semed dictus frater posuit manum suam in manu dicit actoris ipso invita, cetera negando, et super hoc actor
detulit iuramentum dicte ree, que iuravit se nunquam contraxisse sponsalia cum dicto actore nec intentionis
sue extitisse [sic] contrahere cum ipso, etc.; quo iuramento attentum ree ad [read ah] impetitione actoris
absolvimus, dantes utrique licentiam etc.
553. Ch 7, n. 50: rens confessa fuit quod amici ipseam partium loquy [sic] fuerunt insimul de matrimonio
contrahendo inter ipsas partes, etc., sed nichil fuit concordatium, sponsalia negando.
554. Ch 7, n. 53: rea confessa fuit quod dom ipse vir et mulier insunt quiesum [sic] palem pro quodam
coram magistro F. in villa de [Argenteuil] supervenerunt quidam socii ad dictam filiam cum eussibus evaginatus
minando ipsum occidere nisi affidaret dictum [GK]; que quidem mulier pro terrore ipsorum sociorum promisit
tunc eidem sociis quod ipsum virum acciperet et statim hic reconcilaverit, et detulit actrix ree [sic; read actor
ree] qui iuravit ut supra, et fuit absoluta, etc., dantes licentiam utrique, etc.; filia ii s.
555. Ch 7, n. 55: actrix proposuit sponsalia et fideidationes matrimoniales, lite ex parte rei negative contesta,
dicendo quod licet ipse partes loquy [sic] fuerunt insimul de matrimonio inter se contrahendo, nunquam
contraquerat cum dicta actrice nec eam affidaverat, et quia delato sibi iuramento per actricem, hoc iuravit, fuit
idem rea absolutus, etc.; quilibet ii s. – Contemnatus est idem vir erga dictam Peretam in viginti septem fr.
auri et duobus paribus linteabinum audita confessione dicti viri. – Nota; Forestarri.
556. Ch 7, n. 56: Alain Forestarri (Forester), Lic. in decrets, served variously as examiner, promoter, and
commisssioner to take evidence for the court throughout the period of the register. See, e.g., col. 4, 215, 233,
281, 397, 517. He kept one of the registers of fines. Col. 262. His role here is unclear, but his signature appears
in the place where someone other than Jean de Villennes signs an entry.
557. Ch 7, n. 57: How substantial is discussed when we try to make sense of the fees that the court charged.
Assuming that the reference to “gold francs” is not intended to be to some special unit of account but the
simple Paris livre notionally equivalent to a livre tournois, we should probably be thinking in terms of a
ratio of approximately 4:1 for the conversion from pounds sterling to livres. Seven pounds sterling could hire
an English carpenter for three and a half years. See Spufford, Handbook of Exchange.
558. Ch 7, n. 60: This procedure is quite common in the Paris records, though it is by no means invariable.
It is also, from a modern point of view, odd, because we would expect that the defendant would be the one
choosing a domicile, both for purposes of service of process and to establish jurisdiction. In fact, it is almost
always the plaintiff who does so. (Esveill´ee c Bontrelli [at nn. 98–9]) is an exception.) It may have been done,
we might speculate, in order to establish a place at which a default could be declared. A nonsuited plaintiff
would not be heard later to claim that he was unaware of the nonsuit if he had been called at the declared
domicile. This may not have been necessary in the case of the defendant because he had already been cited (and presumably found) by the process server.

559. Ch 7, n. 62: rea, ad finem repellendi dictum actorem ab agendo, excipiendo proposuit quod idem actar et excommunicatus auctoritate nostrae pro re ad instantiam receptoris emendatum curae Parisiensis. I must confess that I am not sure what pro re means. It could mean “for sexual intercourse,” as in the phrase re integra in marriage cases, but I suspect that it means “for debt.”

560. Ch 7, n. 64: One other case, Clergesse c Prace (n. 54), has an initial entry in which the parties simply appear and the defendant is inhibited from contracting elsewhere pendente lite. In Fouquet c Noble (n. 22), and Besson c Goupille (6.ii.86), col. 260/1, there is evidence that there had been a previous appearance that was not recorded (actor qui alias proponerat sponsalia de futuro, etc., the same formula used in Coemes c Poulain [n. 29], to be discussed). In other cases that have more than one entry, the additional entry may be explained in other ways. In Langonis c Royne (7.v.85), col. 302/1, the initial entry records the citation of the defendant for the following day. In Gaigny c Lombard (20–27.iii.87), col. 447/3, 450/8, and Coemes c Poulain (n. 29), the claim is made in the initial entry, and the case set for proof. The decisory oath takes place in the second entry and the plaintiff is charged with expenses, perhaps because of the extra session. The same pattern appears in Touesse c Ruele (7–14.xii.84), col. 6/1, 12/3, and Pari c Charrons (n. 32) (in the latter with an inhibition pendente lite), without the taxation of costs. Luzeraz c Vauriecher (19–24.vii.85), col. 159/5, 163/2, and Noblete c Janet (27–31.iii.86), col. 284/1, 286/1, have two entries, but in the first the plaintiff fails to appear.

561. Ch 7, n. 65: And is let off with a low fee, 12 deniers, though she has previously paid 8 deniers. This is still less than the usual fee of 2 sous for the decisory oath.

562. Ch 7, n. 67: Nota quod promotor sult prosequi sponsalia. Pilaye, Nicolas Pilays was one of the promoters of the court and as such kept one of the registers of fines. Col. 236, 515.

563. Ch 7, n. 69: rea incursit se non recordari aliquas promissiones matrimoniales cum dicit actore habuisse nec unquam fuit intentionis sue contrahere cum ipso, et insuper dicta partes bincinde promissiones matrimoniales aut verba, si que haberant insimul, sapientia vim sponsaliorum remiserunt alter alteri, quam quittan tum in patientia tolleramus, dantes utrique licentiam, cetera consciente relinquentes.

564. Ch 7, n. 70: There also may be some hint as to age when the record uses the word filia to describe the woman when it is not giving her name, as in the assignment of fees: filia u s. E.g., col. 501 (Keraurinez c Sartouville, 297/2 (Champfront c Vallee). The alternative is to describe her as rea. E.g., col. 324/3 (Burgondi c Fuss). Since we have some evidence, however, that Gilette de Valle (in Champfront) was mature enough to know her own mind and that Perette Fusie in Burgondi was not, we probably should not put much weight on this usage. The notary was probably thinking filae, a word that at least in modern French can be quite ambiguous as to its indication of age.

565. Ch 7, n. 71: That would seem to be the case in Bourges c Lombardi (n. 47), which has a similar fact-pattern to Pseudohonne, although the woman is a bit less emphatic about her rejection of her father's choice. She is described as Margot fille de Milo Lombardi.

566. Ch 7, n. 72: If the 11 cases were evenly distributed over the thirty-four-month period, we would expect about 1.37 case in each three-month period (roughly 9%). We get 5 cases in this three-month period (roughly 43%). Comparison of the two proportions yields a z of 2.120, significant at roughly .97. Hence, there is about a 3% chance that this distribution is the result of random variation.
Champenoys c Cadriivo (1.vii.87), col. 490/4 (T&C no. 542); Fabri c Bateur (11.vii.87), col. 495/7; Huguelini c Hubin (30.vii.87), col. 504/1; Lepreux c Ferron (21.viii.87), col. 511/5; Ayoux c Sacespée (23.viii.87), col. 512/7.

568. Ch 7, n. 74: There are also 3 ‘straight’ deferral cases in which a fille d’un tel is the plaintiff: Flament c Arrode (15.xi.85), col. 218/5; Gracieux c Alemant (24.xi.85), col. 224/2; Valle c Jourdani (20.viii.85), col. 473/3. The more circumstantial cases give us less guidance about this type of case, but these plaintiffs may also be young women living with their parents.

569. Ch 7, n. 75: Baillon c Asse (18.iv.85), col. 98/3; Galteri c Bourdinette (6.ii.86), col. 260/2; Gras c Bourdinette (7.ii.86), col. 260/3; Gouant c Gouyere (1.vii.87), col. 490/2; Quoquet c Pain (20.viii.87), col. 510/6.

570. Ch 7, n. 77: Comparentibus [GL] et [JC] in causa matrimoniali seu sponsaliorum promissiones et fideidationes matrimonia quas adinvicem habuerant et contraerant, re integra quoad carnalem copulam, remiserunt alter alteri, et de ipsis et expensis ac processibus inde securitas quittaverunt alter alterum, quas remissionem et quittantiam, ex certis causis nos ad hoc moventibus, dantes utrique licentiam contrahendi alihi, etc., cetera eorum conscientiis relinquentes.

571. Ch 7, n. 78: Hodie [PG] et [JC] sponsalia inter ipsos adinvicem contracta per verba de futuro, re integra quoad carnalem copulam, remiserunt alter alteri et quittaverunt alter alterum, nobis supplicando quatinus quittationem et remissionem huiusmodi admittere et in patientia tollerare dignaremur; nos igitur easdem et ex causa admittimus et in patientia tolleramus, dantes utrique licentiam alibi contrahendi vel, etc.; mulier ii s.

572. Ch 7, n. 79: I do not know what is supposed to come after this vel, for so far as I am aware, it is never spelled out. Possibilities include the redundant vel non contrahendi or castitatem vovendi, though the latter would imply a force to the sponsalia de futuro that is not fully supported in the canonistic literature.

573. Ch 7, n. 81: Roughly 10% in both cases. See at nn. 22–6. It appears eight times in the deferral cases (total: 91) and five times in the remittance cases (total: 45), and in the one mixed deferral/remittance case (Radulphi c Saussaye [at nn. 68–9]).

574. Ch 7, n. 82: As the following text makes clear, in some cases we cannot tell who was plaintiff or defendant, or even whether the parties were opposed. These are styled X and Y as opposed to XcY.

575. Ch 7, n. 83: There are, however, a number of cases in which both parties are charged a fee.

576. Ch 7, n. 86: If we eliminate the cases in which we have identified the moving party on the basis of the payment of the fee, we have hardly enough left to calculate a gender ratio (nine male plaintiffs and five female [65%]), and the difference between the remittance cases and the deferral cases narrows.

577. Ch 7, n. 87: attenta inuentate dicti virti et senectute dicite mulieris.

578. Ch 7, n. 88: attenta inuentate dictarum partium.

579. Ch 7, n. 89: Comparentibus [DP] et [JC] dicentibus quod tres anni sunt elapsi ipsis existentibus etate puerili, fuerunt aliqua verba inter ipsos de matrimonio contrahendo licet nihil intentionem habuerant contraerendi, que verba in quantum saperent sim sponsaliorum vel matrimoni remiserunt alter alteri, etc. For the language, compare Radulphi c Saussaye (n. 69). For the other two cases, see Stainville, Hours, Monete et [. . .] (at n. 102); Aqua et Champione (at nn. 103–4).

580. Ch 7, n. 90: propter adulterium bincinde commissium remiserunt alteri; quod factum emendaverunt, etc.

581. Ch 7, n. 91: dictum non esse eis utile procedere ulterius ad solemnisationem matrimoni, attento quod dicta [JM] pecoearent in legem sponsaliorum et [JL] et alii, etc. . . . Mulier commorans in vico etc., . . . emendavit factum.

582. Ch 7, n. 92: attento etiam quod idem vir medio iuramento asseruit quod ipsa carnaliiter cognoverat [IR] amicam dicte filie et quod dicta [JR] super hoc evocata ut possit sciri veritatem facti non compaurit, etc.

583. Ch 7, n. 93: et quia noblebat ulcerus procedere nec eis videbatur utile, etc.
584. Ch 7, n. 94: certis de causis ipso suo motentibus.

585. Ch 7, n. 95: Dionasii et Lorenaiae (7.i.85), col. 25/3 (attento quo quod uraverunt rem fore integram inter eos); Soupparde c Pasquier (8.x.85), col. 114/1 (re integra inter eos existente quod carnale copulam prout media uramentia deposuerunt; Notin et Gargache (28.viii.85), col. 181/5 (attento quod uraverunt rem esse integram); Tousé et Tansèy (3.x.86), col. 288/3 (attento quod uraverunt rem esse integram quod carnale copulam); Bosco et Mercièere (16.vi.86), col. 337/6 (re integra inter eos existente quod carnale copulam, prout medio uramentino deposuerunt; Canesson et Olone (22.xi.86), col. 394/3 (attento quod uraverunt rem fore integram quod carnale copulam). The formulae illustrate well Villemaden’s (or the official’s) way of varying the entries. They all mean the same thing and probably reflect the same ceremony, but no two of them are quite alike. For the eighth case, see n. 96.

586. Ch 7, n. 96: quia dicta partes uraverunt quod, post dictas promissiones et sponsalia per verba de futuro per dictam [!] actorem proposita, non habuerunt carnalem copulam, licet ante habuerant, et aliis [causa] etc. This last phrase suggests that the official was taking the absence of copula as a causa for granting the dispensation.

587. Ch 7, n. 98: attento quod res est integra quod carnalem copulam et quod invite nupcio difficiles habent exitum, et ne detruse inde contingat, etc.; admissimus.

588. Ch 7, n. 100: Hodie [RO] dicit judicialiter quod licet [GG] alias promiserat eadem [RO] quod daret sibi dictam filiam in sponsam, dicta filia absente, non intendit dictam filiam nec prosequi de promissione buismodi nec ipsam probare posset ut dicit; quam promissionem etiam dictus pater negavit coram nobis et juravit se copulam etc., quittantiam et remissionem in patientia tolleramus.

589. Ch 7, n. 101: [JB] proposuit quod [SV] promiserat eadem auctori dictum filiam in sponsam et uxorem et quod dicta filia hoc ratum habuit; quam promissionem etiam dictus pater negavit coram nobis et juravit se non promisse, etc.; ii s. The awkward negatives in this sentence are a little more understandable if we think French: il n’a l’intention ni de poursuivre la dite fille de cette promesse ni de la prouver, but after that we need to fill out a very elliptical phrase: – vraiment qu’il ne peut pas la prouver.

590. Ch 7, n. 102: Comparentes Yabelliis de Stainville, Johannes du Houx, Gallibius Monete et [. . .] qui alias sponsa sia contraexercant se hincinde quittaverunt, quam [quittantes] admissimus attenta inuentute, etc.; Jo. viii. d.

591. Ch 7, n. 103: Comparentibus [BA] et [PC] asserentibus se invicem alipaque verba habuisse sapanima vim sponsalorum per verba de futuro licet non fuerat tunc nec sit eorum intentiones ad invicem contrabere, etc.

592. Ch 7, n. 104: attenta inuentute dictarum partium et quia uraverunt rem esse integram quod carnale copulam etc., quittantiam et remissionem in patientia tolleramus, etc.

593. Ch 7, n. 105: col. 225/2: asserentes hincinde quod muti mwmurareant ipsum partes habuisse promissiones matrimoniales adinvicem, quas tamen minime habuerunt ipse partes, ut dicidebat, et si quis habuerant inter se vel amisso sua remittemat alter alteri, etc. The incomplete entry in Cerisi et Mote (7.xii.85), col. 233/1: Hodie [RC] et [KM] promissiones matrimoniales quas amisso ui habuerant per verba [. . .] may have been leading to an assertion that the relatives made these promises but not the couple.

594. Ch 7, n. 106: See also Asumone c Chariterie (n. 121), where an allegation of prior unremitted sponsalia provides, it would seem, a total defense to an action based on the current ones.

595. Ch 7, n. 109: Firminia c Bave (n. 74); Lot c Corderii (n. 66); Boujoux c Varlet (n. 90); Nicolay c Luques (19.iii.87), col. 446/5; Bossin et Josseau (18.v.87), col. 472/5; Ymbeleti et Granier (28.vii.87), col. 489/2; Pieanugot et Pagan (13.viii.87), col. 497/5; Gaillart et Ragne (n. 92).

596. Ch 7, n. 110: Blausosin c Enfant (12.xv.85), col. 93/5; Tardieu c Nygland (2.xv.85), col. 109/10; Notin et Gargache (n. 84); Prepositi c Fabri (2.viii.87), col. 491/5.

597. Ch 7, n. 111: Reginald Bontrell domiciled in the house of Étienne Britonis at the sign of the Die, rue Saint-Germain-l’Auxerrois (at n. 98); Jeanette la Malevaude resident in the rue Perce-Saint-André (today impasse Hautefeuille), parish of Saint-Séverin (n. 91).
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598. Ch 7, n. 116: ii x. pro utroque, Magister Ja. debet.
599. Ch 7, n. 117: De [PT] actrice in causa matrimoniali contra [LL] reus, actrix proposuit sponsalia per verba de futuro et fideiisaciones matrimoniales; reus confessus fuit, etc.; condempnatus ad solenpunctum matrimonium in facie ecclesie infra Magdalenam [22.vii.85], etc., quod facere promisit idem vir, etc.; actor xii d.
600. Ch 7, n. 118: Arry c Lion [11.x.86], col. 364/6; Yassy et Perriér [14.i.87], col. 415/1. Arry c Lion lacks an order to solemnize, perhaps subsumed under the “etc.,” but perhaps because the court suspected that Martiennet Lions was going against the wishes of her kin.
602. Ch 7, n. 120: As is quite standard in security cases, the security (but not the injunction) is suspended until Jean Moile “brings security from the Châtelet” (auspensum est quoqueassecuratus afferat assesuramentum de Castelletto). This phrase is never explained, but I am inclined to think that what it means is that Jean Moile, himself a laymen, is to give security before the Châtelet and bring some evidence of it to the court. Such mutuality of security would fit with what seems to be the consensual nature of these security proceedings. See at n. 8. That Jean Moile is also to give security would suggest that he, too, has some obligations, perhaps providing a dowry.
603. Ch 7, n. 122: Comparentibus [JA] actore in causa matrimoniali et [RC], actor proposuit sponsalia per verba de futuro, re integra, etc., quod rea confessus fuit dicendo quod dictus vir anteæ affidaverat aliam, etc.; ad [dem] veineria faciendum fidem ex parte actoris de quittatione primo, etc. One would certainly like to know what was buried in that “etc.” Perhaps it is et ad ponendum hincinde secundo. If the Jean de l’Aumoone, le jeune, is the same as Jean de l’Aumoone (without the jeune), at n. 84, then his allegation that a previous contract had been remitted is true.
605. Ch 7, n. 124: Comparentes [DT], ex una parte, et [PM], ex altera, dicuerunt et assenerunt se alias affidasse alter alterum et post fideiisaciones binaismodi rem carnalem adivicem babusisse et deinde fuisse per officicalem Meldensem adiudicato primo, etc. One would certainly like to know what was buried in that “etc.” Perhaps it is et ad ponendum hincinde secundo. If the Jean de l’Aumoone, le jeune, is the same as Jean de l’Aumoone (without the jeune), at n. 84, then his allegation that a previous contract had been remitted is true.
606. Ch 7, n. 125: Hodie attenta confessione [JS] qui confessus fuit se matrimonium in facie ecclesie cum Sébila [that cannot be right, but granted the mistake, we cannot tell the name of the other woman] contractisset postmodum de facto sponsalia per verba de futuro contraxisse cum [SV] in Gretz [25.x.85], predicta sponsalia decrevimus nulla fuisse, etc., dantes eadem filie licentiam alla contrabenda.
608. Ch 7, n. 129: Hodie decrevimus sponsalia de futuro inter [AT] et [FA] contracta nulla esse etc., attenta confessione dictæ filie qui conficeret se antea sponsalia contraxisse cum Reginaldo Pestel, dantes eadem [FA] licentiam etc.; dicta filia emendavit bona sponsalia prout caviatur in papiro Colimi Charonnis (= ?Nicolas Charronis; see col. 592 x. s. Nicolaus); xii x. s; [sic; almost certainly a mistake for d].
609. Ch 7, n. 130: Comparentibus [SH] et [GO], ex una parte, et [MM], ex altera, idem [SH] proposuit quod circiter tres menses sunt elapsi, ipse affidavit dictam filiam, et predictus [GO], dominus ultimo elapsis, eam etiam affidavit in facie ecclesie, re integram etc., quod premisa dicta filia confessa fuit et hoc mediante
declaravimus prima sponsalia valere et secunda nulla fore, dantes dicto [GO] licentiam alibi contraheundi, et emendavit dicta filia bona sponsalia. ii s. – Emendavit. This case is most like an instance case in this group, in that Simon “proposed” like a plaintiff in an instance case and the way it is styled, with parties appearing ex una parte and ex altera, suggests an instance action as well.

610. Ch 7, n. 132: Quia nobis constat [JEP] post sponsalia per verba de futuro contracta et habita inter ipsum et [JP], re integra, contraxisse sponsalia et deinde matrimonium consummasset cum [JP], dedimus licentiam dicto [JP] alibi contraheundi ut, etc., ii s.; mulier emendavit propt praet causas in papire [AA].


612. Ch 7, n. 134: Insuntum est [PF] que contraxit nova sponsalia per verba de futuro cum [CF] ut faciet fidem de morte primi mariti sui infra Natale; alioquin babebit licenciam idem [CF] contraheendi alibi, etc.; xii d. Petiot questioned faciet, probably because it would be subjective in classical Latin. More serious is the problem of what it means. Fidem facere normally means to take an oath. Here it probably means “to provide assurance,” because the law was fairly explicit on what sort of proof was required to prove the death of a spouse. See Ch 9, n. 277.

613. Ch 7, n. 135: Hodie declaravimus sponsalia per verba de futuro inter [JR] et [MC]uisse et esse nulla, obstante impedimento generis affinitatis existente inter ipsos in primo genere affinitatis, quia Sancelota, uxor dicti [JR], attegebat edem [MC] in tertia gradu consanguinitatis, et ipsa [MC] edem Sanceleto in quarto gradu, etc., dantes utrique licentiam alibi etc.; vir ii s. Pentino certainly looks like a placename. The index suggests Pantin (Seine-Saint-Denis), east of Paris. It is hard to imagine anyone being the ‘countess of Pantin’ (except perhaps in the sense of ‘the duchess of Flatbush’); hence, it is unlikely that Marion’s surname is really Pantin. Nonetheless, these people may be of relatively high station. Sancelote is not a modern French given name, and she is the only woman with that name in the register. The name may be Spanish.

614. Ch 7, n. 136: Hodie [JC] comparunt asserunt quod quinque annis sunt elapsi quidam iuvenis vocatus [GR], de partibus Andegaviae, qui tunc morabatur in dicta villa de Vemars requisivit matrem dicte filie ut eam sibi concederet in sponsam, que mater eadem filiam suam edem viro promisit dare in uxorem, nullis alius promissionibus seu fideiationibus inter ipsum filiam et virum habitis, licet promissionem dicte mater suae ratam habuerit. Quia quidem vir a dicta villa et a partibus circumvicinis se absentavit paulo post et ad partes se transulit aliens, et ideo ipsum fecit in dicta villa, in loco ubi tunc morabatur, et ad primum ecclesie per quatuor dilatationes ad quas minime comparuit, et ideo petebat dicta filia attentis promissionibus et aliis promissionibus [tred premiis] attentis evocationes predictas et iuvamento, et conscientiam suam adiuvans, sic damus, etc., nec denegamus licentiam, etc.; ii s.

615. Ch 7, n. 137: Congessa est licentia [JR] ut possit contrabere matrimonium etc., non obstantibus promissionibus matrimonialibus quas babuerat diu est cum [GC] re integra etc., attentis quatuor evocationibus etc., et quod idem Guillèlum non potest reperiri et se absentavit, annus est elapsus etc., et quod dicta filia ciprius mater efficavit rem esse integram quoad carnsalem copulam et quod promissiones fuerunt conditionales et per verba de futuro etc., uiz. in case quod placet amicis dicte filie, etc.; iii s.


617. Ch 7, n. 140: Compartimenths [PF] et [JM] atto en quod non babuerant aliquas sponsalia, licet eorum patres alias babuerant verba inter eos de dando alterum alteri etc., dedimus eis licentiam alibi contraheundi quia non processum fuit ulterius, etc.; vir ii s.
618. Ch 7, n. 141: actor proposuit quod dictus defunctus pater et mater dicte ree promiserunt diu est dictam ream eorum filiam dare dicto actori in uxorem et eam sibi concesserunt et affidaverunt, mediante certo contractu inter eos habitio; rea negavit fideidationes et si pater et mater ipsius aliquid promiserunt dicto actori non sibi placet nec pro tunc erat in etate et ex nunc reclamat si citius ipsum actuolum potussent reperire (citius reperire) [sic; Petit probably was suggesting that the phrase in parentheses should be deleted] citius reclamasset, etc.

619. Ch 7, n. 142: There are also a number of parties who seem to come from outside the diocese (Denis Toussains [n. 124], Meaux; Jean Sapientis [n. 125], Besançon diocese; Guillaume Regis [n. 136], Anjou; Guillaume de Carnoto [n. 137], Chartres), but this is what we would expect in cases that raise issues of bigamy and absence.

620. Ch 7, n. 144: Lorrain c Guerin (22–24.iii.85), col. 84/6, 88/6 (plaintiff fails to appear at second session); Carré c Magistri (15–21.iv.85), col. 97/5, 101/6 (defendant fails to appear at second session; plaintiff apparently decides not to pursue the matter); Buisson c Hore (16.1.86), col. 246/6 (case disappears after initial session); Noylete c Sutoris (14.iv.–26.v.86), col. 292/5, 302/4, 311/5 (plaintiff fails to appear at second session; in third entry defendant constitutes proctors).

621. Ch 7, n. 145: After producing witnesses Jean fails to appear at the third session (21.viii.86). The following May, the deferral takes place, Jean here being called Colin. They may not be the same man, but like the indexer, Iam inclined to think that they are.

622. Ch 7, n. 152: dicendo tamen quod nescit utrum dictus actor cepit manum suam vel non, etc.

623. Ch 7, n. 158: Ruth Karras (private communication), on the basis of secular records from Paris in the same period, suggests that this should be ‘servant’. An apprentice is a discipulus. There is, however, evidence in this case that Jean, having been a famulus of Guillaume, a locksmith, then went on to become a locksmith himself. The arrangement may not have been one of formal apprenticeship, but it is one of the few indications that we get in the Paris cases of what might be life-cycle servanthood in England.

624. Ch 7, n. 160: Col. 58/3: concluso in causa bode, ad mercurii in octo ad audiendum ius et fiet collatio die dominica instanti cum partibus. It was the practice of the Paris court to require that the parties attend a conference (collatio) before the sentence. A couple of entries suggest that the purpose of this conference was to compare (collatio in a different sense) the versions of the acta that each party had. This conference could, however, have led to a compromise, perhaps encouraged by the judge. The proceedings were private and out of session. (The one in this case was scheduled for a Sunday.) The analogy to the modern ‘conference in the judge’s chambers’ is striking.

625. Ch 7, n. 162: actor proposuit quod sponsalia per verba de futuro contracta [fuisse] inter ipsum et amicos dicte ree, que ipsa rea rata habuit ante et post, et cum ipsamet contraxit, etc.; rea confessa fuit quod dictus actor locitius fuit cum ipsa et quod ipsa dixit quod nichil faceret nisi de voluntate amicorum suorum, etc.

626. Ch 7, n. 164: actor proposuit sponsalia per verba de futuro et fideidationes matrimoniales, etc.; rea confessa fuit [eadem sed] in causo quo placetet amici sui et non alias, etc.; et comparuerunt amici dicte file dicentes quod non placet nec placet eis.

627. Ch 7, n. 165: The fact that Jeanette’s pleadings speak of the approval of her relatives and not more specifically of her father and that it takes a while for the father to appear suggests that there may have been doubt about the father’s position on the issue.

628. Ch 7, n. 167: rea confessa fuit quod idem actor eam requisiuit ut vellet esse uxor sua, etc.; que tunc respondit quod faceret illud quod placent patri et matri suis; qui pater presens uratit quod ei non placet nec placet, etc., et hoc mediante fuit absoluta, etc., dantes utrique, etc.
dantes licentiam utrique etc
hoc examinatorum qui hodie idem testificati fuerunt, dictam ream absolvimus ab impetione dicti actoris,
ad etatem nubilem, que etiam rea die hodie iuravit coram nobis se alias cum dicto actore non contraxisse aut
actore, et quod hoc fuerat metu et non aliter, de quibus sponsalibus reclamandis protestabatur dum veniret
dicta rea confessa fuerat se per seductionem patris dicti actoris habuerat promissionem matrimonii cum eodem
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dicta rea confessa fuerat se per seductionem patris dicti actoris habuerat promissio

639. Ch 7, n. 184: The contract could be completed in stages, with the promise of one party being transmitted to the other, who then accepted it and promised back. It was, perhaps, binding at that moment; it certainly was when the promise of the other party was communicated to the party who had first promised, so long as the first party had not in the meantime revoked. Canon law, unlike classical Roman law, did not require that stipulating parties be in each other’s presence for the contract to be binding. The complexities, however, of this form of contract were substantial. See Sánchez, Disputationes de matrimonio, 1.7, pp. 1:18a–24b.

640. Ch 7, n. 187: The case may have continued beyond the chronological reach of the register because the last entry occurs just before the harvest and vintage vacations, and the register ends before the end of the latter.

641. Ch 7, n. 189: Proctor ree proposuit quod si unquam dicte partes aliqua sponsalia vel promissiones matrimoniales adinvicem contraxerant, Johannes Hesselin et Maria eius uxor, parentes dicte ree, ipsum ream desadvocaverunt et desadvocant, et quod hes sibi non placeant neque placent, aut rata babuerunt nec habent, etc.

642. Ch 7, n. 190: qui quidem parentes sibi commissario diversum et depoissentur per juramento sua quod si aliqua sponsalia seu promissiones matrimoniales babuerunt dicte partes nungquam eisdem parentibus placuerunt nec placent ymo dislocuerunt et displicent, etc.

643. Ch 7, n. 192: Comparabantibus [CV] et [JF] remissi per curatum de Tramblay pro eo quod idem actor dum banna proclamarentur inter ipsum ream et [OB] reclamavit, actor proposuit sponsalia per verba de futuro, re integra, etc.; rea confessa fut quod dictus actor eam requisuerat ut vellet esse suor una et quod idem sibip respondit quod placebat sibi, dum tamem placert patri et amicis suis, cetera negando.


645. Ch 7, n. 195: actrix proposuit quod idem reus a festo Natalis Domini citra eam affidavit in domo [IR] et promisit eadem actrix quod ipsum duceret in uxorem et quod nunquam eisdem habueret preter ipsum etc., et ipsa actrix vice versa promisit eadem reo etc.; reus confessus fut se promisse eadem actrici quod ipsum duceret in uxorem dum tamem placert patri etc., cetera negando.

646. Ch 7, n. 196: The specificity of the pleadings may indicate that Perette was operating without much professional help. No advocate or proctor is mentioned, and professional pleadings would probably have been deliberately made vague in order to accommodate what might appear at the proof stage. The procedural snarl on col. 309/8 (which I do not fully understand) may also be the result of Perette’s lack of professional help. That Perette has less money than Guillaume is suggested by the fact that she is charged eight deniers at the first hearing and Guillaume is charged two sous, something that called for a nota in the margin.

647. Ch 7, n. 198: pater comparebit super eo quod idem vir ir vir proposuit quod dictus pater promiserat sibi alias dictam filiam in sponsam cum certis de bonis tradendis infra terminum iam elapsum, quod non fecit, et ob hoc petebat licentiam sibi dari cum alia contrahendi vel quod idem pater adimpleat promissionem, etc.

648. Ch 7, n. 199: Case set ad implendum ex parte patris dicte filie promissionem alias per eum tractatu sponsaliorum dictarum partium factam, et in casu quo non adimplebit dictam promissionem data est ex nunc licentia aliis contrabrand.

649. Ch 7, n. 200: Hodie sponsalia conditionalia contracta inter [JP] et [IG] ac patrem dicte filie furent declarata nulla fuisse, et futi data edem viro licentia alibi contrabrandi in casu quo conditio et promissio non fuerit completa, que delibet compleri infra diem bodearnam, etc.; vir ii s.

650. Ch 7, n. 203, col. 272/4: actricis amicitia predicta vel unam partem se causam vos frater dictae filie promissit, etc., et mediam partem unus domus etc., et hoc circiter duo annis sunt elapsus, et deputat dictam promissionem minime complexerunt, etc., cetera negando; actrix confessa fut promissiones predictas, excepta media parte domus, offerendo se paratem complevere promis-
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siones dictas excepta media parte domus, et proposuit insuper quod deposit predictus reus promisit simpliciter, nulla apposita conditione, ipsam duceret in uxorem, etc.; res obo negante, etc. The remission at col. 275/8 describes the promises as those between idem reus et amici dicte actricis, without mentioning that Denisette had promised.

631. Ch 7, n. 203: actor proposuit quod ipse promisit eidem ree quod ipsum duceret in sponsam et eadem rea viceversa, etc., quodque dicta rea dixit deposit quod si dichtus actor vellet contrahere cum ipsa quod ipsa posset eum impedire; rea confessa fuit quod idem actor ipsam requisit ut vellet esse sponsam suam etc., cui ipsa rea respondit quod non etc.

632. Ch 7, n. 206: It may be significant that no collatio is called for. The case was so straightforward that no collatio was required. Unfortunately, the state of the record does not exclude the possibility that it was straightforward that the plaintiff had not proved his case.

633. Ch 7, n. 208: actrix proposuit sponsalia per verba de futuro, viz., idem reus, circiter quatuor anni vel circiter sunt elapsi, promisit edem actrici quod ipsum duceret in uxorem et quod munguam baboret aliam quamdiu etc., quodque postmodum idem reus confitendo premissa acceptavit plures dilatationes ad solemnizandum matrimonium huissusmodi et confessi fuit coram phribus ipsam actricem affidasse, etc.; reus item contestando confessa fuit quod [dicta quod] si unquam duceret uxorem munguam duceret aliam pretier ipsum actricem, cetera negando.

634. Ch 7, n. 210: The delays from col. 201/3 (12.x.85) to 262/5 (13.ii.86) and from 268/5 (26.ii.86) to 309/8 (23.v.86) are hard to explain. Perhaps Agnesotte was running out of money, and these were the stages of the cases (where the raciones on both sides were presented and answered) where she most needed professional help.

635. Ch 7, n. 212: Attentis confessionibus [IH] et [MB] qui confessi fuerunt bincinde se circiter tres anni sunt elapsa contraxisse sponsalia de futuro, carnali copula inde secuta et prole suscepisse, fuerunt adiudicati alter altier, viz., dicta mulier in uxorem dicto viro et idem vir in maritum dictae mulieris, et fuit ex insipient sub pena excommunicationis et quadraginta libras ut infra quindenam faciant solemnizari matrimonium in facie ecclesiae, etc.

636. Ch 7, n. 213: Hodie attenta confessione [MC] qui confessus fuisset sponsalia per verba de futuro et promissiones matrimoniales cum [JB] et eam postmodem carntiliter cognosuisse, prole suscepsita, etc., fuit adiudicatus eadem mulieri in maritum et dicta mulier in uxorem dicto viro, etc.

637. Ch 7, n. 214: Comparantibus [ABH], actrice in causa matrimoniali, ex parte una, et [JI], reo, ex altera, attientis confessionibus partium bincinde que confesse fuerunt sponsalia contraxisse cum carntali copula secuta adiudicavimus alteram alteri in congingem et fuit iniquum dicto viro ut matrimonium solemnizet cum dicta actrice in facie ecclesiae, etc. . . mulier xvi d.

638. Ch 7, n. 215: Comparantibus [JC], ex una parte, et [JS], ex altera, qui alias sponsalia per verba de futuro inter se habuerant carntali copula inde secuta, matrimonium inter ipsos consummando, qua predicta mulier confessa fuit expost se adulterio commisisse cum [GB], in legem huiusmodi matrimonii peccando, fuerunt per nos quodum bona et thorum separati, etc., decernendo ipsos debere vivere segregatim, etc., et emendavit mulier prout continetur in registro [NC]; mulier viii d, vir xii d.

639. Ch 7, n. 216: in causa matrimoniali actrix proposuit sponsalia per verba de futuro carnali copula secuta, reus confessus fuit quod ipse et dicta actrix promissiones matrimoniales habuerunt et tractatum, in quo tractatu matrimoniali mater dicte ree [read actrica] promisit dicto reo viginti francos et unum lectum furnitum et mediatem utensilium ipsius materia, et mediante promissione huissusmodi promisit ducere eam in uxorem et non aliter, quodque postmodum ipsam carntiliter cognovit semel, viz., [8.vii.85], dicens se paratum solemnizare matrimonium, satisfacto sibi de dicta promissione, dicta actrice ducere conditionem esse purificatam per carnaelem copulam etc.; quibus auditus ipsam actricem edem actrici [read reo] in sponsam et uxorem et dictum reum edem actori in maritum adiudicamus, etc.; quilibet xii d.

640. Ch 7, n. 217: [GA] proposuit sponsalia per verba de futuro, carnali copula et prole secutis; reus confessus fuit quod promisit eidem actrici ipsum ducerere in uxorem dum tamen ipsa actrica vellet facere voluntatem suam, et eam postmodum carntiliter cognovit; quibus attentus reum actricem in maritum adiudicavimus, etc.,
et ipsam reum moneamus sub pena excommunicationis in scriptis ex nunc prout ex tunc ut intra quindecim dies post mortem suam, pro ab omissione matrimonii sumptum, etc. et emendaverunt carnalem copulam prout cavitur in registro [YC].

661. Ch 7, n. 218: Hodie [MA] quittavit et quittum clamavit [JV] de omnibus et singulis que posses [petet, supplied by editor] ab eodem ratione salaria sui de toto tempore quod cum ipsum stetit quam alias quatercumque, et e contra idem [JV] quittavit dictam [MA] de omnibus que posset petere ab ipsa quaecumque ratione sua, de toto tempore preterito usque nunc, etc., et asserunt in suipser dictae partes se nunquam habuisse promissiones matrimoniales insimul nec fideitationes aut sponsalia contraxisse; attamen emendaverunt concubinatum, emendata taxata pro quolibet ad sumnum fr., et elegentur domicilia, vellucelit vir in vico Carbre ad insignam Claris, in parrochia Sancti Severini, et dicta mulier in parrochia Sancti Christophori ante Carnificeriam, etc. – Emendaverunt.

662. Ch 7, n. 219: Both defendants in Office c Gaigneur et Badoise [at n. 286], another concubinage case, also stated their (separate) domiciles.

663. Ch 7, n. 220: In causa matrimoniali actrix propusiit sponsalia per verba de futuro et fideitationes matrimoniales, carnali copula secuta; reus confessus fuit rei carnalem cetera negando. Qua lice sic contestata, actrix asserens medius iuramentum se nullos testes habere, etc., detulit iuramentum reo qui inarret se nunquam contraxisse sponsalia cum dicta actrice nec promissiones matrimoniales habuisse, etc., quo iuramento attento reum ab impettione actricis absolutum, dantes, etc.

664. Ch 7, n. 221: E.g., Perigote c Magistri (13.i.86), col. 245/5 (asserent); Hardie c Cruce (28.vi.85), col. 145/1 (sic); Doucete c Gambier (4.j.86), col. 241/1 (simply defers); Patée c Vallibus (30.ix.86), col. 298/3 (quia actrix nullos habebat testes detulit).

665. Ch 7, n. 222: Col. 502/2: Comparentibus [RB] in causa matrimoniali, reo, et [ JSQ], actrice, actrix propusiit sponsalia cum copula carnali secuta; reus negavit, et detulit actrix iuramentum reo, qui iuravit se nunquam contraxisse, et hoc mediante reum ab impettione [CE] quae alias possessorat sponsalia per verba de futuro, carnali copula secuta, et hoc attento iuramento dicti [CE] per dictam actricem dicentem se non possere probare eadem [CT] delato et per eum proestito, etc.; vir xvi d., etc.

666. Ch 7, n. 223: dantes viro licenciam contrahendi alibi, nisi etc., cetera eius conscientiae relinquentes. Cf. Bigoire c Vanpoterel (7.vii.86), col. 345/3; dantes reo licentiam contrahendi, Piccone c Bourdon (28.viii.87), col. 515/5; dantes eadem reo licentiam, etc.

667. Ch 7, n. 227: Patée c Vallibus (n. 221); Bigoire c Vanpoterel (n. 226); Guillard c Limoges (n. 226); Flamangere c Bagosart (30.ix.87), col. 465/6 (emendaverunt carnalem copulam . . . emendaverunt); Perona c Hessepillart (21.vi.87), col. 483/3 (emendaverunt concubinatum . . . emendaverunt); Piccone c Bourdon (n. 226); Faivre c Drouard (n. 225) (reus emendavit [factum]; Marcheis c Sapientis (30.x.85), col. 212/1 (emendaverunt concubinatum . . . emendaverunt).

668. Ch 7, n. 229: actrix propusiit sponsalia et promissiones matrimoniales per verba de futuro carnali copula secuta; reus confessus fuit carnalem copulam et deflorationem, sponsalia negando, et [actrix] detulit iuramentum reo sic; reo is probably meant, though it is possible that this is a mistake for actrici, a possibility made somewhat more likely by the que that follows) super sponsalias, que iuravit dicta sponsalia inter eos contracta fuisse; quo iuramento auditu dictae partes affidaverunt altera alteram in iudicio sponte, etc. Et hodie [JB] et dicta filia dicebat quod idem [JB] loquitus fuerat cum patre dictae filiae de matrimonio contrabrande cum dicta filia et eum petierat a patre, et quod dictus pater promiserat et consentit dicto [JB] dictam filiam suam in caso quod placaret amici dicantur parum hicinde, et quod mater dicti [JB] comparavit et dixit non placet nec placeat unde, et attento vinculo supradicto et carnali copula habita cum dicto [JB] eum [ . . . (broken entry)].

669. Ch 7, n. 230: actrix propusiit sponsalia de futuro carnali copula secuta tam vivente primo marito dicit actricis quam post mortem suam; reus confessus fuit carnalem copulam et cetera negavit, [actrice] deferens iuramentum reo qui iuravit se nunquam contraxisse cum dicta actrice; quo iuramento attento reum ab impettione actricis absolutum. Emendaverunt concubinatum, etc. . . . Emendaverunt.
670. Ch 7, n. 231: Hodie [TV] reus in causa matrimoniali detulit iuramentum [OR] actrici super sponsalia per dictam actricem proposita, etc., quae iuravit quod contraxerant sponsalia insimul, carnali copula secuta; quo iuramento, ac confessione dicti rei, qui confessus fuit carnalem copulam, attestis, adiudicavimus [. . . (broken entry)].

671. Ch 7, n. 233: De domicella [JM] contra [MS] que actrix alias propossuerat sponsalia de futuro carnali copula subsecenta, et super loco fuit processum ad examinationem aliquorum testium summarie et de plano, per quorum testium depositiones dicta actrix intentionem suam non probavit et idem iuramentum dicto reo detulit, qui hodie iuravit se non quanquam contraxisse sponsalia cum dicta actrice nec promissiones matrimonales babuisse, nec intentiones sue fuisse dictam actricem habere in uxorem; quo iuramento, et attestis, etc., sententiam nostram protestimus in hunc modum: quia actrix intentionem suam minime probavit et attestio iuramento rei per dictam actricem silo delato, reum ab impetitione actricis absolvimus; vir ii s.

672. Ch 7, n. 234: emendaverunt concubinatum, etc.; nihil. – Emendaverunt. It is possible that this entry means that they made amends but paid no fine. On the basis of other similar entries, however, I am inclined to think that the nihil applies to the fee for the session (there was none), and that the subsequent emendaverunt means that they did pay a fine but the amount is not stated.

673. Ch 7, n. 236: [FC] propositus sponsalia per verba de futuro carnali copula secuta et deflorationem, reus confessus est carnalem copulam, cetera negando; actrix asserens se non habere testes detulit iuramentum reo, petendo ipsum reum compelli ad dotandum ipsum, etc.; qui uidem reus fuit se non posse probare ipsum fuisse ab alto difamatum detulit iuramentum actricis hyper iuramento super sponsalia et iuramento super dicta defloratione, et iuramento propositum de censura ad dicta partibus, etc., reum ab impetitione actricis absolvimus ipsum tamen ad dotandum dictam filiam uxestu statum suam condempnavimus.

674. Ch 7, n. 237: in causa dota ad eam hora prime audientiam nostram cum partibus munitam.

675. Ch 7, n. 238: Condemnatus est [OC] erga [FC] in decem francos auri pro dotalitio, et ad nutrituram, partus pro media parte, etc.; xii d.

676. Ch 7, n. 240: Actrix propositus quod idem reus eam defloraverat promittendo eam capere in sponsam; reus negavit sponsalia et iuravit se non habere testes detulit iuramentum ipsum, etc.; qui uidem reus fuit se non posse probare ipsum fuisse ab alto difamatum detulit iuramentum actricis super sponsalia et iuramento super dicta defloratione, et quia actrix iuravit se dixerit ipsum, etc.; qui uidem reus fuit se non posse probare ipsum fuisse per alium defloratum fuit condempnatus ad dotandum ipsum secundum facultatem et ipsum partis, etc.; v d., xii d.

677. Ch 7, n. 242: There may have been a deferral in this case, too, because the truncated entry also fails to mention that there was a deferral to the man on the question of sponsalia. Indeed, it is highly unlikely that there was no deferral on the question of sponsalia. In fact, there is a high probability that the notary just neglected to mention it.

678. Ch 7, n. 244: [CJ] propositus sponsalia per verba de futuro carnali copula ac deflorationem et prole suscepsit, reus confessus fuit rem carnalem et prolem, sponsalia negando, quae dicta mulier iuravit se non habere testes et detulit iuramentum viro qui iuravit se non quanquam coniunxisse sponsalia aut promissiones matrimonales cum ipsa et confessus fuit rem carnalem non confendi tamen de defloratione; et quia idem reus fuit se non posse probare ipsum fuisse per alium defloratum fuit condempnatus ad dotandum ipsum secondum facultatem et ipsum partis, etc.; xii d. pro actrice.

679. Ch 7, n. 246: [MG] propositus sponsalia per verba de futuro carnali copula secuta; reus confessus fuit se carnaliiter cognovisse dictam actricem in augusto erant tres anni vel circiter, cetera negando; ad octo ponderium semel et unica vice, et comparebant partes, et fuit actrix protestata de dote, ratione deflorationis sue, etc., cum partibus, actrix munita consilio G. de Marchia.

680. Ch 7, n. 247: ad dote pro venaria [4.i.87] in statu ex officio nostro quia mulier sacet in puero, etc.

681. Ch 7, n. 248: ad octo procedendum prout de iure super eo quod actrix petebat quadraginta libras pro dote et de defloratione etc., et a prosecute cause matrimonii se desistit ex mun etc., quare reus petebat
condemnationem, expensas et absolutionem, etc., cum H. Huraudii procuratore actricis, et reo, etc. . . . [GL]

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condemnationem, expensas et absolutionem, etc., cum H. Huraudii procuratore actricis, et reo, etc. . . . [GL]

...
691. Ch. 7, n. 260: Comparentibus [SR] et [JC] actrix proposuit quod ipsis insimul sponsalia per verba de futuro et fideidationes contraxerant adinvicem tempore quadragesime fuit annus elapsus carnali copula inde secuta; reus confessus fuit quod promisit edem actrici eam accipere et dicere in uxor et maritus sui esset tunc mortuus, et eam postmodum cognoverit; et ad finem quod absolveret, etc., proposuit quod maritus ipsius tunc sivebat et adhuc vivit; actice contrarium asserente [23.vii.86] ad informandum nos et fideem ex parte actricis de morte dicti maritii, quem dicit descessisse quinque anni sunt elapsi, cum partibus munitis hincinde consulis; . . . emendaverunt factum prout cautelaverant [Ives Chapon].

692. Ch. 7, n. 261: Vocavi Johannam filiam defuncti Stephani l'Escot uxorem defuncti ut dicitur ex parte ipsius Guillelmi de Carte actricem originalem pro Sephano Ruffi, reo, contra eam expectante, etc.; . . .

693. Ch. 7, n. 262: E.g., Portier et Malevaude (n. 91) [intercourse contra legem sponsaliorum]; Cheuvre c Jouvin (n. 133) [una sponsalia]; Fervier c Drouardi (n. 227) [licit intercourse, possibly concubinage]; Office c Anelli (n. 249) [deflowering].

694. Ch. 7, n. 263: [JM] proposuit sponsalia per verba de futuro carnali copula secuta; rea confessus fuit fideidationes et carnalem copulam, et audita confessione sua fuit adiudicatus in virum dicte mulieri et mulier sibi in uxor, et fuit sibi inuncta sub pena excommunicationis et evitata sub pena excommunicationis etc; ad octo ad proponendum facta predicta peremptoria et quicquid iuris, etc., cum partibus munitis hincinde.

695. Ch. 7, n. 264: Sanchez, for example, argues that forcible sexual intercourse is not raptus if there is no abduction. He then goes on to say that forcible sexual intercourse without abduction is punished capital in Castile, but apparently by the secular courts. Sanchez, Disputationes de matrimonio, 7.12 nu. 20, pp. 2:46b–47a.

696. Ch. 7, n. 265: [JB] proposuit sponsalia per verba de futuro et fideidationes in facie ecclesie, carnali copula secuta; reus confessus fuit adinvicem carnali copulam, et audit a fideidatione sua fuit adiudicatus in virum dicte mulieri et mulier sibi in uxor, et fuit sibi inuncta sub pena excommunicationis et evitata sub pena excommunicationis etc; ad octo ad proponendum facta predicta peremptoria et quicquid iuris, etc., cum partibus munitis hincinde.

697. Ch. 7, n. 266: in causa matrimonialis appellations contra [GC] ream appellatam, ad octo litem super petitione actoris per modum acti medio tempore tradenda et comparebit filia si comode etc., etc., cum partibus munitis hincinde, etc.; ad octo ad proponendum facta predicta peremptoria et quicquid iuris, etc., cum partibus munitis hincinde.

698. Ch. 7, n. 267: [AM] proposuit sponsalia de futuro carnali copula secuta, viz., sedecem anni sunt elapsi ipsum affidasse apud Bruges; reus negavit sponsalia et fideidationes, rem carnalem confitendo, etc. . . . Vir emendavit alias carnalem copulam prout cautelaverant [Ives Chapon].

699. Ch. 7, n. 268: in causa matrimonialis [MH] proposuit quod a quatuor annis citra sponsalia adinvicem contracturar carnali copula secuta, etc., et dixi mercurii ultime elapsi ossis male collusului [read osculati sunt et alter alterum citaverunt nomine matrimonii; reus negavit sponsalia confitendo carnalem copulam semel habuisse cum dicta actrice. I'm a bit uncomfortable with citaverunt, but the meaning seems to be as given in the text, although it could mean anything up to and including "they 'made out' as if they were married." It is possible that Jaquin, not Marion, was the domiciliary of the rue du Platre-au-Marais because the entry (col. 264/2) is ambiguous as to the subject, but it is normally the plaintiff not the defendant who elegit domicilium.

700. Ch. 7, n. 270: Colombier does not appear in the index of the book. He was certainly not a "regular" of the court and may have been associated with Bruges, though that is not a name that one would associate with that place.

701. Ch. 7, n. 271: magistrum Hugonem le Grant – Mariam dominam de la Selle. I cannot identify this Selle but it may one of the numerous places called Selles.
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702. Ch 7, n. 274: *Hodie decrevimus* [GG] *excommunicatam, aggravatam et reaggravatam auctoritate nostra pro re ad instantiam [GE] fore absolvendam, mediante miserabili cessione bonorum per eam hodie facta, salvis tamen principali et expensis, et consensit dicta [GG] *expensas taxari in eius absentia, etc., que sunt taxatae ad v.s. et in litteris de nisi, sibi f.*

703. Ch 7, n. 275: *E.g., Aubour c. Mercerii et Sayce (7.ii.85 to 6.iii.85), col. 49/2, 684; Patoe c Albi (21–23.iii.85), col. 60/4, 63/6; Lasisco c Bisquanero (4.iii.85), col. 69/7; Margneville, Blondeau et Malet c Yone (1.xviii.85), col. 91/2; Pons c Moury (1.ii.85), col. 109/5; Jaquet c Blanchet (15.vi.85), col. 136/2; Verde c Balneolis (18.viii.85), col. 175/3.*

704. Ch 7, n. 276: *Hodie decrevimus dictum actorem fore absolvendum, salvis expensis, etc., ita quod nisi infra mensem a die litis contestationis probaverit adulterium, etc., retrudi in presentem sententiam, etc.*

705. Ch 7, n. 277: *Normally, letters nisi ordered excommunication unless (nisi) the debt were paid. Here we suspect that there was a further condition that she have the ability to pay.*

706. Ch 7, n. 279: *Reus revocavit quamdam positionem ubi cavetur :’item et que [sc. actrix] mallet perdere suam presentem causam et solvere expensas quam scienter se periurare’; voco [read voce]: ’credit’; respondet: ’non credit’; . . . et iuravit idem reus quod erronea [read erronee] responserat dicte positioni;’ credit’, etc.; reus viii d.*

707. Ch 7, n. 280: *et faciet reus diligentiam de habendo testes suos alioquin publicabantur.*

708. Ch 7, n. 283: *Even the archdeacon’s court, according to Pommeray, did not usually deal with simple fornication unless it had some aggravating factor: concubinage, deflowering, pregnancy, illegitimate birth.*

709. Ch 7, n. 285: *fuit iniunctum sibi loco emende et pro modo culpe quod ponat unum cereum de una libra . . . I am not quite sure that I have caught the meaning of ‘pro modo culpe’, which is not a standard phrase in the register.*

710. Ch 7, n. 288: *rea confessa fuit quod idem eam requisivit ut esset sponsa su et quod ipsa eidem respondit quod nichil faceret nisi de consensu patris et matris suorum et quod faceret illud quod placet eisdem, cetera negando.*


712. Ch 7, n. 290: *Col. 56/6: qua dictus actor proposuerat in acto suo se cum dicta rea clandestinum matrimonium, viz., per verba de presenti, contraxisse, rea per organum consilii sui petit dictum actorem declararti excommunicatum, cum per statuta synodalia contrabentes matrimonia clandestina sint excommunicata, etc., et repellis ab agendo, obstante sententia excommunicationis buiasmodi, protestando de expensis, etc.; nos autem, informati de dictis statutis synodalibus declararimus ipsum actorem auctoritate dictorum statutorum synodalium . . . This entry is broken off, but earlier, col. 56/3, we find: Decrevimus [HR] excommunicatum propter clandestinum matrimonium contractum cum [EB] fore absolvendum, etc., mediante emenda per eum pcscata prout cavetur in registro A Audrey. The translation assumes that the two entries are to be read together and takes pscata as meaning ‘pledged’, though it may mean ‘paid as an obligation’ (Latham).*

713. Ch 7, n. 295: *Col. 81/4: salva examinatione Agnesoto la Charboniere et Johannette, nuper pedisece patris dicte ree, que sunt in remotae partibus ut dicter, etc. It is possible that both of them were former servants of Gérard, but if they were, we would expect pedierarum.*

714. Ch 7, n. 297: *Col. 200/1: actor proposuit sponsalia per verba de futuro et de presenti, interveniente consensu mutuo utrisque, et quia rea loco confiteretur, fuit adiuicata actoris in sponsam et fuit ei iniunctum ut infra mensem solemnize matrimonium sub pena excommunicationis, etc.*

715. Ch 7, n. 298: *There may be a slight note of greater seriousness in that the solemnization order is under threat of excommunication, something that is not normally found in the confessed de futuro cases.*

716. Ch 7, n. 299: *in causa matrimoniali actrix proposuit quod ipse partes et eorum amici eorum nominibus promuniones matrimoniales adinvecem habuerant, et tunc ipse reus manum dicte actricis cepit dicendo sibi...*
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quad ex tunc retinuhat et capiebat in uxorem; reus confessus fuit quod ipsi amici ipsorum actricis et rei balu- rant promotiones de matrimonio inter dictas partes contrabando, ista conditione admpleta, viz., quod pater dicte filie suis promitterat tradere quinguaqinta libras parisiosis ante contractum matrimonii et quingua- ginta alias solvere promiserat <solever> post contractum, viz., infra festum nativitatis sancti Johannisi Baptiste proxime venturum et ad hoc debeat idem pater se obligare unam quodam aliam responsum, etc.

717. Ch 7, n. 300: reus confessus fuit bodie se affidasse dictam actricem additis tunc certis conditionibus, viz., in caso quod pater ipsius solvet pre manibus, viz., quinguaqinta libras et infra festum nativitatis sancti Johannisi Baptiste quinguaqinta libras et ipsam inducere, quodque paratus erat compleure matrimonium dum tamen idem pater solvet quinguaqinta libras, etc., actrice diciente quod simplicer sine conditione promiserat ipsam ducere in uxorem etc. It is possible that the ‘etc.’ is meant to cover the other conditions, in which case Jacquet has given up nothing except, perhaps, his insistence on a guarantor, but Jeanne has given up her claim to a de presenti contract. What ipsam inducere means is unclear, but it seems to mean that the father was to persuade Jeanne to agree to accept Jacquet. That condition seems to have been fulfilled.


720. Ch 7, n. 303: The record says dicte filie, which is doubly odd, odd because it should be sui and odd because she has just been called mulier. She may have been young, despite the fact that she was a widow.

721. Ch 7, n. 305: [ED] proposuit sponsalia per verba de futuro; rea confessa fuit quod ivit ad domum [. . .] matrine sue, in qua domo dicta [. . .] tradidit ipsi actori unum castellum de quo gastello idem actor tradidit eidem ree unam peciam quam recipit et regraciata fuit dicto actori et postea idem actor dixit quod nomine matrimonii tradiderat dictam peciam panis dictae ree, et dicit eadem rea quod nonmagnum fuit intentionis sue ipsum actorem babere in matrimonium, cetera negando.

722. Ch 7, n. 306: The mainstream view was based on X 4.1.23 (Innocent III, Cum apud) and X 4.1.25 (Innocent III, Tiae fraternitatis), and the doctrine is already found in Tancred, Summa de matrimonio, tit. 8, p. 12. Hostiensis, Summa aurea, tit. de matrimonio, nn. 10–11, col. 1249–52, comes out the other way, though he recognizes that he is disagreeing with Geoffrey of Trani.

723. Ch 7, n. 307: In addition to the relatively few cases that do not specify the tense of the sponsalia that we felt confident enough to classify as de futuro, there are 15 cases of spousal litigations where we simply cannot tell what kind of sponsalia were being alleged. Of these, 8 end after one or two sessions before the pleadings are entered: Boysauran c Curia (10.xi.84 to 13.xii.84), col. 9/1, 17/2 (see next paragraph); Textoris c Nicolai (24.xi.85), col. 224/5 (nonappearance of reus); Anvers c Rousseli (29.x.86), col. 253/3 (broken entry); Rousselle c Beau (27.vii.86), col. 343/2 (nonappearance of actrix); Ambans c Baigneux (12.xi.86), col. 365/6 (nonappearance of actrix); Charrot c Germon (15.xi.86), col. 391/1 (nonappearance of actrix); Dune c Feucherre (1.vii.87), col. 490/1 (broken entry); Laurence [. . .] et Jeanne la Costuriere (1.vii.87), col. 490/3 (nonappearance of Laurence; unclear which side he is taking).

One of these cases gives us other information. In Boysauran c Curia, the rea fails to appear at the first session and is excused by her proctor on the ground of illness. At the second session, she again fails to appear, and her proctor asks that he be admitted to ask for and receive the libel, arguing that the only session at which her personal appearance is required is to respond to the positions. Reference is made to the style of the court, and the court rules that the defendant is contumacious. The case then disappears from view: Col. 172: respondit [. . .] et facere venire ream personaliter excusatam; per [SV] procuratorem quia non comparuit personaliter, dicto procuratore nattente expedire causam et dicente quod debeat admitter ad petendum et recipiendum.
libellum, etc., et quod sufficiat quod compararet semel in causa, viz., ad respondendum positionibus rei [read actoris] actore e contrario dicente, dictaque procuratore se referente super hoc ad stibum curiae, etc., auditis et relatis depositionibus maioris et sanioris partis advocatorum et stillatorum curiae, fuit reputata contumax, etc.; actior s.

In two of these cases, the entries begin after the pleadings are entered. Villani et Maudolee (13.i.–20.iii.85), col. 29/8, 34/7, 41/3, 52/7, 57/1, 62/5, 69/1, 82/5. The case is at the proof stage, and a number of witnesses are produced on each side. There is a procedural ruling when the actior objects to the introduction of an exception by the rea that the mother of the rea had perjured herself, having testified to the contrary before the Châtelet. The ground of the objection is that the exception was introduced out of time. The court apparently rules that the rea’s proctor may be specially deputized to swear that the rea did not find out about the exception until after the time for raising it had passed. He takes the oath, and the case disappears from view, a fact that suggests that the ruling was a crucial one. This sequence of events also suggests that the rea was opposing the wishes of at least one of her parents.

Perron c Jumelle (8.v.85 to 7.vi.85), col. 113/6, 119/3, 123/3, 130/5, is also at the proof stage, and disappears after the actior twice fails to appear.

Two cases produce sentences. In Loquet c Royne (8.v.85), col. 114/4, Lorette la Royne confesses that she had affianced (the word certainly suggests sponsalia de futuro) Jean Loquet in the face of the church. The couple are ordered to solemnize within a month. In Commin c Regis (11–17.i.87), col. 414/3, 416/3, the court rules that the words proposed by the actior “do not savor the force of sponsalia” (non saperunt vim sponsaliorum), and since the rea does not wish to take him as spouse, the couple are given license to contract elsewhere.

Two cases tell us something about the uncertain borders between instance and office cases. When we first see Jeanette la Villette servante de Pierre Champenoys c Jean de Capella (17.i.86 to 31.iii.86), col. 265/5, 266/4, 286/2, the court orders that witnesses be introduced to inform it about the words savoring of sponsalia de futuro, which the actrix said were exchanged between them even though she did not wish to pursue the matter. Two sessions later the parties remit, at a session in which Jean is now said to be suing Jeanette: super eo quod dicta rea alias tacuisset se cum dicit actore sponsalia contraxisset per verba de futuro; quod quam rea interrogata medio iuramento dixit coram nobis se nunquam habuisse nec contraxisse jam. In two of these cases, the entries begin after the pleadings are entered.

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sponsalia cum dicta filia nec se iactasse, etc., et si aliguis [sc. promissiones] habuerat, eas sibi remittebat, etc.; vir xii d.

727. Ch 7, n. 313: Hodie [BR] citatus super eo quod iactaverat se affidasse [IS] falsus, tamen depositum medio iuramento se non affidasse dictam filiam nec promissiones matrimoniales habuisse cum ipsa; quo iuramento attento data fuit licentia dicte filie alibi contrahendi, etc.; filia xvi d. Why Jeanette pays the fee in this case whereas Alain pays it in the previous case is hard to know. The following cases do not give us enough evidence to discern any pattern in the fees, though there seems to be some suggestion in Thomassin et Guione (n. 316) and Gonterii et Varenges (n. 317) that it was paid by the person who asked for the license to contract elsewhere.

728. Ch 7, n. 314: Comparantibus [RB], ex parte una, et [AP], ex altera, dicta mulier dixit quod ipsa vir se iactaverat quod ipsum affidavit; qui quidem vir dixit medio iuramento quod munquam aliqua sponsalia aut liceationes cum eadem contraxerat, etc., et hoc mediante decrevimus nullum fuisse propter hoc impedimentum quin ipsa possit alibi contrahere, etc.; xii [without specifying who is to pay it].


730. Ch 7, n. 317: De [EG] contra [JV] citatum super eo quod dicta [JF] se falsus iactaverat promissiones matrimoniales habuisse cum eodem actore, impediendo bonum matrimonium dicit vir; que quidem res per nos interrogata dixit et depositum medio iuramento quod munquam habuerat promissiones matrimoniales cum dicit viro, nec etiam super hoc se iactaverat, et hoc mediante dedimus licentiam viro alibi contrahendi; vir xii d.


732. Ch 7, n. 320: Data est licentia [PE] ut possit contrahere sponsalia per verba de futuro cum [IM] non obstante quod [IR] se alia se iactaverat sponsalia per verba de futuro cum dicta filia attentis evocationibus facts contra dictum Rappe qui se absentavit, etc., et non obstante etiam quod dicta filia parsua etate duodecim annorum, etc.; xii d.

733. Ch 7, n. 321: Hodie [MC] que se iactaverat, ut dictabatur, [JB] etc., et idem [JB] comparuerunt eorum noluer et iuraverunt se non munquam contraxisse sponsalia nec promissiones matrimoniales habuisse, etc., et ideo promissiones matrimoniales si quas adinvicem habuerunt, ipsorum conscientius relinquimus et eorum conscientiam unam esse nullum propter frigiditatem inhabilitatem et impotentiam dicti viro, quia ideo res ubi per nos interrogata dixit et depositum medio iuramento quod munquam habuerat promissiones matrimoniales cum dicit viro, nec etiam super hoc se iactaverat, etc.; xii d.

734. Ch 7, n. 322: Data est licentia [JB] contrabendi cum [IS], etc., non obstante impedimento apposito per [PP] quia nullum.


736. Ch 7, n. 325: The standard language of such inhibitions is that the person inhibited not bind him or herself “with the same or a stronger bond,” a clear reference to the priority that sponsalia de presenti had over sponsalia de futuro re integra.

737. Ch 7, n. 326: remisa fuit isti emenda ob contemplationem domini des Essars. The toponym suggests modern Essars (Pas-de-Calais) and may indicate that the couple had Norman connections.
mulier moratur et elegit domicilium, etc. domino ultimo preterito; taxatur ad sex francos, solvendos tres viz. infra octo dies et tres infra [9.iv]; Colinus vivat, contraxit de facto cum annos idem maritus suus recessit et fuit per xvi annos absque eo quod audivisset aliqua nova de ipso, licet idem [Sainte-Croix-sur-Buchy (Seine-Inférieure)] viz. in parrochia scientia. If we classify it with the divorce cases, the number of ‘straight’ cases should be reduced from 24 to 23.

739. Ch 7, n. 328: Hodie bora plactorum de mane [PN] et [RP], eius uxor putativa, inaraverunt se prestitisse opem, auxilium et operam ut rem carnalem admissam habere possent, videlicet a sex annis elapsis, a quo temporre matrimonium contractuare; verum adhuc idem vir eam carnalem cognoscere non valuit, quia erat impotentem et inhabitum ad mulierem cognoscendum, et attenta relatione magistrorum [GC] in medicina et [GC] in cirurgia magistrorum [sic] qui retulerunt ipsum virum impotentem repersese, et quia etiam [ML], [PM] et [PB], [JC] et [PH] [all men] inaraverunt quod credebant ipsos verum iurese et quod super hunc laborem publicus [sic fut hoc laborant publica] vox et fama [etc.], decrevimus ipsum matrimonium nullum, obstante impotentia predicta, dantes licentiam dicte mulieri etc.; dicta mulier confessa fuit se fuisse defloratam et cognitum carnaletur a [PP], de quo delicto fuit sibi remissa emenda in causu quo idem [PP] ipsum duceret in uxororem, etc.

740. Ch 7, n. 329: This may not even be a case of divorcium a vinculo, since the phrase causa divorci is not to refer to separation cases. The Paris court, however, pretty consistently refers to the latter as causa separationis.


743. Ch 7, n. 332: Comparentes [JB], custarius, Cameracensis diocesis, ex una parte, et [MH], ex altera parte, circiter hincinde quod ipse vel alius matrimonium in facie ecclesie contractuare cum [DC] circiter xi annis sunt elapsi, et postmodum, vivente ipso Dionisio, idem vir matrimonium de facto contractum cum ipsa [MH], circiter vii annis sunt elapsi, et quia de premisis nobis constitit secundum matrimonium inter dictos virum et mulierem, et quia etiam [ML], [PM] et [PB], [JC] et [PH] [all men] inaraverunt quod credebant ipsos verum iurese et quod super hunc laborem publicus [sic fut hoc laborant publica] vox et fama [etc.], decrevimus ipsum matrimonium non valuisse nec valere, etc.; alias vir emendavit istud factum, etc.; viginti duo anni sunt elapsi adhuc vivit, etc., dantes eidem [GM] licentiam alibi contrabendi, etc.; retenta est prisonaria.


751. Ch 7, n. 342: The qualifications are necessary because we know so little about how witness proof proceeded in this court. I should also add that Ringart c Bersaut (at nn. 287–94) is the only Paris case that we have found in which the procedural objections just discussed are raised, and we have no such objections raised in the relatively few de presenti cases in the Brussels/Cambrai registers discussed in Chapters 8 and 9.

752. Ch 7, n. 344: Vivian c Furno (at nn. 191–3) is the one case in which the plaintiff won a contested case, though that case could be thought of as confessed. In a half dozen other cases discussed in the text, the court declares a conclusion in the case, and the case disappears from view. Any one of these could have resulted in a judgment for plaintiff recorded elsewhere and now lost, but it seems unlikely that all of them did.

753. Ch 7, n. 347: While there is a fairly large literature on French marriage practices in the Middle Ages, there is little that is specific to Paris. I am encouraged in my speculations by Diefendorf, Paris City Councillors, 155–209, a prosopographical study that reports marriage practices in the sixteenth century quite similar to those that I posit here.

754. Ch 8, n. 1: Derived from Platelle, in Dioceses de Cambrai et de Lille and the introductions to Registres de Cambrai and Liber van Brussels. In what follows, cases where the parties’ names are given in French come from the Cambrai registers; where they are given in Dutch, they come from the Brussels register. The literature on these courts is not extensive but is becoming more so, largely as a result of the efforts of one of the editors of the registers, who is, by herself, the editor of the account books of the officiality of the adjoining diocese of Tournaí (Comptus Tornacensi). See, e.g., Vleeschouwers-van Melkebeek, “Aspects du lien matrimonial”; id., “Incestuous Marriages”; id., “Marital Breakdown”; cf. id., “Self-Divorce.” Declauwe, “Zeilscheidung,” came to my attention too late for me to come to grips with his findings in what follows.

755. Ch 8, n. 2: In causa mota et pendente coram nobis officialis Cameracensi, inter [JR] actricem ex una et [CO] reum ex altera partibus, visis petitione dicit actricis coram nobis iudicialiter exhibita, sacraments, assertionibus et responsumibus partium predictarum alisque nos et animum nostrum movendentibus, iurisperitorum freti matrimoniales clandestinas per verba de futuro ad hec apta et habilia cum predicta actrice misse et haluisse ad dictam actricem deforasse et carnali cognovisse ac unam prolem ex eadem suscitasse, eaprotter dictum reum ad procedendum ulterius ad matrimonii solemnizationem – prout moris est ac fere consuetum – in manu presbiteri et facie ecclesie cum dicta actrice condempnatus sententialiter diffinendo in his scriptis.

756. Ch 8, n. 3: One might also code, as I did not, whether the judge had consulted with the assessors (iurisperitorum freti maturo consilio), as that phrase does not appear in every sentence. Since I did not code it, I can only give an impression: It seems to appear more often in sentences of Divris and Nicolai than it does in those of Rodolphi and Platea (suggesting a difference in style between Cambrai and Brussels), and it appears more often in cases that are, in some sense, difficult.

757. Ch 8, n. 4: Tenentur partes ad leges pro clandestinis invicem habitis et minime renovatis et quia infra tempus iuris non processerunt., carnali copula subsecuta, sic quod reus actricem deforavat.

758. Ch 8, n. 7: Quotquid hic scribatur non ista fuit promulgatum ymmo fuit alter scriptum quam dictum, me absente, ultra montes existente, et registro meo presenti penes Radulphum Homonouque existente, et hoc attestor in damnum anime et in vim iuramenti in assumptione mea ad auditoratum curie Cameracensis prestiti. Carleri
propria [sc. name]. What Carlerii means by assumptione mea ad audituratum curie is not completely clear, but others, though not all, of the notaries of the court are described as auditors. E.g., Registres de Cambrai, p. xiv, nn. 94, 96, 98, 105. This would probably entitle them to take part in the consilium iurisperitorum mentioned in a number of the sentences. See n. 3. Someone may have raised the objection to Carlerii’s promotion that he had misregistered the offending sentence.

759. Ch 8, n. 8: But see n. 7 for evidence that the notary was supposed to take it down as it was spoken. We cannot tell, however, whether what was wrong with the sentence at issue there was the wording, in its literal sense, or its substance.

760. Ch 8, n. 9: In causa officii, mota et pendente coram nobis, officiali Cameracensi, inter promotorem causarum officii nostri, nomine et ad causam officii sui, actorem ex una et [JH] ac [JH] reos ex altera, etc.

761. Ch 8, n. 10: Visis articulis promotoris officii nostri [JR] et [JC] reis impositis, etc.

762. Ch 8, n. 11: Visis articulis promotoris officii nostri [JW] et [CP] subditis ac inlicitabilibus nostri reis impositis, etc.

763. Ch 8, n. 13: The reason for the preference for Cambrai over Brussels is that the Cambrai sentences cover a wider chronological span and, until 1448, a wider geographical area. The Cambrai sentences are also better indexed. This is not to say that the indices in the Brussels book are bad, but the editors did the Brussels book first, and their experience with that book led them to improve the indices in the Cambrai book.

764. Ch 8, n. 14: (89) Prohibeant presbiteri subditi suis ne dent sibi fidem mutuo de contrahendo matrimonio, nisi coram presbitero alterius eorum qui volunt contrahare et in publico coram hominibus; et si se facerit de matrimonio, non valebit. (90) Precipimus ut nullus sacerdos audeat in sua licentia episcopi edicta vel bannos celebrire, nec matrimonium inter eos solemnizare, quum quis etiam velint post primum fidem iterum coram presbiterum affidare. Si autem sacerdos contra preceptum istud inter aliuos matrimonium celebrare presumpsit, eo ipso se sit esse suspensum. (91) Excommunicentur et denuntienetur excommunicati qui clandestinas nuptias contrahent, et sacerdos qui celebrat huiusmodi nuptias neconon denuntieretur excommunicatus. Quicumque clericus vel laicus vel mulier aliquas personas modo predicto coniungere presumpsit, denuntietur etiam excommunicati. (92) Excommunicentur et denuntietur excommunicati qui post affidationem clandestinam carnaliter se congruoscent. Quicumque clandestinas nuptias coram sacerdote vel aliis celebratis interfuerint, nisi infra quindicem dies episcopo vel eis officiali reveletur, excommunicamus eos. (93) Excommunicamus qui fiderem dedissent vel accepterent et donum accepterent vel dedissent pro impedimentis celandis matrimonii. Excommunicatio ista [publicetur (supplied by ed.)] sepe a singulis sacerdotibus in parochiis, etc. . . . (96) Si quis alicui dedisset fidem de matrimonio contraheendo per verba de futuro et ante carnalem copulam fidem mutuo velint remittere, non fiat huiusmodi quattuor nisi per episcopum vel eis officialum.

The version that we give here probably dates from the middle of the thirteenth century and, again probably, contains some improvements in the original wording. The numbers are Avril’s. Cambrai was certainly not unique in these provisions. Similar provisions can be found in statutes of Tournai from the beginning of the fourteenth century, id., 331–3, and in statutes of Li`ege of 1288, cited in id., 45–7 nn. 148, 150, 152, 154, 158, 160. The cases from Chˆalons-sur-Marne reported in Gottlieb, Getting Married, certainly suggest that similar provisions were in effect there. See T&C no. 1278.

765. Ch 8, n. 18: (65) (80) Inhibeant presbiteri parrochiales subditi suis ne sponsalia contrahant seu dent fidei de matrimonio inter eos pariter contraheando nisi coram presbitero alterius saltem contrahebre volentium, et hoc in loco publico: ecclesia videdet cemeterio vel capella et coram pluribus fidelegus, et si aliter contraerent sponsalia, nisi infra triduum, et hoc in loco publico: ecclesia videlicet cymeterio vel capella et coram pluribus fidelegus, et si aliter contraerent sponsalia, nisi infra triduum, etc. . . . (86) Si quis alicui dedisset fidem de matrimonio contraheendo per verba de futuro et ante carnalem copulam fidem mutuo velint remittere, non fiat huiusmodi quattuor nisi per episcopum vel eis officialum.

As noted, the period within which the clandestine espousals had to be announced was extended from the three days of the 1287–8 version to the eight of that of the early fourteenth century. Whether the scienter requirement was added in the last sentence is unclear. Avril does not fully edit the later version.
The core provision on clandestine marriage remained essentially the same in the version of the early fourteenth century: [82] Item excommunicamus omnes qui clandestinas nuptias contrahant, et presbiteros qui nuptias huissusmodi clandestinas celebrant. Clandestina [sic] autem nuptias vocamus quas non preciserunt tres banni in ecclesia infra missam solemniter tribus diebus sollemnibus a se distantibus proclamati vel de quibus per nos vel per officialem nostrum non extitit dispensatum. Statuts synodaux français IV, 160. A further excommunication for those who procure or who are present at clandestine marriages is given in T&C no. 766.

766. Ch 8, n. 19: It may have been forty days because that is the period mentioned in a number of the sentences where the couple are ordered to solemnize. A possible source of this requirement is found in the statutes of 1287–8, which, it would seem, relieve the couple who consummate private or public espousals from the penalty of excommunication if they solemnize their marriage within thirty days thereafter: [66] Insuper excommunicamus et denunciari in generali volumus excommunicatos omnes illos et illas qui post affidationem, sive clandestinam, sive in manus presbiteri factam, ante sollemnisationem matrimonii se carnaliter cognoverint, nisi infra mensem a dicta commissione [sic] carnali inter se matrimonium cum effectu fecerint et procuraverint sollemniter celebrari, nisi alud canonici obvissit. Statuts synodaux français IV, 118. But this provision was not carried over into the legislation of the early fourteenth century: [81] Insuper excommunicamus et denunciari in generali volumus excommunicatos omnes illos et illas qui post affidationem, sive clandestinam, sive in manus presbiteri factam, ante sollemnisationem matrimonii se carnaliter cognoverint, et illos qui clandestine nuptias fieri procuraverint, seu ipsi presumperint interesse. Id., 160.

The earlier editions (e.g., Martène and Durand, 7: col. 1291–1332; Actes de Reims, 2:441–72) of the version of the early fourteenth century (of which there may have been two) were based on a Grimbergen manuscript, now lost. Statuta antiquissima gives a version from another manuscript, but with only minor variants from the Grimbergen manuscript (and from Avril’s partial edition). It is clear, however, from Actes de Reims that changes were made, at least until the middle of the fourteenth century. After that, relatively little that is new has yet been found until the sixteenth century. Hence, the version of the statutes with which our courts were working has not been reconstructed. I will, however, continue to cite the version of the early fourteenth century because it explains most, if not quite all, of what we see in the fifteenth-century sentences.

767. Ch 8, n. 20: Prohibeant sacerdotes frequenter laicis sub excommunicatione, ne dent fidem sibi de contrahendo, nisi sacerdote praesente, et pluribus alis, et si fecerint ea absense, non faciat edicta seu banna. The editor notes the similarity with the Cambrai statutes of the early sixteenth century (id., n. 10), but considering the history just outlined, it is likely that the influence ran from earlier Cambrai statutes to Soissons rather, than the other way around.

768. Ch 8, n. 24: (71) Item excommunicamus omnes qui contra matrimonia falsa impedimenta proposuerint, vel vera celaverint scienter, amore, precepto vel favore, vel alia quam omne de causa, et volumus eos excommunicatus proprius hoc frequenter a presbiteria nuntiari. Quod si nemo bannorum proclamatione se opposuerit, et loci presbyteri nuntiolum aut veram contra matrimonium habeat coniecturam, nobis aut officio nostro Cameracensi inconsultis super hoc, ad solemnisationem matrimonii non procedat, et si contra hoc fecerit, pena pro clandestinis nuptias imposita tenetur. The predecessor statute on this topic ([1275], c. 9, in id., p. 96) is unambiguous in applying the scienter requirement to those who raise false impediments. I think it unlikely that any substantive change was intended in 1277–8, but an ambiguity was introduced that was, it would seem, exploited in later centuries.

Ch 8, n. 25: The words are put in the mouth of the priest: Tu promittis quod dictam Bertham accipies in uxorem, si impedimentum canonicum non obstat.

769. Notes for Table 8.1:

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The total number of sentences (n) is 1,455. Hence, extrapolating from the sample, there should be 1,019 “marriage” cases. This is somewhat higher than Vleeschouwers-van Melkenbeek’s actual count (902), but is almost certainly the result of the fact that she defined “marriage business cases” more narrowly. “Marital Breakdown,” 81–2. Lacking a discussion or her data set, we cannot be sure, but I suspect that she did not include cases of sexual offenses (e.g., deflowering) where marriage is not specifically mentioned.

b “Ecclesiastical: Other”, “Matrimonial”, and “Testamentary: Other” each includes one case the type of which is doubtful.
770. Ch 8, n. 27: This observation needs to be qualified by the fact that the sentence registers include interlocutory sentences, even where there was no definitive sentence.

771. Ch 8, n. 28: The Ely proportion is exaggerated by the fact that the act book records routine probates of testaments, something that was done elsewhere at York, and may have been done elsewhere at Paris, if it was done at all.

772. Ch 8, n. 29: The table on which this is based is not reproduced here because it is more complicated than enlightening, but the raw numbers are as follows: Cambrai Sample: Administrative 9 (6%), Instance 43 (29%), Office 90 (62%), Office Promoted 4 (3%); Ely: Administrative 96 (19%), Instance 266 (54%), Office 120 (24%), Office Promoted 12 (2%). We omitted the Ely appeal cases from the comparison because the Cambrai court heard virtually none, and the subject matter of the Ely appeal cases other than the matrimonial ones is normally not given. Technically, all the office cases at Cambrai are “office promoted” because all of them are brought by a professional promotor. We include under “office promoted” for Cambrai those cases in which someone other than a professional promotor was also a formal party, or in which instance and office proceedings were formally combined. We will see that at Cambrai, as at Ely, the line between instance and office cases tended to blur.

773. Note for Table 8.2:

a There is more than the usual amount of guesswork in these numbers. The following contain uncertain classifications: Ecclesiastical: Clerical Discipline 1, Ecclesiastical: Other 2, Debt 1, Debt Appeal 2, Matrimonial 3, Testamentary 1. The number of sentences (n) here is 1,590, and, once more, extrapolating from the sample we should have 1,177. This is, once again, higher than Vleeschouwers-van Melkenbeek’s actual count (918), and once more, we suspect that this is the result of her narrower definition of “marriage business cases.” “Marital Breakdown,” 81–2; see T&C no. 769.

774. Ch 8, n. 31: Liber van Brussel, s.vv. clericus, geslachtsgemeenschap met non, gerucht; clericus, onucht; priester, concubine; priester, geschlachtsgemeenschap. Officie c Schietbase (10.x.49), no. 105, involves a married clerk who was defamed of sexual intimacy with a female religious. Officie en Juvenis et Lote (12.xi.57), no. 1248, involves a pair of clerics, one of whom was a dean, who regularly visited brothels. Officie et Lelle c Ducq (6.xi.1450), no. 211, is a privately promoted office case in which a priest had boasted that he had sexual relations with the private promotor and she, in turn, charged him with sexual relations with another woman and had him condemned to perform an expiatory pilgrimage to Rheims. Officie en Meesere (31.i.58), no. 1272, is more routine: A priest had committed adultery, though he did not know the the woman was married, and also frequented taverns.

775. Ch 8, n. 32: We know little about these courts, but we know that they existed. One separation case is basically an appeal from a judgment of the dean of Christianity of Brussels, and there are two (probable) debt cases on appeal from unnamed lower courts.

776. Ch 8, n. 33: Officie en Beckere c Bruggen (25.vi.1456), no. 980, suggests that public adultery could be prosecuted in some secular courts, at least where the adulterer was not a clerk.

777. Ch 8, n. 35: Compare Blocke (16.vi.56), no. 990, with Erclaes c Cluetincx en Erclaes (9.i.59 to 28.ix.59), nos. 1410, 1428, 1436, 1456, 1537. In both cases, the man who made the agreement is dead. In the first case, the man’s widow may be seeking the registration of the contract because she fears that her daughter’s second husband will not honor it. In the second case, registration is sought by the son of the woman who was involved in the marriage and, it would seem, his father’s mother and brother are resisting.

778. Ch 8, n. 37: The one possible exception is Blocke (T&C no. 777). As was the case in comparing types of procedure at Cambrai and at Ely, the table on which the numbers in this paragraph are based is more complicated than illuminating and is not reproduced. The raw numbers are as follows: Cambrai Sample: Administrative 9 (6%), Instance 43 (29%), Office 90 (62%), Office Promoted 4 (3%); Brussels Sample: Administrative 1 (1%), Instance 39 (51%), Office 35 (45%), Office Promoted 2 (3%).

779. Ch 8, n. 38: This may be a feature of what is recorded in the sentence book, rather than of what was actually litigated in the court. The Brussels sentence book has a larger proportion of interlocutory sentences than does the Cambrai book. Our sample of 77 Brussels cases contains 118 sentences, an average of 1.3
sentences per case; our Cambrai sample of 146 cases contains only 158 sentences, an average of 1.1 sentences per case. Since cases other than matrimonial cases were more likely to produce interlocutory sentences (and to lack a definitive sentence), a practice of recording more interlocutory sentences would bring to light more nonmatrimonial cases. (Hence, too, the Cambrai books represent more actual cases than does the Brussels book despite the larger number of sentences in the Brussels book. Extrapolating from the sample, we estimate that the 1,590 sentences in the Brussels book represent 1,038 cases, while the 1,455 sentences in the Cambrai books represent 1,345 cases.)

780. Ch 8, n. 39: The raw numbers for marriage cases are as follows: Cambrai Sample: Administrative 0 (0%), Instance 32 (22%), Office 80 (55%), Office Promoted 3 (2%); Brussels Sample: Administrative 1 (1%), Instance 21 (27%), Office 33 (43%), Office Promoted 2 (3%). Remove the Cambrai cases of clerical discipline in sexual matters and the result for the Cambrai pure office cases becomes 67 (46%).

781. Notes for Table 8.3:

\[a\] The comparison with Paris leaves out the Paris 'straight' office cases and those where the subject matter cannot be told. It is, hence, a comparison involving 370 rather than 410 cases.

\[b\] Cambrai includes 1 case and Paris 11 cases of ambiguous sponsalia. Paris total includes confessed cases.

\[c\] In one Cambrai dissolution case and in one contested de futuro two–party case, the parties ultimately remit their sponsalia, but the case had proceeded far enough that we can identify the type, and they are not included here.

\[d\] The Cambrai de futuro three–party cases includes one, Varioit c Hauwe (at nn. 164–6), where the decisory oath is deferred to the plaintiff. Three–party cases are not broken out for Paris; there are very few, and they are included within 'contested'.

\[e\] The Paris total includes all cases where a de presenti marriage may be involved. None of them involves allegations of copula.

782. Ch 8, n. 40: The first sample consisted of every tenth case; the second consisted of the first case in each decile (other than the first case) that was a marriage case; the third began with the third case in each decile, searched until a marriage instance case was found, and then went to the next decile. The second and third samples, therefore, cannot be used to calculate proportions of marriage cases to other kinds of cases, and the third sample cannot be used to calculate the proportion of straight marriage instance cases to other kinds of marriage cases.

783. Ch 8, n. 41: The one case in our sample fails, and a separation for adultery is granted. Watiere c Lonc (6.x.42), no. 351.

784. Ch 8, n. 42: The consummated de presenti marriage of Elisabeth and Gérard is held to take precedence over the marriage that the dean of Antwerp had ordered Marguerite and Gérard to solemnize. Elisabeth and Gérard are ordered to make amends for the clandestine contract and the intercourse. Marguerite's opposition is declared frivolous, and she is ordered to keep perpetual silence about the matter, but Gérard is to pay her costs. For the substantial problems of proof caused by this type of case, see at nn. 281–5.

785. Notes for Table 8.4:

\[a\] Because the numbers in many of the individual cells are small, extreme caution should be used in extrapolating from these cells to the whole population.

\[b\] One of these cases has only an interlocutory sentence, as does one separation and one miscellaneous case.

\[c\] See Table 8.3, n. c. In the contested spousals case, we treated the remission as a sentence for the defendant, in the dissolution case as a sentence for the plaintiff.

\[d\] Only two of the remission cases have an identifiable plaintiff and defendant, and one separation and one dissolution case do not. The gender ratios could be calculated for the miscellaneous cases but, except in the case of a woman who obtains a declaration of her husband's death, would be irrelevant for our purposes.

\[e\] The one interlocking competitor case here (which we later treat as an office/instance case) is treated here as a victory for the male plaintiff. See at n. 1.

\[f\] In one of these, Perona [. . .] Mayere [1.vii.38], no. 1, the identity of the plaintiff is uncertain. It is sufficiently likely to have been a woman that it is counted as a case with a female plaintiff.
Notes for Table 8.5:

There are no judgments at Ely and York that are not assigned to a particular plaintiff, and jactitation cases are totally absent. Because the numbers in many of the individual cells are small, the aggregates here are much more reliable than many of the individual cases. This table combines the results in Table 3.5, Table 3.6, Table 6.5, Table 7.4, and Table 8.4. Miscellaneous cases have been removed, resulting in slightly smaller totals for Ely, and considerably smaller totals for Paris. Previous tables did not split out the York cases and the Ely three-party cases in which _copula_ was involved. As we have seen, many of the Ely and York cases have formulaic complaints that allege both a _de presenti_ marriage and one formed by _de futuro_ words plus _copula_. I have looked behind the complaint in those cases in which it was possible. The results here almost certainly understated the number of cases in which _copula_ was involved. In the case of Ely, I have used the combined results in instance and office/instance cases. Although there are some differences in the two types of cases, the numbers in each group are sufficiently small that it seemed better to use the aggregates. In the case of Paris, there are so few three-party cases as to make this distinction meaningless.

All the Paris spousals cases are treated as if they were two-party cases.

Notes for Table 8.6:

As noted in n. 41, the unsuccessful female plaintiff in the divorce case does obtain a separation on the ground of her husband’s adultery.

There are no judgments at Ely and York that are not assigned to a particular plaintiff, and jactitation cases are totally absent. Because the numbers in many of the individual cells are small, the aggregates here are much more reliable than many of the individual cells. This table combines the results in Table 3.5, Table 3.6, Table 6.5, Table 7.4, and Table 8.4. Miscellaneous cases have been removed, resulting in slightly smaller totals for Ely, and considerably smaller totals for Paris. Previous tables did not split out the York cases and the Ely three-party cases in which _copula_ was involved. As we have seen, many of the Ely and York cases have formulaic complaints that allege both a _de presenti_ marriage and one formed by _de futuro_ words plus _copula_. I have looked behind the complaint in those cases in which it was possible. The results here almost certainly understated the number of cases in which _copula_ was involved. In the case of Ely, I have used the combined results in instance and office/instance cases. Although there are some differences in the two types of cases, the numbers in each group are sufficiently small that it seemed better to use the aggregates. In the case of Paris, there are so few three-party cases as to make this distinction meaningless.

All the Paris spousals cases are treated as if they were two-party cases.

The Cambrai sample was based on the first two samples mentioned at n. 40 (excluding the sample that included only instance cases). The Brussels sample drew the first marriage case every decile. Two cases had to be dropped from the Brussels sample. They are instance cases, almost certainly matrimonial, but were initially interpreted as marriage cases. All three types of cases are distinguished here. The sample is sufficiently small that its results are not reliable. The only group for which there is any reliability is the _office/instance_ cases, because the sample was based on them. The larger samples have made arguments for or presented proof on behalf of the promotor. All of these cases are described here as _office/instance_. In most cases, we cannot tell whether the case was begun as an instance case because no sentence from that stage of the case survives, and making someone who was not a professional promotor a formal party occurs sufficiently rarely that we cannot be sure that it was not simply another way of describing the fact that one of the defendants intervened on the side of the promotor.

Recalling that _n_ = 1590, the sample predicts that there should be 97 separation cases (13/157 [8.2%] times 1,177, the predicted number of “marriage” cases as we have defined them). Vleeschouwers-van Melkebeek
counts 80 such cases (“Marital Breakdown,” 82), and so our prediction is not far off, granted the size of the sample. (She presumably did not include cases of restoration of conjugal rights, unless a separation was granted, and may not have included cases where a separation was sought but not granted.) The same cannot be said of her count of “annulment” actions (323, ibid.). This is, of course, wildly different from the extrapolation of our count of divorce actions (15 = \( 2/157 \) [1.3%] times 1,177). Again, the difference is probably to be explained by differences in definition. The table shows that a substantial proportion of the spousals cases at Brussels involved three parties (39% of all “marriage cases,” which extrapolates to 459 cases). Many of these involved claims of two espousals (\( \text{bina sponsalia} \)), one of which would, in most cases, annul the other. We will also see in Chapter 11 that a substantial number of Brussels spousals cases involved claims that the espousals were void because of incest. Once more, if we regard these as annulment cases, that would greatly increase their quantity.

\^k 1 of the office/instance cases may involve a presumptive marriage. See at n. 119.
\^l 1 of these cases involves the dissolution of the marriage; 2 office cases result in remission.
\^m 2 office/instance cases involve four-party cases.
\^n 1 three-party case and 1 two-party case, the \textit{de presenti} nature of the sponsalia being doubtful in the latter case.
\^o Office: consanguinity in the fourth degree; instance: affinity (mer by a counterclaim for restitution of conjugal rights and ultimately ending in a separation).
\^p Many described as \textit{causa dotei seu donationis propter nuptias}. In 1 case, the nature of the payment is doubtful (it could be an inheritance claim); another case might be classified as ‘administrative’, since all that is recorded is the dotal agreement without any indication that it was contentious.
\^q 1 case of double adultery; 1 case of rape.

792. Notes for Table 8.7:

\^r Some of the smaller Brussels subtotals will not add up to the larger ones because of the inclusion in the latter of categories that do not exist at Cambrai, e.g., restoration of conjugal rights. The number = 1,455, and our predicted number of marriage cases, broadly defined, is 1,019. Excluding the prosecutions for sexual offenses on the basis of this sample, we get a predicted number of marriage cases more narrowly defined of 814 (207/259 [80%] times 1,455). This is clearly in the same world as Vleeschouwers-van Melkebeek’s actual count (902, “Marital Breakdown,” 82; “Incestuous Marriages,” 85). Some of the difference may result from the fact that she included as “marriage business” cases some of the cases involving prosecution of sexual offenses (perhaps, for example, where incest was alleged); some may result from the fact that samples are no substitute for counting the universe. The results so far as the proportion of separation cases is concerned are also encouraging. Vleeschouwers-van Melkebeek counts 124 cases (13.75% of her marriage business cases); we extrapolate 122 (15% of our marriage cases, narrowly defined). Once more her count of annulment cases (134) is considerably higher than our extrapolation from divorce cases (49), and once more the difference could be more than accounted for by the fact that we did not include the three-party cases involving \( \text{bina sponsalia} \) and spousals cases where issues of incest were raised. See T&C no. 791. That Vleeschouwers-van Melkebeek reports substantially fewer “annulment” cases at Cambrai than at Brussels (134 vs 323, 14.85% [of marriage business cases] vs 35.18%), and that there are also substantially fewer three-party cases involving \textit{copula} (and hence a potentially presumptive marriage) at Cambrai than there are at Brussels and (as we will see in Ch 11) substantially fewer spousals cases in which violation of the incest rules is alleged, tends to confirm our suspicion that this is where the difference lies.

\^s 13 involve incest, and 3 involve other aggravating factors. In one, interestingly, the woman with whom the man is accused of committing adultery joins with the promoter (hence, technically, \textit{ex officio promoto}).
\^t 1 of these cases is \textit{ex officio promoto}, but that aspect of it has nothing to do with marriage. Only clerks in major orders are included here; clerks in minor orders are included with the named offenses. See T&C no. 1202.
Texts and Commentary

2 deferred.
1 ex officio promotio; 1 deferred.
1 confessed.
1 deferred.
instance/office; 1 ex officio promotio.
Includes 1 the instance nature of which is in doubt.
Includes 3 dissolution cases.
Includes 1 that involves 3 parties.
Includes 1 that begins as a divorce case but ends as a separation case and 1 the instance nature of which is in doubt.
Includes 1 instance/office.
Includes 3 dissolution cases.
Includes 1 that involves 3 parties.
Includes 1 that begins as a divorce case but ends as a separation case and 1 the instance nature of which is in doubt.
Includes 1 instance/office.
1 declaration of death of woman's former husband; 2 jactitation; 1 dowry (donatio).
1 wrongful solemnization against a priest; 3 impeding a marriage (2 by defamation (1 ex officio promotio), 1 by invoking lay jurisdiction). See at nn. 360–7.
Excluding sexual offenses.

793. Ch 8, n. 54: The number in the table understates the proportion of cases involving prosecutions for adultery since such cases are categorized as separation cases when they resulted in a separation. Of the 14 office and office/instance separation cases, 12 began as prosecutions for adultery. (One began as a prosecution for attempted bigamy and another as a prosecution for non-cohabitation.) Confirmation of the fact that more routine cases of sexual offenses were heard before lower-level courts is provided by Office c Steene (9.iii.43), no. 441, a prosecution for contempt committed against the dean of Christianity of Alost while he was prosecuting a case of suspected deflowering. We will return to the prosecution of sexual offenses at Cambrai in Ch 11, at n. 93.

794. Ch 8, n. 56: two–party contested: \( z = 5.00 \), significant beyond .99; two–party remission, \( z = 2.15 \), significant at .97; three–party: \( z = 1.85 \), significant at .94. For the legitimacy of using a \( z \)-test in this case, see Ch 6, n. 25 (T&C no. 406).

795. Ch 8, n. 57: Counting the case involving tutors as a case about marital property (which it may be but need not necessarily be) and the one case about dowry, we get .8%, but the number in the cell is so small that “tiny fraction” is a more accurate description.

796. Ch 8, n. 61: If we add in the Cambrai prosecutions of sexual offenses, the overall percentage of straight civil cases in the two courts is approximately the same (31% vs 30%), but the differences in the types of cases being heard expand.

797. Notes for Table 8.8:

\( a \) In Office c Quintart (T&C no. 1202), the woman with whom Quintart is alleged to have committed adultery and incest joins with the promotor in prosecuting him. The result (amends for ‘inaudacious conversation’) is treated as an SFP.

\( b \) In Office et Dommarto c Espine (5.ix.52 to 7.x.52), nos. 1340, 1351, Renaud Dommarto, a priest, joins with the promotor in bringing an action for injures against the defendants, all of whom are described as clerks. That action fails, and so the case is treated as one in which the male plaintiff failed. Much of what the promotor is trying to establish also fails, and so the case is treated as one in which the promotor failed, though he did manage to get two of the defendants convicted of sexual offenses. To avoid double counting, only the latter sentence is included in the totals.

\( c \) Inst: SMD = 2; Office: SMD = 6.

\( d \) In Office c Romain et Tongen (26.i.43), no. 410, the woman is convicted of having intercourse with another man “against the law of her espousals,” and the man is absolved from the promotor's charges. This could be treated as a case in which the promotor was attempting to establish a presumptive marriage and failed (or one in which he was attempting to get the couple to solemnize their admittedly public sponsalia and failed because the man had a good reason for not proceeding). Hence, it is treated as a case in which the promotor failed, despite the fact that dissolution was awarded.

\( e \) Inst: SMD = 2.
f. Patin c Burye, Burye c Prije (Ch 9, n. 171), involves what we called in Chapter 6 ‘interlocking competitors’: A man sues a woman to establish sponsalia and she sues a different man to establish the same thing. We counted the two sentences in the case as a victory for the male plaintiff because the woman lost both actions. See Table 8.4 n. e. If there were more such cases, a more accurate count would be to treat the case as half a SMP and half a SMD. See Ch 3, at n. 53.

g. In Office c Roos et Thenakere (Ch 9, n. 287), the successful ‘plaintiff’ is not a party to the case but a woman with whom the reus had entered into “secondary promises” and who joins with the promotor to establish the priority of the previous relationship.

h. Included here is Office et Bigotte c Crispel (Ch 9, n. 360), a case of ex officio promoto, in which the woman and the promotor successfully combine to convict the defendant of having impugned her chastity and thus having impeded her marriage.

798. Ch 8, n. 66: Plaintiffs’ success rate was slightly higher (16%), but one of these “successes” includes a woman who was not trying to establish a marriage. See Table 8.8, n. e. We return to the question of who was trying to establish what at the end of the section (at nn. 70–7).

799. Ch 8, n. 67: 43% of the female plaintiffs were successful (3/7) and 30% of the male (8/27). These rates are lower than the overall success rate of plaintiffs in such cases (47%) because 9 remission cases (all successful) do not have parties identified to a particular gender. If we exclude the uncontested cases, as they were already excluded in Table 8.8, then the overall plaintiffs’ success rate in this sample approximates that of Table 8.4 (32% vs 34%).

800. Ch 8, n. 68: They obtain four sentences (3 remission and 1 dissolution) (4/12, 33%), while the men obtain five (1 2-p contested, 1 remission, 2 dissolution, and 1 3-p) (5/17, 29%). Once more, the overall plaintiffs’ success rate in this type of case (35%) is higher than either of the gendered cells because of two remissions that the couple sought together.

801. Notes for Table 8.9:

a. For details on the cases, see Table 8.6.
b. Inst: 1 SMP; Off/Inst: 1 SMD; Off: 1 SD.
c. Off/Inst: 2 SFD.
d. Inst: 1 MP.
e. Inst: 1 SFD, 1 SMD; Off/Inst: 7 SFD, 3 SMD.
f. Off/Inst: 2 SFD.
g. Inst: 2 SMD.
h. Inst: 1 MP, 1 SFD.

802. Ch 8, n. 71: Office c Bugghenhout en Huneghem (22 to 23.xi.48), nos. 11, 12; Office c Brunen en Roelants (25.x.49), no. 110; Office c Hemelriek en Verlshotten (10.ix.51), no. 310; Office c Goffart et Defier (28.i.52), no. 343; Office c Alboeme en Arends (12.x.54), no. 701; Office c Goffaert en Defier (28.i.52), no. 343; Office c Goffaert en Defier (28.i.52), no. 343; Office c Gheerts en Heiden (20.iv.53 to 6.vii.53), nos. 481, 482, 510 (succeeded); Office c Beckere, Houte en Rode (1.vii.58), no. 1332.

803. Ch 8, n. 72: Office c Bouchoute en Triestrams (28.ix.50), no. 200 (succeeded); Office c Voert en Ols (7.ix.54), no. 680; Office c Beckere en Leuren (1.vii.55), no. 810; Office c Crane, Bastijn en Marien (13.v.57), no. 1150 (succeeded).

804. Ch 8, n. 73: Office c Platea en Aa (4.x.50), no. 190 (succeeded in establishing sponsalia but not presumptive marriage and the couple remit); Office c Godscalc et Godens (31.ii.52), no. 360 (succeeded); Office c Gheerts en Hesden (20.iv.53 to 6.vii.53), no. 481, 482, 510 (succeeded); Office c Courtoy et Wahltravens (26.x.53), no. 530; Office c Stooten en Aken (21.i.56), no. 920 (succeeded); Office c Kerckhoven en Vischers (13.iv.56), no. 950 (succeeded); Office c Coereman en Ysa (16.x.56), no. 1040; Office c Verdonct en Voirde (12.x.56), no. 1050 (succeeded).

805. Ch 8, n. 74: Office c Spekenen et Vettekens (14.iii.39), no. 170 (succeeded); Office c Cambre et Crocq (14.vii.43), no. 260; Office c Broeckxens et Staelarts (25.vii.42), no. 300; Office c Quare et Franchoue (8.i.43), no. 421; Office c Staelkins et Vilde (11.vii.44), no. 492 (succeeded); Office c Riseline et Mulders
(2.vii.46), no. 960; Office c Marchi et Rommescamp (23.xii.44), no. 620 (succeeds); Office c Télier et Veruise (16.xi.46), no. 1043; Office c Leggle et Anglee (13.xii.52), no. 1390; Office c Enfant et Mairesse (23.xii.52), no. 1381 (succeeds); Office c Romain et Iongen (Table 8.8, n. d; the referenced note explains why this is treated as a dissolution case in the table, but here as a case in which the promotor is trying to establish espousals and fails).

806. Ch 8, n. 75: Office c Base et Honters (20.xii.38), no. 101 (fails); Office c Borquerie et Frarinne (9.viii.42), no. 291 (succeeds); Office c Oiseleur et Grumulle (22.ix.42), no. 330 (succeeds); Office c Monchiaux et Maquet (24.ix.42), no. 340 (succeeds); Office c Girete et Bossche (26.i.43), no. 411 (succeeds); Office c Bohier et Fverre (14.vi.46), no. 922 (succeeds); Office c Cailliel et Planque (28.iv.33), no. 1430 (fails).

807. Ch 8, n. 76: Office c Pevenage et Stapcoemans (24.i.39), no. 126; Office c Brisemoustier et Buisson (10.iv.45), no. 672 (classed in Table 8.8 as a case in which the promotor succeeds in establishing the marriage [which he does], it also involves an issue of incest, which the promotor fails to establish); Office c Blekere et Clements (28.viii.45), no. 770 (succeeds); Office c Raes et Piperezé (31.x.49), no. 1220.

808. Ch 8, n. 77: Office c Roy et Barbireuse (26.vii.38), no. 22 (succeeds); Office c Eddgehem en Couwenberghe (31.i.39), no. 131 (succeeds); Office c Dronisalux et Plancque (11.xi.42), no. 381; Office c Moyart et Boulette (22.i.43), no. 480 (succeeds); Office c Bonsarlet et Brideanne (22.vi.43), no. 481 (succeeds); Office c Macon et Poulande (22.i.50), no. 1251; Office c Watel et Murielle (7.viii.50), no. 1270; Office c Bellekens et Capellen (23.i.45), no. 631 (succeeds); Office c Paye en Baillelette (23.x.45), no. 681; Office c Herdtt en Compaings (6.ix.45), no. 661; Office c Ravin et Bridaire (12.i.46), no. 860 (succeeds); Office c Patte en Yebon (6.v.47), no. 1130; Office c Vaschere en Mete (10.vi.47), no. 1162, 1225 (succeeds); Office c Lambert (2.v.50), no. 1290 (succeeds); Office c Bregue en Fayc (6.vi.50), no. 1310 (succeeds); Office c Petit en Voye (7.x.52), no. 1360.

809. Note for Table 8.10: 

810. Note for Table 8.11: 

811. Ch 8, n. 79: E.g., Office c Siger Tristram, Catherine tsRijnlanders et Jean bˆatard de Wattripont (15.xi.38), no. 64 (an abduction case; Catherine was a parishioner of Russeignies [Hainaut]; Catherine and Jean are fined in Wattripont [Hainaut]; Siger is fined at Oudenarde [Oost-Vlaanderen]; Russeignies and Wattripont are
basically next to each other, and Oudenaarde is about 12 km away); Office c Hayette et Hongroise (13.xii.38), no. 90 (married couple in separation case; he is fined at Rebecque [Brabant]; she at Herne [Vlaams-Brabant]; the places are about 10 km apart); Grande c Grand et Potière (11.x.1446), no. 917 (the actrix is fined at Everbeek [Oost-Vlaanderen]; the rei celebrated their espousals in the church of Frasnes-lez-Buissenal [Hainaut]; the places are about 20 km apart as the crow flies).

812. Ch 8, n. 80: E.g., Staebiers c Grote (30.x.1449), no. 1218 (deflowering case; she was a parishioner of Geraardsbergen [Oost-Vlaanderen]; he is fined at Acren [Hainaut]; the places are about 5 km apart); Office c Portere (22.i.1450), no. 1245 (prosecution for adultery and incest; reus described as bailiff of Ophasselt [Oost-Vlaanderen], but he may not have been resident there); Office c Dale et Burets (7.ui.1450), no. 1269 (prosecution for fornication, promises of marriage, contempt for ecclesiastical jurisdiction, and assault on a priest; the reus is said to have attempted to assault his curé near the reus’s house in Ronse [Oost-Vlaanderen]).

While some of these places are close to the modern provincial borders, they are all well within the jurisdictional boundaries supposedly given to the Brussels court.

813. Ch 9, n. 2: In causa mota et pendente coram nobis officiali Cameracensi inter [JL] actorem ex una et [II] ream ex altera partibus, suas petitione dicti actoris, sacramentis, assertionibus, confessionibus et responsionibus partium predictarum alisque nos et animum nostrum mosentibus, iurisperitorum freti maturo consilio, Christi nomine invocato, ream predictam a conventionibus matrimonialibus per eundem actorem propositam et allegatus absoluitus, actorem predictum in expensis dicte ree, taxatione iudicio nostro reservata, condempnantes dictam tamen ree cum alio nubendi, si nubere voluerit in Domino, tribuentes facultatem, sententialiter diffiniendo in his scriptis.

814. Ch 9, n. 9: So far as I am aware, this formula appears only in the sentences of Jan Platea. E.g., Office c Lambrechts, Masen en Bocx (7.v.55), no. 790; Office c Coeman en Perremans (11.x.55), no. 852; Office c Lamno, Anselmi en Peysant (10.i.56), no. 911; Office c Cleren en Piermont (17.x.58), no. 1370. It is possible, however, that it is to be assumed in the sentences of the other judges. If it can be, that puts the relatively high level of the fines that the Tournai account books (see App ch.2) suggest were imposed in these cases in a somewhat different light. Those who could not afford the fines underwent corporal penances, and those who paid the fines were of a station that made them want to avoid such penances and the publicity that they entailed.

815. Ch 9, n. 11: Gottlieb, Getting Married, 396–7, has a table showing the range of fines that were imposed at Troyes in the years 1453–64 (discussed at 294–8). The Troyes court was less imaginative than was that in Cambrai in what it imposed fines for, but at Troyes the fines for clandestine betrothal ranged from a pound of wax to 10 sols tournois, for fornication from 11 sols to 5 livres tournois, for presumptive marriage from 21 sols to 5 livres, and for adultery and bigamy from 2 to 5 livres. We will see in our discussion of the cases in this chapter that the judges in Cambrai diocese could also heighten and lessen the impact of the case on the parties by manipulating the taxation of costs.

816. Ch 9, n. 16: Alternatively, it could have been she who was reluctant to solemnize after the first sentence, and the man ultimately agreed to call the marriage off.

817. Ch 9, n. 17: dictam ream ab actore – quo ad eius facultates – deceptam ac cum eodem contrahere renmentem, a conventionibus matrimonialibus per ipsum contra eam propositis et allegatis, absoluitus, expensas hincinde factas compensantes et ex causa, etc.

818. Ch 9, n. 20: ream pretacata ad procedendum ulterius ad matrimonii solemnizationem in manu presbiteri et facie ecclesie – prout moris est ac fieri consuetum – cum dicto actore pronunciatus et decernimus, etc.

819. Ch 9, n. 23: ream predictum ab articuliu dicti promotoris et conventionibus matrimonialibus per eodem promotorum et corream propositum et allegatis absoluitus, eodem cum alia nubendi in Domino, si nubere voluerit, tribuentes facultatem, ipsum Peronam corream nobis in emendis condignis et dictos reos in expensis legitimus dicti promotoris, earumdem taxatione iudicio nostro reservata, condempnantes sententialiter, etca., etc., . . . Non sunt leges pro reo. Tenetur rea ad leges pro clandestinum [sic, a common spelling in these registers] fratrole allegatis contra ream. It will be noted that this case couple came from Cordes in the deanery of Tournai-Saint-Brice, an area that would later be subject to the jurisdiction of the official of Brussels.
820. Ch 9, n. 24: Like many institutions of the courts of Cambrai, the precise role of these "commissions" is unclear. About 70 of them are mentioned in the Cambrai sentences. See Registres de Cambrai, s.v. commissio. Divitis used them fairly extensively, Nicolai less so. (Or, at least, the scribe failed to record them, particularly toward the end of the registers.) They do not seem to be mentioned in the Brussels registers. The most probable explanation is that someone has complained to the official about an offense, but for some reason does not want to promote a prosecution. The official then commissions one of the promotors to investigate the case and to prosecute if that is warranted. If this is right, then the only difference between this type of case and a regular ex officio would be that in the normal case, the official would have heard nothing about it until the promoter filed his articles.

821. Ch 9, n. 25: In causa mota et pendente coram nobis, officiali Cameracensi, inter promotorem causarum officii nostri, nomine et ad causam officii sui, actorem ex una et [JS] et [MV] reos ex altera, partibus, visum quodam commissione a nobis emanata, sacramento, confessione et responsione ipsius rei, contumaciam eiusdem ree, attestationibus testium pro parte dixit promotors productorum, aliaque nos et annum nostrum muenitibus, iurisperitorum freti maturo consilio, Christi nomine invocato, quia nobis constat atque constat predictos reos sponsalia per verba ad hoc apta et habilia clandestine iniisse et habuisse eademque infra tempus debitum minime renovasse nec ad matrimonii solemnizationem infra tempora statuta processisse, eaproxiter dixit reos ad procedendum alterius ad sponsaliorum et matrimonii solemnizationem – prond moris est et ferei conunctum – nobisque in emendis et in expenses legitimi dixt promotors, earundem taxatione iudicio nostro reservata condempnamus sententialiter diffinendo in his scriptis. The couple came from Malines (Mechelen), an area that would later be subject to the jurisdiction of the official of Brussels.

822. Ch 9, n. 26: Visum articulis promotors [EC] et [MC] impositis, ipsorum reorum sacramentis, confessionibus et responsionibus aliaque nos et annum nostrum muenitibus, Christi nomine invocato, dixt reos ab arti-
culis ipsius promotors et conventionibus matrimonialibus per ipsum contra eadem propositis absolvimus. Reos in expenses legitimi dixt promotors, earundem taxatione iudicio nostro reservata, condempnamus, sententialiter diffinindo in his scriptis. The place of origin of the parties is not given.

823. Ch 9, n. 31: Both phrases are fairly common in Nicolai’s sentences and are not found in any of Divitis’s sentences in the sample, but in this case the specificity in Nicolai’s sentence may result from the fact that the res was resulting the result more than she was in the parallel case before Divitis.

824. Ch 9, n. 32: Baguenieu et Beghinardae (19.xi.46), no. 1050 (not mentioned); Marlière et Quoys (11.x.49), no. 1212 (costs awarded res).

825. Ch 9, n. 33: [JC] pro eo quod de quibusdam assertis per eum verba renovandia alteriussi illorum pretexuti cum correa ad matrimonii contractum infra debita tempora procedendo seu saltem eandem ab hoc in causam trahendi procurando diligentiam nullam fecit, nobis in emenda . . . condempnamus.

826. Ch 9, n. 36: In causa sponsaliuim . . . viuis libello seu petitione actores, responsione ree, sacramentis, asser-
tionibus, propositionibus, responsionibus et confessionibus partium predictarum, testium pro parte eiusdem actores productorum depositionibus, certis buissmodi depositionorum impagnatorius ac alius earundem salva-
torius spectris per partes ipsas successive indiciliter editus un Atmos quibusdam litteris pro prefati actores parte in modum probationis exhibitis . . . quosam per ea que iudiciai cognovimus indagine nobis legitime constitit [JC] ream predictam cum actore antefato conventiones per verba de futuro ad hoc apta et habilia inнесене и в независимости от того, что заинтересованные стороны, действующие с уполномочением и на законных основаниях, могут быть привлечены к ответственности за незаконное использование данных, что в данном случае может привести к незаконным последствиям.
iuramento veritatis ex officio nostro, certa rationalibus de causis animum nostrum ad hoc moventibus, ree delato per ipsamque suscepto ac prestito, ream predictam a conventionibus matrimonialibus per actorem allegatis absolutissimis dantes eaproprio eadem ree liberam ubi et quando voluerit in Domino nubendi; facultatem, expensas nulionumos per et inter easdem partes occasione presentis processus factas compensantes, etc.

829. Ch 9, n. 39: In presenti causa sponialum . . . vias . . . certa adversus predictos testes et eorum depositiones datis impugnationibus ipsumque salvationibus unum cum testium pro parte ree super predictis factis impugnatorius proactorum dispositionibus, demum et iuramento veritatis, per nos ex officio nostro predicte ree delato, per eam suscepto ac prestito, . . . ream pretactam a conventionibus matrimonialibus per actorem allegatis ac ab eis impulsione absolutissima, propter ea actorem in expensis buias litis, earam taxatiane indicio nostro reservata, condempnamus, etc. In margine: Tenetur actior ad leges pro clandestis frivole allegatis, etc.

830. Ch 9, n. 40: de expensis ex occasione in hoc processus factis substicentes et ex causa. Substicere is not a classical word, but it appears in DuCange with this meaning.

831. Ch 9, n. 44: In some cases the phrase is expense buias litis and in others expense per et inter partes or simply expense rei or actioris, depending on who was successful. While the first phrase could refer only to fees imposed by the court and its personnel, and while the latter almost certainly includes the fees of any proctor or advocate that the parties may have hired and the legitimate travel and maintenance expenses of witnesses, I have taken them as being synonymous not only because there is no evidence of any difference in the record but also because no canonist that I am aware of distinguishes between the two.

832. Ch 9, n. 45: E.g., Office c Scotee et Barhette (11.vii.44), no. 494 (eundem etiam [corream] in dualis partibus expensarum prefate [corre] . . . condempnantes, de relqua tertia parte expensarum buiasmodi subticentes); Office c Cuppere et Moens (10.x.44), no. 531 (in sample; de expensis per et inter partes subticentes); Office c Willon et Ghiblerde (21.xi.44), no. 605 (ipsam muliorem in media parte expensarum viri . . . condempnantes, de relqua autem parte expresaram subticentes); Berles c Duaurto (18.viii.46), no. 984 (de expensis buias litis, certa rationaliblis de causis animum nostrum ad id mosentibus, subticentes); Office et Tournai [prêts et jurés] c Marès (13.ix.52), no. 1343 (like Cuppere).

833. Ch 9, n. 47: In a few cases a genuine decisory oath seems to have been used at Cambrai. See Registres de Cambrai, i.e., instrumentum liatiscessorium (5 instances). None of these cases was matrimonial. Most do not tell us what the subject matter was. The plaintiff defers to the defendant’s oath; the latter takes it and is given judgment, and the entry does not report what the oath was about. In Hendine c Cornelle (7.v.50), no. 1292, the reus is contumacious when he was supposed to take the oath; the official assumes that he refused the oath, defers the oath to the plaintiff, and enters judgment for him in the sum of 4 l. 15 s. of the money of Hainault, plus costs. The other cases probably also involved pecuniary obligations.

834. Ch 9, n. 48: The fact that the scribe consistently uses this term suggests that he was aware of the difference between this procedure and that described in n. 47.

835. Ch 9, n. 50: In two cases, one involving debt and the other probably involving debt, the oath is said to be about a particular article in the case. Wendin c Capron (3.xii.46), no. 1054: iuramento veritatis, per nos ex officio nostro, super quibusdam articulis ad rem ipsum pertinentibus eadem actiori delato per ipsamque actorem suscepto et prestito; Fevre c Lettris (8.vii.52), no. 1326: iuramento veritatis, certis de causis nos et animum nostrum ad hoc moventibus, eadem [II] super quodam predicte sue responsionis articulo ex officio nostro delato per ipsamque suscepto ac prestito, etc.

An elaborate dowry case brought by a man and his wife against the woman’s father tells us a bit more. After the couple had presented their case in chief, the father raised a number of peremptory exceptions. The possible grounds of such exceptions were many, but what happens next procedurally suggests that among the grounds may have been that the couple had subsequently agreed to accept, or had done something that made them entitled to, less than had been originally promised. The plaintiffs proposed facts impugning the exceptions; witnesses about them were introduced on both sides, and documentary evidence was produced. In the end, as part of the cum ceteris considerandis clause, the official explains that he deferred the oath to the male actio: “with other things to be considered and to be supplied by law inclining my soul to deferring to Gauthier, one of the plaintiffs, the oath of truth about certain things concerning the facts proposed in the last instance by these plaintiffs – and they moved it [my soul] with merit, and they ought to move it – [and considering] such an oath
that had therefore been deferred to the same Gauthier by our office and had been received by him and taken, etc. Messien et Daniels c Daniels (2.vi.46 to 5.vi.46), no. 900, 1041: certis [i.e., articulis et factis] in vno exceptionum peremptoriarum pro parte rei, responsonibus actorum ad hec nec non quibusdam factis illorum [i.e., the certa] impignoratoris per eodem actores propositis et allegatis cum responsonae rei ad illa, testium bincinde per partes ipsas super haussmodi factis repaginantibus productorum delegationibus, quibusdam etiam litteris patentiibus ac instrumentis in modum probationis bincinde per partis easdem iudicandae et exhibitis, cum certis considerandis, de iure supplendis, anumum nostrum ad super quibusdam, facta predicta ultimo loco per ipsas actores proposita concernentibus, uramentum veritatis preiftato Waltero alteri actorum deferendum inclinatibus meritoque mosentibus ac mosere debentibus, uramentum propertea haussmodi eodem Waltero ex officio nostro delato per ipsamque suscepito ac pretisto, etc.

There was much at stake. Gauthier and his wife obtained judgment for a perpetual and heritable annual rent of three pounds of Brabantine groats, a capital sum of 250 Rhenish florins, and 19.5 pounds of Brabantine groats for arrearages since 1 March 1440. (For some sense of the values here, see n. 374.) They failed, however, to obtain the maintenance costs that they had asked for, and the costs were compensated.

836. Ch 9, n. 52: Where it had not been, I think we are to imagine that the proof on the other side was deficient but not so deficient that caution did not call for it to be countered by the oath. E.g., Office c Attre et Bertoule (9.xii.52), no. 1389, a two-party, office/instance case, where the only proof mentioned is the depositions on behalf of the promoter.

837. Ch 9, n. 56: Office c Basquouy et Cazyme (7.viii.45), p. 440, no. 762; Office c Gobert et Gange (n. 34); Office c Brabant et Lamons (15.xi.52), no. 1371 (another case in which the oath is deferred after witnesses are introduced on the other side); Office c Estrées et Bailleue (27.i.53), no. 1401 (not only depositions but also exceptions to the witnesses); Office et Donne c Flanniele (at nn. 61–8).

838. Ch 9, n. 58: ipsam nicholominus a necessitate ulterius cum eodem reo procedendi absolvente.

839. Ch 9, n. 60: Office c Chercy et Mairesse (n. 198) is quite similar in this regard and roughly contemporary. Office c Cabouset et Crustanche (19.xi.53), no. 1453 [not in sample], bears some resemblance to Office c Cospin et Morielle (n. 59) in that both parties are given license, except it is the man who is here alleging the promises. At approximately the same time, Nicolas began to absolve married couples who were charged with living separately from the obligation to resume common life when he was willing to grant them a separation. Office c Pouille et Pouille (Ch 10, at n. 198); Office c Térasse et Térasse (Ch 10, n. 124); Office c Derche et Derche (2.xii.52), no. 1383; Office c Grumianau et Robette (28.iv.53), p. 826, no. 1432.


841. Ch 9, n. 64: uxta patrum decreta sanctorum iudicamentem oporteat cuncta rimari et ordinem rerum plena inquisitione discutere. As the editors point out, the quotation is from C. 30 q. 5 c. 11.

842. Ch 9, n. 65: dicta [JE] a certa advocazione per reverendam in Christi patrem et dominum nostrum, dominum episcopum Cameracenem de causa ipsa facta et alias appellaverit ad venerabiles et circumspectos viros, dominus officiales sedemque metropoliticae Remensi (sic).

843. Ch 9, n. 66: in qua appellatissim causa ad nominales actus, citra causae sententiae prolacionem, partes inter ipsas processum fuerit.

844. Ch 9, n. 67: I differ here from the way that the editors seem to read this because I think it clear that the appeal was from the advocatio of the bishop, but perhaps that is what they are saying.

845. Ch 9, n. 69: Office c Staellens et Vilde (11.vii.44), no. 492; Office c Marchis et Rommescamp (23.xii.44), no. 620.

846. Ch 9, n. 72: In Office c Brocotten et Staetsarts (23.viii.42), no. 300, we learn only that the couple was absolved from the articles of the promoter, despite the fact that testimony had been taken, and that they were to pay his costs “on account of a certain fama” (propter famam atulamen). We cannot even be sure that the promoter had alleged clandestine promises, though it seems likely. In Office c Quare et Franchoise (8.i.43), no. 421, on the basis of their statements only, the couple are absolved “from the promes and other
things” alleged by the promotor, but are to pay his costs “for certain reasons moving us and our conscience” (a conventio matrimonialis et cetera per promotorem allegatis . . . certa ex causis nostrae promotoris). In Office c Telier et Veneuse (16.xi.46), no. 1043, the couple, again on the basis of their statements alone, are absolved from all articles, but are to pay the promotor’s costs “on account of a certain fana at work against them concerning and about the contents of the articles” (propter aliquid fanae adversus ipsos de et super contentis in dictis articulis laborantem). They are also both given license to marry others, a fact that makes clear that a marriage contract was one of the charges in the articles. In Office c Raelinc et Mulders (2.vii.46), no. 960, depositions had been taken; the official nonetheless absolves the couple from the promises of marriage and other things alleged by the promotor, gives them both license to marry others, but charges them with the costs of the promotor “because of the fana at work about such asserted promises” (propter fanae, super buismodi assartis conventio matrimonialis laborantem). Office c Leggle et Anglee (13.xii.52), no. 1390, is like Raelinc, except that it is based only on the statements of the couple and a slightly different justification for imposing the promotor’s costs is stated: “on account of certain fana at work on behalf of what the promotor charged” (propter aliquid fanae pro intendence promotoris laborantem).

847. Ch 9, n. 74: dicimus, decernimus et pronunciamus prefatum reum a pretensis conventus matrimonialibus per dictum actricem allegatis absolvendum fore et absolvimus, expensas per et inter partes predictas factas ex causa compensantes, etc.

848. Ch 9, n. 75: In causa matrimonialis supra conventum matrimonialium mota et pendente coram nobis per et inter [JC] et [KR] vis propitionibus, allegationibus et assertionibus dicti actoriis responsionibusque eiusdem ree ad easdem, prestatis prae ab buismodi partibus solemnibus in eorum testium pro parte ipsius actoris productorum, iuratorum et examinatorum depositionibus seu attestationibus, cum ceteris attendendis et de iure speciali Christi nomine invocato prefatum ream dicto actori in sponsam avertendum et pronuntiantem per eo quod de assertis per eum verbis in vim conventionum matrimonialium duces et pronuntiantem per eum quod pro eo quod buismodi nostrae sententiae per eum quod pro eo quod buismodi nostrae sententiae per eum quod pro eo quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae sententiae per eum quod buismodi nostrae senten...
reis ut iuxta eorum tractatus matrimoniales inter ipsos et eorum amicos habitos et tentos ad eorum affilidationem infra temporis debita procedant insinuentes, etc.


854. Ch 9, n. 83: **Maletet: propter peccatum per ream in legem buissmodi sponsalia commissum; Fortin: per verba de futuro.

855. Ch 9, n. 84: **reus vagabundus est et dum in partibus se tenet apud Honnecourt.

856. Ch 9, n. 86: **pretactum [AB] coruum uxorum Villebrodri [. . .] allicuisse ac eandem sui maritus retraxisse, item eademque multotiens carnaliter cognovisse, in et per premissa graviter delinquendo et excedendo, etc.

857. Ch 9, n. 87: **The reason that I think it more likely is that in most of the cases where a commission is mentioned, it looks as if one of the parties obtained it. Prosecutions based on *fama*, et which there were many, all seem to have been instituted by the promoters without commission.

858. Ch 9, n. 89: **Office c Roussiau et Comte (30.vi.39), no. 250 (27); Office c Belin et Blondielle (30.ix.44), no. 540. In Roussiau the woman is also condemned to amend for clandestine espousals not renewed publicly, and in Belin for failure to proceed with solemnization of the marriage. Divitis’s sentence in Roussiau specifically mentions that the couple had not had intercourse; Nicolaï’s in Belin omits this fact (though it must have been present) but specifically mentions that the *reus* is to pay the *rea*’s costs.

859. Ch 9, n. 90: **In Ymberde c Dent (n. 84), the actrix reacted to this fact by bringing an action against the reus and obtaining a judgment that the *sponsalia* are dissolved. In Office c Roussiau et Comte (n. 89) and Office c Belin et Blondielle (n. 89), the woman may have approached the promoter and joined with him in achieving the same result. For that to have been a rational course of action would depend on whether the promoter’s costs and the amount that she would have to pay in fines would be equal to or less than the cost of bringing an instance action. In these cases, however, we have an additional piece of information (unfortunately not available in all the cases) that helps to explain the difference in procedure. The actrix in *Ymberde* came from Honnecourt, which is in the deanery of Cambrai. She would have had relatively easy access to information about the court and its procedures. The women in *Belin* and *Roussiau* came from Hacquegnies (Tourrai-Saint-Brice) and Tainières-en-Thiérache (Avesnes-sur-Helpe), both rural places, then and now, and both more than thirty miles from Cambrai. These women are likely to have been less well informed about their options than was the woman from Honnecourt. They are also probably more likely to have thought that they could just drop (more likely in the case of the clandestine espousals than in the case of the public ones), and hence it is more likely that the citation came as an unwelcome surprise, rather than as something that had been prearranged.

860. Ch 9, n. 95: **visi . . . contumacis eiusdem ree ex quibus prosequitur eandem ream in legem sponsalium peccasse – prout actar ispe in suo libello declaratari, etc.

861. Ch 9, n. 99: **quandam Margharetam tsHazem sepe et sepius necnon plures alias mulieres carnaliter cognovisse. The man and the woman were fined for not proceeding to solemnize the clandestine espousals and the man for “having sinned against the law of espousals”; the espousals were dissolved, the *rea* was given license, and costs were compensated between the parties.

862. Ch 9, n. 100: **se a quodam Thoma Ranet abduci, deflorari et carnaliter cognoscisse permittendo peccasse, etc.

863. Ch 9, n. 101: **ream abduci, deflorari, dehonestari et pluries carnaliter cognoscisse permitissim, in legem sponsalorum peccando, etc.

864. Ch 9, n. 103: **Office c Tristram, Rijnlanders et Wattripont (Ch 8, n. 79) (see T&C 870); Office c Eddéghem et Couwenbergh (n. 207); Office c Vekemans, Scuermans et Brughman (n. 413); Office c Dorke (13.iv.43),
no. 447 (attempt only, in a massive list of charges against a priest); Office c Gillaelt et Moersche (n. 413). In addition, Steenhorge c Rauere et Brunere (n. 282) is the only case in the book to use the word rapere without abducere in this sense. See Registres de Cambrai, s.vv. abducere, rapere, raptus.


866. Ch 9, n. 105: rea pro peccato in legem sponsalium commissos.

867. Ch 9, n. 108: in legem sui matrimonii graviiter peccando, se a quodam viro, in articulis nominato, adulterino coitu pollui permissem.

868. Ch 9, n. 109: ividente abducit et in loco non multum a loco residentiae ipsorum distantia – facile saltem repercibili – marito eiusdem ree, conventiones matrimoniales de facto, etiam in manu predicti et facie ecclesiae tribusque bannis desuper utcumque proclamatis invicem inire presumperunt.

869. Ch 9, n. 110: uterius ad pretensis matrimonii contractum, si non obtitutus publicatio eis buusmodi – quantum in eis fuisset – processuri, in et per hoc dampnatarum nuptiarum affectatores sese demonstrando gravissimoque delinquendo et excedendo.

870. Ch 9, n. 114: quoniam matrimonia iuxta canonicas sanctiones debent esse libera, dicimus et pronunciavmus sponsalia, per prefatum [MO] coream, tamquam per metum cum dicit [HT], reo, taliter qualiter contracta, fuisse ac esse invalida eaque ut et tamquam talia decernamus et declaramus atque ex officio nostro dissolvimus, cassamus et annulamus, eadem [MO] coree, alibi in Domino nubendi, si et dum nubere voluerit, licentiam atque [facultatem concedentes, necnon [HT], reum prefatum, propter contractum buusmodi sponsalium et quia manus forti dictam coream ad diversa loca ducere, ymo potius abducere presumptum, ad leges et emendas condignas, unacum expensis dictorum promotoris et [MO] coree necnon sibi coree ad damnare et interesse . . . condempnantes, etc. The sponsalia in this case may have been de presenti. The Cambrai case, Office c Tristram, Rhijnlanders et Wattripont (no. 103), has a similar result, though the woman there is said to have been 13 at the time of the abduction, and the case is complicated by the fact that she then proceeded to enter into a presumptive marriage with another man.

871. Ch 9, n. 116: conventiones matrimoniales inter dictos reos intas que vnum sponsalorum [sic: this genitive plural is classical, as well as the more usual sponsalum, Lewis and Short] babere videntur propter peccatum per dictum [BL] in lege eorum cum [EL] comissum de ipsorum reorum esse de et super conventiones predictis quatere violatium matutus consensu, attento etiam quod inter ipsa non interivit fraud, dohas illae illecita pactio aut carnalis copula et quod inesse mutue difficiles consueverunt babere eum, dissolvimus, cassamus et annulamus, dantes et concedentes eisdem reis et eorum cuiuslibet liberam alibi si et dum voluerint in Domino nubendi facultatem, etc. For the similarity of language to remission cases, see the next subsection.

872. Ch 9, n. 119: predictum [JD] a conventiones matrimonialibus contra ipsum per predictam [MN] allegatis et presumptis que eum sponsalorum clandestine contractum babere videntur propter peccatum in legem dictorum sponsalium per sepedictam [MN] cum [GV] post predictas allegatas conventiones commissum et confessatum, suis [omit and read oppositum] carnalis copule per dictum [JD] tempore sue ebrietatis circa dictam [MN] eum coream attemptate non obstante, inutrum supra veritate dicte carnalis copule prae et delato et in se suscepto, absolviendum esse et absolviuus, predictam promotors et [MN] super eisdem perpetuum idemnum imponeentes, necnon quidam suinhus buusmodi conventiones buuscide propria eorum tementi factam et passatam, dictorum correorum conscientias desuper onerantes nostramque penitentiae exonerantes, preservant propter morum eorum discrepantiam in patientia admittimus et tolleramus. For the similarity to the wording of separation sentences, see Ch 10; for the similarity to the wording of remission sentences, see the next subsection.

In Office c Lauwers et Winnen, the case discussed in the next paragraph in the text, Platea orders the couple to solemnize, allegationibus per predictum [WL], quas frivolas et minus legitimas reputamus, non obstantibus. A bit more than two years later the couple are back in court in an instance action brought by Willem, and Platea allows them to remit their sponsalia on the ground of morum discrepantia. Lauwers c Winnen (T&S C no. 891).
That makes more sense, and this may be another example of an aural mistake. The decretal from which this datisese adinvicem admittere nolentes liberam alibi interveniente contingat ut ipsa talem ducat ne tractas [Tervuren (Vlaams-Brabant)].

878. Ch 9, n. 125: declaramus affidationem seu sponsalia in manu presbiteri et facie ecclesiae parrochialis de Fera [Tervuren [Vlaams-Brabant]] uno banno postmodum rite subsecuto, inter predictos [HG] et [MW] contractas, initias, contracta et initia, propter morum suorum discrepantium et mutuum duplicificantia, ne forte contingat ut ipsa talcum ducat ne [read quem] odio aut alias suspectum habeat, eorumdem mutuo consensu intervenienti, dissolvimus, cassamus et annulamus, in patientia tollerantes et concedentes quod predicti admittere nolentes liberam alihi, si et dum contrahere voluerint, in Domino subjiciendam habeant facultatem, presertim cum in premiosis fraud, dolus, collusio sive aliqua illicita pacto saepe carnalis copulata post bannos et facultatione non intervenirent, de quibus sufficiently fuimus et sumus informati, expensas propter opera inter dictas partes factas et habitas ex causa compensantes, etc. In Grimbergen c. Gheeraets (n. 134), the problematical phrase in the middle of this sentence is rendered quem odio versusimili prosequetur. That makes more sense, and this may be another example of an aural mistake. The decretal from which this language is derived, however (X.4,12.2, Alexander III, Super ev. Praeterea hi, WH 101), reads ne forte inde deterius contingat ut talcum scilicet ducat quam odio habet.

881. Ch 9, n. 133: declaramus affidationem, inter prefatos actorem et ream in manu presbiteri et facie ecclesiae parrochialis Beat c. Rampenberch et Bossche (at n. 79) for a similar distinction.

882. Ch 9, n. 134: declaramus affidationem, inter prefatos [AG] et [BG] in facie ecclesiae de Capella [Onze-Lieve-Vrouw-Kapelletje (Brussel)]... inita et contracta, propter suorum morum discrepantium et mutuum duplicificantia, ne forte contingat ut quis vel qui illum illam ducat, quem vel quam odio versusimili prosequetur, presertim, mutuo eorum consensus interveniente, dissolvendam, cassandam et annulandam fore et dissolvimus, cassamus et annulamus, ipsos a mutuo eorum affidatione absolventes, in patientia tollerantes et concedentes quod ipsi, bussamodi affidavitem ad matrimonii solemnizationem perdicere nolentes, liberam...
aliis, dum et quando contrahere voluerint, in Domino nubendi seu contrabendi habeat facultatem, etc. Cf. Godewele en Willeghen (n. 131).

883. Ch 9, n. 135: Listed in Liber van Brussel, s.v. quittance seu remissio conventuum matrimonialium clandestinarum. The group includes some cases where the espousals were public, at least eventually. Three of these cases are in the sample. Two we have already examined; they are cases of dissolution of sponsalia for infidelity, Officie c Lisen en Ghesons (n. 116); Officie c Diels en Noots (n. 119). The other is a case in which copula is alleged, but it turns out that the copula occurred before the sponsalia, and therefore the couple is allowed to remit. Officie c Platea en Aa (4.xi.50), no. 190.

884. Ch 9, n. 136: Rodolphi: Officie c Hoedemaker en Mulders (20.xi.48), no. 9; Officie c Schuuen en Clercx (28.xii.49), no. 37; Officie c Temmerman en Roex (26.vii.49), no. 84; Officie c Boonenarts en Lodins (5.iv.49), no. 42, and (28.xi.49), no. 121; Officie c Drivere en Vleminx (23.xii.49), no. 126; Officie c Plongon en Mekebems (14.vii.50), no. 181; Officie c Platea en Aa (n. 135); Officie c Gapenberch en Expols (22.xi.51), no. 241; Officie c Eriacops in Dierecx (7.vii.51), no. 288, and (7.vii.51), no. 287; Officie c Wesenbagen en Sintboven (7.xi.49 to 6.vii.51), nos. 34, 302; Officie c Hectoris in Velds (6.vii.51), no. 303; Officie c Beschoot en Karloe (16.xi.51), no. 327. Platea: Officie c Lisen en Ghesons (n. 116); Officie c Menereren en Bollents (3.vii.53), no. 507; Officie c Riemen en Kestermans (5.xi.53), no. 534; Officie c Hublochs en Luytens (9.xi.53), no. 539; Officie c Suwertszaghre in Reyes (13.xi.53), no. 541; Officie c Best en Beccmans (5.iv.54), no. 598; Officie c Diels en Noots (n. 119).

885. Ch 9, n. 139: Officie c Boonenarts en Lodins (n. 136); Officie c Platea en Aa (n. 135); Officie c Eriacops en Dierecx (n. 136); Officie c Wesenbagen en Sintboven (n. 136). Officie c Hoedemaker en Mulders (n. 136) could be the same situation with the order to solemnize entered before the beginning of the register.

886. Ch 9, n. 140: Officie c Schuuen en Clercx (n. 136) (unclear that an order to solemnize would have been issued because the woman is found to have taken an informal vow of chastity); Officie c Drivere en Vleminx (n. 136); Officie c Plongon en Mekebems (n. 136) (a three-party case made easier by the fact that the first rea now wishes to take up the habit of religion); Officie c Hectoris in Velds (n. 136).

887. Ch 9, n. 141: Officie c Temmerman en Roex (n. 136); Officie c Gapenberch en Expols (n. 136) (both no amends or costs); Officie c Beschoot en Karloe (n. 136) (costs only).

888. Ch 9, n. 143: conventiones tales quales inter dictos reos allegatas et presumptas, que sim sponsaliorum habere voluntur, prceptivee morum suorum discrepantium se admicemse admittere voluntam, ipse prorsus nos ad contrahendum seorsum admonet et diligenter inductis, ne forte contingat ut quis talem ducat quam ipsam sui conscientiam, per scrupulosam in Domino nubendi seu contrahendi habeant voluntatem, etc. Cf. Officie c Riemen en Kestermans (n. 119). The other is a case in which dissolution of sponsalia is alleged, but it turns out that the dissolution occurred before the sponsalia, and therefore the couple is allowed to remit.

889. Ch 9, n. 144: Rodolphi: Officie c Hectoris en Veels (ibid.) (private remission); Officie c Best en Beccmans (ibid.) (id.).
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891. Ch 9, n. 147: E.g., _Jacobi c Paradaems_ (20.viii.56), no. 1004; _Laauwers c Wennen_ (21.i.57), no. 1099; _Clinkaert c Lesteol_ (18.i.57), no. 1117. With regard to _Clinkaert_, see _Officie c Clinkart en Lescole_ (n. 279), where amends had been imposed six months earlier; with regard to _Laauwers_, see _Officie c Laauwers en Wennen_ (n. 119), where amends had been imposed on the man more than two years earlier.

892. Ch 9, n. 148: _Office c Siëp en Overbeke_ (23.i.56), no. 923 (illness of the man); _Office c Robart en Quessnoit_ (2.xii.38), no. 1394 (disparitas morum et suspicion of leprosy).

893. Ch 9, n. 149: Amends for clandestine promises and not proceeding, but earlier in the case the couple confessed that they had attempted to have intercourse but had not succeeded and also that they had contracted in a tavern.

894. Ch 9, n. 151: Viss oppositione [PR] qui se sponsalibus in manu presbiteri et facie ecclesie de Quer-mont Cameracensis dioecesis [Kwaremont (Oost-Vlaanderen)] inter [AP] et [JG] contrabre volentes initis et habitis, tribus hannis desuper proclamatus, opposuit, dicte [AP] alteris contrabre volentium responsionibus ipsumque partium sacramento, confessionibus et responsionibus, ... Christi nomine invocato, dicimus et decernimus per et inter contrabre volentes predicte fuisse ac esse ulterius ad matrimonii contractum et...

895. Ch 9, n. 152: Coactiones buinosmodi difficiles soleant exitus frequentem habere: X 4.1.17 (Lucius III, 

896. Ch 9, n. 153: Stasse c Loëys (29.v.39), no. 230; Rocque c Piera (n. 151); Cailliot c Bruecquet (18.xi.44), no. 590; Neuwille c Megge (22.ix.45), no. 680; Petit c Blassine (13.vii.45), no. 741; Ewart c Ortyere (21.vii.46), no. 973; Carpraio c Lievre et Turnure (12.x.47), no. 1140; Weez c Gauyelle (15.xi.52), no. 1370; Estriez c Moquille (15.xi.52), no. 1391.

897. Ch 9, n. 154: In this case the _actor_ was contumacious, but there are other cases in which _leges_ are imposed on contumacious _actores_. E.g., _Mariëre c Quoys_ (n. 32).

898. Ch 9, n. 155: Cf. _Neuwille c Megge_ (n. 153) and _Carpraio c Lieve_ (ibid.), where this formula is coupled with _leges_ for frivolous opposition.

899. Ch 9, n. 156: Bains c Sore (27.xi.45), no. 832; Fortin c Rasse et Turnette (10.xii.45), no. 843; Mado c Moreille et Sourmier (25.xi.47), no. 1103.

900. Ch 9, n. 161: It will be noted that in _Engles c Jacotte et Bourgios_ (n. 160), the condemnation was only to pay costs (legimus expensis), whereas in this case it was to pay costs and damages (legitusm expensis unacum dampnis et interesse). The longer phrase is found in a minority of cases, e.g., _Rocque c Piera_ (n. 151) and _Fortin c Rasse et Turnette_ (n. 156), and may indicate that the party had incurred damages in excess of litigation costs, for example, in preparations for the marriage. _Damma et interesse_ may also, however, be included in the phrase _legitusm expensis_.

901. Ch 9, n. 162: It is possible that the _correa_ denied the second set, but the wording of the sentence suggests a finding that they had indeed taken place. It is certainly odd that the _correa_ is not fined for double espousals, but she may have had a story that she was pressured into the second set.

902. Ch 9, n. 165: This raises the possibility that others of our two-party cases involve a third party, with no interlocutory sentence to tell us about his or her existence.
that they had failed to publicize them within eight days. It is possible that in Montsponsaliaofficial mentions that the first 

910. Ch 9, n. 179: W e have already discussed two instance cases quite similar to (22.i.50), no. 1250.

907. Ch 9, n. 173: in et per premissa jurisdictionem spiritualen reverendissimae domini nostrae Cameracensis et buius sue curie ascensionem non modicum leundo, gravando et commendandoquamplurimum et eius bonorum detrahendo, in prelegeta per eam alias advenita malitia glorando simileque scelus permotissimum exempli – quod videlicet ammodo testes coram nobis producendo, tali fortassis timore pecuniae, plenaria sua non valeant conscientiarum exonerandamarin libertate – damaem tiliter perpetrando aliusque multipliciter offendendo et gravissime delinquendo, etc.

906. Ch 9, n. 174:urusus et premissam non contentam rea . . . dum de testibus in illo [processu contra Haacquinetum] producendis agetur verba quaedam indecentissimae talia scilicet in effectu quod “nisi testes buiusmodi veritatem sue intentionem conformem deponerent, ipsa illos quernadmodum alius faceret canterisari 

905. Ch 9, n. 169: Office c Honte c Bloittere et Jeheyme (n. 167); Office c Fieret et Crocarde (n. 167).

904. Ch 9, n. 168: Office c Mont et Aredenoise (n. 176) and Office c Barat et Brule (n. 176); Engles c Jacotte et Bourgois and Moru c Mellée et Boussieres(at nn. 160–3). In Engles and Moru we suggested that where the second sponsalia were public, the consent of the second partner was necessary when the parties to the prior sponsalia had nothing but their confession to the clandestine ones. Mont and Barat seem inconsistent with this suggestion. There is no indication in Mont and Barat of any proof of the first sponsalia other than the usual oaths, confessions, and replies of the couple, and there is no mention of consent. (In both cases the second partner was interrogated, but that was almost certainly about the circumstances of the second sponsalia.) Unless we are to assume that the intervention of the promotor makes a difference, it looks as if there was no difference in result that depended on whether the second sponsalia were public. The intervention of the promotor could make a difference in that he may have had evidence of the fama of the first sponsalia. That, coupled with the confession of the parties, might have been sufficient to overcome the undeniable proof of the second sponsalia. If there was such fama, however, one wonders how the second partner could have been deceived and why he was not fined, as some were, for having entered into the sponsalia despite the fama. On balance, I am inclined to think that the mention of consent is specific to Dretins (Engles). Nicolai speaks of interrogation of the second partner in the other three cases. In none of Nicolai’s cases is there any indication that the second partner was resisting. He is not even a formal party in the office cases. In all three Nicolai cases, the second partner got damages as well as costs. That may have been all he wanted; he may have thought that deceit was not a very good way to begin a marriage. Hence, the cases are consistent: There was consent in all four cases; it is just that Nicolai does not mention it.

That leaves us with the first couples. At least one of each of them wanted the marriage. If neither of them had wanted it, they could have remitted the sponsalia. It is quite possible that both wanted the marriage. If one of the parties was unwilling, he or she could have denied the agreement and, in the office cases, put the promotor and the willing party to proof, a proof which, as we have seen, was quite difficult to make. That is just a possibility, however, because we have seen cases where parties will not swear to a falsehood even when it is to their advantage to do so, and it seems reasonably clear that the official did make them swear. If at least one, and perhaps both, of the couple wanted the marriage, it seems likely, there being no evidence of fama, that in the office cases one of them went to the promotor to get the case brought.

There is a piece of evidence that points to a possible difference between Mont and Barat. In Mont, the official mentions that the first sponsalia had occurred a long time ago (siam dur est); in Barat he emphasizes that they had failed to publicize them within eight days. It is possible that in Mont, the man delayed, and the
woman finally contracted with another. Then the man was galvanized into going to see the promotor. Barat looks more like one in which the couple exchanged consent when they knew that others intended to espouse the woman to someone else. In Barat, who went to the promotor is, perhaps, irrelevant; they may have both gotten what they wanted.

In Office c. Tiensepoort, Ischaus et Louijs (n. 177) and Office c. Martin, Flamenc et Clergesse (n. 177), the facts seem reasonably clear. A couple had contracted clandestinely. They are fined for not having publicized the contract, but not for failure to proceed to solemnization. This may mean that they were in court within a relatively short period of time. In both cases, the promotor alleges that, in one case, the man and, in the other, the woman had previously contracted with someone else (probably clandestinely). In both cases, the court absolves the third party from the charges of the promotor and orders the clandestinely contracting couple to solemnize within forty days. In both cases the third party, who is made a formal party in the case, is ordered to share with the couple in paying the promotor's costs.

Tiensepoort and Martin differ from each other in that in Tiensepoort, witnesses were heard and the contracting couple were also fined for having contracted before the fama that the man had contracted with the other woman had been “purified” (fama predicta minime purificata). Martin has neither of these features, but does contain an express license to the third party to marry another. In Tiensepoort we may suspect that there really was fama of the precontract; that may have been what the witnesses testified to. In Martin, there is no evidence of fama; indeed, there is no evidence of any proof other than what the three parties said. Perhaps the promotor thought that he had evidence of fama but was unable to produce it when the time came to do so. It is also possible that the third party had brought the matter to the promotor's attention but had then settled with the couple, leaving the promotor high and dry. This may account for the fact that he has to share in paying the promotor's costs.

In Office c. Lenteuoen, Coesins et Haremans (n. 178), all we know is that the promotor brought charges against a man and two women; the court heard the “oaths, replies, and confessions” of the parties and the testimony of the promotor's witnesses. It then absolved all three of all charges but condemned the man and one of the women each to pay a half of the promotor's costs “for certain reasons moving us and our conscience to [do] this.” While it is not completely clear that this is a double espousals case, it probably is. Whatever the promotor thought the parties were going to say they did not say it, and apparently his witnesses were of no help. The official thought, however, that there was enough evidence that the man and one of the women had committed some kind of offense (perhaps clandestine sponsalia) that they had to pay the promotor's costs.

911. Ch 9, n. 180: oppositione dictae actricis sive opponentis quam minus sufficientem reputamus non obstante.

912. Ch 9, n. 182: declaramus litteras nostras inhibitorias originales, pro parte dicte domicelle a nobis alias impetratas, ante omna infra certum tempus a nobis obtinendum, ne nostro indicio illiud contingat [tread nostrum judicium et illiud], per eandem aut suum procuratorem unacum executione earundem, exhibendas esse et exhiberi debere, aliosquin ipsas nunc prout extunc revocamus, cassamus et annulamus, etc.


915. Ch 9, n. 186: [CH] qui se dicto matrimonio contrabendo friuole oppositum contra statuta synodalia perpetam veniendo. For a suggestion as to what statute is at stake, see Ch 8, at n. 24. For the suggestion that we do not have all the statutes with which the court was operating, see Ch 8, n. 19.

916. Ch 9, n. 187: oppositione prefati [NF] facta et non probata quam propeream reponamus non obstante ac properear eundem [NF] ad penitentiam peragendam aut alias ad leges et emendas, tantu excessibus
condignas, unacum expensis promotoris et damnis e interesse per dictam [ES] perpessis et ad ipsius honoris reparandum eius aucta arbitrium proborum taxandum, etc. Officie c Clays en Heyden (9.x.59), no. 1540: [NC]
prefat ree propter inuirusa verba in sua oppositione predicta absque veritate contra eam dicta et prolata ad reparandum suum honorem uixta dictamen duorum proborum siueorum bincude assumendam obligatum suisse et esse . . . condempnamus, etc.


918. Ch 9, n. 191: prefatam [AH] reum propter quedam verba in vim conventionum matrimonialium sonantia

tia per eum allegata et non probata et quia, dicta [ML] pruis coram indice competentis non vocata, quen-
dam [sic] Claram vanden Ortgate in manu presbiteri et facie ecclesie affidavit, ad leges et emendas condig-
nas unacum expensis dicti promotoris . . . condempnamus, deernentenses et pronunciates predictam [ML]
rea a conversionibus matrimonialibus contra eam propositis et allegatis absolvendam fore et absolvimus, etc.

919. Ch 9, n. 193: Predictum [HR] reum qui false et perperam tales conventiones inter se et dictam [JG]
sue sponsse sororem asseruit et eandem [JG] que de se hocidem asseri consentit ad leges et emendas . . .
condempnamus, etc.

920. Ch 9, n. 194: declaramus inter [JT] et [CG] . . . ad matrimonii solumquisitionem . . . procedendum esse, etc. . . . oppositione prefat [AR] super suis spondalibus contra dictum [JT] allegatis et taliter qualiter presumpit, que ad obviandum futurum periculos et scandalis, de quibus nos suificentiam fuimus informati,
cassamus, irritamus et annullamus, non obstante, dicte [AR] ex nostro mero officio alibi in Domino nubendi,
dum et quando nubere voluerit, licentiam dantes et concedentes. Sepedictum [JT] qui Deo et omnibus Sanctis
cum prefata rea contrahere promisit, fidem suam eidem clandestine prebendo ab eadem tamen non rite recepita,
et qui non obstante dictam [CG] affidare presumpsit, hina spondalis quantum in eo fuit temere contrabando
ac fidem suam Deo et omnibus sanctis prettiam violando, et eos qui clandestine predicta sponsalia taliter
qualiter pacta nostra intimare omiserunt contra constitutiones synodales emiendo . . . ad penitentiam aut
alias ad leges et emendas . . . condempnamus, etc.

921. Ch 9, n. 197: See Ch 8, at n. 77. We also suggested that he was probably trying to dissolve four presumptive
marriages; he succeeded in one case and failed in three.

922. Ch 9, n. 198: Visis articulis promotoris . . . eorundem reorum sacramentis, responsionibus et confessionibus, mutus etiam per et inter eodem reos data allegationibus, petitionibus et conclusionibus, testium ad antedictorum promotoris et [MM] corre, eidem promotori adherentes, instantiam productorum deposi-
tionibus, scripturas impugnatorius haecmodi depositis [recte depositionum] pro parte [GC] dies, responsione promotoris et [MM] predatorum ad ilias testimonia desuper productorum depositionibus . . . [JC] reum pre-
dictum a conventionibus matrimonialibus ac ceteris per promotorum et [MM] sepedictam allegatis et petitis absolvimus dantes ob hoc eodem [JC] liberam ubi et quando voluerit in Domino nubendi . . .

923. Ch 9, n. 200: Visis articulis promotoris . . . eorundem reorum sacramentis, confessionibus et responsio-
nibus, mutus etiam per et inter ipsus reos data allegationibus, propositionibus et conclusiunctionibus testiumque
productorum depositionibus . . . reos predictos pro eo quod de clandestinis conventionibus matrimonialibus per
et inter ipsos initis renovandis illarumme vigore ulterius ad matrimonii contractum et solemnizationem infra
debita tempora procedendo seu saltem judicialem desuper declarationem petendo et obtinendo diligientiam
alisum facere non curavsort, ymos, relus sic stantibus, rem inicic carnelam plures habuerunt, conventiones antetactas propter hoc in vim presumpti matrimonii – quale et nos ipsum declaramus – transformando,
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924. Ch 9, n. 201: It seems particularly unlikely in this case because the phrase mutuis etiam per et inter ipsos reos datas allegationibus, propositionibus et conclusionibus seems to be included only in cases where the parties disagree among themselves.


926. Ch 9, n. 204: prefatum idicirco [HF] ut ad buusmodi sui matrimonii publicationem et solemnisationem cum sepedicta [MN] correa, idpsum adimplere parata, infra XI. dies abhinc numerandos, illam deinde conjugali affectione pertractaturus procedat, etc.

927. Ch 9, n. 205: Office c Hannuchove et Witsvliet (22.vi.46), no. 1031; Office c Bonvarlet et Bridainne (22.vi.43), no. 481; Office c Moyart et Boulette (22.vi.43), no. 480; Office c Belleken et Capellen (23.i.45), no. 631; Office c Raun et Briderde (12.i.46), no. 860; Office c Lambert et Journette (2.x.50), no. 1299; Perona [ . . . ] Mayere (1.vi.38), no. 1 (a straight civil case is damaged, but it does not look as if there was much process).

928. Ch 9, n. 207: Office c Roy et Barboresse (26.vii.38), no. 22; Office c Eddeghem et Couwenberghe (31.i.39), no. 131 (also involves abduction); Office c Brisemoustier et Buisson (10.iv.45), no. 672 (see n. 215); Office c Visschere et Mets (10.vi.47 to 22.xi.49), nos. 1162, 1225; Office c Cherchy et Mairesse (n. 198); Office c Bosqhe et Fayt (n. 200).

929. Ch 9, n. 208: Office c Hannuchove et Witsvliet (n. 205); Office c Bonvarlet et Bridainne (n. 205); Office c Belleken et Capellen (n. 205); Office c Raun et Briderde (n. 205); Office c Brisemoustier et Buisson (n. 207); Office c Visschere et Mets (n. 207). 

930. Ch 9, n. 209: Rattine c Osseleur (n. 2); Office c Hannuchove et Witsvliet (n. 205); Office c Moyart et Boulette (n. 205); Office c Fenain et Nain (n. 203).

931. Ch 9, n. 213: It seems hard to believe that the promotor got this couple into court within eight days of the contract, but it is possible.

932. Ch 9, n. 214: Boulette: reus cum pluribus et rea cum quodam Gerardo peccare non erubuerunt; Lambert: rea duplex adulterium.

933. Ch 9, n. 215: reus incestum – saltem mentalm–committendo. With the phrase saltem mentalm, compare affectator ignorantie, which appears quite frequently in incest cases where the sexual relationship (or attempt to marry) is proven but the incest is not. See Ch 11, at n. 118. Considering the incest issue in this case, it is quite possible that depositions were about that, and so this may have been an uncontested case so far as the presumptive marriage is concerned. The sentence was engrossed for one Jean de Bohaing, who may have been interested in ensuring that Jacques Bissemoustier did the right thing by the deflowered Hannette du Buisson.
934. Ch. 9, n. 216: In classical Latin, *excedere* normally does not have legal connotations, but considering the medieval usage of *excessus* as meaning a crime, that is probably the way this verb ought to be taken in this common phrase in the sentences.

935. Ch. 9, n. 217: Besghie: *in emendis excessibus hiuusmodi correspondentibus* without delinquendo et excedendo; Ravin: *graviter delinquendo et excedendo* with a simple in *emendis* clause.

936. Ch. 9, n. 220: *qua constitit et constat pretactam* [DE] *corream dictam* [BC] *corream suis blandis verbis allaucasse*, *abduxisse et tandem deflorasse floreque sue virginitatis prouasse*, cum eademque conventiones matrimoniales clandestinse inisse et habuisse, dictas etiam conventiones manum renossasse nec ulterius ad matrimonii solemnizationem infra tempus statutum processisse, *eapropter pretaxtis res ad procedendum ulterius ad matrimonii solemnizationem—prout moris est et fieri consuetum—nobisque in emendis condignis et in expensis legitimis dicti promotorii . . . condempnamus, etc.*

937. Ch. 9, n. 221: In this regard it is quite different from the other Cambrai cases that mention abduction (at nn. 100–103). The Brussels case, *Corthink c Trullaerts* (at n. 347), has a similar pattern but a quite different outcome: *Officce c Paulls, Simoens en Trullaerts* (at n. 348).

938. Ch. 9, n. 222: *reum predictum pro eo quod cits bona et bonorum matrimonii, actu fornicari* [CC] *tunc virginem incorruptam, stuprare et deflorare ad postmodum [pluralies] carnaliter cognoscerem presumpti, . . . corream autem quia de conventionibus matrimonialibus clandestinis per eam allegatis renovandis earumque vigore ulterius cum prefato reo ad matrimonii contractum et solemnizationem procedendo nullam—saltam unde constet—diligentiam adhibere caravat ymo, rebus sic stantibus, se ab eodem reo deflorare et postmodum pluralies carnaliter cognoscri permisit, preassertas conventiones—quatenus in se fuit—in vim presumpti matrimonii transformando, . . . nobis reos eodem in emendis excessibus predictos correspondentes unacum expensis dicti promotorii, etc., . . . inter partes autem predictis reum proper deflorationem anteceditum ad dictum corream secundum suorum dignitatem natalum bonorumque ipsius rei facultatem unacum expensis . . . condempnamus, a conventionibus predictis reum ipsum absolventes, etc.*

939. Ch. 9, n. 224: A cryptic sentence of Divitis, but the marginalia say *Nota leges in sententia*, and the only offense mentioned in the sentence is the deflowering and subsequent intercourse. In *Officce c Apelheren et Claus* (14.vii.39), no. 252, also a Divitis sentence, it seems reasonably clear that the only offense mentioned in the sentence is the deflowering and subsequent intercourse. In *Office c Apelheren et Claus* (21.ii.39), no. 151.

940. Ch. 9, n. 225: *Provense c Gavre* (at n. 347), has a similar pattern but a quite different outcome.*Note* the sentence is the deflowering and subsequent intercourse. In *Office c Apelheren et Claus* (14.vii.39), no. 252, also a Divitis sentence, it seems reasonably clear that the only offense mentioned in the sentence is the deflowering and subsequent intercourse. In *Office c Apelheren et Claus* (21.ii.39), no. 151.

941. Ch. 9, n. 229: *It is, of course, possible that the woman was unaware that she was entitled to a dowry or that she was of such low station or the man so poor that no dowry would be forthcoming under the standard of secundum suorum dignitatem natalum bonorumque ipsiusre i facultatem. Those possibilities, however, seem less likely. See at nn. 370–85.*

942. Ch. 9, n. 220: E.g., Divitis does not seem to have favored multiplying the *leges* for frivolous allegations in one case not involving deflowering. *Office c Borst et Philips* (21.ii.39), no. 151.

943. Ch. 9, n. 232: *praeterea et quandam communciationem sententiam in eum auctoritate nostra debite latam, in articulis declaratum, ultra annum in se sustinere non formidavit. A year prior to this sentence would put us in* May 1446, *a year for which a full collection of sentences survives, but this is not among them.*

944. Ch. 9, n. 233: *rursus et quia aedile put premissa, in legem hiuusmodi sui asserti presumpti matrimonii graviter peccando, se a quodam canonico in seculo articulo designato pollui permisit.*

945. Ch. 9, n. 234: *reum quandam coniugatam in suam eisdem domo, mensa, et lecto tenuit, cum eadem quotiens vult adulterium committendo.*

946. Ch. 9, n. 235: *reum bonorum nominis et fame virginemque incorruptam existentem ac in nullo viro diffamatum defloratione floreque sue virginitatis prouasse. In addition to making amends, the couple are to provide two pounds of wax for the chapel.*
et eas infra tempus debitum non renovarunt ac sese carnaliter commiscuerunt, stuprum promises, for not having renewed them, and "for having commingled in the flesh with each other, perpetrating ple to solemnize and, in somewhat stronger language, to make amends: for having contracted clandestine allegations (the clandestine promises are specifically said to have been confessed), Platea orders the couple to solemnize and to make amends for not renewing their clandestine promises or proceeding to solemnize their presumptive marriage. He does not seem to order them to make amends for consummating carnalem invicem habuerunt, eisdem domo et lecto simul in fornicatione steterunt eisdem domo et lecto simul in concubinatu stando, etc.

948. Ch 9, n. 237: The reason for the doubt in the case where they did not both ask for it is that separations were not granted to married couples where both had committed adultery. X 5.16.6 (Innocent III, Intelleximus) paria delicta mutua compensatione tollantur. This, however, has to be balanced against the invitae nuptiae principle of C.31 q.2 d.a. c.1.

949. Ch 9, n. 241: This was probably a joint liability so that the promotor could get the costs from whichever of the two he could collect. The wording of this sentence makes it particularly likely that this is the case because each of the rei is condemned to pay, it would seem, the full costs.

950. Ch 9, n. 243: Office c Borst et Philips (21.i.39), no. 151 (Divitis; costs and alimenter not mentioned; couple ordered to pay 2 lb. wax to the chapel [and in previous entry too]); Office c Perchant et Sara (7.x.44), no. 502 (reus pays lying-in and litigation costs); Office c Pyroir et Beverlincx (2.xv.46), no. 902 (reus pays for lying-in and alimenter; litigation costs compensated).

951. Ch 9, n. 244: Office c Mortgate et Voete (16.vii.44), no. 500 (reus pays costs); Office c Camps et Macecliere (12.vi.45), no. 711 (costs compensated).

952. Ch 9, n. 245: . . . per duos annos continuos citra bonum et honorem matrimonii rem sepius carnalem inviscem babuerunt, eisdem mensa et lecto simul in concubinatu stando, etc.

953. Ch 9, n. 246: Office c Pierre Watelet et Jeanne Marielle (7.iii.50), no. 1270: per multos annos simul eisdem domo, mensa et lecto in fornicatione steterunt, etc.; Office c Louis Petit et Jeanne de la Voye (7.x.52), no. 1360: per XII annorum spatium et amplius simul in fornicatione steterunt eisdemque domo, mensa et lecto cohabitarunt, etc.

954. Ch 9, n. 247: [rei] citra bonum et honorem matromonii, acta fornicario rem placiter inviscem babuerunt carnalem, etc.

955. Ch 9, n. 250: Seven are sentences of Rodolphi, the rest of Platea, giving Platea slightly more than his share (79% vs 75%, z = .56, significant at .42, i.e., not statistically significant).

956. Ch 9, n. 252: For the straight-office cases, see Ch 8, n. 73. The office/instance cases are Officce c Bie et Amerlincx (n. 257), Office c Pepe en Herstorens (n. 255), and Office c Molen en Louwe (n. 258).

957. Ch 9, n. 253: For the straight-office cases, see Ch 8, n. 72. The office/instance cases are Office c Clinkart en Lescule (n. 279), Office c Chanelens, Houmolen en Michaelis (Ch 11, n. 154), Office c Rode en Vamincx (n. 278), and Office c Pietere en Uden (n. 276).

958. Ch 9, n. 254: Combining the office/instance and office cases and excluding the dissolution cases, we have 8 judgments for the presumptive marriage at Brussels (804, 33%) and 11 at Cambrai (11/29, 38%).

959. Ch 9, n. 257: (for Texts and Commentary for nn. 255–6, see T&C nos. 964–5) In Office c Godescale en Godens (31.iii.52), no. 360, on the basis of the couple's oaths, replies, confessions, and allegations, Rodolphi orders the couple to solemnize and to make amends for not renewing their clandestine promises or proceeding to solemnize their presumptive marriage. He does not seem to order them to make amends for consummating their clandestine promises, and he certainly does not mention that they thereby incurred excommunication. ([R]eos pro eo et ex eo conventiones matrimoniales clandestinas, per et inter se mutuo initas et habitas, ac per carnalem copulam inter eos teratis vicibus subscisitam, in vim presumpti matrimonii transformatas, renovare aut ulterius illiurn vigore ad matrimonii solemniszationem infra tempora debita procedere non curavunt, ad leges et amendas . . . condemnpanm, etc.)

In Office c Stoeten en Aken (21.i.56), no. 920, on the basis of the couple's replies, confessions, and allegations (the clandestine promises are specifically said to have been confessed), Platea orders the couple to solemnize and, in somewhat stronger language, to make amends: for having contracted clandestine promises, for not having renewed them, and “for having commingled in the flesh with each other, perpetrating stuprum and incurring excommunication” ([R]eos qui biusamodi clandestinas conventiones contraxerunt et eas infra tempus debitum non renovarunt ac sese carnaliter commiscuerunt, stuprum perpetrando et...
et [GA] ritum Sancte Matris Ecclesie infra tempus debitum fuisse et esse procedendum, vigore ulterius ad matrimonii solempnisationem procedere non curaverunt Gertrudis in prima deflorationem presumpserunt, eo quod inter se et mutuo conventiones clandestinas inire, facientis intercourse and deflowering. (that amends be made for the clandestine promises, their nonrenewal, and the intercourse, and the presumptive marriage was ordered solemnized, amends being ordered for the clandestine promises, their nonrenewal, and the intercourse, stuprorem and excommunication being mentioned. It will be noted that the couple does not have to make amends for not publicizing their clandestine contract; perhaps that is because the somewhat unusual words recognitiose et recognitas are, in fact, a description of a publication. There may also have been only one act of sexual intercourse; only one is mentioned. The mention of witnesses suggests that the man, at least initially, did not confess all. Since he seems to have acknowledged the promise, he may have initially sought to deny the intercourse. The sentence does not suggest, however, that he was resisting marriage very strongly. [D]eclararum inter prefatos [PP] et [GH] propter eorum conventiones matrimoniales clandestine, carnali copula subsecuta, initias et postmodum per eadem recognitas, fuisse et esse matrimonium presumptum ac propterea ad buissmodi matrimonii solemnisationem ex superhabundante aetate ipsa in commissum administrandi rationem cognoscere et fidem mutue inter eos facta et date non obstante, quidem fides remissiones irritat et de facto presumptam decernentes necnon ipsus qui clandestine contraheret et usque ad ipsius temporis iuxta ritum Sancte Matris Ecclesie procedendum esse et procedi videndum, dictosque reos qui sexus usque ipsius [GH] deificationem carnali cogerentur et clandestine contraxerunt, stuprorem perpetrando, excommunicationem incurvendo ac alias graviter delinquendo, ad penitentiam subiaret aut alias ad leges et emendas... condempnatum, etc.)

960. Ch 9, n. 258: declararum inter prefatos [EK] et [KT] propter eorum conventiones matrimoniales clandestine inter se, copula postmodum subsecuta, initias, habitas et hincinde sufficienter confessatas, fuisse et esse matrimonium presumptum ac propter eam ad buissmodi matrimonii solemnisationem... procedendum esse, etc. . . . remissioni fidei mutae inter eos facta et date non obstante, quidem fides remissiones irritat et de facto presumptam decernentes necnon ipsos qui clandestine contraheret et usque dicte [KT] deificationem cognoscere ac fidei mutua propria eorum teneritate remittere, excommunicationem incurvendo, stuprorem perpetrando ac contra fidei prestata hincinde temere veniendo, ad penitentiam peragendam aut alia ad leges et emendas... condempnatum, etc.)

961. Ch 9, n. 259: In Office c Bieet en Ameltricx (21.xi.49), no. 120, Rodolfphi heard testimony and then “out of an abundance of caution” (ex superhabundanti) deferred the oath to the woman, which she took. The presumptive marriage was found and ordered solemnized. Once more it would seem that Rodolfphi ordered that amends be made for the clandestine promises, their nonrenewal, and failure to solemnize but not for the intercourse and deflowering. (Visis articula promotoris [HB] et [GA] impositis, reorumque responsionibus, assertiones et testium pro parte dictorum promotum et [GA] eidem adherentis et secum partem formalen facientes, depositionibus et unicum uramamente veritatis dicte [GA] ex superhabundanti in supplementum pro actionis ex officio nostro delato et per eandem in se suscepto... discusse, decernimus et declararum inter [HB] et [GA] predictos fuisse et esse matrimonium presumptum, ulteriorque ad ipsius solemnisationem secundum ritum Sancte Matris Ecclesie infra tempus debitum fuisse et esse procedendum, ipsos quoque [HB] et [GA] ex eo quod inter se et mutuo conventiones clandestinas inire, carnali copula pluries subsecuta, usque ad ipsius Gertrudis in prima deificationem presumptam, quodaque eis infra tempus debitum removere, eorumque vaginae ulterius ad matrimonii solemnisationem procedere non curaverunt, nobis ad leges et emendas... condempnantes, etc.)

Office c Verdonyt en Voure (12.xi.56), no. 1050, looks like a case of concubinage, though the word is not used; the couple had had three children after the woman had been deflowered. She introduced witnesses, and the presumptive marriage was ordered solemnized, amends being ordered for the clandestine promises, their nonrenewal, and the intercourse, stuprorem and excommunication both being mentioned. It is interesting that costs are compensated between the parties, one of the few cases in which the parties’ costs are mentioned. (The promotor gets his costs in all of the Brussels cases alleging copula, except Office c Courayt en Waalewawns [n. 274].) [D]eclararum inter prefatos reos propter eorum conventiones clandestinas habitas et initias et per carnalem copulam usque ipsum [AV] deificationem et trium prolum procurationem in matrimonium presumptum transformatas, ad buissmodi matrimonii solemnisationem... esse
procedendum, dicitque reos qui buiusmodi clamdestinas conventiones contraxerunt et eas infra tempus debitum non renovaverrunt ac sese carnaliter commiserunt, stuprum perpetrando et excommunicationem incurrrendo, ad pertinentiam peragendam aut alias ad leges et emendas . . . unacum expensis dicti nostri promotoris, ipsis inter dictis corree ex causa annum nostrum movente compensatis . . . condempnamus, etc.)

Officie c Oemens en Bleesers, (20.xiv.53 to 6.vii.53), nos. 481, 482, 510, had even more process. After witnesses were introduced by the promotor and the rea, the man filed exceptions to the witnesses and introduced his own witnesses. This was followed by replications, duplications, and triplications. The couple were ordered to make amends for failure to proceed to solemnization and for consummating their promises, thereby incurring excommunication. Deflowering and stuprum are not mentioned in the order to make amends, although the court in its basic findings states that it occurred and that a female child had been procreated. Id., no. 481. The man appealed this case to Rheims (id., no. 482), but the appeal was declared abandoned when it was not pursued within time (id., no. 510).

962. Ch 9, n. 260: "Officie c Mol en Louve" (23.xi.53 to 18.xii.53), nos. 547, 548 (case set for grant of apostoli), 560 (grant of apostoli).

963. Ch 9, n. 261: There are also three other two-party cases (and a considerable number of three-party cases that are better treated subsequently) in this period outside of the sample in which a presumptive marriage is found. In Officie c Erbauwens en Lamps (21.xi.52), p. 328, no. 417, the woman and the promotor introduced witnesses; in Officie c Steenwickele en Wavere (6.vii.53), no. 508, and Officie c Meyngaert en Vegethens (23.xi.53), no. 546, there is no indication that the man is resisting the charges. Officie c Steenwickele en Wavere is particularly interesting in that the promises on which the presumptive marriage was based had been made by the woman's father in her name.

964. Ch 9, n. 255: In Officie c Oemens en Bleezers (12.xi.48), no. 60, in addition to the usual sworn replies, confessions, and assertions of the parties, there were "propositions and allegations against each other" (contra seismem propositionibus et allegationibus) but no further proof; in Officie c Rassin en Spontine (13.n.50), no. 140, there was a single witness, but the official deferred the oath to the man (neconnon unius testitis, super articulis buiusmodi producti, iurati et examinasti depositione seu attestatiione, unacum uramento veritatis, eidem reo ex officio nostro delato ac per ipsum in se suscepto et prestito). The description of the sexual offense varies. In Oemens we are told that the couple "many times in an adulterous and fornicatory act up to the procreation of one child presumed to mingle in the flesh (esse pluries actus adulterio et fornicario usque ad unius procreationem carnaliter commiscere presumpserunt)"; in Rassin, they simply "presumed to mingle in the flesh many times in a fornicatory act (esse pluries actus fornicario carnaliter commiscere presumpserunt)," and in Officie c Reins en Briebosch (6.vii.50), no. 210, "they presumed to mingle in the flesh many times up to the procreation of [34] child and the deflowering of the rea (esse pluries usque procreationem ac ipsius ree deflorationem carnaliter commiscere presumpserunt)." The reference to adultery in Oemens is odd. It could be simply a loose use of the term, but it could be that one or the other of the couple had a living spouse during some of the period of their relationship. The impediment of crime may have prevented this from becoming a presumptive marriage, although that impediment is not mentioned. Dowry for deflowering is not mentioned in Reins, nor are expenses of lying-in or child support mentioned in either of the cases in which children are mentioned.

Dowry for deflowering is not commonly in sentences of both Rodolphi and Platea. See Liber van Brussel, s.vv. bruiscchat wegens defloratie and dos pro defloratione (listing 144 non-duplicating cases). Awards of expenses for lying-in and child support were less common, but they are found in sentences of both officials. Id., s.v. Kraangeld (listing 21 cases and an additional 6 in which further proceedings about it seem to be contemplated) and s.v. Alimentatie prods, educatios prods (listing 36 cases).

867. Ch 9, n. 265: prefatum [MC] predicte [CP] ad dotem pro sue virginitatis defforatione secundum suorum dignitatem natalum et ipsius rei facultatem bonorum atque ad puerperii expensas, per dictam ream sustentas, prefato reo circa dictum puerperium per eum aut suum matrem impensis factis deficaldani semper salvis . . . condempnamus, etc. (Defalcare would seem to be a back-formation from French d´efalquer, `to deduct`. See Niermeyert, s.v.)

868. Ch 9, n. 266: prefatum reum dictae [EV] . . . ad prolis inter eos concepte et nate alimentationem prout moris et consuetudinis in loco originis dicte prolis fuerit aut alia prout inter amisibilitatem converyntur . . . condempnamus, etc. The wording of the award suggests a sensitivity to variations in local custom. See at n. 278. The couple are to make amends for fornication, and costs between the parties are compensated. (This case is not included among the eight mentioned at the beginning of the paragraph.)

869. Ch 9, n. 272a declaramus prefata reos qui sese carnali usque ipsius ree defforationem cognoscero preumpserunt et eam que se cum prefato reo conventiones clamdestinas habuisse allegavit, declaramus prefatos reos ab impetitione dicti promotore asserentis conventiones matrimonialibus inter ipsos reus carnali copula subsecuto fuisse et esse initas, quantum in ea fuit conventiones matrimoniales clandestinas subsecuto presump, etc. (Dedefica would seem to be a back-formation from French d´efalquer, `to deduct`. See Niermeyert, s.v.)
solemnizavit, quodque nuncupam per mortem dicte [AT] de qua nobis constitit et constat aut alias canonice repetitur solution ac propteram dictum matrimonium de iure nullum esse censendum, absolvendam esse et absolvimus, promotoreti et [AP] predictis desuper perpetuum silentium imponentes atque ex dicto nostro officio prefav, [KU] alibi in Domino nubenda licentiam pariter et auctoritatem concedentes sepip educers [AP] et [KU] qui clandestine de morte predicte [AT] non certificati suismodi eorum conventiones in matrimonium presum- tum transformare et contrabere nulliter et de facto presumserunt ... ad leges et emendas ... condempnamus, etc.

974. Ch 9, n. 277: X 4.1.19 (Clement III, In praesentia), v. 'viris: ubi tamen verisimiliter presumitur de morte [sc. vivi] a mulier nubat excussatur. This, however, should be contrasted with the holding of the decr帖al, which seems to require a certum numtium of the death of the husband. Cf. X 4.21.2 (Lucius III, Domius). Although Platea may have been thinking along these lines, the wording of the sentence could also be taken to refer to a dissolution of the previous marriage by some canonical means other than the death of the prior husband, e.g., consangunligy.

975. Ch 9, n. 278: predictum [HR] dicte [JV], sue corea ad domet pro sua defloweratione, ubi prius iuramento super eadem publice remissos, secundum suorum dignitatem natalium et ipsius res facultatem bonorum et ad expensas unius puerperii iuxta loci consuetudinem aut prout inter se amicabiliter convenerunt taxandas e... condempnamus, etc.

976. Ch 9, n. 279: Vvius articulis promotoriis ... eorumque reonum responsionibus, sacramento, allegationibus et recognizitionibus, coram duobus feudalistibus prepotenter comitibus Sancti Pauli ... declaramus inter prefatos [JC] et [ML] propter eorum affidationes in manu presbiteri et facie ecclesie de [Rebecq-Rognon (Roosbeek) (Brabant wallon)], uno banno postmodum subsecuto, iuxta ritum Sante Matris Ecclesie infra XLst deis apsi temporis ad matrimonium contrabendum et ipsius solemnizacionem, oppositione vam [Vr.140] mutus per dictum ream allegati et non probati non obstante, qui meritio in constantem mulierem cadere non debuit, procedendum esse, etc., etc. Prefatos tamen reos qui sese mutuo ctitu consensus matris et suorum amicorum prefaciam pre IMP corree abducere presumerunt et predictum [JC] qui se prefaRum corream usque ipsius de flaskationem cognoscere confessus est, stuprum perpetrando ... ad leges et emendas ... condempnamus, etc.

977. Ch 9, n. 280: The count of St Pol at this time would have been Louis de Luxembourg, who was, indeed, a powerful man. See references gathered in Vaughan, Philip the Good, 449.

978. Ch 9, n. 282: In Keus c Streboarte et Keermans (7.ix.42), no. 320, Hannel c Li`evre et Ossent (6.vi.45), no. 731, and Tourtielle c Hainon et Cauliere (1.vii.45), no. 730, the actrix is fined for frivolous opposition; in Streboarte c Rauere et Brunon (12.vii.45), no. 740, and (19.ii.46), no. 884, frivolous opposition is mentioned in the sentence but not picked up in the leges. In Keus, the actrix (but not the reus) is fined for having “stood in concubination” for half a year with the reus and for failure to publicize. In Hannel, both the actrix and the reus are fined for having intercourse with each other over the course of six years. In Keus, costs are not mentioned; in Hannel they are charged to the actrix. In Tourtielle, the reus is condemned to endow the actrix for deflowering (an act for which both he and she are fined), and costs are compensated.

979. Ch 9, n. 283: The grammar of this sentence is a bit confused, but it seems to mean what the text says: Rcum eadem pro eo quod, lite coram nobis inter ipsam tunc actricem et [JR] in causa deflorationis ream pendente indecisa, adeo incanta se gesit in respectu ad eundem [JR] quem constat, liteibus modicis pendente, in castro d’Att huisse – quasi ipsam violenter rapuesse – captavit idemque in summa sex florentem dictorum ridez unicum certis exsectione damnificatum quod notare meruit eadem rea ac diffamari ipsum [JR] in nostris jurisdictio ecclesiastice ac litiinde pendente predicte praedium capi – sic ut premittitur –, occasione pretense violente, damnificari procarurse, nobis ipsam ream in emendas ... condempnamus, etc. This case is the only one of the four in which the actrix is fined for the full range of things that she claimed, nonrenewal of clandestine promises, failure to solemnize, and consummating clandestine promises, although this is also the only case in which frivolous opposition, though mentioned in the sentence, is not mentioned in the leges.

980. Ch 9, n. 286: This case may not have had a promoting party. I classified it as such because of an ambiguous phrase, “promises of marriage imposed by the same promotor with the correasa” (dictum [MR] correasa a conventionibus matrimonialibus, per eundem promotorem cum dicta correasa impositas, absolventes). If, as seems more likely, cum dicta correasa is to be taken with promotoreti, then the tea joined with the promotor in
alleging promises of marriage with the second reus. It is possible, however, that the phrase is to be taken with conventionibus. If that is the case, then this case is straight ex officio.

981. Ch 9, n. 287: quae nos constitit et constat [CR] et [PT] reus tribus annis vel circiter nunc effluxit, primo et postmodum pluries invicem actis fonsuicario, etiam usque ad diurnum prolatum suscitantem inclusive, rem carnalem habuisse, de conventionibus etiam matrimonialibus clandestinis post hoc animo et intentione predictarum prolatum legitimationem inter se habitis et contractus renovandis easurnae vigore ulterius infra tempora debita ad matrimonium contractum et solemnisatiponem procedendo minime curasse, rursus [CP] predictum – de facto cum de iure, premissis attendit non posset – sponsalia in manu presbiter et facie ecclesie, uno desuper banno proclamato, cum [MB] superius nominata, premessorum tunc inicia, secondario contraxisse eademque [MB] eo modo dicere vel existimasse et sita premissa ecclesiis [PT] predictos deliquisse gravem et excessisse, etc. This case is also ambiguous as to whether there was a promoting party. The “oaths, replies, assertions, and confessions” of the second woman, who was not made a party by the promotor, were said to have been heard by the official ex officio.

982. Ch 9, n. 288: Nicolaí’s sentences in this type of case, as we have come to expect, impose a full range of amends on the delinquents. In this case, the reus is to make amends for not proceeding to solemnize his marriage after three banns, for entering into secondary promises that he did not renew publicly nor proceed to solemnize, for having recourse to presumptive marriage, and for deflowering the second rea and having intercourse with her many times. The second rea is to amend for having entered into secondary promises de facto while she was aware of the first ones, and for having allowed herself to be deflowered and known many times. The reus and second rea are ordered to pay the promotor’s costs. The reus is also ordered to pay damages (expense legitime et interesse) to the first rea for deceit. She, in turn, is given license and is absolved of all articles of the promotor.

983. Ch 9, n. 293: prosto rei depositi arduitas.

984. Ch 9, n. 294: [H]ic hipaque non contenta Maria predicta postmodum cum Johanne de Backere, altero reo- rum, alias conventiones matrimoniales, tribus desuper bannis proclamatis, in manu presbiteri et facie ecclesie parochialis de Humbeke Cameracensis [Humbeek (Vlaams-Brabant)] diocesis inire et – quod longe graves est – quia, certa oppositio contra pretensum huimusodi futurus matrimonium propter consangunitatem inter prefatos Florenceum et Joannem correos in quarto grada [rectius intra quartum gradum] et ex consequenti affinitate in similis grada inter ipsos Johannes et Mariam per Florentium prenemoratum defloratum et sepsum – ut ipsi ambo fatenus – cognitant obsistente, emend Marie ree tunc sufficienter et nobis in presenti processu clare patetactam creata obsistente, curatus predicti loci de Humbeke eosdem de facto contrahere volentes ad matrimonium contractum et solemnisatiponem admittit et recusavit, ipsa Maria tamquam ignorantie affectatrix se ad parrochiam et diocesis alienas, villum videlicet de Hulst Tracteensia diocesi – ubi de premissa noticia verumtimeri non poterat – cum eodem Johanne correos se transfere ibidemque, cito quorumcumque a diocesanos aut curato suis litterarum emptationem ac obtentum, ad matrimonii contractum et solemnisatiponem in facie ecclesie loci predicti utcunque consolare et demum pretensum huimusodi matrimonii carnalis cohabitatione et incestuosa commotione pro suo lito voluntatis autem temerario consistente etiam usque ad duarum prolium suscitationem inclusive, etc. This case is also ambiguous as to whether there was a promoting party. The “oaths, replies, assertions, and confessions” of the second woman, who was not made a party by the promotor, were said to have been heard by the official ex officio.

985. Ch 9, n. 299: ut autem in materia federis, de cuius dissolutione per promotorum predictum tractatur, rei et cum ea maturitate– quam materia expositat – procedere valeamus, super carnalis copula, per et inter prefatos Florenceum et Mariam allegata et confessata, testes ac alia – si que sint – ampliora documenta producenda necnon et Elizabeth’ [a] Joes cum qua praefatu Florentius utcunque sponsalia et matrimonium dictum contraxisse tamquam in hac parte interesse habentem coram nobis in ius vocandam esse ac produci et evocari debe re decernamus et declaramus in his scriptis.
896. Ch. 9, n. 300: It is for this reason that we questioned whether the text should read in quarto gradu and not intra quartum gradum. It is not only that the latter is what sentences frequently say (see T&C no. 1260) but also that it is hard to imagine how a process that only seems to have had one set of depositions could patetacere a relationship of third cousins, and how Marie could have been said to have the relationship sufficienter patefacta to her at the time of her marriage to Jean.

897. Ch. 9, n. 301: This possibility would also explain why the first sentence condemns Jean as incertarum ac alias prohibitarum nuptiarum et commixtionum conformiter ad eandem Mariam affectatorem et perpetra-torem (emphasis supplied).

898. Ch. 9, n. 304: altera die resolucionem huiusmodi immediate sequente insimul recedere [add a predict-tis conventionibus] ac alias de facto conventiones matrimonales carnale copula et precedent et subsequeta, invicem habere non erubuerunt, secundarum conventiones anteductas – quatum in eis fut – in vero matrimo-non presumpto – quale et ipsum fuisset ac esse decernimus – formando, gravissime delinquendo hincinde et excedendo, etc.

899. Ch. 9, n. 307: The leges tell us that Pasque is to make amends for failure to proceed to solemnization. Jean and Catherine are to make amends for failure to renew, for failure to solemnize, and for consummating their clandestine sponsalia. Jean is to make amends for something that makes no sense in the text, but which was probably intended to be for contracting publicly with Pasque, notwithstanding his presumptive clandestine marriage with Catherine.

900. Ch. 9, n. 308: I have no explanation for how Jean Oerens became Jean Coppins, but it is clearly the same case because the sentence refers to a previous judgment in anno xxxviii, and the name of the reus is the same.

901. Ch. 9, n. 309: extra matrimonii predicti solemnisationem, in modum reprobati confutnatus eiusmod domo, mensa et lecto cohabitasse, sententiam prememoratam autoritatemque huius curie tenevate contempt-endo, etc.

902. Ch. 9, n. 311: Officie c Hellenputten, Vleeshuere en Kerkofs (10.vii.51), no. 290; Officie c Forc, Perrens en Gruenewettere (3.vii.53), no. 1490 (the reus in this case is ordered to pay the costs both of the promoter and of Jan, suggesting that the latter was pursuing the matter).

903. Ch. 9, n. 312: This latter finding probably indicates that the official thought that there was something to the allegations, even though they could not be proven. In addition to these two (in which costs of the parties are not mentioned), there are seven cases in which the parties' costs are compensated (including one instance case in which the reus has to pay half of all the costs) and two in which the reus is to pay both the reus's costs and those of the promoter; in five cases, however, the reus has to pay the reus's costs (including three [one doubtful] in which she also has to pay the promoter's and one in which she has to pay both costs and damages). In the first group, we also have some indication that the official thought that the reus had a plausible claim, despite the fact that he ultimately found it to be “trivulus.” In one instance case and one office/instance case, the ex officio oath is deferred to the reus (and in two cases of deflowering it is deferred to the reus, presumably on question of deflowering). One case mentions the mutual propositions, petitions, and conclusions of the parties and one a referral from the pastor before whom the espousals were solemnized, in addition to the usual sworn responses. This suggests that there was a bit more process in these cases, but that fact is not reflected in the sentences. In four cases witnesses were introduced, twice by the promoter and the reus, twice by the reus alone. This does seem to have an effect on the sentence. All these cases involved deflowering. In two of them, the reus is ordered to pay the costs of the promoter and of the reus; in one case the oath is deferred to the reus and costs are compensated between the parties; in the fourth, costs between the parties are not mentioned but further proceedings are to be had on the reus's action for deflowering:

Molenbeke c Hochstrate (18.i.49), no. 20 (deflowering, oath deferred to reus; reus to pay half of the costs); Blomsarts c Loerfort (5.x.49), no. 90; Officie c Cosin en Dalem (5.xii.49), no. 70 (deflowering; reus to pay reus's costs); Officie c Daems en Pesters (14.viii.50), no. 180 (reus to pay reus's costs); Officie c Huysmans en Steenkoen (14.xi.50), no. 220 (deflowering; reus to amend for nonrenewal and non-proceeding); Officie c Flamingi en Spaten (3.xii.51), no. 300 (deflowering); Officie c Jacob en Heyen (25.viii.52), no. 400 (reus to amend for nonrenewal and non-proceeding); Officie c Docx en Beken (28.xi.52), no. 420 (deflowering; mutual proposition, petitions and conclusions); Officie c Keyen en Bijkerraets (16.i.53), no. 440 (deflowering);
Officie c Oost en Vrdachi (20.vi.53), no. 480 (costs between the parties compensated); Officie c Addiers, Ocezeele en Spalsters (9.xi.53), no. 540 (rea pays both promotor’s and reus’s costs); Officie c Geerts en Steenman (7.xi.54), no. 630 (deflowering; costs of parties compensated); Officie c Lambrechtus, Mose en Boux (7.x.55), no. 790 (deflowering; costs of parties compensated); Officie c Boi, Bayschere en Gheersone (7.viii.58), no. 828, and (4.xi.58), no. 970 (deflowering; second rea produces witnesses; oath on deflowering deferred to her; reus pays all costs); Officie c Coeman en Perremans (11.x.55), no. 852 (costs between the parties compensated); Officie c Mey en Rayers (26.i.57), no. 1100 (referral of pastor of Denderwindse); Officie c Wolf en Rokhen (12.vi.57), no. 1180 (deflowering; witnesses produced by promotor and first rea; reus to pay all costs); Officie c Bousche en Scheekens (5.x.58), no. 1350 (deflowering; oath thereon deferred to rea; costs between parties compensated); Officie c Cleren en Piernon (17.x.58), no. 1370 (rea to pay promotor’s costs and both costs and damages to reus and his fiancée); Officie c Bagraen, Glosquet en Streichen (28.vi.59), no. 1460; Officie c Nuyenhoue en Herpyn (25.viii.59), no. 1520 (deflowering; witnesses produced by promotor and rea; oath deferred to reus; costs compensated); Officie c Stael, Cloote en Woorans (23.xi.59), no. 1577 (deflowering deferred; denied by reus; witnesses produced by first rea); Officie c Smet en Beeckmans (27.xi.59), no. 1583 (rea to pay costs of promotor and reus).

994. Ch 9, n. 313: There are factual variations in these cases that are worth noting. In Officie c Meyran, Eechoute en Haucq (24.i.53), no. 451, on the basis of the oaths, responses, and confessions of the parties and their mutual propositions, allegations, and confessions, Platea orders the presumptive marriage of the reus with the first rea solemnized. The reus and second rea are to make amends for illicit intercourse, including deflowering and the procreation of a child. The second rea is to make amends for nonrenewal and not proceeding with her alleged promises and frivolously opposing the marriage of the first rea and the reus dictum [CH] pro eo quod . . . matrimonio quod dictus reus cum prefata [HE] sua sponsa contrabere intendebat frivolo se opposuit . . . condempmannus. The first rea and the reus are to make amends for entering into clandestine promises and for consummating them, whereby the first rea was deflowered. They thereby converted the promises into a presumptive marriage and incurred excommunication by doing so. The reus is then ordered to endow the first rea.

Since there were no witnesses and both the alleged and the sustained promises were clandestine, it looks as if the man was allowed to choose between the two women simply by denying that he contracted with one of them and confessing that he contracted with the other. One would have thought that at the least he should have been made to take the ex officio oath. Perhaps he was, though frequently that fact is specifically mentioned. It is possible, however, that the confessions of the parties solved the case. That would have been true if the promises alleged by the first rea had occurred after the presumptive marriage had been formed by the reus and the second rea, or if the first rea was not able to allege that she had had intercourse with the reus after they had contracted. That would mean, of course, that the reus was pursuing his relationship with both women simultaneously or virtually simultaneously, but that does not seem at all unlikely in the world that these records reveal. Some support for this interpretation may be found in the fact that the first rea is to make amends not for having frivolously alleged the promises but, rather, for having frivolously opposed the marriage of the reus and the second rea.

In Officie c Bloke, Jans en Braken (12.iv.54), no. 602, the espousals that were turned into a presumptive marriage were public. The opponent, Elisabeth vander Braken, however, was able to produce witnesses, and they said enough that Platea required the reus, Antoon vanden Bloke, to take the ex officio oath. Platea ultimately finds that the promises were “not lawfully proven and hence we consider them inapt and invalid” (oppositione conventio matrimonialum per predictam [EB] opponentem contra [AB] allegatarum et minuslegtime probatarum non obstante, quas propterea ineptas et minusvalidas reputamus, uramento veritatis super eisdem dicto [AB] prae debite et indicilatir in se suscepto, predictis promotori et [EB] aequo huicmodi conventionibus silentium perpetuum imponentes, etc.). While he imposes perpetual silence on the second rea and the promotor, costs are compensated, and she is not to make amends for her opposition but for “simple fornication.” The couple who consummated their public espousals, on the other hand, are expressly said to have incurred excommunication. This may be a case in which the reus and first rea deliberately raised the stakes by consummating their espousals because they knew the second rea had a case.

Officie c Meynsschaert, Roemnx en Doert (13.ix.55), no. 840, is similar to the first in that both the alleged and the sustained promises were clandestine, there is no proof of them other than the statements of the
parties, and the opponent is not to make amends for frivolously alleging the promises with the reus but for frivolously opposing his marriage. Once more it seems possible, perhaps even likely, that the sentence is based on the admitted timing of the events, rather than on a conflict about whether either set of promises had occurred. This is suggested by the strong language with which Platea condemns the couple whose presumptive marriage is to be solemnized. ([P]reditosusus [JM] et [ID] qui proprio eorum tementiate sponte alterunt, clandestinasque conventiones matrimoniales contraexserunt ac sese carnaliter commiscuerunt usque ad predicte [ID] et ipsius [ER] deflorationem, stuprum cum easdem perpetrando, excommunicationem incurrere... ad leges et emendas... condempnamus, etc. The phrase does not quite parse ([ID] did not deflower [ER], and only [JM] committed a stuprum with two women), but the meaning is clear enough. Although it is clear that [ER] was also deflowered (that fact is also mentioned later), she is not awarded a dowry, perhaps because she had already received it.)

In Officie c Clerc, Meets en Augustini (28.iv.58), no. 1301, the timing of at least some of the events is clear. The reus went off and deflowered the second rea after he had publicly contracted with the first; hence, he is to make amends for having “exceeded the law of his espousals.” That wording suggests that at the time, he had not yet consummated his espousals. Once more the opponent is to make amends for having opposed the marriage of the reus and her correa frivolously, suggesting that there may be something to her charge that the reus contracted with her. Once more it is unclear whether these promises came after the presumptive marriage had been formed or whether there was no proof that intercourse followed them, but since the case was decided on the basis of on the statements of the parties alone, it is likely that the order of the confessed events made the result obvious. ([A]petdictum [JC] qui sua affidavitone predicta non obstante rem carnalem cum predicta opponente habuit in legem suorum sponsaliorum temere excedendo et graviter delinquendo necnon dictam opponente quem se matrimonio inter sepelidito [JC] et [GT] contraебrando frivole opposuit... ad leges et emendas... condempnamus, etc.)


996. Ch 9, n. 315: declaramus inter prefatos [JH] et [KA] propter eorum conventiones matrimoniales clandestine habitas et initas, carnali copula subsecuta, que matrimonium facerunt presumptum ad buissmodi matrimonii presumpti solemnizationem... quibusdam conventiones matrimoniales per dictum [JH] quas cum predicto [KA] se babuisse quasque frivolas, minime probatas et ineptas reputamus non obstantibus, procedendum esse et procedebre. Sepedictos corrossos, qui clandestine contrahere presumpserunt, ac prefatos [JH] et [KA], qui sese carnaliter usque ipsius deflorationem cognoverunt, stuprum perpetrando... ad leges et emendas... condempnamus, etc. See no. 1033, n. b, for the reading [JH] in the last position.

997. Ch 9, n. 316: Officie c Temmerman en Coninx (28.iii.50), no. 150 (witnesses produced by promotor and KTY), Officie c Meynuscaert, Zegers en Rode (26.x.54), no. 710 (EM and GR amend for prior clandestine promises); Officie c Willem de Scrivere, Katharina vanden Ahele en Anna vander Sportc (11.vii.55), no. 820 (witnesses produced by AS; WS and AS to pay KA’s damages and costs); Officie c Jan Biesman, Katherina Stroyancken en Machtedt Scutters (29.v.59), no. 1472 (witnesses [unclear who produced]); JB and KS to pay MS’s damages and costs; Officie c Waghels, Gampe en Scoemans (8.vi.59), no. 1480 (AW and MS to pay MC’s costs).

Platea has a standardized form for his four sentences. In all cases, the public espousals are dissolved “on account of the stronger bond” (propter fortius vinculum) of the presumptive marriage, and the second rea is expressly given license. Rodolphi’s one sentence has neither feature, but he does dissolve the public espousals, and there can be little doubt that the result is the same.

That three of the second rea in Platea’s sentences are awarded at least their costs, while the fourth is not, is probably to be explained by the fact that the exceptional rea is also the one who contracted clandestinely with...
the man before their espousals were made public. Officie c Meynsscaert, Zegbers en Rode. At a minimum, her method of proceeding put herself in a position where she could be deceived by the man’s duplicity, and Platea may have suspected that she knew something about his past. I have no explanation for why two of the women who are awarded costs are also awarded damages, and one is not.

998. Ch 9, n.317: [WS] qui priori sua fide non obstante dicte [KA] scienter [AW] affidare permisit, binaque sponsalia quantum in eo fast contrafalicando et contra fidem suam prius prestitam tenere veniendo. This, of course, does not parse as it stands; we would expect se affidari permisit. It will parse if we emend permisit to presumpsit (barely; we still should have a se), but the slip may be telling.

999. [This number was not used.]

1000. Ch 9, n.318: We cannot, however, exclude two other possibilities: (1) that the woman did have witnesses and the man knew it, so that there was no point in denying her charges, or (2) that the man was ashamed when the woman confronted him in court and so confessed.

1001. Ch 9, n.319: carnali copula sepius usque ipsius [MS] deflorationem subsecuta... [AW] et [MS] qui sese carnaliter extra legem matrimonii cognoverunt et clandestine contraire excommunicationem inurrendo et inconstum [read stuprum] perpetrando, etc.

1002. Ch 9, n.320: The presumptive marriage is ordered solemnized; the secondary promises are dissolved, in all but one, propter fortius vinculum; in all but one, the second man is given license; in three cases, the couple who are to solemnize are to make amends for their clandestine promises and in two for the intercourse, and the woman is to make amends for the secondary promises. In three of the four, cases, witnesses are introduced. In three of four, the second reus gets at least a share of the costs, and in two he gets both costs and damages. Villa c Bossout, Officie c Villa en Bossout (20.iii.53 to 22.iv.58), nos. 470, 503, 679, 1034, 1299 (promotor appears only in next-to-last entry; costs compensated; no amends for intercourse; no mention of fortius vinculum; no license); Officie c Hermans, Bruxes en Logaert (7.ix.53), no. 520 (no costs; amends for mutual abduction and stuprum); Officie c Sualmen, Wittebroots en Meyere (16.vii.54), no. 650 (no amends for the clandestine covenants); Officie c Peerman, Hoesinghen en Cesaris (7.xi.59), no. 1564 (no amends for intercourse).

1003. Ch 9, n.324: [CS] et [MW] qui propria eorum tementiae, lite super suis conventionibus coram nobis indecise pendente non obstante, mutuo abierunt, sese carnaliter comisscentes et excommunicationis sententiam incurrerunt, etc.

1004. Ch 9, n.327: [LH] et [AK] corross propter conventiones clandestinas per verba de futuro non obstante impedimento consanguinitatis quarta gradus inter eodem existente mutuo de facto contractas et quia de binae modi conventionibus ulterius ad matrimonii solemnizacionem aut alias iuridice [sic] diligentiam facere non cararet, [AK] quaque et [JV] pro eo quod ipsa [JV] ipsum [AK] abducere preter consentum parentum, amicorum eadem, eam carnaliter cognoscente, usque ad eadem deflorationem presumpsit ipsumque ab eodem abduci et deflorari ut premissitat permisit et quia post affidationem inter eodem corross subsecutam sese carnaliter saltatem unica vice commissere presumpserunt... ad leges et emendas... condempnamus, etc. The first reus is given license but not his costs, presumably because he had entered into invalid clandestine promises.

1005. Ch 9, n.328: [AS] pro eo quod... se abduci, deflorari et postmodum iterata vicibus carnaliter cognosci permitting non erubuit conventionibus binae modi secundarias in vim presumpsti matrimonii transformingo unique, etc. The priores conventiones for which EG is to make amends should almost certainly be secundarias conventiones, suggesting that he was aware of those with JG. JG, though he is to make amends for the clandestine promises and failure to proceed with them, is given license and awarded his costs and damages to be paid the couple who are to solemnize, but he has to share in paying the promotor’s costs. The couple are to pay costs of the promotor and the damages and costs of the first reus, who is expressly given license.
1006. Ch 9, n. 330: [CM] et [JC], correas, quia in præiudicium dicte affidationis, non requisitis ymmo insciis dicte ree parentibus et estra consensum eorum, parter abierunt et clandestine conterTaxerunt atque esse pluriae et iterato vicibus etiam usque ipsius ree deforlationem carnali commiscitages, simul esdom domo, mansa et leço stantae et cohabistantes, contra statuta symodialia et canonicas sanctiones temere cemendo pretatoque [HP], sponsos et coreos, prejudicando et honoris suo permaxime derogando . . . ad leges et emendas . . . condempnamus, etc.

1007. Ch 9, n. 332: [HG] et [MB] quia in silipendum predictorum sponsalorum et huiusmodi litispieldentie præiudicium esse ante predicti matrimonii solenmpizationem carnali commisscerunt et infra tempora debita non processerunt, stuprum damnpialabiliperpetrando et excommunicationem incurrendo . . . ad leges et emendas . . . condempnamus, etc. It is possible that predictorum sponsalorum refers to the second espousals, although it is hard to see how the couple infra tempora debita non processerent, when those espousals were the subject of litigation after the first banns had been proclaimed. On balance, it seems better to take both phrases as referring to the first espousals. The first reus is awarded costs and damages and is expressly given license, but he has to share in the costs of the promotor and make amends for his clandestine promises.

1008. Ch 9, n. 334: declaramus inter prefatos [WG] et [MP] propter eorum affidationes in manu presbiteri et face ecclesie de [Lettelingen (Hainaut)], carnali copula subsuecta, factas et initas matrimonium clandestinium censendum atque ad euidem matrimonii solenmpizationen . . . procedendum fore, etc. . . . conventionibus matrimonialibus inter [JE] et [MP] predictos clandestine initias non obstantibus, quibus per predictas conventiones in face ecclesie contractas in foro contentiouso sit publice derogatum. The rea alone is to pay the costs of the promotor and the first reus, apparently because it was found that WG was unaware of the previous espousals. Neither license to nor damages of the first reus is mentioned.


1012. Ch 9, n. 342: That he did not before the register ends is indicated by the fact that two quite ordinary cases of opposition to public espousals on the basis of clandestine ones were heard during and just after the period in which those cases were being decided, but those are the cases which impose the most serious penalties on the opponent for frivolous opposition. Officce c Favele, Oys en Scroten; Officce c Cleyse en Heydon (both at n. 187, T&C no. 916).

1013. Ch 9, n. 343: Placet us sentences tend to get more cryptic as the register goes on, and he never, at least in the sample, indulged in the high rhetoric that we find in some of Nicolai’s sentences. By the time he rendered this sentence, he had been on the job for six years, and, we might say, he had “seen it all.”

dies et ebdomadas in diversis locis successive secum tenuit, iteratisque vicibus carnaliter cognovit, ad leges et emendas, tantis excessibus correspondentes, eorum taxatione iudicio nostro reservata, condempnamus in bis scriptis. It is unfortunate that Rodolph does not recite the process by which he reached his conclusions, but the interlocutory sentence of 19 March tells us that Walter submitted articles and positions that were admitted. The fact that there is no equivalent entry for Barbara suggests, though it certainly does not prove, that the story of the abduction was confessed to by the parties in open court.


1017. Ch 9, n. 350: That this is so is also indicated by the fact that the sentence in the civil case does not include the tag phrase sententialiter diffiendo in bis scriptis, a phrase that is found in virtually all the sentences except the interlocutory ones, and by the fact that that sentence does not contain the expected order to solemnize the sponsalia de futuro. The tag phrase does occur in the second sentence (but not in the third).

1018. Ch 9, n. 352: There is one civil case that apparently began as a divorce case (the grounds are not stated), but by the sentence stage, it had turned into a case of separation on the ground of adultery. Watti`ere c Lonc (6.x.42), no. 351.

1019. Ch 9, n. 353: It is not clear that the promotor was even trying to dissolve the marriage in this case because he does not join the husband as a party.

1020. Ch 9, n. 357: Office c Gheerts en Bertels (14.v.51), no. 270 (Ch 10, at nn. 131, 200); Perre c Meys (10.i.55 to 7.ii.55), nos. 740, 745, 748, 762 (Ch 10, at n. 136).

1021. Ch 9, n. 359: I am virtually certain that this is a jactitation action brought by Renaud and not, as the editors have it, a spousals action brought by Hannette.

1022. Ch 9, n. 360: It will be noted that the court rendered this sentence on Christmas eve. My translation of the French defamatory words is not literal and ignores the possible sexual connotations of portée: Il n en eragera me car il ne sera me de la première portée. The other case in which we have seen the defendant being required to undertake an expiatory pilgrimage is one of unchastity by a priest (above, at n. 31). There also seems to be a reference to one (or more) pilgrimages in an award of costs in the four-party spousals case. Office c Painieux, Simoons en Trullaert (at n. 349).

1023. Ch 9, n. 364: Once more this is not what the French says literally: Demisiele, laissez vous ent car j’ay donné mon ame au dyable en cas que me [read na] fille l’ai a mariage. Alternatively, emend j’ay to the conditional and translate: “I would give my soul to the devil if my daughter should marry him.”
1024. Ch 9, n. 365: loquendo irreveranter, infonon multum et irreligiosae ac aliter quam debeat verum orthodoxae fidei zelatum responsisse.

1025. Ch 9, n. 367: The church officer who forged the letters is custos. This would probably be a church warden in England, but the editors’ translation of sacristain is also possible.

1026. Ch 9, n. 371: In causa que coram nobis vertitur et pendet indecisa inter [EE] actricem ex una et [EG] reum partibus ex altera, visis certorum testium receptorum, juratorum, examinatorem et pro parte dicte actricis productorum despositionibus . . . declaramus prefatum [EG] reum prudicit actrii proper suo viginitatis deflorationem ad causam emendam ipsa reus aliae extitit per nos condempnatus, ad unum de duobus, aut ut eodem actrii XVI clinkardos monete Brabantie semel infra binc et [15.viii.58] solvat, aut duos clinkardos eiusdem monete, quanduip ipsa actrix in humanis vixerit, per eam recipendos et levandos, singulis annis in festo sancti Johannis Baptiste [24.vi] anni quinquagesimo nono [the addition of the year suggests that the previous proposition should be a rather in, or that we should amend to a anno quinquagesimo nono] ad et supra sufficiens contrapignus eadem actrii infra mensem post huisumodi electionem quam reus predictus infra tres hebdomadas a die sententie nostre nunc late computandas requisita facere tenebitur, assignet, fuisse et esse obligatum, quem et nos ad premissa facienda unacum expensis per dictam actricem factis, . . . condempnamus, etc. (The fact that the sentence says alias extitit condempnatus suggests that there is an interlocutory sentence that is missing, because the previous recorded sentence deferred any ruling on the topic to future proceedings.)

1027. Ch 9, n. 374: Clinkardus in the Latin is the modern Dutch klinkaard, a dialectical variant of klinker, meaning the typical Flemish or Dutch yellow brick. As a coin name it is found applied to the double royal or florin, a gold coin issued by Philip IV of France, known in French as chaise. Spufford, Money, 408. It is unlikely that this is the coin meant, particularly since we are speaking of “money of Brabant.” What is probably being referred to is the philippus or cavalier or rider of the Burgundian Netherlands, or, perhaps less likely, the lion or leene of the same. Id., at 409. These were worth 48 gros or 60 gros, respectively, or between 3s. 6d. and 4s. 6d., English sterling. Spufford, Handbook of Exchange, 221, 205 (exchanging through Venetian ducats). Another way of approximating the value is to note that in 1434, a skilled carpenter in Antwerp earned 5 gros a working day. Spufford, Money, 322.

1028. Ch 9, n. 375: declaramus anteditiam [YF], intervenientem, partemque se contra prefatum actricem facientem, sepedicit actrici proper suo viginitatis deflorationem, ad causam emendam alias prefatus quonam [MC] extitit contempnatus ad unum de duobus, aut ut eodem actrii quattuordecim clinkardos semel infra binc et festum Nativitatis Christi proximam [sic] solvat aut duos clinkardos singulis annis dicte actrii ad et supra sufficiens contrapignus infra mensem post huisumodi electionem, quem [YF] predicta infra duas ebdomadas a die sententie nostre nunc late computandas, requisito [sic] facere teneatur, assignet per dictam actricem in festo Nativitatis Johannis Baptiste proxime futuro et quolibet subsequenti quanduip ipsa actrix in humanis vixerit recipendos et levandos fuuisse et esse obligatum quam et nos ad premissa facienda unacum expensis per dictam actricem factis . . . condempnamus, etc.

1029. Ch 9, n. 376: (4.vi.56), no. 970: declaramus prefatum [HB], reum, dicte actrici ratione sue deflorationis, ad causam emendam sibi alias extitit condempnatus, ad unum de duobus, ideoque et ut eadem actrici octodecim petros semel, quem pro octodecim stufferis computando, infra binc et festum Assumptioinis Beate Marie Virginis semper Gloriosae proximam solvat, aut duos petros singulis annis predicte actrici, ad et supra sufficiens contrapignus infra tres ebdomadas post huisumodi electionem, quam facere infra duodecim dies proximos teneatur, annum silicet in festo Nativitati Domini Nostri Iesu Christi proxime futuro et relinquum in festo sancti Johannis Baptiste immediate sequenti per sepedicit actricem quanduip ipsa vixerit in humanis capiendos et levandos, assignet, fuisse et esse obligatum, quam et nos ad premissa aut alterum eorum facienda, unacum expensis per dictam actricem factis . . . condempnamus, etc. The facts that Officie c Chebaen in Polet (T&C no. 1028) describes the installment payments as recipendos et levandos, that this one speaks of them as capiendos et levandos, and that all three sentences use the term assignare suggest that what is contemplated is some sort of rente or cens.

1030. Ch 9, n. 378: About ten years after the date of this sentence, Philip the Good began to issue a gold coin known as a “florin of St Andrew,” worth 3s. 6d. groat, or slightly more than 18 stuivers. Spufford, Money, 409. It is possible that this coin had a predecessor with the image of St Peter on it. Be that as it may, the
Comptus Tornacenses regularly use ‘peter’ to indicate a unit of 36 gros, which corresponds to what we have determined in the following text.

1031. Ch 9, n. 379: It is possible that our difficult text is telling us that 18 ‘peters’ are worth 18 stuiver, which would suggest that petrus is a corruption of patardus. This seems less likely both because it does not account for the singular quem (perhaps the equivalent of chacun) and because it would give this woman an almost derisory sum. For the equivalences, see n. 374; for further reference to ‘peters’, see at n. 386. Once more, the Comptus Tornacenses seem to settle the matter.

1032. Ch 9, n. 380: Raet c Triest (16.v.49 to 31.iii.52), nos. 50, 185, 231, 261, 332, 364 (letters of execution). No. 332: Visa quadam informatione facta de et super dignitate natualum [ER], actricis, in causa deflorationis ex una, et factuate atque possibilitate [LT], rei, partibus ex altera, cum circumstancis ad hic facientibus et alia nos et animum nostrum moventibus, Christi nomine invocato, per banc nostrum sententiam taxando decernimus et pronunciamus prefatum reum ad tradendum et solvendum dicte actrici pro sua defloratione loco dotis summam seu valorum viginti flororum dictorum clinkertaet semel unaque vice, aut duos consimilides annis singulis quanandi ipsa actrix vitam duxerit in humanis, si ipse reus maluerit seu optaveret, nec non pro buissimodi doobus flores si duxerit annatam solvendi sufficienti pignus assignandum unacum expensis per dictam actricem in presenti causa legitime factis, earum taxatione indicio nostro reservata, fuisse ac esse condempnandum et condempnamus, edem reo ad optandum terminum duodecim dierum proximorum statuentes et preffentes. The reus was resisting this judgment mightily. He excepted to the actrix’s initial petition and was given fifteen days to prove his exception (no. 50); sixteen months later, she was authorized to take the oath, despite his objections (no. 185); three months later, he was admitted to prove that he had already settled with her (no. 231); four months later, when his witnesses had failed to prove the settlement, he was ordered to endow her (no. 261); it took another eight months to develop the “information” on her dignity and his circumstances (no. 332, just quoted).

1033. Ch 9, n. 381: Siligons, classically ‘milles’, but in the Middle Ages ‘rye’; see Niermeyer, c.s. Precision about modius is impossible. See DeCange, s.v. Various equivalences suggest that we should be thinking in terms of 40 to 60 Roman pounds, 30 to 55 avoirdupois. Two 50-pound sacks of flour is probably not enough for bread for a woman for a year, but it could make a substantial dent in her requirements.

1034. Ch 9, n. 382: Vis [a] quadam informatione facta de mandato nostro de et super dignitate natualum [MB], actricis, in causa deflorationis ex una, et factuate atque possibilitate [AV], rei, partibus, ex altera, cum circumstancis ad hic facientibus alia nos et animum nostrum moventibus Christi nomine invocato per banc nostrum sententiam taxando decernimus et pronunciamus prefatum [AV] reum ad tradendum et solvendum dicte [MB] actrici pro sua defloratione loco dotis duos modios siliginis annis singulis quanandi ipsa actrix vitam duxerit in humanis necnon pro buissimodi doobus modiis annatam solvendi sufficienti pignus assignandum unacum expensis per dictam actricem in presenti causa legitime factis . . . condempnandum, etc.

1035. Ch 9, n. 384: Hoebrugs c Everaerds (7.iii.55), no. 770; Stamesoert c Cluetinck (27.v.57), no. 1160; Boexele c Honsem (26.viii.57), no. 1200.

1036. Ch 9, n. 385: iure patri putativo dicte proli semper salvo.

1037. Ch 9, n. 387: The sentence closes with the phrase: easdemque partes quo ad alia bincide proposita, petita et allegata, ab instantia indicia nostris absolverentes. This may mean that the court found that there was nothing else in the agreement, but it could equally well mean that the court found that the other elements in the agreement were being or had been complied with.

1038. Ch 9, n. 388: declaramus predictam ream [KG] antefato actores nomine suse uxoros ad solvendum, tradendum et deliberandum quadraonginta modios siliginis mensure Loovaniae pro duobus annis dicto actori debitos et non solutos, nosem modios desuper solutis dictae ree semper salvis, pretextu viginti modorum siliginis dicte mensure singulis annis sepedicto actori per eandem ream cum sua filia predicta, ipsius legitima uxor, quandiu ipsa in humanis vixerit, nomine dotis promissorium ac singulis annis ad assignandum quingue saccos siliginis et ad solvendum eodem de anno quinquagesimo quarto aut saltatem ad cassandum et tollendum inhibitionem per dictam ream [SR] possessori certarum terrarum factam a quo prefatus actio dictus quingue modios siliginis solitus fuit recipere, necnon ad dandum et deliberandum quatuor lectos cum unioni lecti cortinis et unicum duodena phvinarum prout hec et alia in instrumento supratacto latus continetur, obligatam fuisse
et esse ... alius in predicto instrumento doctis sue donationis propter nuptias contentis in suo volore duraturis nichilominus. Duodena does not seem to mean any of the things reported in Niermeyer, s.v.; plueinaris is not found. Duodena is quite standard in English medieval Latin for ‘dozen’ (Latham, s.v.), and pluvinaris is probably an alternate (or mistaken) form of pluviale.

1039. Ch 9, n. 389: declaramus oppositiones, contradictiones et recusationes per prefatum reum de et super promissione doctis durarum librarum grossorum monete Fländria, sue nepiti [EB] predicte in subsidium matrimoni cum prefato [EH] nunc dui contractii promissarum et per eundem reum ad et supra sufficienti contrapignus assignandarum prestitas et factas fuisse et esse temerariarum, illicitas et misutas, dictumque reum ad et supra sufficienti contrapignus predictas duas libras grossorum, quamdui ipsas coniunges exercerit in humanis, assignandas, anum arrregis debitis, necnon ad eumdem ad tradendum et solvendum duas libras consimiles semel eisdem consentibus fuisse et esse obligatum, etc. Admittedly, this does not say that the forty groats are owed every year, but it is hard to see why it says quamdui ipsas coniunges exercerit in humanis unless they were owed it every year; the assignment of the contrapignus is only found elsewhere for periodic payments, and the mention of “arrearages” suggests that the reus had fallen behind in some regular payment. The other possibility is that a one-time payment is to be made to the survivor of the couple.

1040. Ch 9, n. 390: The sentence does not say that this is a dotal payment, but it seems highly likely that it is. The coin is probably the French écu à la coqronne. In the 1450s, this coin exchanged for 30 sous tournois, or 1.2 Florentine florins. Spufford, Handbook of Exchange, 193, 179. That, in turn, would convert to approximately 79 Brabantine gros. Id., p. 230. Hence, the entire payment was probably in the neighborhood of 1,900 gros., or about three times the size of the capital payments that we saw in dowries for deflowering. That seems quite a lot for a cutler (culbellifex), which is how Daniel Morrayn is described, but there are no other hints as to the status of the parties.

1041. Ch 9, n. 393: declaramus prefatos reos dicto actori ad mediatatem cuiusdam domastidi per ipsos reos monasterio et conventui Haßflingen dicto actori prins nomine sue uxoris pro sua dote obligati et eo insisto nunc et dictor vendit esse obligatos ita quod dictum actor pro certa summa pecunie pro qua domus illa dicta monasterio et conventui fuit vendita poterit consequi et levare, item sepedictos reos prefato actori ad medias expenses in festo nuptiali sibi per eos dari conventas et per eundem actorem expositas unacum collobio et foederatura per eum sue spone emptus necnon ad duas lecticas, unum par linteuminaum et duos supellectiles, proborum virorum in premias estimatione et moderatione semper salva, fuisse et esse obligatos; preterea sepedictum actorem reum dicte actrici in bonis dotaliciis per eundem actorem auctoritas et potestas ad tradendum et solvendum duas libras grossorum, semel eisdem consentibus fuisse et esse obligatum, etc. Admittedly, this does not say that the forty groats are owed every year, but it is hard to see why it says quamdiu ipsas coniunges exercerit in humanis unless they were owed it every year; the assignment of the contrapignus is only found elsewhere for periodic payments, and the mention of “arrearages” suggests that the reus had fallen behind in some regular payment. The other possibility is that a one-time payment is to be made to the survivor of the couple.

1042. Ch 9, n. 397: The sentence does not say that this is a dotal payment, but it seems highly likely that it is. The coin is probably the French écu à la coqronne. In the 1450s, this coin exchanged for 30 sous tournois, or 1.2 Florentine florins. Spufford, Handbook of Exchange, 193, 179. That, in turn, would convert to approximately 79 Brabantine gros. Id., p. 230. Hence, the entire payment was probably in the neighborhood of 1,900 gros., or about three times the size of the capital payments that we saw in dowries for deflowering. That seems quite a lot for a cutler (culbellifex), which is how Daniel Morrayn is described, but there are no other hints as to the status of the parties.

1043. Ch 9, n. 399: p. 225, no. 232: declaramus molestationes, perturbationes et inquietationes per prefatum reum dicte actrici in bonus dotaticus per quondam Elisabeth matre dictarum partium in actis butis cause designatis factas fuisse et esse frivolas, misutas et de facto presumptas, etc.
1045. Ch. 9, n. 409: *In causa dotis seu donationis propter nuptias, per [WB] [RE] cum [KZ] sua nepte promisse et stipulare, ne copia probationis ess et suas quorum interesse poterit, successus temporis, valeat deperire et ne suis dote seu donatione propter nuptias premissis defraudentur, attestationes testium . . . decernimus esse et consenti debere publica munimenta, etc.*

1046. Ch. 9, n. 403: This, of course, does not exhaust the possibilities. I originally had a much more elaborate possibility in which Everard was the son of a half brother of Wenceslas junior. We also could be dealing with an illegitimate line, with any one of Clara, Everard's father, or Everard himself being the illegitimate offspring of Wenceslas senior. That would further help to explain the resistance of the rei, but is harder to reconcile with Everard's surname, his seemingly unquestioned knightly status, the titles of respect given both Clara and her mother, and the fact that in the one case in this group that clearly does involve an illegitimate, the court has no hesitancy saying so. See Ronde (Joebena) c Motten (n. 407). I am grateful to Diana Moses for suggesting the possibility put forward in the text, which seems, on balance, to be the simplest explanation of numerous possibilities.

1047. Ch. 9, n. 408: *reum quem tempore nocturno clam et latenter cartum seu begoagium begovinarum opidi [Aalst] proposito et voluntate recipiendi et abducendi [RH] riletam quandam [LK] intrasse quamque [RH] in lecto suo incamerum rectum et reclamantium extra domum suam atutissae, rapuisse et abducisse, dictum cartun sub defensione reverendi in Christo patris domini Episcopi Cameracensis et libertate Deo serviendo pro inhi commorantibus begovinis et aliis confluxis constitutam ac pontificalli auctoritate dotam et privilegiatism damnabiliter tumendo, perturbando et temere violando, eiusque libertatem et franchesiam infringendo, necnon eandem [read eandem] reum quem timore Dei postposito prefatam sic ut premittitur ablatam, raptam et abducitam et nocturno tempore in quodam nisi positam extra diocesem Cameracensem uxta suum temerarium propositum solenmptionibus in matrimonio contraeendo requisitis spretis et omissis publice in uxorem, nullis bannis saltem ex parte ipsius procalamatis seu redemptis, in villa de [Hever], Leodiensis diocesis, duexisse constat, nedum contra iva veram etiam contra statuta synodalia huissusmodi nuptias interdicicentia temere veniendo, excommunicationem incurrerendo, etc.*

1048. Ch. 9, n. 409: *Hever (today in Boortmeerbeek, Vlaams-Brabant), is about 20 miles west of Aalst. Although the editors identify Hever as being within the diocese of Cambrai, there was a piece of the diocese of Liège that stretched north from Leuven into the diocese of Cambrai that could have included all or part of Hever. A journey there by boat from Aalst would have been circuitous but possible. It would have involved going north from Aalst to join the Scheldt and then taking a tributary of the Scheldt southwest through Mechelen to Hever. That such a trip could have been accomplished in one night seems unlikely.*

1049. Ch. 9, n. 410: *Cum ad indicem spectet merita causarum pescraturi et que veritatiss sint indagiagi et ne veritas processaus coram nolus habit proficuerit, periculolque [read ?et periculum] animarum obverter, mos ex officio nostrum [AF] actorem ad varicandam [anam coram nolus pro parte [OS] rei alias confessatam, lite tamen desuper prius contestata, interloquendo decernimus admittendum fore et admittimus, in contrarium allegatis non ostantibus.*

1050. Ch. 9, n. 411: *See Liber van Brussel, s.v. adulterium. There are a few against clerics, noted at n. 31. Officce c Rijkenrode en Loerel (13.v.57), no. 1153, is a proceeding against the two men who had gone surety for the offenses committed by a third, now deceased. The deceased is found to have committed (double) adultery with a married woman and what is held to be double adultery and incest with a Cistercian nun. In the latter case, it is double adultery because the nun was the spouse of God and incest because God is the man’s father. (Platea may have been conscious of the irony that we see in this.)

1051. Ch. 9, n. 412: *Someone must have ordered the sureties in Officce c Rijkenrode en Loerel, but no such order is found in the register. Similarly, assuming that the quittance mentioned in this case was from a previous prosecution, no record of that prosecution is to be found in the register. Both of these facts suggest the work of lower-level courts.*

1052. Ch. 9, n. 413: *Gillart: [re] scientes quendam [MM] random [CM] alteram roam in domo patris sui sub amoris colore prosecutam fasue ad to quod idem [MM] manutenebat cum ipso [CM] conventiones clandestinas et etiam tem carnalem babuasse, a loco et parrochten de Grotenbergh ubi premiuss contingentiam clam simul recensionis itu qued [PG] [CM] corcum abducit ipsaque, predicto patre ac alias amicia suas ignorantibus, se ad alium locum abducit permisit ubi conventiones matrimoniales, etiam in facie ecclesiae, pro sue libito voluntatis
inertum famaquae, de et super predictis inter antetatum [MM] et ipsam [CM] conventionibus precedentibus nec-
non et super oppositione, quam idem [MM] delisbat adversus matrimonia inter ipsa res contra tertandum
emisse, volante, spretà et contempta minimeque inducem ecclesiasticum competenter – unde saltem constet –
purificata, ad matrimonia contractum et solemnizationem ac deinde illius per copule carnalis interventionem
consummationem processent, ignorantae per loco affectatores se reddendo, aut per predictum [MM] for-
tassis prius quos detraendo, Vekemans: [Condempnamus] [GS] antem pro eo quod post conventiones
matrimoniales per eam cum prefato [IV] habitas, tribus etiam hannis desuper proclamatis, alterius ad matri-
monia contractum et solemnizationem procedere recusavit et, hoc non contenta, cum [GR] allo corree recessit
cum quo secundarias iniit conventiones clandestinas et post hoc ab eadem se deflorari et carnaliter cognoscere
permisit, in legeon sposalium peccando sponsaliaque secundaria in preedium primarum conventionum
cum allo corree habituturn in som matrimonii presumptii – quattuor in ea futur – transire faciendo, – [GR]
vero predictum pro eo quod ipse, sciens predictas primas conventiones inter [IV] et [GS] corream contractas,
eandem [GR] – sic ut premitit – abducere, cum eadem conventiones secundarias inre et deinde eadem
deflorare et plurias postmodum carnaliter cognoscere presumpti.

1053. Ch 9, n. 414: E.g., Office c Steneren en Boullons (n. 136) (Platea); Office c Clinkart en Lucolde
(n. 279) (Platea); Office c Basereode, Kempeneere en Wateren (n. 314) (Platea); Office c Hermans, Brixis
en Logaert (n. 320) (Platea); Office c Hellemputten, Vleeshuere en Kerkoefs (n. 327) (Rodolph); Office c
Deckers, Godofridi en Giseghem (n. 328) (Rodolph); Couthem c Trullaerts (n. 347) (Rodolph). In Office c
Tieselinc c Tieselinc en Outerstrate (n. 114) (Rodolph), the abduction seems to have been against the will
of the woman. That in Office c Drivere (at n. 408) (Platea) was probably with the consent of the woman, but
was not, at least so far as we can tell, a case of raptus in parentes. The Cambrai sentences that use the term
abducere (there are only seven in the whole register) are gathered in n. 103 and accompanying text.

1054. Appendix e9.1: Non sunt leges or None Mentioned.
In the Cambrai sample with which we have been dealing in this chapter, there are two cases, both in
the earlier years, that contain a marginal note non sunt leges.1 But there are many more cases where leges
could have been imposed and none are mentioned. In order to get a better sense of when leges were imposed and
when they were not, we expanded the sample to all the Cambrai matrimonial cases included in our database.
In addition to the sample principally dealt with in this chapter, this includes the expanded instance sample
used for Tables 8.3, 8.4, and 8.5, and an expanded sample of separation cases that we will use in Chapter
10. Cases simply involving sexual offenses (adultery, clerical sexual misconduct, etc.) were excluded. The
sample includes 284 cases. The sample is heavily biased toward instance cases (most of the separation cases
are instance cases), but that is not a problem for the question that we are asking, since virtually all the office
and mixed cases impose some kind of fine. The sample shows little chronological bias, as can be seen in
Table e9.App.1.

There are 15 cases in the sample that contain the marginal note non sunt leges. All but one are instance cases.
They cover a variety of topics: 9 separation cases, none of which mention adultery as a ground, 3 remission
cases, and 1 each, jactitation, a two-party dissolution case (office), and a three-party spousals case. The last is
particularly striking because the official specifically declares in his sentence that he finds the opposition of the
contumacious actor frivolous, but no penalty for frivolous opposition was imposed.2 The suggestion in the
preceding paragraph that these notes tend to be found more often in the earlier parts of the book is confirmed
by the sample, although the pattern is sufficiently variable and the numbers small enough that we should be
cautious: 1438–9: 3; 1442–9: 3; 1444–5: 2; 1445–6: 2; 1446–7: 4; 1449–50: 1; 1452–3: none. Hence, the
pattern, except for the outlier of 1446–7, is one in which there are more notes than we would expect based
on the number of cases that we have in the years in question in the early years and a steady decline until we
reach nothingness.

There are 46 cases in the sample, all but two straight instance, in which leges or emende are not mentioned;
6 should be omitted from consideration because their subject matter (legitimation, dowry, debt, declaration
of death of a spouse) is not of the kind of case in which we find leges imposed, and another 2 should be
omitted because we lack a final sentence. That still leaves 38 cases of types in which we normally find leges

---

1 Office c Base et Hunters (n. 75) (an ex offices dissolution case); Roussel et Fère (3.xii.42), no. 391 (an instance remission
case).
2 Bastard c Potine (n. 154).
Table e9.App.1. Proportions of Cases in Each of the Cambrai Registers and in the Large Sample of Them (1438–1453)

<table>
<thead>
<tr>
<th>Register</th>
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<th>Actual Cases</th>
<th>Actual%</th>
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<td>12</td>
<td>133</td>
<td>9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
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<td><strong>100</strong></td>
<td><strong>1455</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

Notes: Where 'Register' = years covered in the register, 'Sample Cases' = the number of cases in the sample, 'Sample%' = the proportion of those cases to the total number of cases in the sample, and 'Actual' = the corresponding figures for the actual number of sentences in the register.

Source: Registres de Cambrai.

imposed: 9 (including one office) two-party actions about the existence of spousals without copula and 1 with, 3 two-party dissolution cases, 9 two-party remission cases, & three-party spousals cases not involving copula, 1 three-party divorce case (office), and 9 separation cases. Not only are these the types of cases in which we normally find leges imposed, but in some cases the grounds for imposing them also appear right on the face of the sentence. Two of the three dissolutions are granted on the ground that one of the sponsi committed fornication,4 and four of the nine separation cases are grounded in the adultery of one of the couple.5 In the two-party case involving copula, the man is found to have deflowered the woman and is ordered to endow her for it.6 In three of the six three-party cases, the plaintiff's opposition is declared to be frivolous.7

The chronological pattern of these cases is the opposite of those in which non sunt leges is noted; we find fewer than we would expect based on the number of cases that we have in the years in question in the early years, and more in the later years (again, with one exception): 1438–9: 4; 1442–3: 2; 1444–5: 8; 1445–6: 10; 1446–7: 8; 1449–50: 1; 1452–3: 5. The most obvious explanation for this phenomenon is that over the course of the years, the scribes noted non sunt leges less and less and tended more and more not to say anything when leges were not imposed. This may account for some of the phenomenon, but I am inclined to think that it does not account for all of it. It is hard to imagine, for example, that fines were not imposed in at least some of the cases in which sexual offenses were found. Some of the marginalia contain mysterious references to breviculi, in which leges are to be found, and one of these tells us the breviculi were those of the promotor.8 This means that at least in some cases, the sentence book was not the only record of the leges, and in these cases omitting them would not mean that the record of them would be lost. We also noted that successful plaintiffs may not have been able to obtain their sentences until they had paid the leges. If the leges had been paid, there would be less reason to record them. Finally, the scribe normally did not note the leges in the margin if emende were imposed in the sentence and the sentence was specific about what the emende were for. It is possible that in some of the sentences where amendable offenses are noted, the scribe forgot to include the language that indicated that the offenders were condemned to the emende.

3 Dourias c. Malette (n. 83); Fortin c. Boursière (n. 83); See discussion at nn. 93–105.

4 Carton c. Billebaude (13.x.44), no. 553; Flandre c. Barbieux (31.x.44), no. 571; Arents c. Keere (4.xi.45), no. 812; Raet c. Braille (15.xi.47), no. 1112.

5 Raymburds c. Buigmont (18.xi.52), no. 1380.

6 Ardiel c. Castelain et Lattke (11.xi.45), no. 819; Bautros c. Sore (27.xi.45), no. 832; Fortin c. Rasure et Tourbette (10.xi.45), no. 843.

7 Worsc c. Roussart (10.xi.46), no. 939 (Facti sunt super legibus breviculae); Provence c. Garre (10.xi.46), no. 940 (Similiter facti sunt breviculae, [Previous entry says Facti sunt super legibus breviculae.]); Philipps et Rume (30.xi.50), no. 1275 (Nota leges in brevicula promotoris); cf. Office c. Naquin et Rocque (3.xi.46), no. 874 (Leges notantur in cedula promotoris).
All of this suggests that we must be cautious in assuming that _emende_ were not imposed where none are mentioned. The fact that they are not mentioned, however, tells us something. We know from the one case that is marked _non sunt leges_ that _emende_ were not always imposed when the opposition to the marriage was found to be technically "frivolous." It seems likely that they were not in other such cases as well. _Office et Enfants et Maîtres_ is one such case. The couple who were absolved from the promotor’s charge of _neglegentia_ (probably to publicize their espousals) were almost certainly not fined, even though that fact is not noted; the official found that they had exchanged clandestine consent the previous day. They did, however, have to pay the promotor’s costs _propter famam_ (presumably that they had contracted earlier). Hence, the absence of any indication of _lege_ coupled with the circumstances of the case gives us grounds to make a probabilistic judgment that no _leges_ were imposed.\(^8\)

1055. Appendix e9.2: What Can We Learn from the Tournai Account Books?

There are ten surviving fifteenth-century account books of the keeper of the seal of the officiality of Tournai, which have recently been given a splendid edition by Monique Vleeschouwers-van Melkebeek.\(^1\) The accounts are annual, running from 1 July to 30 June, listing both the receipts and expenditures of the keeper, for the fiscal years 1447–8, 1461–2, 1470–1, 1473–4, 1476–7, 1479–80, and 1480–1, with expenditures but not receipts for 1429–30 and an incomplete account of receipts and a complete account of expenditures for 1446–7.\(^2\) The first book in chronological order is not useful for our purposes, but the remaining nine are, for they list the individual amounts received in payments of fines imposed by the court with the name of the person or persons paying it, the parish, and a brief description of what the fine was for.\(^3\) Books 2–4 were compiled by a keeper named Pieter de Vlenke, 5–10 by Jan de Pauw. Both men seem to have been appropriately compulsive for their job. We do not find the obvious errors in arithmetic that typically festoon medieval account books, and that gives us some confidence that they got right what can no longer be checked.

We should, however, keep in mind why these books were being kept. The bottom line of those books that are complete is a netting of income and outgo with a notation that the balance has been paid to those who were entitled to it (principally, the bishop and the archdeacons). Except in the case where a partial payment was made, the books do not record what was owed, simply what was received.\(^4\) Not only do we not know how many fines were imposed for which no payment was received but we also cannot be sure that much care was taken with what concerns us most – what the payment was for. Indeed, we might wonder why the keeper bothered to record that at all. After all, for purposes of the bottom line, what is important is that a certain amount of money was received and from which archdeaconry it was received. The fact that some effort was made to record for what it was received, however, suggests an additional purpose for the books: They may have served as a kind of receipt for the person or persons making the payment. Indeed, they may be records of receipts that were actually given. For this purpose, however, detail is not required. A general description of the nature of the amend, particularly if it is accompanied, as it is in the later accounts, with the approximate date on which it was imposed, would be quite sufficient for the payer if he or she were later challenged for not having paid an amend that was recorded with more precision in the court registers.

Despite these caveats, it is possible, particularly if we assume that the court’s jurisdiction was similar to that of the Cambrai courts, to reconstruct the basic outlines of most of the cases for which amends

\(^8\) See at n. 2.
\(^9\) See at n. 71.
\(^10\) For remission cases, see at n. 121.
\(^1\) _Compotus Tornacenses_ (1429–1481). For an account of how the system worked, see Vleeschouwers-van Melkebeek, "Aperçu typologique.”
\(^2\) _Id._, xi–xxiii. The editor has numbered them 1–10 in chronological order.
\(^3\) In this regard, the second book (1446–7) is for our purposes almost as good as the others because the account of fines seems to be complete. What is missing from the receipts seems to be largely matters of gracious jurisdiction.
\(^4\) That an effort was made to collect these amounts is clear enough. For example, T14898 tells us that the keeper had excommunicated a man, apparently for nonpayment. In addition to those who evaded payment, of whom there must have been some, however, there was _also_ an alternative amend imposed in some cases, a pilgrimage. We hear of these only if the person in question decided to “redeem” the pilgrimage by the payment of money. E.g., T3974, T13408, T15147. (Tournai entries are cited simply by the document number, preceded by “T.”)
were paid. Whether it can be done with quite the precision that Vleeschouwers-van Melkebeek did in a recent article for a particular group of cases is a matter about which we have more doubt. 1 Our concern here, however, is not with the courts of Tournai diocese but with those of Cambrai, and in particular whether we can use the Tournai account books to fill in something that is missing in the Cambrai sentence registers: the amount of the amends. Tournai diocese was not, of course, Cambrai diocese, but the two dioceses were right next to each other; they belonged to the same ecclesiastical province, and the surviving synodal statutes from Tournai suggest that it had a similar, if not quite the same, set of statutes concerning marriage. 2 The southern Burgundian Netherlands in this period had, if not a common currency, at least a monetary system in which the relationship in the currencies was kept constant, and the two dioceses had similar social structures. It seems likely that the two courts followed similar practices in imposing amends.

There is a huge amount of data in these books. The numbered entries in the edition run to 16,699, and while not all of them are receipts, a substantial majority are. Fortunately, the edition has an excellent index, and to get some idea of the range of amends being imposed, we coded the entries listed in the index under clandestinae (as in conventiones matrimoniales), under clandestine (as in eorum matrimonium clandestine carnali copula sequuta consummarunt: “they consummated their marriage secretly by sexual intercourse [that followed],” i.e., the exchange of future consent), and under various uses of the word separare or separatio. The last will be dealt with in Appendix e10.2; the first two concern us here.

There are 137 cases in which amends were imposed for clandestine promises. Two were excluded because they were imposed on priests for having been present at such promises. The rest were imposed on one or both of the parties, as is shown in Table e9.App.2.

The figures for the amends have all been converted into Flemish shillings, the familiar groat, though unfortunately that was not the only equivalence for this unit. (For a helpful introduction, see Comptus Tornacenses, pp. xxxi–xxxii.) The Flemish groat in this period was worth 1 to 1.5 English pennies, so the ‘peter’ of 36 groats would be worth between 3s and 4s 6d sterling. As we noted (Ch 9, n. 374), a skilled carpenter in Antwerp earned 5 (Brabantine) groats a day in this period, roughly the equivalent of 3.3 Flemish groats, and so the ‘peter’ would be about eleven days’ pay for a carpenter.

Prescinding for a moment from the values involved, let us focus on what this table tells us. Amends for clandestine promises seem to be relatively evenly spread over the forty-seven years represented in our nine accounts, though there are more at the beginning than at the end. The average amount of the amends increases slightly over the course of the years (roughly 4% in the 1440s, rising as high as 6% in 1473–4 and 1479–80), but there are enough that run counter to the trend (e.g., 4% in 1476–7) that we would not conclude that there was some tendency to increase the amounts in the latter part of the century were it not for the fact that we have other evidence that such a tendency existed. 3 The placenames (presented here in the Latin form in which they are given in the accounts) could use considerably more analysis than I have been able to do. Taking the existence of more than one parish in a town as a crude measure of urban status, there seem to be more rural cases here (40/155, 26% urban) than in our sample of cases of presumptive marriage (later in this appendix) and of separation cases (App e10.2).

In addition to the use of the Flemish pound of 20 groats, many of the amends reflect thinking in terms of the ‘peter’ of 36 groats. A number of the amends are precisely that amount, and a number of others are multiples (e.g., 72, 48, or 1 and 1/3) or fractions (e.g., 24 or 2/3) of it. This leads to the speculation that the basic amend for clandestine promises was 36 groats, a speculation that is reinforced by the fact that the word ‘peter’ is used to describe the condemnation in a number of entries. It is also the modal amount of an amend, occurring 63 times, far more than any other single number (the next most common is 24s, 2/3 of a petter, which occurs 23 times). What led the court to multiply or to reduce this basic amount is, perhaps, beyond speculation. The possibilities include the wealth of the person being fined and the fact that he or she or they were particularly naive or particularly sophisticated.

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1 Vleeschouwers-van Melkebeek, “Self-Divorce.”
2 Statuts synodaux français IV, 331–3.
3 App e10.2, at n. 1.
### Table 9.2: Tournai Clandestine Covenant Cases – Amends Imposed (1446–1481)

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<th>Amend</th>
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**Σ COUNT: 29** **MAX: 96** **MIN: 24** **AVG: 47.72**

| 3    | 2526    | 1.vii.47 | Rodelghem                    | 72    |
| 3    | 2632    | 1.ix.47  | Caruin                       | 80    |
| 3    | 2756    | 23.x.47  | Fretin                       | 36    |
| 3    | 2764    | 30.x.47  | Sancto Piat Tornacensi       | 36    |
| 3    | 2836    | 20.xi.47 | Fretin                       | 36    |
| 3    | 2949    | 22.i.48  | Auelghem                     | 36    |
| 3    | 3035    | 19.i.48  | Dotegnies                    | 60    |
| 3    | 3055    | 26.i.48  | Lunge                        | 36    |
| 3    | 3059    | 26.i.48  | Derleepe                     | 24    |
| 3    | 3065    | 28.i.48  | Sancto Petro Tornacensi      | 36    |
| 3    | 3230    | 25.i.i.48 | Carnins                      | 60    |
| 3    | 3246    | 1.v.48   | Aneulin                      | 72    |
| 3    | 3374    | 27.x.48  | Sancta Magdalena Tornaco     | 50    |
| 3    | 3423    | 24.vi.48 | Marka juxta Insulas          | 36    |
| 3    | 3465    | 31.vii.47 | Ostende                      | 36    |
| 3    | 3478    | 4.v.47   | Jabbeke                      | 120   |
| 3    | 3563    | 20.xi.47 | Leflingham                   | 36    |
| 3    | 3577    | 27.xi.47 | Zweusele                     | 36    |

(continued)
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Notes: The dates in the table and throughout the accounts are the beginning days of the week in which the event occurred. The accounts are not precise to the day. The placenames are given in the form in which they appear in the accounts. The summary statistics (indicated by Σ) all concern the amends. They give the number of amends imposed in this category (count), the maximum amend, the minimum, and the average.

Source: Comptus Tornacenses.

The wording of the entry gives us some hint as to what there was about these clandestine promises that merited a fine: 48 of them (slightly less than 1/3) read “condemned for clandestine [promises] alleged (by her)” – pro clandestinis (per eam) allegatis condempnata; 19 read “condemned for clandestine [promises] contracted (by her)”; 7 read “condemned for clandestine [promises] proposed (by her)” and 3 read “condemned for clandestine [promises] had (habitis).” The equivalent formulae for men occur only 22 times. This imbalance between women and men (77/22, 78% women) is reflected in the other amends that do not use these formulae. While we may be confident that women paid this amend more often than men, we can be less confident that we know for what they were paying it. We should probably resist the temptation to think that if the verb allegatis was used, the person in question alleged clandestine promises but did not prove them (and hence the fine was like what we see in Cambrai for “frivolous allegations”) and that if the verb contractis is used, the promises were proven (and hence the fine was like what we see in Cambrai for “not publicizing” or “not proceeding”). The verb allegatis occurs principally in de Pauw’s accounts (there are three in vlenke’s account for 1461–2), whereas the verb contractis occurs principally in Vlenke’s (there are three in de Pauw’s account for 1470–1, and one in his account for 1474–5). When we add to this the facts that allegatis et propositis seem to be synonymous, as are contractis and habitis, and that there does not seem to be any difference in the amounts of the amends imposed in the four types of cases, we are probably safer if we do not assume that there is any real underlying difference in these cases. Any of these words is sufficient to identify the amend for purposes of a receipt, and the keeper (or his clerk) varied the formula to relieve his boredom.

In some cases, we get more information. Three cases contain the formula “condemned because he unjustly opposed the marriage of N. and for clandestine promises alleged with her.” The fines here are 80s or 120s, more than double or triple the usual peters. Here, we can be reasonably confident that we are dealing with a fine for “frivolous opposition,” in addition to the usual fine for not proceeding with clandestine promises. Not all unproven allegations of clandestine promises merited an additional penalty, however. Jeanne du Tries did not prove the promises that she alleged with Jean le Feure, but she paid the lowest amount normally awarded in clandestine covenant cases, 24s. Once more we can only speculate as to why. Was it that she put forward a sympathetic case that fell just short of canonical standard of proof? Or is this a reflection of the somewhat more relaxed practice of fining that we see in the accounts of the 1440s as opposed to those later in the century? Or were these couple naïve country people who needed to be told the rules but not punished too harshly?\footnote{10}

The average fine in these cases (approximately 52s) has a population standard deviation of approximately 36. All of the fines that are lower than the average are within one standard deviation of the mean (the lowest being 24s). There are, however, quite a few (22) that are higher. If we look at the amends that are greater than 82s, we can, in some cases, tell why.

The easiest to explain are those in which some offense is involved other than the alleged clandestine promises. In 8 of the cases, the man pays a penalty for having deflowered the woman (ranging from 72s to 130s) and the woman pays the standard penalty for clandestine promises alleged (ranging from 24s to 48s). The fact that these couples are paying the fine at the same time may indicate that the story had a reasonably happy ending, a suspicion that is heightened in the one case where they are said to have paid the combined fines together.\footnote{11} It will be noted that in none of these cases is the woman fined for having allowed herself to be deflowered, though the range of possible explanations for this fact is too wide even for speculation. In one case, the man was fined for having “long held [the woman] in fornication” and she for alleging clandestine promises. Once more, the story may have had a happy ending; they paid the combined penalty together.\footnote{12} In another case, the man had entered into clandestine promises with one woman and public promises with another. The entry, unfortunately, does not tell us which promises prevailed.\footnote{13}

Most of our 22 cases involve two parties. Even where an additional offense is not, or at least not visibly, involved, the doubling of a fine at the high end of the normal range could account for the fact that the total exceeds the average by more than a standard deviation. There are 7 entries in this category, with combined amends ranging from 86s to 120s. Only one divides the fine between the man and woman, suggesting that in

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9 T11616: [CB] \textit{quia se iniuste opposuit matrimonio} [KN] \textit{et pro clandestinis per eam propositis cum ea allegatis} (120s); T13376: [GB] \textit{quia se iniuste opposuit matrimonio} [BT] \textit{et pro clandestinis cum ea allegatis quas non probavit} (80s); T16367: [JM] \textit{quia se iniuste opposuit matrimonio} [MM] \textit{et pro clandestinis cum ea allegatis condempnata in ebulomada} (3.iii.77) (80s; it took three years to collect this).

10 T142: In Roubaix: [JF] pro clandestinis per eam propositis cum [JF] habitis et non probatis condempnata in 24s solvit: 24s.

11 The standard deviation is a relatively sophisticated measure of dispersion that takes into account the difference of each observation in the population from the mean of all observations.

12 In ascending order of the total: T14528: 80; T1216: 72; T13040: 80; T1316: 80, 36; T15106: 80, 48; T16294: 100, 36 (interdict); T16294: 120; T1493: 120; T8201: 120; T3478: 120.

13 T14971: 120 simul.

14 T12749: vir 80; mulier, 36. For a case where the aggravating factor is pretty clearly the man’s unjust opposition to the woman’s espousals with another, see T11616 (n. 9).

15 T1609: vir 50; mulier, 36; T1361: 96 (interdict); T1162: 96; T8263: 100; T11493: 120; T16294: 120; T3478: 120.

16 T8096; see App c10.2, at n. 17.
vanden Brouke. Here, a hint may be provided by the fact that the entry has *archidiaconus* at the bottom. It is possible that the fines were raised when the offense was uncovered by the archdeacon’s staff rather than that of the official.\(^\text{17}\) Even more puzzling are the pair of entries involving Jan Kughelare and Johanna Ribauds of Ruiselede and Georgius van Oudviuere and Katherina widow of Jan Coene of Onze-Lieve-Vrouwe, Brugge. The former paid amends of 84s (48s for the man and 36s for the woman) for clandestine promises and remission of them, the latter 160s (the highest amount in this group) for the same judgment. That a couple should have to pay somewhat on the high side for promises that clearly existed and for their remission, which, if the practice of Cambrai diocese was followed, was regarded as a kind of dispensation, is not surprising; what is surprising is that another couple should have to pay almost twice that amount for the same thing. Once more, however, this latter entry is marked *archidiaconus*.\(^\text{18}\)

Despite these puzzles and despite the appearance of some amends that seem unusually high, we should not lose sight of the basic propositions. Engaging in or alleging clandestine promises did lead to the imposition of amends in the Tournai officiality; these amends were, in many instances, collected; they were of an amount that did not seem to cause much difficulty for most of those who paid them. The amounts were not trivial. Eleven days’ wages would obviously be noticeable for a carpenter who had to pay them. There are, however, relatively few indications that those on whom they were imposed had trouble making the payment. There are four cases in which a partial payment was made; in one of these the balance was paid a week later.\(^\text{19}\) There are three cases in which more than a year passed between the time of the judgment and the time of the payment.\(^\text{20}\) The vast majority of these amends, however, were paid in the week in which they were imposed, and the rest were paid within a month or two.\(^\text{21}\)

If the amends for clandestine promises can be said to be of relatively modest amounts, the same cannot be said of the amends for presumptive marriage, as shown in Table e9.App.3. Unlike the amends for clandestine promises, these amends are not evenly spread over the years represented by the accounts. This phenomenon can be confidently ascribed to the fact that de Pauw began to use the formula *eorum matrimonium clandestinum carnali copula (sequuta) consummarunt* only at the end of 1473, and this was the formula that we coded. Presumptive marriage cases exist in all the account books, and these must be taken simply as a sample.\(^\text{22}\) If we are right that the amount of the amends tended to go up as the century wore on, these may be higher than the averages in the earlier part of the century, but spot-checking those from the earlier dates shows that high amends were also the norm there, too. Somewhat surprisingly, there seems to be a slightly greater urban presence in our sample than there was in the clandestine covenant cases. Taking as a measure of urban the places that had more than one parish, 16 of our cases come from such places (16/37, 43% vs 26% for the clandestine covenant cases).

The major difference, of course, between these cases and the clandestine covenant cases is that the amount of the amend is much higher, averaging almost eight times the amount (408.3 vs 51.9). The dispersion is also much greater. The lowest amount is the lowly peter (36s), the highest the truly impressive sum of 2,400s (10 ‘pounds of groats’, though the term is not used). The population standard deviation is 471, a reflection not only of the fact that there is a wide difference between the minimum and the maximum but also of the fact that there are a number of examples in the extremes of the distribution. The only indication that there was, in some sense, an expected amend for this behavior is the fact that the modal amend, 360, appears seven times. If the penalty for clandestine promises without more was thought of as being a peter, then the penalty for consummating promises by sexual intercourse may have been thought of as ten times that amount.

\(^\text{17}\) T8578.
\(^\text{18}\) T1353, T8354. The indication is at the head of the entry and may refer to the previous entry.
\(^\text{19}\) T548, T3035 (balance a week later), T4006, T1556.
\(^\text{20}\) T16467 (80s paid on 1.vii.70 for amends for unjust opposition imposed on 3.i.77); T7449 (48s paid on 1.x.70 for clandestine promises alleged imposed on 6.vii.67); T8578 (120s paid on 29.x.70 for clandestine promises alleged imposed on 1.xi.66). Of course, delay in payment can indicate unwillingness rather than inability to pay.
\(^\text{21}\) T12218 is the only exception (payment on 25.xi.76 for clandestine promises alleged imposed on 22.iv.76). There may be a few more; Vlenke’s registers do not indicate the date on which the fine was imposed.
\(^\text{22}\) *Consummarunt eorum matrimonium per carnalem copulam solemnitate Ecclesie omissa*: T954 (12.v.47): 160s; T3334 (29.iv.48): 320s; *sexe carnali commiscuerunt eorum matrimonium consummante*: T8606 (5.xi.1470): 1,440s; *eorum matrimonium clandestinum carnali copula consummante*: T8606 (5.xi.1470): 120s.
### Table e9.App.3: Tournai Presumptive Marriage Cases – Amends Imposed (1473–1481)

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**Note:** The layout of this table is the same as Table e9.App.2.

**Source:** Computus Tornacense.
Let us examine the extremes of the distribution to see if we can get some kind of impression of what might have led the court to deviate from this imagined norm. On 8 May 1480, Adriaan Heyns and Adriana daughter of Jacob Ghenins of Sint-Kruis, Brugge, were convicted of having consummated their marriage clandestinely “omitting the banns”; on 1 July, they paid a peter (36s), and the balance was remitted “on account of their poverty.”24 On 9 October 1475, Gerard van der Cruze and Sara Hunouts of Moorsele were convicted of paying 80s (“because they are poor”), “because after affiancing in the hand of a priest and one bann proclaimed they consummated their marriage clandestinely by sexual intercourse.”25 On 24 March 1477, they paid 40s, and the balance was remitted gratis “because they are poor.”26 It seems relatively clear what happened in both cases. Neither of these couples had much money. In the case of Gerard and Sara, they were trying to do the right thing; that may also have been the case with Adriaan and Adriana. They didn’t wait and they got caught. Marriage is what they had in mind all along. The normal swinging penalty for presumptive marriage will in their cases be reduced to the normal penalty for clandestine promises.

An entry dated in the week of 12 August 1476 tells us that Adriaan de Gommegies and a jonkvrouw (her Christian name is not given), the widow of Egid de Cauwere, of Sint-Michiels, Gent, consummated their marriage by sexual intercourse, omitting the banns and solemnities of the church, after they had been affianced in the hands of a priest and notwithstanding the fact that the jonkvrouw had previously clandestinely affianced one Jan vander Kerchoue. They “ought to pay” 2,400s. They paid 1,200s on the spot and the balance three weeks later.27 The key to this case may lie in the fact that it is never said that the sum that they “ought to pay” was the result of a condemnation by the official and in the fact that the jonkvrouw’s name is not mentioned (though it should have been fairly easy to determine who she was, granted that her late husband’s name is given). This case may have been a settlement reached by the couple with the promotor and the keeper (with or without the knowledge of the official). They, and particularly she, had been caught in serious wrongdoing (one is reminded of how seriously both the Cambrai and Paris courts took lona sponsalis). The couple did not want the publicity, and they had plenty of money. The court personnel were happy to accommodate them for 10 “pounds of groats,” the highest sum in our sample.

We can be less sure of what is going on in the case of Jan de Gommegies, crassier, and Adriana daughter of Valentin Crekele of Sint-Saluator, Brugge. They were convicted, he for 1,200s, she for 720s, on 16 May 1474, simply for consummating their marriage clandestinely and “omitting the banns and solemnities of the church.” They paid in installments, 960s on 18 July 1474, 480s on 31 October 1474, and 480s on 23 January 1475 (the sums, it will noted, are all multiples of “pounds of groats,” adding up to eight).28 This couple do not seem to have been able to raise the money as easily as did Adriaan and the jonkvrouw (a crassier is probably a dealer in fat, oil, and/or candles). More than this the record does not say, but it is possible that they were guilty of some more serious offense that is not mentioned.

It is striking how many of these entries show that something was wrong with the marriage, other than the fact that it was consummated by sexual intercourse before the solemnities. In three cases, the woman was guilty of some more serious offense that is not mentioned.

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26 T11557 (18.vii.74): Johannes de Gommegies, crassier, et Adriana filia Valentinii Crekele quos eorum matrimonium clandestinum carnali copula sequuta consummatarum et Ecclesiae solemnitisibus omisso condemnati in ebdomada [16-74], in 60b et multo in 36b, solverunt super bisus 48 lb. Restant adhuc solvenda 48 lb. Solverunt partem in ebdomada [31.x.74; T11615]. In T16555 (23.i.75), they pay another 24 lb.

27 T13274 (30.ix.76): 480s; T13533 (30.xui.76) 360s; T16565 (16.iv.81) 360s; T16532 (5.aii.81) 240s (clandestine).
this, prior promises with himself.28 In one case the record mentions both prior promises and opposition.29 We are reminded that getting married during the pendency of litigation about a marriage was taken very seriously at relatively relaxed Ely (though there it was done by exchanging words of present consent or solemnization). We are also reminded of our speculations earlier in this chapter that some of the cases of presumptive marriage may be the result of couples’ raising the stakes in the face of opposition to their marriage. In one Tournai case, the couple had consummated their marriage despite their spiritual affinity; the affinity had been dispensed (probably after the consummation), but they had to pay 240s for the consummation, even though the amount had been reduced in favorem matrimoni.30

There is considerable evidence in our relatively small sample that couples were having difficulty making the payment. Two of the cases at the extremes of the distribution involve reductions in the amount paid; another was paid in three installments.31 In two cases the payment was made two years after the judgment, in one a year after the judgment.32 In three cases the bishop reduced the amount to be paid, from 720s to 600s, from 1,440s to 720s, and from 720s to 360s, twice at the instance of other ecclesiastical officials and once on his own accord when he found out that the couple “had lost all” in a fire.33

On the assumption, which may be wrong, that imposition of amends worked in Cambrai diocese in the same way as it worked in Tournai diocese, our brief investigation of the practice in the latter suggests that we cannot put a fixed number on the amends that were imposed in the former. The hints that we find in the Tournai account books do, however, suggest that the factors that emerged from the rhetoric of the sentences probably operated when it came to setting and collecting the amends. Unsophisticated young people who got into trouble but were basically heading in the right direction had to pay. The amounts probably seemed high to them, but they were not more than they could afford. Older, more sophisticated, and wealthier people, particularly if their offenses were serious, had to pay a lot. Sometimes they used their connections to get the amount reduced, but the court and its officers did not show them much sympathy when it came to setting the amounts. Further investigation of the fascinating records of Tournai may allow us to say more. In particular, the converse of the propositions just offered warrants further exploration. How was a man without much money who behaved unconscionably treated? How were sophisticated people whose offenses were not that serious treated? The records are not full enough to allow systematic answers to such questions, but they do give hints of answers.

1056. Ch 10, n. 4: T1 lists seven women: Alice de Helmsley, Catherine daughter of William of York, probably Marjorie Oliver, Cecily servant of John Layton, Isuelt daughter of Hamo Gardener, Cecily del Broom, and Cecily Baldwin. At least two children are ascribed to Alice and one each to Catherine, ?Marjorie, and Cecily del Broom, for a minimum of five. T2 lists five women: Alice, Catherine, Marjorie, Isuelt, and Cecily del Broom. T2 lists the first three and calls Marjorie ‘Mariot’. Both T2 and T3 describe the children only generally. T4 lists the same women as T3, and ascribes two children to Alice and one each to Catherine and Marjorie. T5 lists five women without surnames, Alice, Catherine, Marjorie, Isuelt, and two Cecilys (almost certainly del Broom and probably Baldwin). He ascribes two children to Alice and Catherine and one each to ?Marjorie and Cecily del Broom, for a total of six. T6 lists Alice, Cecily del Broom, and Catherine, and ascribes one child each to Alice and Cecily and two to Catherine, for a total of four.

1057. Ch 10, n. 9: notoria et manifesta in villa de Novo Castro (T2); vera et manifesta habita et reputata in villa et locis supradicts (T5).

28 T14959 (24.ix.80) 720s; T15873 (28.viii.80) 600s; T15908 (2.ix.81) 480s; T16097 (2.iv.81) 240s; T16465 (27.vi.80) 960s; T16517 (12.vi.81) 240s.
29 T15881 (11.ix.80) 360s (3–p).
30 T14948 (1.v.80) 240s: non obstante quod pater [MT] [JZ] de sacro fonte levaverat – super quo dispensati sunt auctoritate apostolica. The result in this case may have been negotiated; there is no mention of a condemnation.
31 See at nn. 23, 24, 26.
32 T15007 (19.vi.80) 120s: condempnati [9.uii.78]; T15008 (19.vi.80) 360s: condempnati [14.vi.79]; T16097 (2.iv.81) 240s: condempnati [1.n.79].
33 T14437 (27.xi.79) 72lb quas dominus Tornacensis moderavit ad preces magistri [JW] ad 36lb quod ad preces professis Theobaldus moderate sunt ad 36lb; T16365 (16.xii.81) 360s: 36lb quas reverendissimus dominus cardinalis in Alderendo existens moderate ad 130s quod incendio somma perdiderunt. Dominus cardinalis (and dominus in T14437) is Ferry of Clany, bishop of Tournai (1473–83), and cardinal of the Roman Church from 1480 until his death in 1483. Eubel, Hierarchia, 2:278 and n. 2.
dimittere
take out the proposition that the husband could dismiss (was combined with adultery. It would take relatively little to convert this “dismissal” (reports that Vincentus [?Hispanus] seems to have thought that he still could, at least where the plot on his life in the commentary (see King, Canonical Procedure in Separation Cases) is not particularly powerful contrary evidence, both because the endorsement seems to have been added later and because these are the depositions of Devoine against Scot. Four times in the depositions Scot is referred to as de quo agitur (X 1.13.8), which is roughly contemporary, and T2 certainly says that Richard was charged (impetus) with having beaten Marjorie, as well as for his adulteries. T2 certainly says that Richard was charged (impetus) with having beaten her.

1058. Ch 10, n. 16: See, e.g., the glossa ordinaria on C.32 q.5 c.5, v$^o$ sub castela (Venice 1572) p. 1044; Hostiensis, Lectura in X 4.13.1, v$^o$ post mortem uxoris (in fine), fol. 42vb. But see Hostiensis, Summa, tit. Si mulier petat in virum (in fine), col. 1395, which focuses on the cautio that the man is to give that he not mistreat his wife and does not contemplate the possibility that the restitution will not be awarded.

1059. Ch 10, n. 18: Esmein, Mariage, 2:110–11. Dauvillier offers no references to Bernard or Innocent, either here or in Mariage en droit classique 349–50, and I have been unable to find the passages to which he refers.

1060. Ch 10, n. 20: Brundage, Lane, Sex, 511 and n. 93, suggests that the doctrine may be found in Petrus de Ancharano, who wrote a full generation before Panormitanus. This is not quite what Ancharano says, however. Commentaria in X 4.13.1, p. 136a: Sed minus quod cogetur vir habiisse cum uxorre, quae sic insidiavit; nec refrenari potest? Dicit Ioan. And. quod non; ex quo nulla potest cautione mederi: imo potest eici et restitutionem potest obstat exceptio. [X 2.13.13 in fine]. Johannes Andreae says the same thing (substitutum non puto for Dict Ioan. And. quod non)). Novella Commentaria in X 4.13.1 (Venice 1581), fol. 64ra. Earlier in the commentary (id., fol. 63vb), Johannes shows that he is aware that Raymond had edited the decretal to take out the proposition that the husband could dismiss (dimittere) his wife under these circumstances and reports that Vincentus (?Hispanus) seems to have thought that he still could, at least where the plot on his life was combined with adultery. It would take relatively little to convert this “dismissal” (dimittere) and “casting out” (potest eici) into an affirmative action for separation from bed and board in the case where one spouse plotted against the life of the other and to go from there to the situation discussed in X 2.13.8 and X 2.13.13, where the violence or cruelty of one spouse endangered the safety of the other. For a collection of references on the topic of procedure in separation cases that might be used to develop the history of the substantive side of the law, see King, Canonical Procedure in Separation Cases. See also T&C no. 1089.

1061. Ch 10, n. 21: That the endorsement calls the case Devoine c Scot is not particularly powerful contrary evidence, both because the endorsement seems to have been added later and because these are the depositions of Devoine against Scot. Four times in the depositions Scot is referred to as de quo agitur (T1, T2 [twice], T6), but Marjorie is once referred to as de quo agitur (T1), and once the couple are referred to as de quibus agitur (T5). Hence, the phrase tells us little about who is plaintiff and who is defendant but rather tells us who the case is about. Ultimately, our conclusion is based on the judgment that these depositions seem more likely to have been produced by a woman who was seeking to justify having separated herself from her husband (and, hence, defending a restitutionary action) than by one who was seeking as plaintiff a judgment of separation.

1062. Ch 10, n. 23: A right of the husband to “correct” his wife, at least in extreme circumstances, could be derived from C.33 q.2 c.10, though the tendency of the canonists seems to have been to limit the reach of that text. See, e.g., glossa ordinaria ad id. v$^o$ postestatem, p. 1087a; Summa Coloniensis 14.11, 4:61–2. T2 may suggest that Richard was punished by the archdeacon’s official for having beaten Marjorie, as well as for his adulteries. T2 certainly says that Richard was charged (impetus) with having beaten her.

1063. Ch 10, n. 24: Compare Gudefelawe c Chappeman (Ch 4, at n. 255), which follows the expected pattern of appeal from the archdeacon of Northumberland to the consistory of Durham, and thence to the court of York.

1064. Ch 10, n. 25: See Hystickton c Munkton (Ch 4, at nn. 215–24), which is roughly contemporary, and in which the husband bypasses the official to sue for restoration in the audience of the archbishop.

1065. Ch 10, n. 26: That there were articles is clear because all the witnesses are examined according to them. That there were interrogatories is less clear. The word interrogatit appears seven times (once restored) at the end of each witness’s testimony, in which the witness is being asked routine questions about possible bias. There may have been formal written interrogatories on these topics (which would mean that this was a contested case and, hence, most likely that Richard, too, appeared at York), but these may have been interrogatories that the examiner formulated of his own motion.

1066. Ch 10, n. 27: That is to say, the whole of class CFE. See Table 3.2. An action for separation on the ground of her husband’s adultery may underlie Colyle c Davell (Ch 4, at n. 253), but when we see the case, what is at stake is the payment of alimony and costs in what was probably a parallel action for restoration of conjugal rights.
1067. Ch 10, n. 29: Helmholz, Marriage Litigation, 69, cites this case (under its former number) for the proposition that one could defend a possessory action on the ground that the words spoken did not make a valid contract of marriage. I may have missed something, but I do not see that issue in this case. Cf. Pederson, Marriage Disputes, 198 and n. 85.

1068. Ch 10, n. 34: We do not know much about these men. One of them (T2) describes himself as a tanner, another (T4) as a butcher in stress of tenement[s]; two of them (T5, T6) call themselves clerks. The examiner was probably not impressed with these last two because he took the unusual step of mentioning that the articles had to be expounded to them in lingua materna.

1069. Ch 10, n. 36: T1 (twice), T2, T3 (twice) (aula); T2 (ad portam manzai); T1 (satisfactionebat . . . pro certo precio solveni); T1, T3, T4, T5, T6 (Richard aluit at least some of his illegitimate children); T1, T2, T3, T5, T6 (nec tenens).


1071. Ch 10, n. 41: The testimony is too long to transcribe in full, but samples of it follow:

Joan Fleschawer of York, 21, servant of Joan and Robert while they were living together: On one occasion Robert cum baculo caput dicte Johanne friget. Interrogatus de causa scientiae sue dicit quod quidam Petronella Russell de Goderamgata Elbor’ misit ad dictam Joanam pro quadam summam pecunie in qua erat dictae Petronelle pro mensa sua indebitata eo tempore quod fuit soluta a dicto Roberto et dicta Johanna peciit dictam pecuniam a dicto Roberto marito suo et bac de causa friget caput eius, etc. . . . [?]

epius audivit ista iurata prefatum Robertum inferre minas dicte Johanne uxori suae quod frangeret ipsius brachia et tibias et quod nullam potest invenire securitatem de impunitate uxoris suae per aliquem vicinorum suorum de auditu et noticia eius, etc. . . . [D]icit quod dictus Robertus occupavit et occupat omnium bona communitia dictorum Roberti et Johanne, dotem, terras et tenementa ac omnium alia bona que fuerunt dicte Johanne propria tempore matrimonii contracti inter dictos Robertum et Johannam exceptis qbudusdam vestibus debitiscum qubisdam induebat et cum qubisdam recessit marito suo et ista dicit.

dicte Johanna quod nisi dictus canis reductus esset ad domum suam antequam ipse Robertus de quadam silva ad istam de causa recessit ab eo . . . [?]

Erodei de causa percussionis dicit quia . . . [?]


Two other witnesses confirm this story, converting the threats into “it would be better for you if you had never left your mother’s womb” and “you will never lay your eyes on me again,” but they, too, testify on the basis of hearsay.

Joan wife of John Potter of York, 40 and more. Dicit eciam ista iurata quod audivit dictam Johanna annuatim xj marcas et hoc se dicit scire quia dicta Johanna uxor dicti Roberti sic ei retulit. [Most of the witnesses confirm these financial details with minor variations.] Item interrogatus an dicta Johanna recessit ad dicto Roberto sponte vel coacte dicit quod dicta Johanna uno die de quo non recolit de mane surrexit et solvit unum canem ligatum cum cathena in domo habitationis dicti Roberti et quia canis predictus recessit a domo dicti Roberto ipse Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescivit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre sua ubi fuit dictus canis et ipsa Johanna respondebat quod nescit nec esset quod dictus Robertus gessist a dicta Johanna uxorre su
amicorum 'causam in dominica Ramispalmarum predicta sine locione per servientes negligenter domissim dicto Roberto marito suo cum vas de peuteri novo ministravit in prandium prout audavit dixi a dicto Ricardo Marshall et Johanna uxor Johannis Potter. [Both Richard and Joan testify, but they did not see the event either.]

John Potter of York, 50 or more. In quadragesima ultimo preterita videlicet die mercurii proximo post dominicam Ramispalmarum dictus Robertus Londesdale levata una face ardentis in manu sua dictam Johannam graviter percussit super genam et oculum ita quod cutis pendebat per genam quam quadem percussionem gravem vidit postea iste ursus non tamen interfuit nec vidit quando dicta Johanna sic futu percussa et hoc se dicit scire quod sic audavit dixi ex relatione dicte Johanne sua percusa et servientes suaam. Interrogates quare dictus Robertus percussit dictam Johannam dicit quia servivit in prandio dicto Roberto marito suo cum vaso novo de peuter cum servientes illius noluerunt vasa vetera de peuter mundare quapropter quod sit dies locato Iure domini suae in loco suo.

There is an extensive account of the case in Butler, Language of Abuse, 304–9. She has the date and the result wrong, and her description of the depositions is full of errors. For example, Robert is not reported to have come at Joan with a “flushed face” but with a burning torch [face ardentis]; he did not break her arm and shinbone, but threatened to break her arms and legs [inferre minas . . . quod frangeret ipsam brachia et tibias]; Joan did not lend money to her friend Petronella Russell, but Petronella sent her a bill for board for the period when Joan was single [quam Petronella Russell . . . misit ad dictam Johananam pro quadam summa pecuniae in qua erat dicte Petronelle pro mensa sua indebitata eo tempore quod futu soluta a dicto Roberto]. My principal difficulty with the account, however, is that it takes as true what the witnesses say, even though the vast bulk of the testimony is hearsay.

1072. Ch 10, n. 44: vir honestus, manusuetus, solitus, pius, affabilis, quietus, pacificus, bumillis.

1073. Ch 10, n. 45: austerus, irregularis et terribilis vs bonesta bumilis et benevina (T1); demens et lunaticus (T2); austerus ferox adulter et terribilis vs honesta, bumilis, prudens et benevina (T3).

1074. Ch 10, n. 46: I cannot identify this place, but I suspect that it lies to the west of Chester-le-Street (Durham), just south of Newcastle (compare Chester Moor, Durham). Watts, Dictionary, 135, reports a West Hall in Chester-le-Street, the clerk of the depositions may have truncated this.

1075. Ch 10, n. 48: E.g., T3: [V]iata predictum Henricum protrender et sine causa male tractare et verberare Ceciliam predictam et eam ad terram prostrare et eum pugilis suo puricare in oculo sic quod ex huiusmodi iictu oculum predicte Cecile idem Henricus extraxit et de suo capite cumberavit [CLat incohuit] ita quod iacuit super genam ipsius Cecile, et bene scit quod dicta Cecilia pro perpetuo amiisset suum huiusmodi oculum nisi per materem suam tutius et magis caute predictus oculus in suum locum pristinum impositor fuisse de notis et vix suam ut dicit in usuramento suo.

T4: [Ista ursa sepus vidit eandem Ceciliam propter mortem suae et alium metum quem habuit erga Henricum suum maritem predictum velle saltasse per quandam fenestram cum aliis camere suae et se demerso in aqua Use tamquam mulier mente alienata nis quod impepta fuit per Johananam matrem suam, istam ursatam et alios servientes eiusdem Cecile ut dicit in usuramento suo.

1076. Ch 10, n. 49: I owe this suggestion to Butler, Language of Abuse, 328–30. There is similar, though not quite the same, testimony in Irelby c Lonesdale (at n. 49). Now that we know that that case is virtually contemporary with this one (1409–10 vs 1410), we can suspect some sharing of information among witnesses as to how to tell a compelling story of spousal abuse.

1077. Ch 10, n. 51: non convenit vosibus ipsum de stacione sua exprobarae quia modicum vel nihil sihi dedistis.

1078. Ch 10, n. 52: Sara Butler’s account of this case (Language of Abuse, 301–3) overemphasizes, in my view, the defamatory words and underemphasizes the physical violence and the cause of the quarrel (the stepson). I agree with her, however, that the case does suggest changing notions of what constitutes cruelty.

1079. Ch 10, n. 53: There is one other fifteenth-century case that we classified, with some hesitation, as a separation case. Gerard Preston of Hauwen c Marjone [. . .] (1434), CP.F 110. All that survives is a set of depositions of witnesses who testify to Marjorie’s numerous adulteries and concubinages; she is now living
with Gerard by whom she has had children. Except for the fact that Marjorie and Gerard are referred to as de qua and de quo agitare, these could be depositions on an exception against a witness. As it is, the underlying case could be an action for separation brought by Gerard against Marjorie, a defense (in pari delicto) to an action for separation brought by Marjorie against Gerard, or an ex officio prosecution against them both. The first seems the most likely, and if these witnesses’ testimony goes uncontradicted, a result in Gerard’s favor will be a foregone conclusion.

1080. Ch 10, n. 54: I am grateful to Sara Butler for calling my attention to the separation actions found in these books. She deals with a number of entries from these books from the point of view of what they show about attitudes toward spousal abuse in id., pp. 360, 365, 372–3, 375.

1081. Ch 10, n. 55: Item eodem die comparuerunt personaliter coram domino. Oficialis Robertus de Moreby spurier et Constantia uxor eius et propter diversas divisiones et discordias inter eos suscitatas ac propter periculum mortis dicte Constantiae per prefatum Robertum sibi ‘sejus committatur dominus’. Oficialis de consensu dicti Roberti concesit eisdem licenciam abinuicem seorsum morandi et dictus Robertus invitavit ad sancta dei Evangelia quod amodo non inferet malum dicte uxoriae nec faciat et super bona communis eos eorum quorumque et omnium pertinentium se laudo ‘inserat’ quod noluerit eam in legem matrimonii ‘adulterium’ et ipsis propter diversa divisiones inter eos suscitatas et propter eiusmodi pertinentia se laudo ‘inserat’.

1082. Ch 10, n. 56: Item decimo octavo die mensis Marci [1174] comparuerunt Johanna filia Willelmi Matheuson et Robertus de ?Potterflete coram domino officialis pro tribunal sedente, dictaque Johanna proposuit verbotenam quod predictus Robertus duxit ipsam in uxorem et quaquae proles concepti de ea, iurataque allegavit quod metu mortis non auderet secum cohabitare, iurataque ut [it could be inrata] de calumnia et Datus dies martis proximo ad [what follows is problematical] discendum quod inde dominus officialis adhiberet sibi. [What follows is once more clear:] Item dictus Robertus iuravit quod cito carniprivicum ultimo perpetitum cognoscit carnaliter Elenam de la Chaumbre.

1083. Ch 10, n. 58: In margin: Inzumentum Johannis Kellynglay tractandii uxorem suam] Item eodem die comparuerunt personaliter coram domini Officialis Carie Ebor’ Commissario generali pro tribunal sedente. Johanne de Kellinglay et Cecilia uxor suae quem quidem Johannes iuravit ad sancta dei Evangelia per ipsum corporaliter tacta quod ab isto die in antea [Tread postea] dictam Ceciliam uxorem suam decenter et honeste in lecto et mensa et omnibus alibus fudus comingle centro et dicta Johanna iuravit quod predicta Cecilia cum nullo instrumento vel ex manu sua vel pede attrociter percuciet et inconvenienceler verberabit aut castigabit [note that we are in the indicative here] in minimorum vel in maiorum sub pena duodecim fugationum circa forum Pontisfracti et sub pena euntis eine dies dominicam ante processionem ecclesiae Cathedrales beati Petri Ebor’ more penitencie cum una eius unius libri in manu su a si eum contingat in premissis delinquere vel alqiao premissum. Subsequenter vero dicta Cecilia consimile prestitit uramentum quod ida ab isto die in antea [sic] ‘prefato Johanne vero suo edidit et obtenerat sumpliniter ut tenetur sub pena predicta.

1084. Ch 10, n. 60: Et dictus Ricardus et Alisia unanimitas consenserunt seorsum et separatim commorandi et hoc a domino officialis instanter poterunt. Set dictus dominus officialis dixit exprasse quod voluerit ei licenciam concedere seorsum commorandi set bene permitteret ad tempus quoque pacta et concordia inter eos melius fuerint reformata.


1086. Ch 10, n. 67: Two of the civil cases of separation of goods (Courtiller, col. 148/3, 210/7, 213/7, 216/4; Messenger, 11.iii.85, 3.xii.86, 11–12.xi.86, 14.xii.86, 389/3, 397/4, 402/2, 403/3, 403/6) may have begun as criminal actions for wife beating.

1087. Ch 10, n. 71: In Barrote c Clerici (11.ix.85), col. 188/8, separation of goods is granted on the grounds of cruelty. The case goes on to explain quia pecaverunt [sic] hicincide in legem matrimonii fuit adulterium compensatum, a curious phrase that suggests that one party compensated for the other’s adultery by committing adultery and was therefore not entitled to a separation on the ground of adultery. Amyon (22.i.85), col. 843, may have been a criminal case. Both parties confess adultery; the man is enjoined to receive his wife and treat her with marital affection, and both pay a fine.
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1088. Ch 10, n. 75: Ferebroc (9.xii.84 to 11.iii.87), col. 7/8, 22/4, 136/8, 142/3, 432/8, 436/5, 442/5, etc. She produced at least 16 witnesses (col. 136/8, 142/3), including one who was the registrar of the court, and three documents, including ones under the seal of the court and of the Châtelot (col. 432/8, 436/5). While there may have been more than this involved, it certainly looks as if one of the things that Jeanne was trying to prove was that Jean had been convicted of adultery. The final entry (col. 442/5) declares a conclusio in causa in the absence of the reus, the last step that we normally find recorded before the unrecorded sentence is issued. Compare Joofe c Jooffin 26.iv.85, 29.v.85, 5.vi.85, 5.vi.85, 17.vi.85, col. 105/3 (routine separation of goods); 11/2 (promoter joins the case and husband inhibited from dissipating the community property); 12/2 (promoter leaves the case); 129/2, 129/3 (wife presents libel); 138/1 (wife fails to appear). While it is possible that the proceedings subsequent to the separation were all concerned with the property division, the presence of the promoter suggests that more serious matters, such as a possible separation a thoro for adultery, may have been involved.

1089. Ch 10, n. 75: Sánchez, who passes over little, does not mention the possibility. He recognizes cruelty as a ground for separation from bed and board, though he is quite strict about the requirements. Disputationes de matrimonio, 10.18, pp. 3:399a–407a. Panormitanus, who, as we have seen (at nn. 17–19) is among the first to recognize cruelty as an affirmative ground for separation, interprets X 5.10.2 (Lucius III, Intelleximus) to mean that a separation cannot be granted even if one of the spouses deliberately murders one their children. Panormitanus, Commentaria in X 5.10.2, fol. 124rb: Nam Deus tantum except causam formationis. There may be a discussion of separation of goods in the academic commentary on the decretals on marital property. I have not examined these with the attention that I have tried to pay to the commentary on marriage formation and dissolution.

1090. Ch 10, n. 76: Hodie... fuerunt separati quoad bona salvo inre thori et hoc propeter malum regimen viri et dissipationem bonorum ac sevitiam dicti viri, etc., et quilibet ipsorum se tenuit pro contento de bonis inter ipsas communibus.

1091. Ch 10, n. 77: Col. 91; fuerunt separati quoad bona propter inimicitas, discordias, rancores et oda orta inter ipsos, ne detersus inde contingat, et hoc de consensu dictorum coniugum. Cf. Thiphaine c Thiphaine (27.ii.85), col. 647: propter oda et rancores ortos inter eos de quibus nobis constat, etc., salvo inre thori... et fuit inhibitum viro ne verberet ultra modum coniugalem predictam eius uxorem sub pena excommunicationis et xx librarum.

1092. Ch 10, n. 78: Col. 82. Separavimus [es] propter malum regimen dicti viri, etc., et quia plures obligationes erga plures ipsa insistit et absque eis [uxoris] proficuo. Cf. Perrieres c Perrieres (16.iii.85); col. 78/2: Fuerunt separati quoad bona salvo inre thori et hoc propeter malum regimen dicti viri et propter malum regimen ad solvendum debita seu contractus alterius [non teneatur].

1093. Ch 10, n. 79: et quattuor venit alterius de bonis communibus inter ipsas duabus ob Francisc quos dixit mulier tenebatur et promisit solvere eadem viro.

1094. Ch 10, n. 80: Sumaverunt facere bonam partem.

1095. Ch 10, n. 82: Keranteur c Keranteur (16.iii.85), col. 78/3; Messaiger c Messaiger (14.xii.86), col. 403/6; Brunceau c Brunceau (29.xii.86), col. 397/1.

1096. Ch 10, n. 83: Auberti c Auberti (n. 76); Boquet c Boquet (28.xii.85), col. 226/5; Andegois c Andegois (19.iii.86), col. 279/4; Porte c Porte (13.iii.86), col. 276/2; Morelli c Morelli (9.iii.85), col. 290/6; Blondelli c Blondelli (21.iii.87, 1.iii.87), col. 432/1, 436/2. That malum regimen refers to property rather than to misuse in general seems reasonably clear. In Blondelli, the complaint alleges sevitiam, dissipatio bonorum et malum regimen. In the sentence, this is shortened simply to malum regimen viri et sevitiam. As we will see, malum regimen also appears in all the cases where property mismanagement is alleged without cruelty.

1097. Ch 10, n. 86: Gontier c Gontier (n. 78). In one of the cases where the sentence mentions only cruelty (Vane c Vane [2.ix.85, 9.ix.85, 23.ix.85], col. 185/2, 188/2, 192/3), the complaint charges dilapidatio bonorum rather than dissipatio, and another case where the sentence is grounded on both cruelty and mismanagement uses dilapidatio [Martini c Martini (11.iii.87), col. 443/4]. This may be significant; the words are not synonyms,
though the semantic fields overlap. Perhaps in the former case we should think of allowing property to go to rack and ruin, and in the latter of extravagant spending.

1098. Ch 10, n. 88: Alamanica et Alamanica (22.iui.86), col. 281/6, and Bargondi c Bargondi (26.i.87), col. 420/3 (add sevitia); Beurgny c Beurgny (n. 77) (discordie); Boudart c Boudart (6.vii.85), col. 150/4 (verberationes).

1099. Ch 10, n. 89: Thibaine c Thibaine (n. 77); Joffin c Joffin (25.iv.85), col. 105/3; Arnulphi et Arnulphi (10.v.85), col. 114/5; Boudart c Boudart (n. 88). The possibility that we are looking at change in clerical practice is heightened by the fact that all these sentences are within six months of one another.

1100. Ch 10, n. 84: Pastour c Pastour (19.iv.85, 28.iv.85), col. 99/2, 105/8; Vane c Vane (n. 86); Martini c Martini (n. 103); Messager c Messager (n. 67); Blondelli c Blondelli (n. 83) (both preliminary and final inhibition).

1101. Ch 10, n. 93: ne dicat aliquid insanius viro nec ipsum provocet ad iuram, etc.

1102. Ch 10, n. 94: Inhibitum est [PM] ne ipse, sub pena excommunicationis et xx l., verberet aut maletractaret uxorem suam aut bona inter ipsos communia dissipet, et in caso quo contrarium fecerit fieri separatio quoad bona etc., et fuit iniunctum dicte uxor, sub consimilibus penis, ut obediat predicto marito suo.

1103. Ch 10, n. 95: Hodie [SC], morbo lepro infectus, et [JC], eius uxor, furent separati quoad bona propter sevitiam uirii, attenta informatione etc., et iuravit mulier facere bonam partem etc., ad maritum ad irandun ex parte uiri et eligendum locum ut potuerunt tute cohabitare insimul etc.

1104. Ch 10, n. 100: [RP] promisit et iuravit tenere et servare [GP] et eam tractare amicabiliter ut maritus debet tractare uxorem suam etc., et dicta uxor iuravit etiam sibi obedire etc., et fuit eis iniunctum quatenus insimul etc., sub pena excommunicationis.


1106. Ch 10, n. 102: In causa separationis actrix propositi sevitiam, dilapidationem honorum, etc., et reus proposuit e contra austeritatem et inobsidentiam dicit mulieris, etc. Finaliter fuit inhibitus dicto viro ne ipse sub pena excommunicationis et centum librarum dictam uxorem suam verberet aut maletractaret et ne bona communia inter ipsos dissipet aut se obliget in preediumum dictae uxoriae sue et quod afferat in communitatem, si que furent per eam transportata, etc., quod facere iuravit. Et dicta mulier facere iuravit sub consimilibus penis quatenus obediat dicto marito suo, etc.

1107. Ch 10, n. 103: Martini c Martini (2.viii.86, 31.viii.86, 13.iii.87), col. 328/1 (preliminary inhibition of husband that he not beat his wife under penalty of 100 livres); col. 343/9 (inhibition granted under substantially the same terms as Trubert c Trubert (n. 102), except that the woman is not accused of austeritas); col. 443/4 (standard-form separation for austeritas, sevitia, et dilapidatio honororum). The woman in this case is described as domicilia, a fact that may account for the high penal sum. See n. 86.

1108. Ch 10, n. 104: De [CS] actrise in causa separationis contra [GS] bodie fuit inhibitus dictus partarius, dicit marito sub pena excommunicationis et centum marcarum argenti ne dictam uxorem suam indebite verberet aut maletractaret aut bona inter ipsos communia dissipet vel alienet et simulit fuit inhibitus dicte mulier ne aliquid alienet aut transportet de bonis communibus inter ipsos et fuit sibi iniunctum ut obediat dicto marito, et sic recesserunt sine die.

1109. Ch 10, n. 105: ut ipse ... eius uxor commisi affectione marii et per modum conuagalem tractaret nec eam verberet ultra modum conuagalem aut crudeliter vel enormiter.
1110. Ch 10, n. 106: Caullere c Caullere (2.i.85), col. 21/6 (set for 7.i.85); Sampson c Sampson (10.v.85, 13.x.85), col. 114/6, 117/2 (case set for 15.v.85, but interim order issued before that); Boucher c Boucher (7.vii.87, 6.xii.87), col. 434/7, 439/2 (set for 9.xii.87 and inhibitions previously given renewed).

1111. Ch 10, n. 108: Varlet (8.ii.86), col. 261/1; Courtillier c Courtillier (3.vii.85, 30.x.85, 6.xi.85, 13.xi.85), col. 148/3, 210/7, 213/7, 216/4 (both the restitution orders also contain orders to the woman’s brother ne retireat dictum xecorum in domo sua ne ipse eandem [mulierem] seducat aut confortatur [sic] ad dimittendum dictum maritum).

1112. Ch 10, n. 109: fuerunt inhibitus eidem viro quod eam non verberet ultra modum consulegatum, et intransum ut ipsam recipert sub pena excommunicationis et x l

1113. Ch 10, n. 110: Arnulphi et Arnulphi (16.ii.85), col. 54/5; Quercu c Quercu (10.iv.85, 5.vii.86), col. 197/3, 331/1 (almost certainly the same case despite the gap of more than a year). Referrals of this kind occur in at least 15 other cases.

1114. Ch 10, n. 111: Referendum informationem fiendam; e.g., Caullere c Caullere (2.i.85), col. 21/6; Biaut c Biaut (16.ii.85), col. 54/5; Quercu c Quercu (10.iv.85, 5.vii.86), col. 93/4, 331/1 (one of the cases despite the gap of more than a year). Referrals of this kind occur in at least 15 other cases.

1115. Ch 10, n. 112: Keranstret c Keranstret (n. 82); Reins c Reins (2.x.85), col. 195/10.

1116. Ch 10, n. 113: De qualus nos sentit (or some variation of that formula): Thibaine c Thibaine (n. 77); Arnulphi et Arnulphi (n. 89); Pastour c Pastour (n. 92); Boudart c Boudart (n. 88); Trubart c Trubart (28.vii.85, 27.vii.86, 31.vii.86, 19.iv.87, 26.iv.87), col. 194/3, 342/7, 343/5 (sentence), 458/6, 463/2 (the gap between the first and second entries may indicate an attempted reconciliation; after the sentence they return to court squabbling about the division of the community property; if Trubart c Trubart (n. 102) is, despite the different spelling of the name, the same case, that would confirm these speculations); Girardi c Girardi (9.xii.86), col. 274/5 (looks highly consensual); Juliani et Juliani (16.vii.86), col. 337/1; Croix c Croix (4.x.86, 30.x.86), col. 360/2 (sentence: attenta confessione ipsius viri et quia alias constat), 385/2 (order to husband not to remove clothing, rings, and other articles of female use and to return what he had removed); Langin c Langin (19.x.86), col. 379/5; Bruncaux c Bruncaux (29.xi.86), col. 397/3 (a few years separate quodad bona propter malum regimen et dissipationem bonorum dicti viri et austeritatem etc. de quibus constat per confessionem viri et alia); Burgondi c Burgondi (11.xii.86, 19.xii.86, 26.xi.87), col. 403/3, 404/6 (set ad referendum informationem fiendam), 420/3 (quia de sevitis, rancoribus et odios ortis inter dictas partes nobis sentit, separation granted).

1117. Ch 10, n. 114: E.g., Arnulphi et Arnulphi (28.xi.85), col. 342/7, 343/5 (sentence), 458/6, 463/2 (the gap between the first and second entries may indicate an attempted reconciliation; after the sentence they return to court squabbling about the division of the community property; if Trubart c Trubart (n. 102) is, despite the different spelling of the name, the same case, that would confirm these speculations); Girardi c Girardi (9.xii.86), col. 274/5 (looks highly consensual); Juliani et Juliani (16.vii.86), col. 337/1; Croix c Croix (4.x.86, 30.x.86), col. 360/2 (sentence: attenta confessione ipsius viri et quia alias constat), 385/2 (order to husband not to remove clothing, rings, and other articles of female use and to return what he had removed); Langin c Langin (19.x.86), col. 379/5; Bruncaux c Bruncaux (29.xi.86), col. 397/3 (a few years separate quodad bona propter malum regimen et dissipationem bonorum dicti viri et austeritatem etc. de quibus constat per confessionem viri et alia); Burgondi c Burgondi (11.xii.86, 19.xii.86, 26.xi.87), col. 403/3, 404/6 (set ad referendum informationem fiendam), 420/3 (quia de sevitis, rancoribus et odios ortis inter dictas partes nobis sentit, separation granted).

1118. Ch 10, n. 115: Closodaco et Closodaco (13.xi.85), col. 54/2 (de eorum consuego voluntate); Bessergy c Beurgny (n. 77) (de consuego dictorum coniugum); Pastour c Pastour (n. 92) (de eorum consuego; this case had been referred to a commissioner, but the couple returned before the set date and obtained the sentence); Ortolarii c Ortolarii (15.vii.85), col. 138/1 (here, the couple reconciled subject to the condition that if the woman complained of the cruelty and harshness of the husband in the future and was willing to swear to it, the husband consented to a separation sine alia informatione); Vane c Vane (n. 86) (attenta informatione facta de mandato nostro . . . propter seviam viri conserverunt in separationem buusmodi); Burgondi c Burgondi (n. 113) (consentibus in boc dictis partibus, but see T&C no. 1116 for the information taken in the case). To these we should add Barre c Barre (11.vii.86, 11.vii.86), col. 333/6, 334/5. In the first entry, an information is ordered and the case set for the following week; the same day the parties return and the sentence is granted.


1120. Ch 10, n. 120: 27% of marriage instance cases, which are 28% of the marriage cases, which are 70% of all cases (≈ 3.5%). Hence, our sample has drawn slightly less than half of the estimated number of such sentences (34/77, 44%). Vleschouwers-van Melkebeek counts 124 such sentences (“Marital Breakdown,” 82). This is clearly within the same universe, and her somewhat higher number is largely the result of the fact that she includes ex officio cases in which a separation is granted. (Id., 84–5, Table 3). We add the ex officio cases at n. 122.
1121. Ch 10, n. 121: It may have been granted in the case that is now represented only by an interlocutory sentence. *Demoiselle Agnès des Rosieres c Colard Hasnon* (19.i.46), no. 881. The sentence admits the actrix's articles to proof. If the proof took more than seventeen months, the definitive sentence would have appeared in a register that is now lost.

1122. Ch 10, n. 123: *Office c Brelier et Rieulinn* (20.x.42), no. 362, is the only case in the sample in which a married couple appears in response to the promotor's charges, one of them is condemned for adultery, and a separation is not granted to the innocent spouse. It is possible that Isabelle Rieulinn asked for a separation and did not receive it, but it is equally possible that she did not ask for one. The promotor apparently thought that he had something against her, too, but she is absolved of all (unnamed) charges.

1123. Ch 10, n. 124: The fact that the previous sentence is not recorded raises the possibility that such sentences were not entered in the register, but it is equally possible that it was entered in the previous year, the register of which is now missing.

1124. Ch 10, n. 125: There are 274 sentences recorded in the name of Oudard Divitis, official in 1438–39, and 1,181 in the name of Grégoire Nicolaï, official in the remaining years (a broken series up to 1453). Hence, the ratio is approximately 19%. The corresponding figures in our sample of separation cases are 10 and 39, for a ratio of 20%.

1125. Ch 10, n. 126: Another way of putting this is that extrapolating from the overall sample, we would estimate that Divitis would have rendered 11.5 criminal and 14.5 civil separation sentences in his 274 sentences; extrapolating from the sample of his separation cases, the numbers are 24.5 and 9.1, respectively. (The significance of the differences is not the same, but both are significant: criminal: $z = 4.02$, significant beyond .99; civil: $z = 1.95$, significant at .95.) Not only does this suggest that there is a serious imbalance in the two types of sentences between the two officials, but it also suggests that the preliminary results presented in n. 125 are wrong. Because the civil sentences are overrepresented in the sample, the number of separation cases represented by the two samples will not be the same, and we can aggregate them the way that we did in n. 125 only if the ratio of criminal to civil sentences is the same between the two judges. Caution: The differences are clearly significant, assuming that we have an adequate sample, but the sample size is sufficiently small that we should not put too much reliance on these numbers.

1126. Ch 10, n. 127: The reason why we must be vague about this number is that, as in the Cambrai book, there are a number of interlocutory sentences recorded in the Brussels book. Hence, the total number of sentences (1,590) is considerably larger than the total number of cases. Our 82 separation cases produced 103 sentences, or roughly 6.5% of the total. Vleeschouwers-Van Melkebeek counts 80 cases rather than 82 ("Marital Breakdown," 85, Table 4). We are clearly dealing with the same set of records, and it did not seem worthwhile to identify the two cases in which I thought that issues of separation were probably involved and she did not.

1127. Ch 10, n. 129: For reasons stated in n. 127, the totals in the table underestimate the proportion of separation cases to the total number of cases, but there is no reason to believe that there is a bias in the comparisons that we make here.

1128. Ch 10, n. 130: This includes a few cases in which all that is recorded is a judgment confirming the separation of goods that the couple had agreed to but which refers to an earlier separation *a thoro* that is not found in the sentence book. The dates of these judgments suggest that not all sentences that could have been recorded in the sentence book are, in fact, there.

1129. Ch 10, n. 134: This remarkable document also tells us that Katherina’s son, the duke of Burgundy, and the *scabini* of Dendermonde (Oost-Vlaanderen) had also intervened in the case.

1130. Ch 10, n. 135: Keynoghe: *cauto tamen perprius legitime per ipsum actorem de non alienandis bonis prefate ree ultra onera matrimonii; Gouwen: cautio tamen sufficienti dicta ree super huini modxi sevilia et inhumanitiae et de ipsius bonis indebite non alienandis per sepexitum actorem prius praeitita et data, etc.* Vleeschouwers-Van Melkebeek takes Keynoghe c Zoetens as evidence that separation could be granted at Brussels solely on the ground of mismanagement of funds ("spendthrift", as she puts it). "Marital Breakdown,”
84 and n. 20. She may be right, but this is the only case at either Brussels or Cambrai that evidences it. She does have three cases from the neighboring diocese of Tournai that do seem to rely on this ground. Ibid.

1131. Ch 10, n. 136: *apud probam et honestam mulierem infra Bruxellam.*

1132. Ch 10, n. 138: A separate draw of all cases from the Cambrai records where separation was granted in an instance case on the ground of *morum discrepantia* (see next paragraph) reveals an even higher percentage of female plaintiffs, 18/20 (90%). The same is not true, however, of Brussels instance separations granted on the same ground (23/33, 71%). (Five cases in this group do not identify the plaintiff, though in one, granted on the ground of spousal abuse by the husband, the woman was probably the moving party. *Jaembottal en Bakereve* [at n. 172].) This may mean, to use terms that we will develop later in this section, that more Cambrai cases involved spousal abuse and fewer involved dysfunctional families, but such a conclusion would be highly speculative. Vleeschouwers-van Melkebeek ("Marital Breakdown," 84–7) employs a somewhat different set of categorizations, but comes to the same conclusions about the dominance of women as moving parties.

1133. Ch 10, n. 141: *In patientia tolleramus quod CV actrix et HN reus, con Ingues – ne deterior inde contingat – abinvicem segetrati maneant donec, Deo previo, sese reconciliare duxerint et de bonis eorum in forma iuris disponimus,* etc.

1134. Ch 10, n. 142: The source of both phrases is probably X 4.1.2 (Alexander III, *Super eo.* Praeterea hi, WH 101): *ne forte deterius inde contingat* ... *hoc possit in patientia tollerari.* This decretal is also probably the source of the dispensatory language in remission cases, for which it is much more on point. See Ch 9, n. 131.

1135. Ch 10, n. 144: The *leges* read: *quia abinvicem steterunt separate, peccando in legem matrimonii.* The second phrase could mean that it was a sin against the *lex* of matrimony to “stand apart” without judgment of the church, but where we have more specifics, the phrase *peccare in legem matrimonii* always refers to adultery.

1136. Ch 10, n. 145: No separation granted: *Office c Sadonne et Keere* (17.i.39), no. 120 (in addition to unauthorized separation, this case also involved an issue of whether the marriage was invalid for *affinitas per copulam illicitam*; the official ultimately decides that the marriage is valid); *Office c Petit et Tannaise* (27.ix.38), no. 38 (no adultery mentioned).

1137. Ch 10, n. 146: *Office c Emenhoven et Vrouweren* (20.xii.38), no. 100; *Office c Hayette et Hongroise* (13.xii.38), no. 90; *Office c Campion et Leurenche* (28.iii.38), no. 190.

1138. Ch 10, n. 151: *Divortium nichilominus per dictam MJ petitum propter peccatum in legem sui matrimonii per ipsum JP comissum et confessatum celebramus et de bonis eorum in forma iuris ordinamus,* etc.

1139. Ch 10, n. 152: The clearest example is *Rosieres c Hasnon* (n. 121), an interlocutory sentence admitting articles of the plaintiff to proof. It is not completely clear, however, that this is a separation case as opposed to an annulment case, *in causa divorci* is all that it says.

1140. Ch 10, n. 153: *propter peccatum eiusdem rei tuisque expressum ad hoc interveniement consensum, divortium per actricem petitum admittimus in patientia tolerantes quod partes eodem, caste vivendo segregate maneant donec Deo previo, invicem reconciliari potuerint et voluerint,* etc.

1141. Ch 10, n. 155: *propter peccatum eius [idem rei], cause tamen meritis dehite consideratis, et ne, si secus ageteret, deterius inde contigeret, in patientia tolleramus quod partes ipse, [caste vivendo] abinvicem maneant separate donec Deo previo, invicem reconciliari voluerint et potuerint, de bonis, etc.*

1142. Ch 10, n. 156: *propter eorum ambarum partium ad hoc interveniement consensum et ne, si secus ageteret, deterius inde contigeret, in patientia toleramus,* etc.

1143. Ch 10, n. 157: Technically, the judgments in the adultery cases were also grounded in the consent of the parties, since the *consensum* was governed by the same *propter* that governed *peccatum.* See
n. 153. But the presence of the peccatum, an undeniable ground for separation, makes the problem far less serious.

1144. Ch 10, n. 158: propter coniugum presentaliter invicem contendentium incompatibilitatem et morum suorum repugnantiam – ne, si secus ageretur, peius inde contingeret – de communi partium earumdem consensus, in patientia tolleramus, etc., de bonus eorum in forma iuris aut de qua rationalibiter hincinde contentarunt forma ordinantes, etc.

1145. Ch 10, n. 159: propter morum predictorum coniugum discrepationem – unde verisimiliter ex eorundem diuturna cohabitatione posset periculum non modicum imminere – in patientia toleramus quod partes eedem – prout hincinde consentiunt – caste vivendo segregate maneant, etc.

1146. Ch 10, n. 160: propter morum predictorum coniugum discrepantiam et ne, si secus ageretur, deterius inde contingeret, utriusque partium predictarum interveniente consensu, in patientia – prout actrix petit – toleramus, etc.

1147. Ch 10, n. 162: Molinace c Wael (31.v.45), no. 706; Croquehan c Hautquian (17.vii.45), no. 742; Matten c Enden (25.ix.45), no. 795; Thory c Thory (24.xii.46), no. 1071.

1148. Ch 10, n. 163: Quarée c Canestiel (19.v.47), no. 1141; Fervre c Fieret (20.v.47), no. 1148. Both sentences say expressly that fines were not imposed.

1149. Ch 10, n. 164: Office c Naquin et Rocque (3.i.46), no. 847 (grounds for prosecution not stated but probably unlawful separation); Office c Tiérasse et Tiérasse (n. 124). The latter case also finds that the couple had been contemptuous of a judgment of the official that they cohabit. For instance cases with fines for unlawful separation, see, e.g., Feluys c Herinc (n. 160); Fervre c Carpentier (15.xii.52), no. 1392. All told, such fines are mentioned in 12 instance cases. In another case, fines are mentioned; we are not told what they were for, but it seems likely that unlawful separation was among the grounds. Werye c Roussiel (10.vi.46), no. 939 (facti sunt super leges brevicali).

1150. Ch 10, n. 165: Touperon c Touperon (10.ix.46), no. 1003 (both); Office c Tiérasse et Tiérasse (n. 124); Horues c Sore (6.vi.46), no. 963; Fervre c Carpentier (n. 164) (all three, man only).

1151. Ch 10, n. 166: propter severitatem et austeritatem viri preallegatas morumque huiusmodi coniugum discrepantiam. Even in this case, if we are to believe the sentence, the man ultimately consented in the judgment. It had probably been a while since this couple had lived together; the agreement of separation of goods that the official confirms is dated 1434.

1152. Ch 10, n. 168: ob adulterium hincinde perpetratum et confessum, nolentes sibi invicem reconcilari neque eorum mutua delicta compensari volentes, propter morum eorum discrepantiam, et dicte ree [sic; ?for re] non modicam lepre suspitionem, ne forte deterius contingat, etc.

1153. Ch 10, n. 169: divortium quo ad thorum per ipsum [AH] actricem petitum . . . addittimus, in patientia tollerantes quod partes ipsae caste vivendo stent et maneant ab invicem segregate, donec sese reconcilare voluerint, de bonus eorumdem in forma iuris aut prout concordes fuerint ordinantes, sententiaerit definitio in his scriptis.

1154. Ch 10, n. 170: visis propositionibus et allegationibus, assisipissibus et confessissibus dictorum coniugum hincinde et presertim senio ac morum discrepancia et continuis dissensionibus gravibus eorundem necnon plorum et amicorum hincinde discordis, litibus et periculis, cum ceteris que pastam nostrum moovere poterunt, Christi nomine invocato, dicimus, decernimus et declaramus divorcium quo ad thorum per prefatos coniuges hincinde petitum addittandum fore et addittimus, in patientia tollerantes, etc.

1155. Ch 10, n. 171: The latter case omits the reference to discord among the children and relatives and adds that depositions of witnesses were taken on the topic.

1157. Ch 10, n. 174: Houchele: *divortium quo ad thorun per ipsum* [AH] *actricem petitum propter causas* *per eandem allegatas necnon per ipsum ramum confessedas admittimus*; Heckene: *ex certis rationalibus causis in actis huiusmodi designatis et ex eisdem colligilibus."

1158. Ch 10, n. 175: The one separation sentence rendered by Platea where we cannot tell the ground is a confirmation of a separation of goods on the basis of a previous unrecorded separation sentence. *Hinkel* *erts c *Pitanpoy (24.v.54), no. 623. That Platea did not find it necessary to use the vague causas suggests that he was able to fit all causes other than adultery into *morum discrepantia."

1159. Ch 10, n. 176: *Reyns c Costere* (12.i.53), no. 439: *propter dicti rei sevistat et austeritatem coram nobis per ipsum ramum dilucide confessatas ac coniugum huiusmodi morum discretionam*; Vekene e Thuyne (9.i.56), no. 907: *propter predicti* [HT] *sevistat in et contra predictam* [AV] *pluribus vicibus perpetrasat* *et confessatas ac propter predictorum reorum morum discretionam, etc. Cf. Ertoghen c Potteray (21.v.54), no. 621: *propter   dicti rei sevistam*; Godscalcs c Lenard (1.i.54), p. 443, no. 626 (like Ertoghen).

1160. Ch 10, n. 179: *Walen c Pede* (23.xi.52), no. 434 (*de mutuo tamen eorumund coniugum et amicorum suorum consensu*); *Reyns c Costere* (n. 178) [*consensu etiam eorumund hincinde interveniente*]; Vekene en Raymakers (2.ii.53), no. 457 (like Reyns); *Pinaerts c Lotsamo* (6.i.54), no. 577 (like Walen); Ertoghen c Potteray (n. 178) (like Reyns); Godscalcs c Lenard (n. 178) (like Reyns); *Broucke c Oudermolen* (24.v.53), no. 867 (like Reyns).

1161. Ch 10, n. 180: *Striecke c Heylicht* (22.xii.53), no. 564; *Corloe c Vloeghels* (12.vii.54), no. 647; *Zwitten c Leo* (11.i.55), no. 742; *Zwitten c Coelijns* (14.iii.55), no. 772 (*morum missing*). The phrase is missing in only one such sentence in this period, and it may be because in that case the official was concerned to record the consent of the reus to pay child support. *Douche c March* (10.xii.54), no. 731.

1162. Ch 10, n. 185: *Ochhe: propter dictarum partium morum discretionam esse adiu vicem pacifice admittere nolentium, ne forte deterius inde contingat*; *Vischmans: propter predictorum [IV] et [MT], [1morum discretionam esse adiu vicem admittere seu compati nolentium*; *ne forte deterius inde contingat et lascivia carnis verisimiliter propter eorum . . . cesset* (at the ellipsis, the editors read *morum*). That Platea did not find it necessary to use the vague *discrepantiam* in addition to *morum discrepantia* as grounds for the sentence.

1163. Ch 10, n. 186: *Gabriels c Zande* (n. 184) (*declaramus divortium . . . inter dictos coniuges esse adiu vicem adiu ngere nolentes propter morum suorum discretionam*); *Vischmans c Meys* (n. 185) (adds *compati*); *Ofhuys c Platea* (27.vi.59), no. 1584 (ob eorum dispartitatem morum esse adiu vicem pacific coniugii nolentiam); but cf. *Faster c Bruers* (19.ii.58), no. 1267 (*propter predictorum coniugium morum discretionam, esse adiu vicem pacifice admittere et habitatere nolentium*).

1164. Ch 10, n. 187: *Ochhe e Breecpots* (n. 185); *Lins c Kerechoe* (4.iii.57), no. 1121; *Belier c Belier* (19.vii.57), no. 1189 (also adultery); *Faster c Bruers* (n. 186); *Praet c Molemans* (2.ii.58), no. 1320; *Loumans c Ourick* (22.vi.58), no. 1324; *Thonias c Jacopits* (28.iv.59), no. 1461; *Ofhuys c Platea* (n. 187) (last four also adultery).

1165. Ch 10, n. 188: I can, for example, discern no reason why *dissequitiam* is joined with *discrepantium* in four of Platea’s separation sentences toward the end of the book. *Roden c Snoop* (19.xii.58), no. 1406; *Diericx c Bletaert* (2.iii.59), no. 1434; *Torre c Poel* (7.iii.59), no. 1437; *Yngbeke c Ezaeta* (16.xi.59), no. 1568. (All of these cases, except *Torre*, also involve adultery.)

1166. Ch 10, n. 189: . . . *declaramus divortium quo ad thorun et mutuum servitutem inter predictos coniuges ob eorum dispartitatem morum, esse adiu vicem pacific coniugii nolentium, et presentem propter adulterium per prefatum ramum cum [EE] perpetrasat et commissam, ac propter peculare que versimiliter inter dictos coniuges accedere possent, quibus quantum nolis obviare et dictis coniugibus quietem et pacem precepare volentes, celebrandum fore et celebramus, etc.

1167. Ch 10, n. 196: *Inter partes autem predictas divorcium per uxorrem rei, in ea parte actricem, petitum propter iusni rei peccatum predeclaratum admittimus, in patientia tolerantes, etc.*
1168. Ch 10, n. 197: This is formally an instance case, but the ex officio elements are so dominant that I have classified it as such.

1169. Ch 10, n. 198: Propter causas per predictam ream ad finem knuismodo allegatas, quibus per cor-reum expresse confessatis attentis, ne, si forsan secus ageretur, deterius inde contingeret, in patientia toleramus, etc.

1170. Ch 10, n. 199: Attenta morum suorum discrepantia, qua causante, eorum etiam ad hoc interveniente consenso, ne forte, si forsan ageretur, deterius inde con-certet, in patientia toleramus, etc.

1171. Ch 10, n. 202: Officie c Gheylen en Claes (23.xi.53), no. 549 (with pacifice); Keyserberge c Vaenkens (5.x.56), no. 1023 (formally instance case, but the ex officio elements dominate); Officie c Coecke en Peussven (4.x.58), no. 1365 (with pacifice); Officie c Bos en Roußels (19.x.59), no. 1347 (with pacifice but without ne deterius); Officie c Eeken en Coppoens (16.xi.59), no. 1569.


1173. Ch 10, n. 209: We can probably go further, at least in a note: My impression is that the absolute number of annulment cases in England is not great enough to account for the difference that we see in the number of separation cases in the two countries, even if all the English annulment cases are founded on falsehood. This is particularly true if we deduct from the number of English annulment cases founded on prior marriage the number of French cases so founded. See n. 207. I prefer to rest on the argument in the text, because calculating the numbers involves complexities of definition and problems of comparison of types of records that would take us beyond the scope even of this book. See generally Lefebvre-Teillard, “Règle et réalité dans le droit matrimonial,” 50–1.

1174. Ch 10, n. 213: Id., at 65 and sources cited; Baker, Introduction, 483–9. For the suggestion that there may have been customs of marital community property surviving into the fifteenth century in England, see Donahue, “Lyndwood’s Gloss propriarum uxorum,” 1:36–7. This suggestion is confirmed by the occasional cases that we saw at nn. 55, 63, where an ecclesiastical court was called upon to divide the common property of a couple who had been separated.

1175. Appendix e10.1 Richard Scot of Newcastle upon Tyne c Marjorie de Devoine of Newcastle upon Tyne (1349)


1 CP.E.257. Roll of four membranes (three full and one short), torn at top, with beginnings and ends of lines stained and torn. The first membrane also has holes in the middle. One membrane is endorsed de Novo Castro Devoine, another with [Devoine c Ricardum Scot de Novo Castro, next line matrimonialis. See T&C no. 1061. Restorations are based on the other depositions and the general style of such documents. They are unlikely to be literally accurate when more than a few letters are supplied. Standard abbreviations are extended silently, and punctuation and capitalization are modernized. The testimony of each witness is preceded by a reference number (T1, T2, etc.), which is used in the discussion. The document contains similar reference numbers in the margin, e.g., nij t. In the notes that follow, manuscript readings and restorations are given in Roman type, commentary in italics.

1 The first line is cut off; a piece of it might be legible on original.

2 Newcastle upon Tyne, Northumb.

3 This witness is the only one who mentions this Cecily.
4 The church of St John was in this period a chapelry in the parish of St Nicholas, Newcastle upon Tyne, Northumb.
5 The archdeaconry of Northumberland was in this period coterminous with the county. In 1349 the archdeacon of Northumberland was either Mr Edmund Haward or William de Salopia. See Le Neve, Fasti, 6:114.
6 The name suggests Harehope, Northumb.
7 The name suggests Killerby, Durham, although there are also two Killerbys in Yorks, NR. This witness is the only one who suggests that Killerby was a knight.
8 Lancaster, Lancs.


12 ms. quem R.
13 Middleton in Tesdale, Durham.
14 This is probably Hugh de Teesdale, BCL, who successfully petetioned the pope for a benefice in the gift of the bishop of Durham in 1339. CPP, 338. He may be the same Hugh de Teesdale who was provided to the treasureship of Dublin Cathedral in the same year but who is reported as having died in the Roman curia in the following year, and/or the Hugh Dalman of Teesdale who was made a papal notary in 1342. Id., 311, 375; CPL (1342-1362), 65.
Isti testes fuerunt examinati xxii die mensis Februarii A.D. M CCC xlvii.15

15 ms. ?p – Perhaps a redundant quod.
16 sc. officiaibus.
17 Insertion required by sense.
18 ms. yvarati
19 22 February 1348/9.
20 William’s surname suggests Hexham, Northumb (‘Hextoldesham’ in 1188).
21 This is the only witness who testifies to the length of time that Richard and Margery were married.
22 John’s surname suggests West Whelpington or Kirkwhelpington, Northumb.
23 Mr Ralph’s surname suggests Blakiston, Durham. He may be the same Ralph de Blakiston who was said to be holding a (disputed) prebend in the collegiate church of Howden (Yorks, ER), and who is described as deceased in September of 1343. CPLP, 1:105. For details of the dispute, see CPL, 3:52, 204, 230. This last entry suggests that Mr Ralph was still alive in June of 1346.
24 John’s surname suggests Halton, Lancs (‘Halghton’ in 1246–51).

1176. Appendix e10.2: The Tournai Separation Cases

A number of the Tournai account entries suggest that a couple had been granted a judicial separation or had separated informally. A search for such entries (aided considerably by the listing in Vleeschouwers-van Melkebeek, “Marital Breakdown,” 84–5, nn. 15–16, 20–2, 24–5) produced 107 such entries (the 96 that Vleeschouwers-van Melkebeek lists, plus one she missed [T6284, a case of the husband’s adultery] and 10 cases in which a couple made amends for “having stood separately without the judgment of the church,” in two of which the wife’s adultery is mentioned but not that the couple were separated judicially). These entries do not tell us nearly so much as we would like to know, but they do tell us something. With all due caution, they suggest that Tournai separation practice was probably similar to that of Brussels and Cambrai but that it also probably had elements that made it more like that of more conservative Paris a century earlier. Let us examine these entries briefly (Table e.10.App.1).
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| 4    | 6199    | 31.viii.61| Aldenardo | adultm | 72      |
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<td>11883</td>
<td>3.x.74</td>
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</tr>
<tr>
<td>7</td>
<td>11983</td>
<td>6.xi.75</td>
<td>Sancto Michael Gandensi</td>
<td>no, involves adultf</td>
<td>116</td>
</tr>
<tr>
<td>7</td>
<td>11998</td>
<td>20.x.75</td>
<td>Eckerghem</td>
<td>adultm</td>
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</tr>
<tr>
<td>7</td>
<td>12049</td>
<td>3.x.v.75</td>
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<td>avg: 162.4</td>
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<td></td>
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<tr>
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<td>8</td>
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<td>19.vii.76</td>
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<tr>
<td>8</td>
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<td>Nechin</td>
<td>no</td>
<td>24</td>
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<tr>
<td>8</td>
<td>12784</td>
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<td>Rodelghem</td>
<td>unspecified, raised by husband</td>
<td>72</td>
</tr>
<tr>
<td>8</td>
<td>12864</td>
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<td>Sancto Mauricio Insulensi</td>
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<tr>
<td>8</td>
<td>12902</td>
<td>20.i.77</td>
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<tr>
<td>8</td>
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</tr>
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<td>8</td>
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</tr>
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<tr>
<td>9</td>
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<td>1.xi.79</td>
<td>Dottignies</td>
<td>adultm</td>
<td>80</td>
</tr>
<tr>
<td>9</td>
<td>14581</td>
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<td>Sancto Bauone juxta Brugae</td>
<td>adultm</td>
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</tr>
<tr>
<td>9</td>
<td>14872</td>
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<tr>
<td>9</td>
<td>14935</td>
<td>1.x.80</td>
<td>Sancto Saluator Brugensi</td>
<td>adultm</td>
<td>160</td>
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</table>

(continued)
**Table e10.App.1 (continued)**

<table>
<thead>
<tr>
<th>No.</th>
<th>Date</th>
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<th>Offender</th>
<th>Charge</th>
<th>Case Type</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>15078</td>
<td>4.x.79</td>
<td>Ursele</td>
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<td>9</td>
<td>15147</td>
<td>6.xii.70</td>
<td>Eckergem</td>
<td>aduldm</td>
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<tr>
<td>9</td>
<td>15151</td>
<td>13.xii.79</td>
<td>Sancto Michaele Gandensi</td>
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<td>360</td>
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<tr>
<td>9</td>
<td>15157</td>
<td>13.xii.79</td>
<td>Sancta Maria Gandensi</td>
<td>aduldm</td>
<td></td>
<td>240</td>
</tr>
<tr>
<td>9</td>
<td>15227</td>
<td>20.xii.80</td>
<td>Eckergem</td>
<td>aduldm</td>
<td></td>
<td>360</td>
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<tr>
<td>9</td>
<td>15253</td>
<td>10.xii.80</td>
<td>Sancto Nicolao Gandensi</td>
<td>aduldm</td>
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<td>9</td>
<td>15254</td>
<td>3.iv.80</td>
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<td></td>
<td>200</td>
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<tr>
<td>9</td>
<td>15292</td>
<td>20.x.x.80</td>
<td>Sancto Johanne Gandensi</td>
<td>adulmf and spendthrift</td>
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<td>1200</td>
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Σ count: 12 max: 1,200 min: 80 avg: 286.6

<table>
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<th>No.</th>
<th>Date</th>
<th>Location</th>
<th>Offender</th>
<th>Charge</th>
<th>Case Type</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>10</td>
<td>15649</td>
<td>14.viii.80</td>
<td>Anechin</td>
<td>aduldm</td>
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<td>288</td>
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<tr>
<td>10</td>
<td>15768</td>
<td>26.xi.81</td>
<td>Weroy</td>
<td>aduldm</td>
<td></td>
<td>200</td>
</tr>
<tr>
<td>10</td>
<td>15847</td>
<td>17.vii.80</td>
<td>Sancta Maria Sluus</td>
<td>cruelty couple</td>
<td></td>
<td>120</td>
</tr>
<tr>
<td>10</td>
<td>15977</td>
<td>18.xii.80</td>
<td>Sancto Sauatore Brugensi</td>
<td>adulfr</td>
<td></td>
<td>240</td>
</tr>
<tr>
<td>10</td>
<td>16379</td>
<td>24.viii.80</td>
<td>Sancta Maria Gandensi</td>
<td>aduldm</td>
<td></td>
<td>360</td>
</tr>
<tr>
<td>10</td>
<td>16408</td>
<td>9.x.80</td>
<td>Sancto Johanne Gandensi</td>
<td>aduldm</td>
<td></td>
<td>160</td>
</tr>
<tr>
<td>10</td>
<td>16425</td>
<td>16.x.80</td>
<td>Moerbeke Wasie</td>
<td>adulmf and cruelty</td>
<td></td>
<td>240</td>
</tr>
<tr>
<td>10</td>
<td>16437</td>
<td>23.x.80</td>
<td>Neuele</td>
<td>adulmf</td>
<td></td>
<td>160</td>
</tr>
</tbody>
</table>

Σ count: 8 max: 360 min: 120 avg: 221

ΣΣ count: 107 max: 4800 min: 24 avg: 176.1

**Notes:**

The layout of the table is the same as that in Table e9.App.3, with the addition of a column of Vleeschouwers-van Melkebeek’s coding (‘VvMCode’), where ‘adultm’ = adultery by the husband, ‘adultf’ = adultery by the wife, ‘crueltym’ = cruelty by the husband, ‘spendthriftm’ = husband is spendthrift, etc.; ‘no’ in the VvMCode means that she did not code it (T6284 should be ‘adultm’; the rest are cases where the couple makes amends for living separately, two involving ‘adultf’ but not mentioning judicial separation).

**Source:** Compositus Tornacenses; Vleeschouwers-van Melkebeek, “Marital Breakdown,” 84–5, nn. 15–16, 20–2, 24–5.

The cases are relatively evenly distributed throughout the books.1 There is a definite tendency for the amount of the amends to increase over the course of the years. This is particularly noticeable if we remove T5448, which has an amend four times higher than the next highest one (4,800s vs 1,200s [T15292]). Whatever is going on in T5448, it is not typical of the other cases.2 Even with our crude measure of urban status (places that had more than one parish), the urban presence in these cases is strong (60/107 [not all of them have parish indications], 56% vs 43% for our sample of presumptive marriage cases and 26% for the clandestine covenant cases [App e9.2]). This provides some support for the notion explored earlier in this chapter that couples of greater wealth had a greater need to obtain a judicial, as opposed to an informal, separation (although the presence of the amends against couples who were living separately without obtaining a judicial separation shows that couples who separated informally, whatever their wealth, ran some risk of prosecution).

What the grounds for these separations were is more problematical than appears at first glance. For example, Vleeschouwers-van Melkebeek codes two cases in which a priest is to make amends for, in one case, “keeping with him [blank] a married woman divorced from her husband,” and in the other, “because he carnally knew a certain Beatrice who was separated from her husband.” The focus here is on the offense of the priest. Whether the husband was the moving party in obtaining the separation (or even, in the second case, whether there was a judicial

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1 Book 6 [1473–4] seems to have unusually few; it also shares with Book 4 the smallest number in Table e9.App.3, suggesting that the quality of reporting for Book 6 warrants investigating.

2 See at n. 16.

3 Vleeschouwers-van Melkebeek, “Marital Breakdown,” 84 n. 22; T4171 (18.xii.48): 240s (quia secum tenet [blank]: coniugatam et ab eius marito divorciatum); T12784 (4.xi.76): 72s (Dominus Philippus Hespiel presbiter pauper capellanus quia carnaliter cognovit quandam Beatricem a suo marito separatam). (An inscription in a manuscript of Sedulius reads ‘Fuit p. Hespiels curati de Rodelghem. 1486’. Carl E. Springer, “The Manuscripts of Sedulius,” Transactions of the American Philosophical Society, n.s. 85 [1995] 60. This would seem to be the same man and suggests that his claim of poverty is exaggerated.)
Ambiguity about whether the offense for which the amendment is being imposed and the ground(s) for the separation abound in the earlier cases. In the earlier cases, the standard wording in adultery cases that mention separation is “[X] separated quoad thorum from [Y] on account of adultery committed by him/her was condemned in [Z]s.” That X made amends for adultery is clear enough; whether that was the ground for the separation depends on whether we put commas after “[X]” and “[Y].” If we do, what we have is a separated person who later commits what is still adultery. There is evidence that de Pauw or his clerk became aware of this ambiguity. Beginning in 1474, the wording in these entries was changed to “[X], a married man/woman, because he committed adultery with [Y] and for this reason was separated from the consortium of his/her wife/husband, was condemned in [Z]s.” The fact that this formula is used consistently after this time suggests, though it certainly does not prove, that the previous ambiguous formula is to be taken in the same way.

There are, however, two entries during the period when the standard entry is ambiguous that provide some evidence that the standard entry is not referring (or need not be referring) to the ground for the separation. The man who as separated makes amends for adultery in the first such entry also appears six months earlier in an entry in which he and his wife make amends for having stood apart without the judgment of the church, and she makes amends for adultery. The entry does not say that they were separated at this point, but if we extrapolate from what happened at Cambrai and Brussels in such situations, they may well have been. The other entry gives rise to the same inference for a different reason. A man was condemned for 320s (a large sum in this type of case) both for standing apart from his wife without the judgment of the church and for having committed adultery “before he was separated quo ad thorum” from her. Both the size of the amend and the fact that it is emphasized that the adultery occurred before the separation suggest that that may not be the case where the amend is lower and nothing is said about when the adultery occurred. Unfortunately, in this case there are also indications that the wealth of the parties may account for the high amend. These doubts suggest that we should move more cautiously and ask what one or both of the couple were fined for in cases that mention separation, even if only an informal separation. The answers correspond fairly closely to those given as grounds for the separation by Vleeschouwers-van Melkebeek, though there are some refinements (Table 10.App.2).

4 E.g., T730 (20.iii.47): [MG] separata quoad thorum a [PB] propter adulterium per eam commissum condemnata in 50s.
5 E.g., T10094 (14.ii.74): [JB] coniugatus quia adulterium commissum cum [CV] et ab hoc separatus a consortio uxoris suae condempnatus in hac ebdomada in 60s.
6 E.g., T10094 (14.ii.74): [IB] coniugus quia 50s. condempnatus a consortio uxoris suae condempnatus in hac ebdomada in 60s.
7 E.g., T7894 (8.iv.71): [BW] quia separatus stetit a consortio domicille [AW] sui a consortio uxoris suo 100s. condempnatus in 26 lb solvit. (There may be other clues in parallel references to the parties in these cases; I checked only a few of them.)

Table 10.App.2. Offenses Amended in Tournai Entries That Mention Separation (1446–1481)

<table>
<thead>
<tr>
<th>Offense</th>
<th>No/Entries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female adultery</td>
<td>22</td>
</tr>
<tr>
<td>Male adultery</td>
<td>67</td>
</tr>
<tr>
<td>Cruelty</td>
<td>4</td>
</tr>
<tr>
<td>Quarrels</td>
<td>2</td>
</tr>
<tr>
<td>Financial</td>
<td>6</td>
</tr>
<tr>
<td>Informal separation</td>
<td>16</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>117</strong></td>
</tr>
</tbody>
</table>

Adultery is straightforward, and its description does not vary. The description of “informal separation” does not vary in these entries (separatim steterunt or stetit absque judicio ecclesie). (The fact that this amend is sometimes imposed on only one of the couple suggests that what she [it is usually she] is being punished for is, in effect, failure to bring her husband’s adultery to the attention of the authorities.) “Cruelty,” “quarrels,” and “financial,” as we have seen in the case of Paris, Cambrai and Brussels, are not always described in the same way, and the differences in the descriptions may reflect differences in behavior. For cruelty we have propter eius [maritii] sevitas et austeritatem (T3861), propter [maritii] austeritatem (T7490), pro sevita in suam uxorem commissa (T16423), and quia austere vixerunt (T15847); for quarrels: propter rixas, discordias et dissensiones inter eos ortas (T5448) and per verba sua rixosa occasionem dedit ut separetur a consortio mariti sui (T12642), and for financial: propter dilapidationem bonorum (T3377, T3380), propter eius [maritii] malum regimen (T3819, T3830, T3888), and [uxor] bona dissipavit et alia inbonensta perpetravit (T15292).8

As we have seen, there was some doubt whether separation could be granted on the ground of cruelty as a matter of the common law of the church, and considerable doubt whether it could be granted for quarrels or financial mismanagement. Since every one of these grounds appears independently as a ground for making amends (though they also appear in conjunction with adultery), there can be no doubt that the Tournai court was penalizing people for these offenses. As we have just seen, we cannot be sure that the Tournai court was granting separations on these grounds (none of them appears alone in conjunction with the unambiguous “on account of this” formula),9 but perhaps the ambiguity was intentional. If the Tournai court had doubts about the legitimacy of granting separations on these grounds, but was in fact doing so, it might have reflected that fact in an ambiguous entry in its account books, which nonetheless showed that penalties were being imposed for the behavior.

There is some evidence that the Tournai court was more conservative than those at Cambrai and Brussels. Only 8% of the entries impose penalties for behavior that is legally problematical and is not accompanied by adultery (8/97, 8.2%).10 This is considerably lower than the proportion of separations that are granted at Cambrai and Brussels on the basis of morum discrepantia, either by itself or in combination with cruelty or old age (28/124, 23%, Cambrai; 22/80, 28%, Brussels).11 Vleeschouwers-van Melkebeek argues that cases of morum discrepantia would not have appeared in the account books because at Cambrai and Brussels such cases did not, at least not normally, give rise to amends.12 She seems to suggest that we ought to assume that such cases were present at Tournai, perhaps even in the quantities that they were at Brussels and Cambrai, but simply not recorded in the only record that we have of the court. She may be right, but arguments from silence are always dangerous. The Tournai court was willing to impose amends for the grounds that singly or in combination seem to have given rise to the finding of morum discrepantia at Cambrai and Brussels: cruelty, quarreling, and financial mismanagement. Our analysis of the Cambrai and Brussels cases generally showed that that court rarely missed an opportunity to impose an amend if one could be imposed. It is hard to imagine that the Tournai court, if it had a practice in morum discrepantia anything like as extensive as that at Brussels and Cambrai, would not have found more cases in which some kind of amend could be imposed. Perhaps cases in which separations for morum discrepantia were granted are hidden in the eight cases in which couples make amends for informal separation and nothing else, but there is no direct evidence of it.

Further evidence for the conservatism of the Tournai court may be found in the fact that two of the eight cases that mention grounds other than adultery and do not mention adultery also state specifically that the separation is one quoad bona and not quoad iurum. In one of these the ground mentioned is malum regimen,
in the other cruelty.\textsuperscript{13} As we have seen in this chapter, separation of goods was granted by the Paris court in the fourteenth century when adultery was not found. Separation of goods, without separation \textit{quoad thorum}, is not found at Cambrai or Brussels. The practice of the Tournai court does not seem quite so rigid as Paris. If we can rely on somewhat ambiguously worded entries, the Tournai court does seem to have granted separations \textit{quoad thorum} for cruelty, quarreling, and mismanagement alone, but it may have insisted on quite strong showings.\textsuperscript{14} The showing might be of gold. An entry dated 19 April 1462 tells us that Jacques d’Anetieres of Tournai and demoiselle Alexandre de Sablens, his wife, were separated \textit{quoad thorum} “on account of the quarrels, wrangling, and dissension that had arisen between them.” Each was condemned to pay 10 pounds of grosats (2,400s), which they did on the spot.\textsuperscript{15} As we have already noted, this is an enormous sum, almost ten standard deviations to the right of the mean. With this much money changing hands, much may be unrecorded. What the record suggests, however, is that those in the Tournai diocese who wanted to obtain a separation for what seems to be \textit{morum discrepantia}, if they could afford it, had to pay dearly.\textsuperscript{16}

1177. Ch 11, n. 1: David d’Avray objects to my use of the word ‘incest’. \textit{Medieval Marriage}, 114 n. 114. He has a point, and we will argue in this chapter that many ordinary people probably had a less extensive view of incest than that of the law, even as modified by the Fourth Lateran Council. When we come to the rhetoric of the judges of Cambrai and Brussels, however, we seem to be dealing with a concept for which we have no better word than ‘incest’.\textsuperscript{17}

1178. Ch 11, n. 3: See Bruguière, “Canon Law and Royal Weddings”; Smith, \textit{Papal Enforcement}. D’Avray, \textit{Medieval Marriage}, 102–4, argues that it is important that Innocent III did not grant a dissolution of Philip’s marriage to Ingeborg, and he sees a major shift in ecclesiastical attitudes toward granting divorces on the ground of incest dating from Innocent’s time. The argument is powerfully made but is hampered by the fact that numerical evidence of the frequency of such divorces in the twelfth century is unavailable.

1179. Ch 11, n. 12: Weigand, “Zur mittelalterlichen kirchlichen Ehegerichtsbarkeit”; Weigand, “Rechtsprechung des Regensburger Gerichts in Ehesachen”; Lindner, Courtship and the Courts; Schwab, Augsburger Offizialatsregister; Deutsch, Ehegerichtsbarkeit. (The last two appeared too recently for their findings to be fully incorporated in this book.)


\textsuperscript{13} T3191 (1.vii.47) (malum regimen); T3861 (21.viii.47) (sevita et austeritatis); T3888 (11.ix.47), also a case of malum regimen, which is indexed as a case of separation of goods, is in fact a case of separation \textit{quoad thorum}. That these entries are within eight weeks of each other suggests that we are dealing with an experiment (or a mistake) that was not continued. Unfortunately, we have no way of knowing whether the experiment was granting separations \textit{quoad bona} or imposing amends for them. The matter is made more confused by the fact that a recently discovered secular record of T3861 says that the separation was one both of goods and of bed. See Vleeschouwers-van Mellebeke, “Eendrachtelijke commen,” Documenten nr. 49 and n. 24.

\textsuperscript{14} T377 (27.xii.48): separatus \textit{qaud thorum} ab eius uxore propter dissipationes in honore; T7490 (1.x.70): separatus \textit{qaud thorum} ab eius uxore propter austeritatem ipsum; T12642 (19.viii.76): quia per verba sua tenuo occasio inquit. That these \textit{Ecclesie et quia austere vixerunt idee separati quod thorum.}


\textsuperscript{16} That the Tournai court was quite willing to charge what the traffic would bear is indicated by the next highest amends in this group: T15292 (29.x.80): In sancto Johanne Gandensi. Domicella Johanne Gandensi uxori Petri de Woode, quia adulterium commisit cum Johanne van Brouchoue, bona quosque dissipavit et alia ibonesta perpetrasse proprior quam separatus est quod thorum a suo marito, condempnata hac editione in 22lb – quia dominus Tornacensis moderavit ad 60lb – solvit. What Katherina did was more serious than what Jacques and Alexandre are alleged to have done, and we have no idea what is hidden behind \textit{alia inhonesta}, but she pays (and seems to have no difficulty paying) an amend that is more than two standard deviations to the right of the mean (mean [including the 4,800s case] = 176.1; population standard deviation = 478.37).
1181. Ch 11, n. 22: The commissary of Canterbury was the de facto official of the diocesan court, but he was called “commissary” rather than “official” because the title “official of Canterbury” was reserved for the judge of the provincial court.

1182. Ch 11, n. 23: Woodcock, *Medieval Ecclesiastical Courts*, 113, reports that he shared the position with Hugh de Forsham and that he was briefly official of the provincial court of Canterbury during the same vacancy. Logan, *Court of Arches*, 198–9, does not confirm the latter appointment.

1183. Ch 11, n. 25: E.g., *Registrum Roberti Winchelsey*, 2:1263–4, 1276–7 (proctor for the prior and convent in the election of Archbishop Winchelsey); CCA, SVSB I 170 (proctor for the prior and convent making protestation of an appeal to Rome [1296]; calendared in Historical Manuscripts Commission, *Report*, 245–6; these documents are no longer in SVSB I, and I have not been able to locate them); CCA, ChCh II 259 (proctor for the prior and convent in an appeal concerning tithes of West Cliffe, temp. Archbishop Winchelsey). Fourteen law books are assigned to his use in the catalogue of the Christ Church Library of the early fourteenth century. Edwards, *Memoirs* 1:233. Clyve was nominated (along with two other monks of Canterbury) for the position of sacrist in 1324. *Literae Cantuarienses*, 1:117. An alb is assigned to his use in the Christ Church inventories of 1315 and 1321, indicating that he was probably a priest. Dart, *History and Antiquities*, App., p. viii.

1184. Ch 11, n. 29: Their fullness consists not so much in the number of cases reported as in the fact that so many acts of ordinary administration, e.g., visitations and routine benefice matters, are included because they became controversial. See Woodcock, *Medieval Ecclesiastical Courts*, 16–18. A calendar of many of them appears, Donahue, ed., *Records* 2. For examples, see CCA, SVSB III 157–73; CCA, Sede Vacante Visitation Rolls 5–15; 17A.

1185. Ch 11, n. 30: There is considerable evidence of legal activity at Christ Church during Richard’s period. Not only were a remarkably large number of documents from the vacancy of 1292–4 retained, but CCA, Literary MS. D.8 contains a formulary and various treatises on procedure in the Court of Arches that were probably compiled at Canterbury in this period, and there is evidence that the monks were also working on a formulary of material from the archiepiscopal court of audience. See Select Canterbury Cases, p. xxiv, introd. 36–7; Donahue and Gordus, “A Case from Archbishop Stratford’s Audience Act Book.” Since Richard was the most prominent monk of Canterbury involved in legal matters in this period, it seems probable that he was also involved in these efforts.

1186. Ch 11, n. 32: Archbishop Pecham was a noted reformer, though I know of no particular effort of his with regard to incest. None of the statutes attributed to him or to councils held under him deals expressly with the problem. See generally Douce, *Archbishop Pecham*, 95–142.

1187. Ch 11, n. 34: No. 6 is particularly striking because it involves a calculation in the fourth and fifth degrees (third cousins once removed), and the correct ruling that the parties were outside of the Lateran degrees.

1188. Ch 11, n. 36: Cf. Helmholtz, *Marriage Litigation*, 82–3, who takes the position that these cases involve genuine failures of proof.

1189. Ch 11, n. 39: Helmholtz, *Marriage Litigation*, 83 n. 25, notes that none of the witnesses was actually an eyewitness to the baptism. This is true, but it is also true that Richard could have decreed the marriage invalid on the basis of this testimony. After all, none of the witnesses in the cases of consanguinity actually saw the sexual intercourse that gave rise to the consanguinity.

1190. Ch 11, n. 43: Appendix e11.1, nos. 2, 7 (probable exceptions to a marriage enforcement action); 8 (ex officio prosecution for fornication turns into a marriage enforcement action); 10, 14 (civil divorce actions); 16 (ex officio divorce action arising out of visitation); 17 (ex officio proceedings perhaps arising out of objections to banns).

1191. Ch 11, n. 44: Considering how full these records are, it is at least possible that there never was a sentence. If that is so, then the effect of not rendering a sentence in both nos. 2 and 7 would have been to sustain the objection to the marriage, since both of the actions were enforcement actions.
1192. Ch 11, n. 46: Assuming that neither Richard nor the official rendered a contrary sentence, the effect of their inaction was to disallow the divorce.

1193. Ch 11, n. 47: While we might take this fact as evidence that Richard believed the allegation perjured, his sentence does not mention perjury. The penance is enjoined for having confessed to illicit intercourse.

1194. Ch 11, n. 67: In addition to the cases where we have sentences in favor of enforcement of the marriage, we should probably add at least some of the cases where there are no sentences but the defense looks weak. In at least some of these cases, the defendant probably gave up and got married.

1195. Ch 11, n. 69: The denominator here for the marriage enforcement is the number of cases for which a defense is known. One of the Ely cases raises two types of incest claims. Hence, the number of claims of consanguinity or affinity is 15, but the number of cases in which the claim is raised is 14.

1196. Ch 11, n. 72: Significantly, the one ex officio case in the York cause papers that raises issues of incest is an appeal from a lower court. Office c Baker and Barker (1339), CP.E.82/8 (Ch 4, at n. 243).

1197. Ch 11, n. 76: Sheehan, “Formation,” 48 and n. 34, notes that in 7 cases of reclamation of bans in the Ely register, the couple had already exchanged present consent.

1198. Ch 11, n. 83: The case is still continuing when the register ends but appears, for all practical purposes, to be over.

1199. Ch 11, n. 86: It is, of course, possible that both of these cases are the product of a local conspiracy determined to thwart this marriage for reasons quite unrelated to their concern about incest.

1200. Ch 11, n. 87: Office c Symond and Page (at n. 73), Office c Barbour and Whistlewed (at n. 74), Office c Slory and Feltewell (at n. 75), Office and Andren and Edyng c Andren and Solsa (at n. 79), Borewell c Blye (at n. 80).

1201. Ch 11, n. 93: The focus here is on actions for dissolution. The proportions could be raised somewhat if we included the three-party cases in which the invalidity of one of the relationships is asserted on the ground of incest. E.g., Office c Tiestaert, Hose et Beckere (at n. 127; Ch 9, at nn. 293–302); Office c Hellenputten, Vlesheuere en Kerkofs (Ch 9, n. 327). Inclusion of such cases would not substantially alter the proportions, but it might bring the ‘gross’ Cambrai proportion (14%) up to that of Ely. Vleeschouwers-van Mellebeek’s figures (App e11.2) suggest that it probably should be so raised, i.e., that my sample may somewhat underestimate the proportion of both Cambrai and Brussels cases that raise issues of incest.

1202. Ch 11, n. 94: Somewhat arbitrarily, cases of clerical discipline are excluded from the following discussion, but only if the clerk was bound to chastity. Hence, 5 of our cases involve married clerks and 1 a clerk who does not seem to be in major orders, and this may be one of the reasons why those cases were treated at the level of the officiality and not in some lower-level court. See Office c Corte (14.iv.39), no. 140; Office c Bist et Scandlers (6.x.42 to 3.xi.42), nos. 350, 376 (incest, unmarried, clear indication of clerical status does not appear until no. 376); Office c Pot (19.iv.44), no. 592; Office c Cauellet et Grigore (30.iv.46), no. 912; Office c Diest (10.vi.47), no. 1133 (incest); Office c Quintart (22.x.46), no. 1030 (incest). Two of the cases of clerical discipline involve what is called incest but only in an extenuated sense. Priests are accused of having sexual relations with women who are in their pastoral care (and hence, the relationship is one of spiritual paternity). Office c Mul tors (27.vii.46), no. 990; Office c Broultart (19.vii.46), no. 890.

That leaves 36 cases in the sample, only one of which resulted in the absolution of the accused, and even here he had to pay the costs of the promotor “on account of some sort of rumor” (propter aliqualem rumor), which apparently did not rise to the level of fama. Office c Hughe (2) (30.vi.46), no. 980 (the rumor was probably of adultery – though the case does not say that – because the rum is expressly described as a married man). In all the rest of the cases, the promotor was able to prove something for which the accused had to make amends, but here there is a rather sharp distinction between those who are found to have committed an offense and those who are found to have allowed fama that they committed the offense to arise. Of the cases in which incest is not alleged, there are 4 in which double adultery is found, 5 in which simple adultery is found, 2 in which fornication is found (both deflowering, one of which gives rise to a dowry), and 2 of solicitation of adultery and 1 of solicitation of fornication. Office c Corte, op. cit.; Office c Potier (16.x.45), no. 800; Office c Homann (30.iv.46), no. 910; Office c Mourart (20.i.45), no. 652 (all double adultery). Office c Rode
The standard charge in these latter cases is phrased along these lines: “The reus had conversation with the rea so incautiously that he vehemently deserved to be defamed of mingling in the flesh.” E.g., Office c Abliaux, op. cit. adeo inepte et incaute cum quadam Cathelota . . . conversatus fuit et quod graviter notari meruit ac publice diffamari rem carnalem . . . cum illa habuisse, et Office c Homan, op. cit. adeo impudenter conversatus est quod in respectu ad Katherinam notari, respectu vero ad Mariam vehementer de carnali commixtione meruit defamari. The distinction drawn in the second case between notari and diffamari may be one of degree. In the case of the former, we are reminded of the Roman censors’ nota.

Perceptive readers will note that the number of cases in which an offense is found and the number of cases in which fama is found adds up to more cases than we have in the group (14 offense found, 10 fama found, 19 non-incest cases [excluding the absolution]). This is because in five cases, one offense is found and another is the subject of fama. These cases suggest that considerable care was taken to distinguish the offenses that had been proven from those about which only fama had arisen. In the first, it was clear that a married man had had intercourse with a woman while she was single and procreated a female child; whether he continued it after she had married could not be proven, but “he was not ashamed to have such incautious conversation with her that the subject of fama was at work about the continuation, indeed, aggravation, of adulterous coitus.” Office c Rode, op. cit. condempnamus, etc. (One wonders about actu coniugata; one would expect something like nunc oder tandem, though it is possible that her marriage was a presumptive one. One also wonders about perurio. Perhaps he promised to marry her after the child was born, but this has to be a wild guess. No proceedings against CS are recorded.)

In the second, the reus had solicited adultery with an unmarried woman by giving her one bushel (mencaldus) of wheat and one (boistellata) of peas, “and thus it is clear that it was no thanks to him that he did not commit adultery with her.” The adultery, however, was not proven, but his “incautious conversation” led to his being defamed of it. Office c Pont, op. cit. reum coniugatum quandam [CS] in eisdem articulis nominantam antequam ipsa matrimonium contraxisset sepius, etiam usque ad unius proles feminei sexus procreationem inclusive, carnaliter adulterando cognovit, et preterea quia cum eadem etiam actus coniugata adae incaute conversari non erubuit quod fama super huiusmodi adulterini coitus continuinge ymmo et aggavitatione laboravit, perurio ac adulterii crimina perpetrando aliasque graviter delinquendo et excedendo, nobis in emendas excessibus huiusmodi correspondentibus usum expensibus promotiorum . . . condempnmanus, etc. (One wonders about actu coniugata; one would expect something like nunc oder tandem, though it is possible that her marriage was a presumptive one. One also wonders about perurio. Perhaps he promised to marry her after the child was born, but this has to be a wild guess. No proceedings against CS are recorded.)

In the third, one double adultery was found, and two simple adulteries were suspected, one with the serving-girl (ancilla) of the reus. Office c Homan, op. cit.

In the fourth, the woman confesses to having been deflowered and to having had intercourse many times (plures) with the reus in the area (ambitus) of the church, presumably the one in which the reus, a married clerk, was sacristan. He, however, does not confess and is to make amends for the “incautious conversation” with her that allowed fama of such adulterous mingling to be at work. Office c Cuvelier et Grigore, op. cit.

In the fifth, it is proven that the reus committed double adultery, and “many thought” (plerique opinantur) that the woman was pregnant by him and not by her husband. Office c Mourart, op. cit.
1203. Ch 11, n. 95: Office c Biest et Scandelers (n. 94); Office c Fève (21.xi.44 to 3.iii.45), no. 601; p. 373, no. 657; Office c Fraingnaert (29.x.45), no. 701; Office c Ablencq (2.vii.46), no. 961; Office c Coppenhole (27.vii.46), no. 992; Office c Quintart (n. 94); Office c Potaste (17.xii.46), no. 1064; Office c Diest (10.vi.47), no. 1155; Office c Palet (16.vi.50), no. 1302; Office c Cauchie (20.vi.50), no. 1321 (all adultery, but in the last, the adultery is with someone other than the one with whom he is defamed of incest); Office c Maquebeke (24.x.44), no. 565 (fornication).

1204. Ch 11, n. 96: Office c Porte et Hennique (10.vi.47), no. 1160 (adultery); Office c Leu (24.x.44), no. 560 (adultery); Office c Scotia (22.x.42), no. 332 (fornication).

1205. Ch 11, n. 98: quia nobis per confessionem dicte corree constitit atque constat eandem ream se a dicto [HW], suo nepote et correo, carnaliter cognosci permissee, in et per premissa incestum damnumabitter committendo, eapropter dictam corream ac dictum [HW] correum, propter famam contra ipsum super super dicta carnali copula laborantem, in emendas condignas... condempnamus (17.xii.46), no. 1064; Office c Ablencq (n. 94) (adultery); Office c Biest et Scandelers (n. 94) (commatere); Office c Ablencq (n. 95) (consanguniae germana et commatere). Technically, the term commater(pater) was used to describe the relationship between the godparent and the natural parent of the child. This seems unlikely in Biest. The man in question is an unmarried clerk (though he could have been the godfather of Scandelers’s child, or the father of an illegitimate child or of a legitimate child whose mother is now dead, for whom Scandelers served as godmother). It is more possible in Ablencq; the man in that case was married. In both cases, however, it seems more likely that we have the common but somewhat loose use of the term commater to describe the man’s own godmother, mater spiritualis.

1206. Ch 11, n. 100: In order: Office c Fève (n. 95), Office c Fraingnaert (n. 95), Office c Hugue (1) (n. 97), Office c Diest (n. 95), Office c Leu (n. 96), Office c Cauchie (n. 95), Office c Ablencq (n. 95); Office c Walop et Rueden (n. 98).

1207. Ch 11, n. 101: Office c Biest et Scandelers (n. 94) (commatere); Office c Ablencq (n. 95) (consanguniae germana et commatere). Such are the complexities of the medieval canon law of incest that it is quite possible for someone to have been both the consangunae and the affine of someone within the prohibited degrees without incest having been committed when the affinity relationship arose. Maquebeke could have been an affine because of a relationship that the man in question had with someone other than the one with whom he is defamed of incest.

1208. Ch 11, n. 102: In order: Office c Coppenhole (n. 95) (suo in aliusuo – ut fattetur – gradus consanguniae); Office c Potaste (n. 95) (eiusdem reee – dum vixit – intra quadratum gradum aﬃne); Office c Palet (n. 95) (sua in – ut ipsa reus asserit – remoto gradu, illium alter non declarando, consanguniae); Office c Porte et Hennique (n. 96) (fama de et super mutua eorum consangunitate in quarto gradu laborantis); Office c Scotia (n. 96) (fama de et super mutua inter ipsam et quondam [JL] intra gradum prohibitus consangunitate et per consequens simili inter ipsum reum et [ME], prefati quondam [JL] rectiam, affiliatitae); Office c Maquebeke (n. 95) (sua consanguniae pariter et affine); Office c Quintart (n. 94) (eius consanguniae). Such are the complexities of the medieval canon law of incest that it is quite possible for someone to have been both the consangunae and the affine of someone within the prohibited degrees without incest having been committed when the affinity relationship arose. Maquebeke could have been an affine because of a relationship that the woman had with a consangunae of his on his father’s side of the family, and a consangunae of the same woman on his mother’s side. The first relationship of the woman would not have been incestuous, but his with her now is doubly incestuous.

1209. Ch 11, n. 103: litteris citatoris ab instancia quaedam socie rei in adulterio.

1210. Ch 11, n. 104: Of the 36 cases, 27 are brought against the man alone (75%), 7 against both man and woman (19%), and 2 against the woman alone (6%). One of the cases brought against a couple does not end up being such a case; the man is convicted of simple adultery, and the rea, his wife, is absolved of all charges. Office c Breier et Raeninonne (n. 94). In another case, involving incest, the man is to make amends for incautious conversation and purge himself of the familia (which he does), and the woman is not convicted of anything. Office c Biest et Scandelers (n. 94).\footnote{There are 8 cases [8/36, 22%] in which purgation is ordered, but only 1, in addition to Office c Biest et Scandelers, in which it is recorded that it was performed: Office c Ablencq (n. 94), Office c Fève (n. 95) (successfully performed), Office c Ablencq (n. 95), Office c Diest (n. 95), Office c Leu (n. 96), Office c Monstre et Fourvresse (n. 94), Office c Quintart (n. 94). Five of these cases involve incest, but there are a number of cases in which there is familia of incest and purgation is not ordered. The motivation given for one order (Ablencq) is that the reus in another case (Ablencq) incited the woman who was pregnant with his putative illegitimate child to give charge of that child to another man (at prolem huiusmodi vestit turam alteri...
Four are cases of deflowering. As we have already suggested, the intercourse in such cases must be found in order for the woman to be entitled to her dowry for deflowering. Office c Thovello et Ree (n. 94); Office c Potaste et Hennique (n. 98). See Ch 9, at nn. 370–85.

The final case is the one in which the woman confesses the incestuous intercourse and the man does not. Office c Walop et Rueden (n. 98). In one of the cases brought against a woman alone, she is found to have had intercourse with many men, some of whom were married. She is to purge herself of the 

\[ \text{fama} \]

that she had intercourse with a father and a son, but no record of the purgation appears. Office c Lew (n. 96). In the other case, the reason for the prosecution is less obvious. The woman is found to have committed adultery and is defamed of having committed incest with another man, but she is also absolved from the rest of the promotor’s articles. Office c Potaste (n. 95). He probably heard about more partners than he ultimately could prove (or show 

\[ \text{fama} \]). No woman in the sample is convicted of incautious conversation with a man. The only women who are convicted of illicit intercourse are the four who were deflowered, two who may have been prostitutes (or suspected of being)\(^2\) and one who may have felt a compulsion to confess a most inappropriate relationship with her nephew. Office c Walop et Rueden (n. 98).

Where are the sexual partners of the nine men who were convicted of either double or simple adultery and the one man who was convicted of fornication with 

\[ \text{fama} \] of incest? In many cases, their names are given, or were known; it is hard to imagine that they all had just disappeared. When we couple the absence of these women with the fact that only men are convicted of incautious conversation, it would almost seem as if the Cambrai court were indulging in the opposite of the traditional double standard. That possibility cannot be excluded. In a world in which the social sanctions against women who engaged in illicit intercourse were probably quite severe, the court may have felt that it was the men who had to be called to account. There is also possible that the women had already confessed and had been assigned a penance in a lower-level court and that the men’s resistance to the charge brought their cases to the higher-level court. There is one more possibility suggested by the case in which we know that the charges were brought by the man’s ‘partner in adultery’. Office c Quintart (n. 94). It is this case that leads to the suggestion in the text that the promotor may have agreed not to prosecute the women in turn for their testifying against the men. (Most of the cases mention witnesses, though we know from the cases in which the woman confessed and the man did not that the testimony of the woman alone was not enough to secure a conviction.)

1211. Ch 11, n. 107: There is one instance case that apparently began as a divorce case (the grounds are not stated), but by the sentence stage, it had turned into a case of separation on the ground of adultery. Wati`ere c Lonc (6.x.42), no. 351.


daret . . . instigae) are the only clues as to why these cases resulted in such orders. The others may have been similarly motivated.

\(^2\) Office c Lew (n. 96). Office c Potaste (n. 95). The fact that the word meretrices only appears once in Registres de Cambrai, s.v., and that in a defamation case, suggests that the Cambrai court was not in the business of prosecuting prostitution as such. The aliquaibus levisibus omoesinibus mulieribus with whom Gilles Brassart (n. 94) is found to have committed adultery were probably prostitutes.
1213. Ch 11, n. 111: The editors are convinced that he was a priest, though the sentence does not say so. He is called *dominus Mattheus* in the sentence, without any of the qualifications, such as *miles* or *comes*, that usually accompany a lay person entitled to be called *dominus*.

1214. Ch 11, n. 112: *scientes et ignorare non valentes ses e...n e c matrimonialiter invicem coniungi neque...nulae rei privata alienam constitutam*... *ubi premiisorum notice versimiliter haberi non possetat petisii, etc.*

1215. Ch 11, n. 113: *de male in peius procedendo, ses invicem incestuosa carnali commissione et cohabitatione praecognita sub velamine predicto sepe et sepius foedare prexumpisse*, etc.

1216. Ch 11, n. 114: *aliasque gravissime delinquendo et excedendo, eaproprier reus pretacit nos in emendibus nonabudibus buusmodi correspondentibus... condemnati, decernentes et declarantes inter eosdem, obstante affectatione predicta, matrimonium efficax neque contrahit neque subistit potuisse aut posse totumne et quidquid in hac re apparentiam est irritum et inane ac nulliter – de facto dumtaxat – presupsumisse... ipsum... fundamentum de facto processisse videtur*... *de facto dumtaxat – qaud absto! – contravenit, penis ne ulterius sub typo aut colore matrimonii invicem cohabitare morari aut etiam... universa rei incestuosa cohabitatione causari possit aut defuit suspicione – conversationem habere presumant, inhibentes, sententialiter diffiniendo in his scriptis.*

1217. Ch 11, n. 116: *quia nobis constitit atque constat pretacit reos sponsalia et matrimonium in manu presbiteri et facie ecclesie – ut moris est – solemni et contrahisse eodem simul ut veros... nonnulli coniuges cohabitatasse...* *

1218. Ch 11, n. 117: *fama super mutua eorum societate laborante – que merito contrahendum inter ipsos matrimonium impende potuisse – neglecta et non obstante nullaque desuper ad indice competenti exspectata... ipsum nec petitia declaracione, convensiones matrimoniales et deinde matrimonium contrahere, solemnisauer carnaliq copula consummari presumeurunt, in et per premiis se ignoratia affectatores ostendendo, etc.* *Office c Johenniau et Chavaliere (8.vii.52), no. 1330, is similar in both language and ultimate result and has the additional feature that the marriage had been of long standing.*

1219. Ch 11, n. 119: *graveiter delinquendo et excedendo, nobis ipso reos in emendiss et preterea eorum quenlibet in dimidia libra cere ad opus capelle nostre unicum expensive dicti promotoria... condemnati, matrimonium nichilominus – sic ut presumitur – per et inter ipsos reos contractum, solemnisante et carnali copula consummatione validum, efficax et in suo robore quoad se xerxeret bmutum permansurum decernentes et declarantes, etc.*

1220. Ch 11, n. 121: *ignorantie neconon et bincinde incestuarum nuptiarum affectatores esse demonstrando.*

1221. Ch 11, n. 122: *cum de alque ad dirimentium sufficienti impedimento minime constet.*
1222. Ch 11, n. 124: cum de preasserto affinitatis impedimento non liquet fidem saltem ad matrimonium iam contractum dirimendum sufficiat [mi] factam extissit. The Latin is certainly awkward. I am reasonably confident that sufficiente should be sufficientem, though the slip is telling, i.e., Nicolai was thinking that the impediment was insufficient, not the confidence (fidem) that he had after examining the processus. The shift from present (liquet) to a double perfect (factam extissit) may be explained by the fact that Nicolai is thinking back to his examination of the processus or to what was established at the hearings.

1223. Ch 11, n. 126: cum de nullo – ad dirimendum saltem sufficienti – constet impedimento, in contrarium allegatis non ostantibus.

1224. Ch 11, n. 128: On the basis of the final phrase in the sentence (quoted in T&C 1223), the editors seem to think that the promotor disagreed with Nicolai on this legal point. That is possible, although the phrase may refer to factual allegations, not legal ones. If the promotor did disagree on the legal point, he was wrong.

1225. Ch 11, n. 129: In processus non obstantibus may refer to factual allegations, not legal ones. If the promotor did disagree on the legal point, he was wrong.

1226. Ch 11, n. 132: reos predictos pro eo quod famam, de et super affiditatem for promotorum inter eos allegata sufficienter utique ad impedimentum [matrimonium] contrabendum prius exorta ac satis publice laborantem, non ignorantem, illa non obstante, conventiones matrimoniales ac deinde matrimonium invicem contrahere, in facie ecclesie solemnizare, carnali copula illud consummare postmodumque simul per multos annos ut vir et uxor stare et cohabitate presumpserunt, nobis ipsos in emendas unam acquisitum expensis promotoris . . . condempnatis. Matrimonium nichilominus per et inter eosdem contractum in facie ecclesie et solemnizatum et carnali – ut premissit – copula consummata, cum per informationem ursudicam desuper auctoritate nostra ordinaria factam de nullo – quod ad ipsum dirimendum sufficerit posse aut debitum – impedimento constare potuerit constiteritque seu constet, in suo roborre quoda vixerint ambo permanens esse ac permanere debere declaratur, etc.

1227. Ch 11, n. 133: ream predictam pro eo quod familiaris famam de et super affidavitatem for promotorum articulata laboratis, ea non obstante, se a suo corde actu illicito delinquant et pluries carnali cognosci permiserit, predictas conventiones matrimoniales de facto, duobus bannis desuper utcumque proclamatis, init sequit ab eodem – ut prius – multotiens, etiam lite presente pendente, carnali cognosci permiserit, predictas conventiones – quatenus in ea fuit – in vnum matrimonium presumpti transmoverat, corream ante tempus quia ream antecifacit actu fornicario delinquant et pluries carnali cognovit conventionesque matrimoniales, unde desuper banno proclamato, init et consequenter, fama predicta affidavitatem ad eius notitiam deducta, nichilominus secundi banni proclamationem super preassertis conventionibus fieri procuravit ac ream antecifacit – ut prius – pluries, etiam lite presente indecisa coram nobis pendente, carnali cognovit, preassartas conventiones in vnum presumpti matrimonium – quatenus in eo fuit – transmoverant, sententiam excommunicationes hincinde in vnum statutorum sinodalium desuper eiusmodem damnabiliter incurruerunt ac alias gravissimis delinquens, reos eodem sententiam excommunicationes buissmodi incurriessi ac absolutione indigere declaratur, ipsos in emendas predictis excessibus correspondentibus unam acquisitum expensis promotoris . . . condempnatis, conventiones nichilominus sic – ut premissit – per et inter ipsos – quumnam tenererse propter famam predictam – contractas, carnali copula subsequentes interventus in vnum matrimonii presumpti transsuase ac inter ipsos matrimonium presumptum subfuisse et subsesse, ad ipsosque publicationem et solemnizatum in facie ecclesie – ut moris est – fama predicta – que sola ex contracta [matrimonium] diurne non potest – non obstante, procedit possit et debere declarantes et decernentes, etc. Disc. at n. 139.

1228. Ch 11, n. 134: cum de nullo ad dirimendum saltem sufficienti constet impedimento.

1229. Ch 11, n. 135: Diana Moses (personal communication) suggests that perhaps super actu carnali inter se extorquendo pluries conari presumperent (T&C no. 1230) should be taken to mean that they tried to talk each other into it, i.e., that extorquendo should be taken as hyperbole.

1230. Ch 11, n. 136: post aliquod tempus eiusdem domo, mensa et lecto simul stare ac super actu carnali inter se extorquendo pluries conari presumperent . . . pronunciantes predictum matrimonium inter dicta
predictos trahere et in matrimonium presumptum transformare presumpserunt, ecclesie de Berlaar (Antwerpen) secundo gradu.

1233. Ch 11, n. 141: Office e Blekere et Clements (T&C no. 1231): ulteriusaque ad eorum pretensis matrimonii solemnisationem processissent, nisi curatus loci propter famam predictam impedimentum praeceperit, etc.

1234. Ch 11, n. 143: Nicolai may have been thinking of the ‘ancient incest penalty’ (Ch 1, at nn. 63–7), but that had been considerably modified (it only applied where the incest occurred after the marriage), and, in any event, was not imposed where the incest had not been proved.

1235. Ch 11, n. 144: Salutiorum – a French gold coin issued in this period. Spufford, Money, 408. Once again (see Ch 8, n. 374), I suspect that this is not a reference to the French coin but rather to the rider of Philip the Good. Id., 409. The coins were of approximately the same value.

1236. Ch 11, n. 145: prefatos reos pro eo et ex eo quod per plures annos eisdem domo, mensa et lecto sede iteratis sicibus carnaliiter commuissentia citra bonum et honorem matrimonii simul stare et cohabitare ac post eorum afflictionem rem carnalem, non obstante oppositione per quendam (WG) ipsius rei consanguinei in secundo grado, se dictam ream perpetuam carnisiter cognosisse asserventem, facto, invicem habere presumi sunt ad leges et emendas condignas... decrementes et pronunciates buusmodi sponsaliter inter eisdem reos de facto contracta ob impedimentum buusmodi per dictum (WG) opponuntem ut prefertur aggravatum et esse dissolventa et annulanda... eisdem reis sub pena excommunications et viginti salutiorum auri elemosine. Reverendi in Christo Patris et domini nostri domini Cambraecensis episcope, sim committendum... applicandorum, ne ipse rei decetero invicem rem carnaelem habere aut cohabitare seu taliter conversari presumant quod inter eas suspicio carnis iter copula possit existere adorios loci ipse in annullane distriecte inhibentes, etc.

1237. Ch 11, n. 147: declaramus afflictionem inter predictos [JC et BB] qui in manu presbiteri et facie ecclesie de [Berlaat (Antwerpen)] intimavit habitation, carnali copula precedente et subsecueto, in matrimonium presumptum de facto transformatae proprii affinitatem proximam et ipsius [JC] cum prefata [BB] ante buusmodi afflictionem habita, dicto [JC] in quarto grado consanguinitatis attinentis, fuisse et esse incestuosam, illicitam ac de facto presumptum, quam irritamus, cassamus et annullamus... ac propter ea inter predictos affidatos ad buusmodi clandestino matrimoni solemnizationem, sic de facto contractis, non esse procedendum, etc. etc. eaque [JC et BB] qui buusmodi incestuosam afflictionem contrahere et in matrimonium presumptum transformare presumiperit, incestum perpetrandum neconit [JM] et [BB] predictos, qui esse extra legem matrimonii carnisiter usque ad ipsius [BB] deforatiationem communicierunt... stjurum committendo... ad leges et emendas... condempnantes, etc.

1238. Ch 11, n. 148: See at n. 176. It is possible that dicto [JC] in quarto grado consanguinitatis attinentis should be translated “comes within fourth degree of consanguinity with [JC].” See T&C 1260.

1239. Ch 11, n. 150: tali qualis fama super consanguinitate, quod inter prefatos affidatos exsterre delibisset [tred dictum esset], minime tamen probata non obstante, etc.

1240. Ch 11, n. 151: cognatione spirituali per dictum promotorum allegata et minime probata non obstante... actione dico promotor super deforatione contra dictum [PB] allegata semper salva.

1241. Ch 11, n. 152: nisse et incerta fama super asserta consanguinitate que inter predictos reos nulliter subsistere asseritur ac a nullo certo auctore procedente quam frivolam et ineptam reputamus non obstante, etc. It is also possible that the first relative clause means “which is ineffectively (nulliter) asserted to exist between the rei,” although nulliter is in an odd position for that meaning.
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1242. Ch 11, n. 154: oppositio predicte [KM] de et super consangvinitate qua se cum prefata [JH] attinere allegabat minime tamen probata neque per eandem aut promotorem predictum verificata non obstante quam frivolam et dicto clamdestinio matrimonio non derogantem reputamus, etc.

1243. Ch 11, n. 155: Nichilominus tamen septicotos reos, [HC] sicicet qui prefatam [KU] carnaliter cognosceretur presumptum, adulterium perpetrandum, et qui clamdestinias conventiones cum prefata [JH] intraret et quam defloraret non enduit, stiprum perpetram comittedendo . . . ad leges et emendas . . . condempnamus, etc.

1244. Ch 11, n. 158: The preceding case was decided by Divitis and all the ones in the following paragraph by Nicolai. That alone would suggest that the two had somewhat different attitudes to such charges. This one is, however, exceptional (despite the rhetoric). It is also one close to the end of the register.

1245. Ch 11, n. 159: scient et ignorantia non valent si alia quaedam [EB], [LB] corree sororem legitimam, carnaliter cognovisse . . . sponsalia de facto cum eadem [LB] corree duobus bannis utcumque in facie ecclesiae proclamatis in re presumptus ulterius nisi aliunde impendimentum buusmodi affinitatis publicatum exsitisset ad matrimonii contractum ac talem qualem solemnizationem et incestuosam cum ipsa [LB] corree sub colore tunc presentis matrimoni comminationem processurus in et per præmissa gravissimse delinquendo et excedendo, etc.

1246. Ch 11, n. 160: post carnale copulam cum [LL] in predictis articulis nominata – quam, fama volente, potest [EF] corree materetam reputare [see T&C no. 1247] – habitam, fama predictam opinonem affinitatis inter ipsam et corream predictam ingerente non obstante, cum eadem sua correa sponsalia, tribus bannis desuper proclamatis, contrahere presumptum quo claram pretextu uterum ad matrimonii solemnizationem procedere curasset, nisi impendimentum predictum ad notitiam curati sui devenisset, in et per præmissa delinquendo et excedendo, nolis in emendis . . . condempnamus . . . ceterum – cum fama contrahendum impedit – sponsalia per verba de futuro . . . contracta cassamus et annulamus, etc.

1247. Ch 11, n. 161: Reputare may be a mistake for reputari, but perhaps we are to assume, quite ungrammatically, that fama is the subject of poterat.

1248. Ch 11, n. 162: [CO] alterum reorum pro eo quod ipsi cum [MG], sua correa, ciusquidem corree filiam legitimam, [MG] nomine, nunc defunctam, alias dum vivor, fama clamante, carnaliter dictur cognovisse, fama buusmodi matrimoniun inter ipsos reum et corream contrahendum impede et merito impide debente non obstante, conventiones matrimonales – de facto cum de iure minime possit – contrahere presumptum, nolis in emendis tali excessui correspondentibus . . . condempnamus, etc.


1250. Ch 11, n. 164: visis articulis promotorum . . . testiumque de super auditorum – ad quorum depositiones ipsi rei se retulenter – depositibus, etc.

1251. Ch 11, n. 165: vinculo famaque de et super buusmodi conputerate notorie laborante non obstante, conventiones matrimoniales per verba de futuro invicem – de facto – uno desuper banno utcumque proclamato, contrahere presumptisse, etc.

1252. Ch 11, n. 166: in et per præmissa contra canonicas pariter et civilis sanctions temere veniente, etc.

ad eorum matrimonii solemnisationem, non obstante conclusione promotoris officii nostri, fusse et esse procedendum.

1254. Ch 11, n. 170: declaramus inter dictos reos ulterius ad eorum matrimonii solemnisationem fusse et esse procedendum et procedi debere, non obstante quodam pretensa fama super eos quod quondam [WR], frater dum voque ipsius res, ream carnaliter cognovisset per quodam [JB] et [ JW] allegata, quam ut ex plurium testimium predictorum depositionibus percipimus ex odio et rancore constat fusse adhucventam, etc.

1255. Ch 11, n. 171: declaramus prefatos reos ab articulis predictis quattuor consangunvitate per dictum promotorum inter eandem [MV] et quondam [MS], quam reos ipse usque duarum prolium procreationem pluris carnaliter cognovit, articulatam concernunt, fusse ac esse absolvendos, pronunciantes inter ex eodem reos in manu presbiteri et facie ecclesie parrochialis de [Opwijk (Vlaams-Brabant)], Cameracensis dioecesis, affidavitos, tribus desuper hannis proclamatis, alterius ad eorum matrimonii solemnisationem procedendum et procedi debere, dicta eiusdem promotoris articulis de et super buissmodi ree et [MS] pretensa consangunvitate et eius fama, minime tamen ex depositionibus testium predictorum probatis, non obstantibus, etc.

1256. Ch 11, n. 172: declaramus impedimentum super pretensa eorumdem reor sim consangunvitate propositum et allegationem fusse et esse frivolum ac invalidum, uteriusque inter dictos reos in manu presbiteri et facie ecclesie de Braine Allodi [Braine-l’Alleud (Brabant wallon)] affidavitos certa et plures desuper hannis proclamatis ad matrimonii solemnisationem suinta sint Sancte Matris Ecclesie procedendum fore et procedi debere, etc.

1257. Ch 11, n. 173: declaramus inter predictos reos . . . ad eorum matrimonii solemnisationem fusse et esse procedendum et procedi debere, fama vaga super emissionem voti castitatis per dictum realem ut referat tempore sue infirmitatis pretit, quod minime praestitum aut emissum vere probatum reperitur non obstante, nichilominus ream cum attente tali qualis fama que de ea inter prolos existit orta ad predictam affiliationem absque indicio ecclesie et purgatione eiusdem procedere non est veritas, ad leges et emendas, etc.

1258. Ch 11, n. 174: declaramus conventiones matrimoniales clandestinas et affiliationem vigeret eandem postmodum inter prefatos reos in manu presbiteri et facie ecclesie de [Asse (Vlaams-Brabant)] factas, intentas et contractas, propter consangunvitate quadrir gradus inter dictos reos existentem, fusse et esse incestuosas, illicitas et de facto presumptas, quas irritamus, cassamus et annulamus, irritas, cassatas et nullas declarantes, ac propter eae inter prefatos reos ad buissmodi conventionum publicationem seu solemnisationem non esse procedendum neque procedi debere. Eos tamen reos qui buissmodi incestuosas conventiones preter consentium suorum amicorum inire presumperent clandestin contrahendo, ad pententiam peragendum aut alias ad leges et emendas, etc.


1260. Ch 11, n. 176: Legally, it makes no difference whether the consangunvity is “within the fourth degree” or “in the fourth degree,” and it is possible that in copying out an abbreviated draft of the sentence, the notary got it wrong. What we have found in our sample varies: “In the fourth degree.” Office c Postate (n. 95), Office c Gheerts et Bertels (Ch 10, n. 131), Office c Crane, Bautius et Marion (n. 147): “within the fourth degree”: Office c Porte et Henneque (n. 96), Office c Sceppere et Clercs (n. 108). On the basis of a much more extensive search, Vleeschouwers-van Melkebeek argues that the references to third- or fourth-degree consangunvity or affinity are to be believed. There are quite a few of them, and they indicate, in her view, that the people of the southern Netherlands had largely internalized the prohibitions in the nearer degrees but got into trouble when it came to the remoter ones. “Incestuous Marriages,” 92. She may be right. The possibility of scribal error suggested here applies only to references to the fourth degree. Those to the third (or third and fourth) are probably quite genuine findings.

1261. Appendix e11.1: Richard de Clyve’s Incest Cases

The following list gives (1) the name of the case, (2) the dates, (3) the place where the case arose (all in Kent), (4) a brief description of the case, (5) archive references and descriptions of all the known documents concerning the case. All documents are in CCA. Abbreviations for the archive classes are expanded in the
1. Office c Reuham and Boywuth. nd (signification by Archbishop Pecham). Ex officio divorce for spiritual affinity (confraterinitas). Draft letter patent of Richard de Clyve announcing that the reus, having contumaciously refused to obey sentence and having been signified and imprisoned, has now repented. He is to be publicly whipped and absolved. SVSB III 117.

2. Everard c Breule. 5 Nov. 1292 to Jan. 1292/3. nd. Instance suit probably to enforce marriage; exception of affinity per copulam illicitam; replication that reus falsely confessed to having had sexual relations with actrix’s kinswoman (degree not stated). No sentence. SVSB I 40/1 (depositions to confession); ESR 89 (depositions to its falsity).

3. Office c Breton and Archer. Feb. 1292/3 to 20 Mar. 1293/4. Dover. Ex officio divorce for consanguinity begun before Martin de Hampton (former commissary of Canterbury). Divorce decreed and penance enjoined by Clyve. SVSB III 95 (return of citation mandate by dean of Dover); SVSB III 97 (mandate to dean of Dover to have rea whipped); ChCh II 44 (John de Lacy, royal clerk, urges relaxation of the penance); SVSB I 100/3 (inhibition and citation mandate in tutorial appeal).


6. Office c Simon and Tanner. June 1293. Wittersham. Ex officio divorce for consanguinity. Sentence of no consanguinity (proof of fourth and fifth degrees). SVSB III 125 (return of citation mandate); SVSB III 124 (return of mandate to cite witnesses); SVSB III 37 (depositions and sentence); SVSB III 38 (depositions).

7. Heredeman c Bandebston. June 1293 to Feb. 1293/4. Dover. Instance suit for marriage on the basis of abjuration followed by intercourse; exception of affinity per copulam illicitam (rea with sister of actrix); replication of absence (testimony that the sister was planting a bean field at the time she was alleged to have been having sexual relations with the reus) and virginity of sister. Case ends with a finding by the dean of Dover on basis of examination by matrons that the sister is not a virgin. SVSB III 133 (return of citation mandate by dean of Dover); SVSB III 43, 44, 45 (depositions to abjuration); ESR 369 (depositions on the exception); SVSB III 32/a, 32/b, 33 (depositions, articles, and interrogatories on replication of absence); SVSB III 134 (return of mandate to have matrons examine sister).

8. Gyk c Thoctere. June to Oct. 1293. Monkton. Begins as a fornication case before the rector of Monkton defended on ground of marriage, but the marriage is ‘accused’ of invalidity on the ground of affinity per copulam illicitam (2d and 3d degrees, reus with first cousin once removed of actrix). Draft sentences in favor of the marriage despite testimony of affinity. SVSB III 115 (processus before commissary of rector of Monkton); ESR 281 (depositions to the marriage and to the affinity); SVSB III 8, 9 (depositions to affinity endorsed with draft sentences).


10. Estkeelynstonc Newingtone. 27 Nov. 1293. Newington. Instance divorce for affinity per copulam illicitam. Sentence for rea despite clear testimony that brother of actor had intercourse with rea fifteen years ago, nine years before the marriage. Richard de Clyve crosses out sentence for actor and replaces it with sentence for rea. SVSB I 109 (depositions and sentence).


which a prior clandestine presumptive marriage prevails over public (unconsummated) espousals. The word coded as two separate cases, once under affinity by illicit intercourse and once under affinity 'by marriage'.

they prejudice the overall results.) For example,

kind of work knows, that coding errors are almost impossible to avoid, and need not be of concern unless results differed from hers, her categorizations were not the same as ours.

to check to see whether our sample is misleading us or whether, as we suspected in other cases where our

or marriages) (71%) dissolved than he did formal bonds (48%) (though virtually all of the three-party cases do), but we have no doubt that it is somewhat higher than the proportion of cases that involve incest. How different the proportion of incest cases at Cambrai and Brussels (though virtually all of the three-party cases do), but we have no doubt that it is somewhat higher than the proportion of cases that involve incest. How different the proportion of incest cases at Cambrai and Brussels

13. Office c Brunwyng and Havingham. July 1294. Lyminge. Ex officio proceeding for divorce on ground of spiritual affinity (confarateritas). No affinity found despite testimony, but witnesses say no scandal. SVSB III 21 (depositions and sentence).

14. Stokeb c Brythc. July 1294. Eastry (I). Inhibition and citation mandate from official of Canterbury sede vacante to commissary of Canterbury in instance divorce proceeding for divorce on ground of affinity per copulam illicitam (brother of actor with rea). Sentence against the divorce had been rendered by Anselm, rector of Eastry, who is alleged in the mandate to have no jurisdiction. ChAnt 5 383.


16. Office c Broke and Reeve. July 1294. Lyminge. Ex officio divorce for affinity per copulam illicitam (second degree, first cousin (called brother) of rea with rea) arising out of visitation. Sentence for the marriage, but cousin who confessed the intercourse is to be whipped. SVSB III 58 (depositions and sentence).

17. Office c Gode and Godholt. July 1294. Ickham. Ex officio proceedings perhaps arising out of objections to banns. Sentence for the marriage despite testimony of affinity per copulam illicitam (second and third degrees, reus with first cousin once removed of rea) reus who confessed the intercourse is to be whipped. SVSB III 27 (depositions and sentence).

18. Office c Tangerton and Smelt. Oct. 1294. np. Ex officio proceedings probably on objection to banns. Marriage allowed to proceed despite testimony of affinity (second and fourth degrees, reus is first cousin twice removed of rea’s former husband); witnesses say no scandal (some possibility of malice). ESR 188 (depositions and sentence).

1262. Appendix e11.2: Recent Work on Incest Cases at Cambrai and Brussels

Monique Vleeschouwers-van Melkebeek’s recent study of incest cases at Cambrai and Brussels (“Incestuous Marriages”) comes to somewhat different conclusions from those that we have reached in this chapter. In some cases, the differences have to do with the fact that she is asking somewhat different questions. For example, we did not calculate the proportion of cases at Cambrai and Brussels that involved precontract (though virtually all of the three-party cases do), but we have no doubt that it is somewhat higher than the proportion of cases that involve incest. How different the proportion of incest cases at Cambrai and Brussels

is from what it was in England can be a matter of more doubt. Most of the figures that she uses for England are derived from cases of divorce from the bond. As we have seen, claims of incest also occur in spousals litigation in England. If these are added to the numbers for England, the proportion of cases raising such issues may not be that far different from what it was at Cambrai and Brussels. Indeed, the proportion at Ely may be higher. See at n. 93. Nor do we doubt that the dominance of the promotor accounts for the higher proportion of incest cases at Cambrai/Brussels than what we find at York and Paris, though the relatively high proportion at Ely may be accounted for by the presence of office prosecutions, despite the absence of a promotor.

Vleeschouwer-van Melkebeek’s figures do, however, suggest a higher success rate for the promotor who claimed incest (57%, id., 87) than is suggested in our discussion based on a sample of such cases. She also asserts that the success rate was essentially the same, whether the case involved an already-formed marriage or simply a betrothal (id., at n. 25), something that did not seem to be the case in the sample cases. The promotor, she also argues, got a considerably higher percentage of informal bonds (whether they be betrothals or marriages) (71%) dissolved than he did formal bonds (48%) (id., p. 90), once more, a difference that did not emerge on the basis of the samples. Since she gives us the data set (id., nn. 22, 23, 24), we are in a position to check to see whether our sample is misleading us or whether, as we suspected in other cases where our results differed from hers, her categorizations were not the same as ours.

There are a few of what seem to be coding errors in the data set. (I hasten to add, as anyone who does this kind of work knows, that coding errors are almost impossible to avoid, and need not be of concern unless they prejudice the overall results.) For example, Office c Vernoert, Verhoeft en Gheens (19.1.56), no. 917, is coded as two separate cases, once under affinity by illicit intercourse and once under affinity ‘by marriage’. The case involves both issues, but counting it twice exaggerates the total number of cases involved. Office c Wagels, Campen en Scoemans (8.xi.59), no. 1480, is not a case that involves consanguinity. It is a case in which a prior clandestine presumptive marriage prevails over public (unconsummated) espousals. The word
incestum, which is used in the case in connection with the presumptive marriage, is either a generic vituperative or, more likely, a scribal error for stuprum. (Obviously, if the first relationship were incestuous in the technical sense, it would not have prevailed over the second.)

More serious, because there are enough of them to affect the overall results, are the situations in which violations of the incest rules are possibly involved but where there exists a simpler explanation for the court’s ruling. In *Officie c Hendrik Rosijn en Johanna Golfaert* (Aleidis Gollfaret) (11.i.55), no. 741, for example, Hendrik and Johanna sought to upset the contract that he had entered into with her sister, Aleidis. The issue here could be the impediment of public honesty (though the court does not mention it), but it seems more likely, since neither relationship had been consummated, that the claim was simply an opportunistic move. In the Cambrai diocese recognized in other cases, that *bina sponsalia* are unenforceable unless and until the first *sponsalia* are dissolved. The court’s finding that the first *sponsalia* did not exist puts an end to both arguments. In *Officie c Gerard Cawale, Elisabeth van Truben en Elisabeth Daens* (26.iv.49 to 27.xv.49), nos. 46, 59, Gerard and Daens ran off and engaged in a presumptive marriage while van Truben was obtaining a court order enforcing her promises of marriage with Gerard. The two women were first cousins, and if the court had been applying the impediment of public honesty, the presumptive marriage would have been dissolved. In fact, what the court does is dissolve the initial promises (with van Truben’s consent) on the ground that the presumptive marriage is a *fortius vinculum*.1 In *Officie c Iwan de Ponte en Helwig Pynaerts* (Margareta Bertels) (19.iii.51), no. 231, there is no question that affinity by illicit intercourse is involved, but that affinity is what makes Iwan’s fornication with Helwig incest rather than simply fornication; it has nothing to do, so far as we can tell from the case, with the espousals of Iwan and Margareta, which are sustained against Helwig’s “trifling” opposition. While it is possible that Helwig’s opposition was based on a claimed precontract with Iwan, which was barred by the affinity (Iwan’s brother had also had sexual relations with her), the case does not say that, and it seems stretching a point to say that that was the ground of her opposition and the reason why the court did not accept it, when neither is stated.

We could go on. There are a number of other cases in which we doubt that the incest rules played as important a role as Vleeschouwers-van Melkebeek seems to say that they did, but let us turn to the question of the proportion of cases in which a marriage or a betrothal was upset, seemingly on the basis of the incest rules. Excluding the problematical cases, but using Vleeschouwers-van Melkebeek’s data set, we counted 68 cases in which it was and 72 in which it was not (49% vs 51%). This is not the same proportion as Vleeschouwers-van Melkebeek arrives at (57% vs 43%), though it is not too far different. Vleeschouwers-van Melkebeek does not give her coding for success and failure, and so we cannot check to see why our judgment about the result of 57%/43%; it would be 52%/48%.2 While we cannot determine the cause of all of these differences, it

1 It is possible that the ruling was erroneous. In *Officie c Coenraets, Beken et Thibaut* (12.vii.38), no. 6, in similar circumstances, the court dissolves the presumptive marriage on the ground of public honesty and the first promises on the ground that they are barred by affinity created by the intercourse that created the presumptive marriage. But the impediment of public honesty only applied to betrothals that were public (as those in *Officie c Coenraets were*); those in *Officie c Cawale may not have been*. That the Brussels court was aware of this distinction is indicated by *Officie c Ballert*, *Cudseghem en Cudseghem* (4.xi.57 to 26.xi.57), nos. 1239 and 1253, where the court refuses to listen to Margareta van Cudseghem’s claim that Everard van Ballert and Katherina van Cudseghem’s espousals are impeded by affinity by marriage: C150; for consanguinity: C113, C182, C346, C397, C633, C877, C1044, C1188; for affinity by marriage: C130; for spiritual affinity C272, C340, C1225, C1443; for public honesty: C6; for affinity by illicit intercourse: B123, B148, B200, B226, B268, B278, B279, B311, B359, B369, B394, B395, B595, B695, B738, B749, B915, B917, B953, B1025, B1039, B1150, B1198, B1346, B1352, for consanguinity: B29+1454,
seems reasonably clear in some cases. For example, in *Office c. Langbroeke et Hoeveinge* (6.x.42), nos. 347 and 348, and *Office c. Tiestaert, Hose et Beckere* (20.x.42), nos. 360, 361, a party or parties are ordered to do penance for having proceeded with what they seem to confess was an incestuous relationship, but in neither case is a betrothal or marriage dissolved. Rather, in both cases the court makes an interlocutory order that proof about the relationship is to be produced, and that is the last we hear of them. One could see how someone might code this case as one in which a marriage or betrothal was dissolved on the ground of a claimed violation of the incest rules, but that is not quite demonstrated by the record we have before us.

These differences, however, should not obscure a basic point. In approximately half of the cases in which a claim of violation of the incest rules was raised, a betrothal or a marriage was dissolved on the basis of the claim. The impression given in this chapter on the basis of samples, that such claims did not often succeed, is misleading. I remain of the view, however, that the different judges had different views of the matter and that Platea became more cautious about such allegations as he matured.

Having conceded a point where my data are misleading, I turn to some areas in which I find Vleeschouwers-van Melkebeek's misleading. Her article is presented in terms of what the promotor did, and what he could prove. The impression given is that, had not the promotor intervened, nothing would have happened, and had not the promotor presented proof (whether or not it succeeded), no one would have. That impression does not seem to be fully supported by the data set. Of the 150 cases listed, 2 are instance cases and 1 a "commissioned" case, in which the promotor does not seem to have participated.\(^1\) More important from a statistical point of view is the number of cases in which someone joined with the promotor in prosecuting the case. We counted 28 cases in which we are virtually certain that this happened and 5 more in which there is some evidence that it happened.\(^2\) As we discussed in Chapters 8 and 9, the number of cases in which we have evidence that this happened is probably considerably smaller than the number of cases in which it did happen, particularly at Brussels, where there were very few straight-instance spousals cases.

Vleeschouwers-van Melkebeek argues (87, n. 25) that the success rate of the promotor was the same, whether what was at stake was a betrothal or a marriage. She divides the data set into 84 betrothal cases and 66 marriage cases and finds that 57% of the former were dissolved and 58% of the latter. Although we had some doubts about the classification of some of them, we clearly resolved those doubts in the same way that she did, because we too found 84 betrothal cases in the data set. We classified only 62 cases as marriage cases because we were not sure about three cases, and one case is a duplicate.\(^5\) Our success rate (cases in which she did, because we too found 84 betrothal cases in the data set. We classified only 62 cases as marriage cases because we were not sure about three cases, and one case is a duplicate.\(^5\) Our success rate (cases in which it happened) is lower in both cases than it is in the case of marriages than it is in the case of betrothals. The reasons why the overall rate is lower are the same as the reasons why it is lower for the entire data set, but the doubts that led us to reduce the overall rate affected the marriage cases more than it did the betrothal cases.

\(^{1}\) More important from a statistical point of view is the number of cases in which someone joined with the promotor in prosecuting the case. We counted 28 cases in which we are virtually certain that this happened and 5 more in which there is some evidence that it happened.\(^2\) As we discussed in Chapters 8 and 9, the number of cases in which we have evidence that this happened is probably considerably smaller than the number of cases in which it did happen, particularly at Brussels, where there were very few straight-instance spousals cases.

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There are also reasons not to lump all the marriage cases together. While we cannot always tell what type of marriage was involved, in most cases we can. There are regular, formal marriages (espousals in the hand of the priest, followed by banns, followed by solemnization, with consummation, so far as we can tell, not following until after that), irregular, formal marriages (normally, where the couple had their marriage solemnized in another diocese, after objections had been raised to it in their own parish), and presumptive marriages (marriages formed by sexual intercourse after espousals and before solemnization or, so far as we can tell, exchange of present consent). Our 62 marriages contain 14 of the first type (and one more that is probably of this type), 9 of the second type, and 32 of the third type. The rate of dissolution is quite different, depending on what type of marriage we are talking about. Of the first type of marriage we dissolved 4 (29% or 27%, depending on whether you count the uncertain one), 6 of the second type were dissolved (67%), and 15 of the third (48%).

These results should not be surprising. The regular, formal marriage was entitled to the full force of the presumption favoring marriage that the law required. Such a marriage could be dissolved, if there was clear evidence warranting its dissolution, but the evidence had to be very clear. The irregular, formal marriage was at the opposite end of the spectrum. The couple's behavior showed that they knew that there was something wrong, and they nonetheless defied the authority of the church and got married. The dissolution was not, however, simply punishment for what they did. In three cases, the suspicion that something was wrong turned out not to be correct, or at least not provable. The presumptive marriage is someplace in between. What the couple did was wrong, and whatever process they went through before they consummated their relationship (it varied from totally informal to a full public process up to, but not including, solemnization), the marriage was not formed in the manner that the church regarded as the only licit one. They were not entitled to the full presumption of validity that attached to those marriages that had been licitly formed; they were dissolved at the opposite end of the spectrum. The couple's behavior showed that they knew that there was something wrong, and they nonetheless defied the authority of the church and got married. The dissolution was not, however, simply punishment for what they did. In three cases, the suspicion that something was wrong turned out not to be correct, or at least not provable. The presumptive marriage is someplace in between. What the couple did was wrong, and whatever process they went through before they consummated their relationship (it varied from totally informal to a full public process up to, but not including, solemnization), the marriage was not formed in the manner that the church regarded as the only licit one. They were not entitled to the full presumption of validity that attached to those marriages that had been licitly formed; they were dissolved at a rate that approximates, though it is slightly lower than, the rate for betrothals.

Vleeschouwers-van Melkebeek's argument that the court dissolved more informal betrothals and marriages than it did formal ones is consistent with the argument of the preceding paragraph, and we have no reason to question it on a priori grounds. We doubt, however, that this data set can be used to make that point with quite the precision that she makes it. Table e11.App.1 shows how she divides the cases (id., 90). Our coding (Table e11.App.2) suggests a more complicated pattern. The differences in the totals of the cases are not great (84 + 66 = 150 vs 87 + 62 = 149), and while we cannot explain them in every case, we can in some, and it is likely that similar explanations lie below the others. As previously noted, we took the total number of cases to be 149 rather than 150, because two types of impediment are asserted in one case. Office c Mamen et Coels (11.vi.44), no. 499, is a case in which the couple had sexual relations after they had informally exchanged promises. It could easily be treated as a presumptive marriage case, although I did not treat it as such because the court did not; perhaps it was so obvious that the promises were invalid that the court did not feel that any difference here. Even if there were a difference, we should be reluctant to make anything of it, because the numbers are so small.

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7 Betrothals, formal: B58, B95, B114, B123, B135, B154, B198, B200, B623, B343, B139, B401, B582, B594, B599, B613, B656, B680, B695, B709, B718, B722, B738, B741, B749, B796, B915, B917, B953, B977, B981, B1114, B1120, B1126, B1155, B1183, B1259, B1253, B1332, B1336, B1346, B1346, B1352, B1353, B1445, B1455, C75, C243, C291, C340, C411, C597, C728, C1044, C1223, C1347, C1388; informal: B46, B290, B1288, C113, C182, C499, C877, C922, C1252, C1257; irregular: B1245; uncertain: B11, B22, B23, B310, B251, B345, B654, B1198, B1358, C36, C101, C116, C330, C403, C508, C1440. The coding of the marriage cases is given in n. 6, to which we should add: informal: B29, B51 (both of presente cases); uncertain: C272, C576, C578, C831. Of the presumptive marriage cases, 12 were founded on informal promises (B148, B311, B322, B595, B835, B1029, B1039, B1172, B1079, B1199, B1212, B1513) and 7 on formal ones (B226, B278, B279, B1150, B1346, B1352). In the rest, the degree of formality cannot be, or has not been, determined. (The fact that these are all Brussels cases suggests that I was more careful about coding Brussels cases for this feature than I was in the case of Cambria.) Seven of the presumptive marriages founded on informal promises were dissolved and four of those founded on formal, and so there does not seem to be any difference here. Even if there were a difference, we should be reluctant to make anything of it, because the numbers are so small.
the relationship was entitled even to the middle-level presumption of validity that seems to have attached to presumptive marriages (certa verba clandestina in com conventio matrimoniale sonantia, carnali etiam copula subsequente, invem – de facto cum de iure non posse – habere presumperunt).

Where we do differ substantially is in our willingness to commit ourselves to the degree of formality involved in some of these cases. We have already discussed how we divided the marriage cases. In the case of the betrothal cases, we were uncertain about the degree of formality to be attached to 16 of them. While it is quite possible that we missed some hint in one direction or the other in a few of them, it is unlikely that we missed it in all 16 or even in a substantial number of them. We can, however, approach Vleeschouwers-van Melkebeek’s numbers if we assume that all cases in which there is not a clear indication of informality (e.g., the word ‘clandestine’ is used) were, in fact, cases in which there was some element of formality. If we, in addition, classify all the cases where an irregular formality was had and those in which a presumptive marriage was involved as ‘informal’, we get the results indicated in Table e11.App.3.

While the number of cases in each cell is quite close to the corresponding numbers in Vleeschouwers-van Melkebeek’s, the proportions of cases dissolved differ substantially. These differences reflect the same differences that we have already noted. Overall, we find fewer cases in which dissolution was ordered on the basis of the incest rules, and we see a substantially greater reluctance to dissolve marriages as opposed to betrothals. Laying these differences aside, our numbers point in the same direction as Vleeschouwers-van Melkebeek’s: The court was more willing to dissolve informal marriages or betrothals than it was to dissolve formal ones. It is just that in our rendering of the numbers, the difference is not so great.

1263. Ch 12, n. 1: For previous work along the lines of this section, see Donahue, “Canon Law and Social Practice”; Lefebvre-Teillard, “Nouvelle venue”; Weigand, “Zur mittelalterlichen kirchlichen Ehegerichtsbarkeit.” This chapter, indeed the whole book, should have paid more attention to the work on London of Shannon McSheffrey: “Place, Space, and Situation: Public and Private in the Making of Marriage in Late-Medieval London,” Speculum, 79 (2004) 965–90; id., Marriage, Sex and Civic Culture in Late Medieval London (Philadelphia 2006). Her book came to my attention while this one was being copy-edited, but I have no excuse for having missed the article. What she says in the article (I still need time to absorb the book) seems to support the generalizations that I make about England in this chapter.


1265. Ch 12, n. 13: Lefebvre-Teillard, “Nouvelle venue,” 650–2, notes many of the same differences and suggests, if I read her right, a difference in the two countries in the customary understandings of the nature of marriage. I'm not sure I would put it quite that way, but what follows may be regarded as an elaboration of this idea.

1266. Ch 12, n. 16: Kim Schepple first suggested this argument to me in a casual conversation at an academic conference. I am grateful to her for stimulating my thinking on the matter, though I have ultimately come to reject the argument. The argument has decided echoes of Engel’s Ursprung der Familie.


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### Table e11.App.1. MVvM Incest Dissolution Cases – Cambrai and Brussels (1439–1459)

<table>
<thead>
<tr>
<th></th>
<th>Formal</th>
<th>Informal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Betrothal</td>
<td>70</td>
<td>30</td>
<td>100</td>
</tr>
<tr>
<td>Marriage</td>
<td>21</td>
<td>45</td>
<td>66</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>91</td>
<td>59</td>
<td>150</td>
</tr>
</tbody>
</table>

**Notes:**

- ‘%Dissolved’ = the proportion of cases where the court dissolved the bond in question.
- Source: Vleeschouwers-van Melkebeek, “Incestuous Marriages.”
<table>
<thead>
<tr>
<th>Category</th>
<th>Formal</th>
<th>%Diss.</th>
<th>Informal</th>
<th>%Diss.</th>
<th>Irregular</th>
<th>%Diss.</th>
<th>Uncertain</th>
<th>%Diss.</th>
<th>Presumptive</th>
<th>%Diss.</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Betrothal</td>
<td>60</td>
<td>53</td>
<td>10</td>
<td>80</td>
<td>1</td>
<td>0</td>
<td>16</td>
<td>31</td>
<td>1</td>
<td>0</td>
<td>87</td>
</tr>
<tr>
<td>Marriage</td>
<td>15</td>
<td>27</td>
<td>2</td>
<td>50</td>
<td>9</td>
<td>67</td>
<td>4</td>
<td>50</td>
<td>32</td>
<td>47</td>
<td>62</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>75</td>
<td>48</td>
<td>12</td>
<td>75</td>
<td>10</td>
<td>60</td>
<td>20</td>
<td>35</td>
<td>32</td>
<td>47</td>
<td>149</td>
</tr>
</tbody>
</table>

Note: '%Diss.' equals the proportion of marriages in the category that were dissolved on the ground of incest.

Source: Registres de Cambrai; Liber van Brussels. (For the data set, see nos. 6–7.)
TABLE e11.App.3. CD/MVeM Incest Dissolution Cases Reconciled – Cambrai and Brussels (1439–1459)

<table>
<thead>
<tr>
<th>CD/VeM</th>
<th>Formal</th>
<th>%Dissolved</th>
<th>Informal</th>
<th>%Dissolved</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Betrothal</td>
<td>76</td>
<td>49</td>
<td>11</td>
<td>73</td>
<td>87</td>
</tr>
<tr>
<td>Marriage</td>
<td>19</td>
<td>32</td>
<td>43</td>
<td>51</td>
<td>62</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>95</strong></td>
<td><strong>45</strong></td>
<td><strong>54</strong></td>
<td><strong>56</strong></td>
<td><strong>149</strong></td>
</tr>
</tbody>
</table>


1268. Ch 12, n. 18: The qualification that the parents must be living is important. Medieval rates of mortality produced many young heirs. See, for a later period, Bonfield, “Marriage Settlements.” Of course, both countries had systems of guardianship for orphans. These systems have not been studied comparatively, but my impression is that English guardians had, if anything, more legal control over the marriages of their wards than did French. The source of our difference is not likely to lie here.

1269. Ch 12, n. 19: The property rules seem to have been less subject to change in the case of the upper classes in both countries. Fortunately, the rules regarding the upper classes were virtually the same in both countries. The source of our difference does not lie here.

1270. Ch 12, n. 20: For examples, see Turlan, “Recherches,” 488–90. The rule was codified so far as testaments were concerned by the edict of Henry II (registered 1.iii.1557), Recueil général des anciennes lois françaises (Isambert ed., Paris, 1829) 13:469–71. On the general development, see Ourliac and Malafosse, Histoire du droit privé, 3:525.

1271. Ch 12, n. 21: For a sophisticated discussion of this last point in the context of peasant land tenure, together with much material suggesting that differences in inheritance systems may not have made much of a practical difference, see Smith, “Some Issues Concerning Families and Their Property.”

1272. Ch 12, n. 22: I will concede that when making property arrangements about marriage before a notary becomes common in the Franco-Belgian region and in those classes in which such arrangements are common, marital property does provide a reason for more formal marriages, and hence marriages are more likely to be arranged.

1273. Ch 12, n. 23: For evidence that this was a conscious trend, at least in the context of inheritance customs, see Thirk, “The European Debate on Customs of Inheritance.”

1274. Ch 12, n. 34: For evidence that this was a conscious trend, at least in the context of inheritance customs, see Thirk, “The European Debate on Customs of Inheritance.”

1275. Ch 12, n. 36: For evidence of these practices, see Turlan, “Recherches,” 482–505. Not much comparative help can be derived from this. Similar material could be developed from similar sources for England.

1276. Ch 12, n. 37: He was speaking of Ely, but the same emphasis on publica vox et fama may be found in the York cause papers, though the proof of it tends to be formulaic, particularly in the fifteenth century.

1277. Ch 12, n. 38: I am encouraged by the fact that R. M. Smith seems to have found an earlier version of this argument plausible, despite the fact that he calls it “challenging and some would say contentious.” Smith, “Marriage Processes,” 78. He then takes me to task for not paying enough attention to the demographic evidence of fewer illegitimate and ‘premarital’ births in France than in England (from a somewhat later period, id., 78–92). The problem with the comparison, however, is that it is not a comparison between likes, granted the fact that unsolemnized marriages in England remained valid (if disapproved) until Lord Hardwicke’s Act in 1753. I agree with him, however (id., 95), that my previous studies paid insufficient attention to the social context of the courts that I was studying, a deficiency that I have tried, bow successfully is for the reader to decide, to remedy in this book.
1278. Ch 12, n. 42: So far as I am aware, no copy of the medieval statutes of Châlons has yet been discovered. The compilation of 1557 has a stronger catechetical element than is found in the medieval statutes of the province that we have examined, though it contains a number of reminiscences of them. *Actes de Reims*, 3:354–405 (for the date, see *Répertoire des statuts synodaux*, 193). The marriage section mentions the formation of marriage by sexual intercourse following *sponsala de futuro*, but does not penalize it unless it is done while opposition to the marriage is pending. *Id.*, 390b–391a, 392a. The parties to clandestine marital promises or “occult” marriage are subjected to an arbitrary penalty (*sub poena emendae arbitrariae*) but not automatic excommunication. Priests who celebrate, however, as well as those who attend, clandestine marriages are automatically excommunicated. *Id.*, 393b.

A compilation of synodal statutes dating from the early thirteenth century to his own time was made by Bishop Jean de Braques of Troyes and promulgated in a synod in 1374 in both Latin and French. The section on the sacrament of marriage is extensive. *Ancienne discipline de Troyes*, 65–81. It contains a strongly worded prohibition against *charivary* (locus 19, *id.*, at 79–80), but is otherwise quite similar to the synodal statutes that we have previously examined. The key provision for our purposes is locus 15 (*id.*, at 74–5): “We prohibit, under penalty of excommunication and a discretionary fine, to be put to proper purposes, any persons from contracting marriage with each other by words of the present tense until they are at the doors of the church where they ought to receive the nuptial blessing. They can, however, pledge their faith to each other that they will contract marriage with each other if Holy Church gives her consent, and this should be done in the face of the church at the hand of a priest. Those who do to the contrary, whether they are the persons who contract marriage or those who are present and associate themselves with it, and those who make this come about, should know that we will severely punish them.” (*Prohibemus sub pena excommunicationis* [sic; read *excommunicationis*] *et emenda arbitrarie, licitis usibus applicande, ne aliquae personne inter se ad invicem Matrimonium contrahant per verba de presenti*, donec sint in valvis ecclesie in qua debentur ad Benedictiorem admissi nuptialem; possunt tamen inter se dare fides de matrimonio inter eos contrahendo, si sancta Ecclesia in hoc consensuerit, et hoc fiat in facie Ecclesie et per manum sacerdotis. *Ili vero qui contra fecerint, sive sint persone Matrimonium contrabentes, sive sint illi qui asciendo interfuerint, et qui hoc fieri procuraverint, se per Nos noverint graviter puniendos.* [The French is similar.]) While this is not so clear as it might be, it would seem that the automatic excommunication applied only those who contract *de presenti* in violation of the statute. Whether the “severe punishment” is promised for unsolemnized betrothals is less clear.

1279. Ch 12, n. 46: Three centuries later, the diocese of Cambrai shows some remarkable elements of continuity in the subjects of marriage litigation. Alain Lottin reports that the eighteenth-century cases in the episcopal court of Cambray are divided roughly as follows: 73% concern fiancées, 19% are divorce and separation (the overwhelming majority being the latter), and 8% are criminal prosecutions for sexual offenses (*n* = 3403). Lottin, *Désunion*, 186. Much, of course, had changed about the law, and many of the cases of fiancées are routine remissions, but many (it would seem about one-third) are contested. It would seem that *de futuro* consent remained an important institution in this area, and a source of disagreement and dispute.

1280. Ch 12, n. 47: Place of origin is not given consistently in the sentence books and in both sets virtually disappears by the end of the chronological period covered by the books. For an attempt to arrive at an approximation of the rural/urban divide, see the following text.

1281. Ch 12, n. 48: The most frequently encountered is domicella, which we have translated as *demoiselle* or *jonkvrouw*, depending on the language of the area. Unfortunately, as an indication of status, this is quite vague.

1282. Ch 12, n. 56: This statement needs to be qualified by the nature of the Cambrai and Brussels records. Because we have only sentences, the vast majority of which are definitive sentences, we do not know, as we do at Ely, how many cases were dropped.

1283. Ch 12, n. 61: A.D. Losière, G963, fols. 64r (*de presenti*), 116r (*de futuro*); G943, fols. 47v–47r, 40v–39r (the foliation in this book proceeds in the opposite direction from the writing).

1285. Ch 12, n. 71: Sardinea filia Ugolini Vernaccii de Albaro c Junctam filium Martini de Piro (9.vii.1230), no. 51, pp. 136–7 (suit for dissolution; the third-party, whose marriage is sustained against the wishes of the reus, never appears); Bonfiliolus quondam Bentiuollie [et Ugolinella] c Benuentam quondam Bruni (7.vii.1230), no. 45, pp. 132–3 (Ugolinella is not made a formal party, but she introduces witnesses in support of the actor's replication that his prior marriage was forced).

1286. Ch 12, n. 74: Iurauerunt stare omnibus mandatis suis [i.e., archiepiscopi] super discordia quam inter se habebant is what suggests that this is an arbitration; on the facts stated, the woman was entitled to a separation if she wanted it.

1287. Ch 12, n. 75: See, e.g., Bruker, Giovanni and Lusanna; Meek, “Women, the Church and the Law”; Seidel Menchi, Coniugi nemici; id., Matrimoni in Dubbio; id., Trasgressioni; Cristellon, Charitas versus eros; Eisenach, Husbands, Wives, and Concubines. I am grateful to Carol Lansing for calling a number of these references to my attention and to Jane Bestor for insisting on their importance.

1288. Ch 12, n. 79: Caution: Meek, “Women, the Church and the Law,” also reports a substantial proportion of allegations of de presenti exchanges in what is admittedly a small data set. Her period (1394–1435) seems too early for there to have been any widespread knowledge of the possibility of obtaining a papal dissolution of an unconsummated de presenti marriage.

1289. Notes for Table 12.6:

\[a\] Includes 1 case where orders were also alleged, 3 cases where absence of consummation (a requirement in all cases) was also alleged, 4 in which absence of consent was also alleged (largely redundant), and 3 in which absence of consent without minority was alleged. The last may not be nonage cases, but I suspect that they are, at least in a general sense.

\[b\] Includes 1 case where consanguinity alone is alleged and 1 in which both are alleged.

\[c\] Cristellon reports 19 cases with uncertain grounds, but then the totals do not add up. On the basis of my own experience with this kind of work, I suspect that she later discovered grounds and forgot to correct the number of ‘uncertain’ cases.

1290. Ch 12, n. 81: Herlihy and Klapisch-Zuber, Toscans et leurs familles, 393–419. For the “northwest European marriage pattern” and the contrast with the south, see Smith, “Geographical Diversity,” with references. See generally Herlihy, Medieval Households.

1291. Ch 12, n. 82: This is certainly suggested by Vernaccii c Martini and Bentiuollie c Bruni (n. 71), in both of which notarized instruments of marriage contracts play a key role in the proof of the marriage that is ultimately sustained.

1292. Appendix e12.1: Office c Colin Tanneur et Peretta fille de Jehannot Doulsoyt de Villers-en-Arroyne

Text\[1\]


[fol. 62v] Perreta filia Jehannoti Doulsot confessa est medio iuramenti quod die sancti Andree novissime lapsa Collinus Tanneur filius Jehannis Tanneur accessit de nocte ad domum sui patris, qui quidem Collinus requisivit eam de contrahendo matrimonium cum ea et post plura verba inter eos habita dictus Collinus Tanneur sibi promisit per fidem sui corporis quod eam acciperet in uxorem et quod numquam aliam haberet in uxorem preter illam. Et viceversa ipsa Peretta similater sibi promisit. Quibus promissionibus sic factis illa hora dictus Collinus sibi tradidit unam virgam argenteam nomine matrimonii quam accepit ipsa loquens. Qua traditione sic facta dicta loquens eodem Collino tradidit unam aliam virgam electri contra nomine matrimonii quam acceptit dictus Collinus. Interrogata quis esset presens quando istas promissiones fuerint inter eos factas dixit quod nullus erat; tamen quidem sibi dixit quod nihilominus quod sibi tenebat ius quod sibi promiserat.


\[2\] Ms. 71volumus.
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[fol. 63r] Collinus Tanneur confessus est medio sui juramenti quod die festi sancti Andree apostoli accessit ad domum patris dicte Perette et ibidem promisit eodem Perette quod eam acciperet in uxorem que simili modo sibi promisit. Interrogatus quis erat presens dixit quod nullus erat.

[fol. 62r] Quod dominus sentenciavit quemlibet ad libram cere et in expensis promotoris litis, et iniunctum est eis quod procedant infra octo dies ad solemnizandum dictum matrimonium.

Translation

Colin Tanneur and Perette daughter of Jehannot Doulsot of Villers-en-Argonne were cited for clandestinity [on 4 January 1494]. Perette daughter of Jehannot Doulsot confessed under oath that on St Andrew's day last past [30 November 1493] Colin Tanneur son of Jehan Tanneur came to her father's house by night. Colin asked her about contracting marriage with her, and after many words had between them Colin Tanneur firmly promised by the faith of his body that he would take her to wife and that he would never have another except her. And conversely Perette firmly promised in like manner. The promises having thus been made, at that time Colin gave her a silver pin in the name of marriage, which the speaker accepted. When he had handed it over, the speaker gave Colin another pin of polished pewter in the name of marriage, which Colin accepted. Asked who was present when these promises were made between them, she said that no one was, but he further said to her that nevertheless he would hold to the right that he had firmly promised.

Colin Tanneur confessed under oath that on the feast of St Andrew the apostle he went to the house of the father of Perette and there promised Perette that he would take her to wife, and she firmly promised in like manner. Asked who was present, he said no one was.

The official sentenced each of them to one pound of wax and [to pay] the costs of the promotor of the case, and they were enjoined to proceed within a week to solemnize the marriage.

1293. Epilogue, n. 2 See Ozment, When Fathers Ruled, 25–49, for a somewhat different and more nuanced story. For a broader view of the Protestant context, see Witte, From Sacrament to Contract.

1294. Epilogue, n. 5: A full account of the French legislation on this topic in the sixteenth century may be found in Diefendorf, Paris Councillors, 156–70. The first French ordonnance on the topic, that of Henry II in 1557, may have been inspired by the runaway marriage of François de Montmorency, the son and heir apparent of Anne duke of Montmorency, the constable of France. See Introd, at n. 30; T&C 1270.

1295. Epilogue, n. 6: Esmein, Mariage, 2:229–35, argues that the civil legislation of the sixteenth and seventeenth centuries made them, as a practical matter, in effect. Tametsi was, of course, not the only reason why the French refused to promulgate the decrees. For a nice account of the whole story, albeit from a somewhat ultramontane point of view, see Martin, Gallicanism et réforme catholique.

1 In the margin around the original entry.
4 Ms. litteris.
5 The guess in Donahue, “Social Practice,” 148 n. 17, that this is the Villers in question is supported by the reading nemus.
7 Gottlieb translates “ring,” following DuCange, s.v. virga.
8 Gottlieb translates “amber,” the classical meaning of electrum, but if the reading contriti is right, “pewter” seems more likely.
Table of Cases

All of the cases cited in this book are listed here with the exception of those used for compiling the statistics in App e9.2 (Tournai account books), App e10.2 (Tournai separation cases), and App e11.2 (Cambrai/Brussels incest cases). (In all three instances, the case is listed if the names of the parties are given.) The organization is alphabetical by the short form of the case name, ignoring only initial 'Office' or 'Officie'. References to the York cases follow, for the most part, Smith's handlists. (Those that are in the fifteenth-century act books are indicated by the act book in which they are found, e.g., 'Cons.AB.1'; specific references to the folio numbers will be found in Smith, Court of York, 1400–1499.) References given by folio number are to the Ely register; those by column number are to the Paris register; in both cases the dates are in the fourteenth century. References in French with page and document number are to Registres de Cambrai; those in Dutch are to Liber van Brussels; in both cases the dates are in the fifteenth century. All other references are spelled out in full. References given as 'at n.', if they are not found in the note itself, will be found in the text near the cited note. References to notes include the accompanying T&C, and references to the T&C include the linked note and accompanying text.

[...]

[...]

...]

[1470], CP.E.246: T&C no. 293

[...]

et Costuire = Laurence [... ] et Jeanne la Costuire [1.ii.87], col. 490/5: T&C no. 723

[...]

St illemens = [ ... ] e Jan St illemens alias Barbironorem [26.iv.37], p. 726, no. 1140: Ch 9, at n. 385

Abbatissavilla et Abbatisvilla = Pierre d'Abbatissavilla vivier et Marie sa femme [6.x.86, 13.x.86], cols. 288/5, 292/3: Ch 10, at n. 99

Abbeville c Clemente = Pierre d'Abbeville c Guillemette la Clemente [31.iii.86 to 23.viii.86], cols. 285/4, 292/1, 297/4, 310/1: Ch 7, at n. 266

Office c Ablencq = Office c Jacques de l'Ablencq [2.vii.46], p. 554, no. 961: T&C nos. 1203, 1206–7, 1210 n. 1

Office c Abliaux = Office c Jacques des Abliaux [4.iii.47], p. 642, no. 1111: T&C nos. 1202, 1210 n. 1

Accum c Carthorp = Joan daughter of Peter de Acclum c John son of John de Carthorp [1337], CP.E.33: Ch 4, at nn. 75–7, 81, n. 99; Ch 11, at n. 58; T&C nos. 180, 200

Office c Addiers, Ockezeele en Spalsters = Office c Hendrik Addiers, Elisabeth Ockezeele en Elisabeth Spalsters [9.x.53], p. 397, no. 540: T&C no. 993

Office and Adekyn c Bassignooura (vicar) = Office promoted by William Adekyn of Bassignooura c Robert vicar of Bassignooura [29.v.77 to 22.x.77], fols. 74v–79v: Ch 6, n. 11, at n. 234

Office c Adm`ere = Office c Mathieu Adm`ere [28.viii.45], p. 445, no. 771: T&C no. 1202

Alamaigne et Alamaigne = Herman d'Alamaigne marshal and Jeanne sa femme [22.iii.86], col. 281/6: T&C no. 1098

Office c Altoome in Arents = Office c Johanna vanden Altoome alias Copman Jans en Jan Arents [12.x.54], p. 482, no. 701: Ch 11, at nn. 1731, 175; T&C no. 802

Office c Alcains en Zee = Office c Egied Alcains en Elisabeth vander Zee [15.xii.56], p. 694, no. 1081: T&C nos. 967, 972

Ambans c Baigneux = Jeanette de Ambans c Pierre de Baigneux [12.x.86], col. 365/6: T&C no. 723

Ancien et Templiere = Ferric l'Ancien and Agnesotte la Templiere [23.an.87], col. 432/7: Ch 7, at n. 129
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Andree c Pigne = Jean Andree c Jeanette fille du defunt Theobald Pigne (16–23.i.86), cols. 246/2, 249/3: Ch 7, at n. 169

?Office and Andren and Solsa = Office promoted by Robert Andren of Swavesey and Alice Edyng of Swavesey c Nicholas Andren of Swavesey and Marjorie Solsa of Swavesey (2.x.81 to 27.ii.82), folgs. 154v–161v: Ch 6, at nn. 213–19; Ch 11, at n. 79; T&C nos. 493, 1200

Office c Andren and Andren = Office c Richard Andren of Swavesey and Agnes his de facto wife (24.iii.74 to 25.x.80), folgs. 5v–144v: T&C nos. 400 n. a, 514

Office c Anegold and Andren = Office c John Anegold of Chesterton and John Andren of Chesterton (31.i.79 to 27.ii.82), fols. 154v–161v: Ch 6, at n. 169; Ch 11, at n. 79; T&C nos. 579, 618


Angot c Vignereux = Gilette Angot c Giles Vignereux (26.vi.86), col. 323/2: Ch 7, at n. 217

Office c Anselli = Office c Etienne Anselli de Quiers (Seine-et-Marne) (a propos de Jeanette fille de Milet Malyverne) (10.x.85), col. 200/3: Ch 7, at n. 249; T&C nos. 685, 693

Ardiel c Castelain et Lukette = Jean d’Ardiel c Jacques Castelain et Hannette Lukette (11.vi.45), p. 471, no. 819: T&C no. 1054 n. 4

Arents c Keere = Josse Arents c Jeanne vander Keere son épouse (4.xi.45), p. 468, no. 812: T&C no. 1054 n. 4

Arneys c Salman = John Arneys cordwainer of Cambridge c Etheldreda daughter of Nigel Salman of Trumpington (10.vi.79 to 25.x.80), folgs. 117v–144v: Ch 6, at nn. 54, 59

Arry c Lions = Laurence d’Arry c Martinette de Lions (11.ix.86), col. 364/6: T&C no. 600

Ask c Ask and Ask = William Ask gentleman c Roger Ask esquire of Aske (also described as of Easby, Richmond archdeaconry) and Isabel Ask bis wife, daughter of the late Christopher Conyers esquire of Barneston, Richmond archdeaconry (also described as of Hornby) (1476), C.P.F.258: Ch 11, at nn. 63, 68; T&C no. 140

Office c Assealeer en Waghemans = Office c Michael van Assealeer en Margareta, Waghemans (13.i.59), p. 884, no. 1451: Ch 11, at n. 272; T&C nos. 967, 972

Astlott c Louth = John Astlott c Agnes Louth of Kingston upon Hull (1422), CP.F.46: Ch 3, at nn. 227–32; T&C nos. 131 (App e3.4, n. 3), 344, 368

Attepool c Frebern = Alice Attepool of Fulbourn c John Frebern of Fulbourn (21.i.77 to 26.ii.77), folgs. 64v–65v: Ch 6, at n. 146

Office c Attre et Bertoule = Office c Pierre de l’Attre et Jeanne Bertoule (9.xii.52), p. 803, no. 1389; T&C no. 836

Auberti c Auberti = Jeanne femme de Pierre Auberti c le même Pierre (13.i.85), col. 763/3: Ch 10, at nn. 76, 79, 216; T&C no. 1096

Aubour c Merceri et Sayce = Guillaume Aubour c Robert Merceri et Maciot Sayce (7.i.85 to 6.iii.85), cols. 492, 684/4, 703; T&C nos. 703

Audigos c Audigos = Jean Audigos c le même Jean Audigos c le même Jean (19.i.86), col. 2794: T&C no. 1096

Aumoone c Charetteres = Jean de l’Aumoone le jeune c Robinette la Charretiere (13–15.xii.85), cols. 235/1, 236/3: Ch 7, at nn. 121–2; T&C nos. 594, 603; see also Aumoone et Boiseleau

Aumoone et Boiseleau = Jean de l’Aumoone et Jeanette la Boiseleau (2.vi.85), col. 126/4: Ch 7, at n. 84; T&C no. 603; see also Aumoone c Charretiere
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Assmuiceri c Lorraine = Belona l Assmuiceri c Thomas le Lorraine (20.v.85), col. 121/4: Ch 7, n. 90
Aungier c Malcake = William son of Adam Aungier of Redness c Joan daughter of Thomas Malcake of Swinefleet (1357), C.P.E.76: Ch 4, at nn. 235–6; Ch 5, n. 63; T&C no. 126
Autreau c Doublet = Baudet d Autreau c Margot fille de Jean Doublet (16.vi.87), col. 455/6: Ch 7, n. 37; T&C no. 547
Auvers c Sore = Pierre Auvers dit le Borger c Marie de Sore (27.xi.45), p. 478, no. 832; T&C nos. 899, 1054 n. 6
Office c Baker and Barker = Office c John son of Geoffrey Baker and Emma called Barker of Grays (1139), C.P.E.82/8d(ii): Ch 3, n. 9; Ch 4, at n. 243; Ch 11, at nn. 56, 85; T&C nos. 98, 120 (Table 3.5, n. a), 1196
Bakenby c Mayben and Loot = Alice Bakenbyt of Malmesbury (Wilts) c Hugh Mayben of Trumpington and Isabel Loot of Trumpington wife of Hugh Mayhen (25.v.80 to 26.v.80), col. 138v: Ch 6, at nn. 124–7
Office c Balhe and Godhewe = Office c William le Balhe and Alice widow of Solomon Godhewe (Canterbury Consistory, xii.1293 to iii.1294), SVSB III 53, 54: Ch 11, at nn. 35, 40; T&C no. 1261 (App e11.1, no. 11)
Office c Balee et Cadejem le Cadejem = Office c Eveard van Balee, Margareta van Cadejem en Katherina van Cadejem verloofde van Eveard (4.xi.57 to 26.xi.57), pp. 778, 785 nos. 1219, 1253: T&C no. 1262 (App e11.2, n.1)
Band c Pryme = Thomas Band of Chesterton c Isabel widow of John Pryme of Thriplow (13.aii.76 to 3.vii.76), cols. 39v–50v: Ch 6, nn. 40, 64; T&C no. 390
Banes c Gover, Walker, Enlay and Mores = Joan Banes c Maurice Gover, Emmott Enlay and Joan Mores (1419–20), Cons.AB.1: T&C no. 1510 (App e3.4, n. 18)
Office c Barat et Brule = Office c Gilles Barat et Jeanne du Brule (24.xii.46), p. 619, no. 1070: Ch 9, n. 176; T&C no. 910
Office c Barbour and Whitered = Office c Adam Barbour of Thornley and Agnes Whitered of Chatteris, residing in Whitley (14.x.81 to 10.x.81), fol. 152r: Ch 6, at nn. 215–17; Ch 11, at n. 76; T&C no. 1200
Barley c Danby = Margaret Barley (Barlay) alias Beverley of St Denis Walmgate York c Nicholas Danby chandler of St Crux Fossgate York, alias Chandelere (1464), C.P.E.203: Ch 5, at 5; T&C no. 139
Barney c Fertling = Joan de Barney c York c John Fertling alias Warre c York (1398), C.P.E.239: Ch 4, at nn. 63, 94; T&C nos. 155, 198
Barre c Barre = Colin de Barre c Isabelle sa femme (11.vii.86, 11.vii.86), cols. 333/6, 334/5: T&C no. 1118
Office c Barre et Braveucl = Office c Jean de la Barre et Warmonde de Braveucl (7iii.39), p. 78, no. 163: T&C no. 873
Barrotte c Cleric = Jeanne la Barro tre de Jean Clericis (11.xi.85), col. 188/8: Ch 10, at n. 91; T&C no. 1087
Office c Base et Hunters = Office c Pierre de Base et Maire van Hunters (20.xii.38), p. 48, no. 103; Ch 11, at n. 157; T&C nos. 806, 1054 n. 1
Office c Baserode, Kempeneere en Woters = Office c Jacob van Basereode, Jan de Kempeneere en Margareta Twosters (31.x.55), p. 880, no. 871: Ch 9, at n. 314; T&C no. 1053
Bassingbourn (vicar) c Adekyn = Robert vicar of Bassingbourn c William Adekyn of Bassingbourn (29.v.77 to 1.x.77), fols. 74v–79v: Ch 6, at n. 235
Office and Bassingbourn (vicar) c Gilberd = Office promoted by Robert vicar of Bassingbourn c John Gilberd chaplain of Bassingbourn (18.xi.77 to 9.vii.77), fols. 75v–77v: Ch 6, at nn. 207–8; T&C no. 493
Bastard c Potine = Gilles Bastard c Egidie Potine (12.xii.44), p. 298, no. 531: Ch 9, n. 154; T&C no. 1054 n. 2
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Office c Bataille et Maloy = Office c Jeanne Bataille et dominus Guillaume Maloy (à propos de Gobin de Stevin) (1.vii.87), col. 491/3: Ch 7, at n. 331

Baxter c Newton = Agnes Baxter of Scarborough c Thomas Newton of Scarborough (no date, mid-15th c), CP.F.48: Ch 11, at n. 66; T&C nos. 293

Bayart et Hemarde = Jean Bayart tailleur (custurarius) du diocèse de Cambrai et Margot la Hemarde (à propos de Denise fille de Noel le Custurier) (7.ii.85), col. 49/3: Ch 7, at n. 332

Beccut c Miquielle = Jean Beccut c Jeanne le Miquielle (12.ix.44), p. 298, no. 530: Ch 9, at n. 30

Officie c Beckere en Leneren = Officie c Pieter de Beckere en Johanna Tsleneren (1.vii.55), p. 546, no. 810: Ch 11, at n. 151; T&C no. 803

Officie c Beckere, Houte en Rode = Officie c Nicolas den Beckere, Margareta vanden Houte en Beatris vanden Rode (1.vii.58), p. 823, no. 1332: Ch 11, nn. 174, 176; T&C no. 802

Office en Beckere c Bruggen = Office en Egid de Beckere gehuwd clericus c ridder Jan vander Bruggen (25.vi.1456), p. 635, no. 980: T&C no. 776

Office c Beerseele et Smets = Office c Pierre van Beerseele et Elisabeth Smets (4.xii.45), p. 481, no. 840: Ch 11, at nn. 123–4, 129–30

Belier c Belier = Jacob de Belier c Elisabeth de Belier (19.vii.57), p. 750, no. 1189: T&C no. 1164

Office c Belin et Blondielle = Office c Louis Belin et Jeanne Blondielle (30.ix.44), p. 303, no. 540: T&C nos. 858–9

Office c Belleken et Capellen = Office c Josse Belleken et Guillaumette vander Capellen (23.i.45), p. 365, no. 631: Ch 9, n. 213; T&C nos. 808, 927, 929

Berchere c Gaulino = Amelotte la Berchere c Pierre Gaulino (16 May 85), col. 119/2: T&C no. 543

Berebruer and Tolows = Laurence Berebruer 'ducheman' and Joan Tolows of York (1427), York Minster Archives, M/2(1)e: T&C no. 151 (App e3.4, nn. 25–6)

Berles c Duaurto = Simon c Duaurto (10.x.85), col. 200/1: Ch 7, at n. 286

Berwick c Frankiss = Thomas Berwick alias Taverner of Pontefract c Agnes Frankiss (h) (Frankyssh) daughter of Robert Frankyssh of Pontefract (1441–2), CP.F.223: Ch 5, at nn.38–41, 57, 172; T&C nos. 139, 344, 371

Besghe et Fayt = Office c Jean le Besghe et Jeanne du Fayt (6.vi.50), p. 756, no. 1310: Ch 9, at n. 200, n. 217; T&C nos. 808, 928

Besson c Goupille = Guillaume Besson c Jeanne la Goupille (6.ii.86), col. 260/1: Ch 9, at n. 236

Officie c Best en Beecmans = Officie c Egied Best en Aleida Beecmans weduwe van Hubert van Minden (7.vi.54), p. 430, no. 598; T&C nos. 84, 889

Office c Bette and Multron = Office c Mr William de Roodehawe official of the archdeacon of Ely c John Bette of Hardwick and Matilda Multron of Hardwick (24.ix.75 to 6.iv.75), fols. 24r–26r: T&C nos. 400 nn. a, b; 403 n. a

Bourg c Bourgry = Jeanne femme de maître Jean Bourgry c le même Jean (31.i.85), col. 91/1: Ch 10, at n. 77
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Office et Beuve c Gresse = Office promu par Denise la Beuve c Hugo (Huguelin) la Gresse (7.vi.86 to 20.vi.86), cols. 315/8, 337/4, 340/4: T&C no. 723

Office c Beys et Kicht = Office c Jeanne Beys et Arnaud de Kicht (14.i.39), p. 67, no. 142; Ch 9, at n. 292

Biaut c Biaut = Agnès femme de Jean le Biaut c le même Jean (16.i.85), col. 54/5: T&C no. 1114

Biauvoisin c Enfant = Alison veuve du défunt Pierre Biauvoisin c Pierre l'Enfant (12.iv.85), col. 95/3: T&C no. 596

Bigote c Vaupoterel = Agnèse la Bigote c Giles de Vaupoterel (16.vii.86), col. 345/3: T&C nos. 666–7

Blakden c Butre = Anabella Blakden of Kilburn c William Butre of Rievaulx (1394), CP.E.210: Ch 4, at nn. 116–17, 125; Ch 11, at n. 59


Bocker c Castro en Godesans = Florens de Bock c jonkvrouw Katherina de Castro en jonkvrouw Katherina Godesans wedue van Jan de Castro, schoonmoeder van Florens de Bock (18.iv.55), p. 139, no. 90; T&C no. 993

Boichout et Fêvre = Office c Daniel Bohier et Jeanne le Fêvre (14.x.46), p. 528, no. 922; Ch 11, at n. 163; T&C no. 806

Boiskerworth and Messager = Office c John Boiskerworth of Sutton and Christine Messager of Sutton (2.x.76 to 2.x.76), fol. 55A: Ch 6, at nn. 210–11
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Bolenbeke v Taye = Jonkweerke Katharina van Bolenbeke weduwe van Jan Esselins v Jan Taye (4.xi.57), p. 779, no. 1240: Ch 9, at nn. 182–3; see also Roevere v Bolenbeke

Bolton v Rawlinson = Margaret Bolton of Hedon in Holderness c John Rawlinson of Hedon in Holderness (1421), C.P.316, Cons.AB.1: T&C no. 138

Bonete et Dol = Jeanette la Bonete et Yvon Dol (12.vii.87), col. 496/2: Ch 7, p. 779, no. 1240: Ch 9, at nn. 182–3; see also Roevere c Bolenbeke

Bonde v Yutte = Agnes Bonde of Wimpole c John Yutte of Wendy (19.x.74 to 14.xi.74), fols. 11r–18r: Ch 6, n. 190, at nn. 199–201

Bonne et Dol = Jeanette la Bonete et Yvon Dol (12.vii.87), col. 496/2: Ch 7, p. 779, no. 1240: Ch 9, at nn. 182–3; see also Roevere c Bolenbeke

Borewell c Russel and Selvald = Alice daughter of Robert Borewell c John Russel of Ely and Katherine Selvald (1.iv.77 to 15.iii.80), fols. 67v–134r: Ch 6, at nn. 128–30; T&C no. 479

Borquerie et Frarinne = Office c Jean de la Borquerie et Égidie le Frarinne (9.vii.42), p. 146, no. 291: Ch 11, at nn. 160–1; T&C no. 806

Borque c Borquerie et Frarinne = Office c Jean de la Borquerie et Égidie le Frarinne (9.vii.42), p. 146, no. 291: Ch 11, at nn. 160–1; T&C no. 806

Boxhorens en Spaens = Zeger Boxhorens en Katherina Spaens (27.ix.54), p. 477, no. 690: Ch 9, at n. 133, n. 138

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Boysauran c Curia = Jean de Boysauran c Jeanette fille de Jean de Curia (10.xii.84 to 13.xii.84), col. 9/1, 17/2; T&C no. 723

Boyton c Andren = John Boyton servant of John Fyssh of Ely c Margaret Andren of Stretham (16.x.76 to 3.xi.76), fol. 55Bv: Ch 6, at n. 50

Office c Brabant et Launois = Office c Jean de Brabant et Marie de Launois (15.xi.52), p. 794, no. 1371: T&C no. 817

Brabantia c Zelleke = Margareta de Brabantia c Jan de Zelleke haar echtgenoot (11.6.51), p. 252, no. 280: Ch 10, at nn. 173–4

Bradentham c Bette = Marjorie Bradenham of Swavesey c John son of Thomas Bette of Swavesey (4.x.80 to 19.xi.80), fol. 144r–145r: Ch 6, at n. 111; T&C no. 410

Bradenho c Taillor = Philip son of Richard Bradenho of Doddington c Joan daughter of William (or Thomas) Taillor of March (21.vii.79 to 15.iii.80), fols. 119v–134v: Ch 6, at nn. 36, 39, at nn. 44, 60; T&C no. 876

Bradley c Walkyngton = Matilda de Bradley of York c John de Walkyngton barker of York (1355), CP.E.82: Ch 4, at nn. 111–12, 124, 125

Office c Brambosche, Peelken et Quisthous = Office c Baudouin vander Brambosche, Jeanne van Peelken et Peronne Quisthous (21.i.47), p. 624, no. 1081: Ch 9, at n. 290

Brantice c Crane = Alice de Brantice daughter of Richard de Draycote of Cropwell Butler c William Crane of Bingham (1332–3), CP.E.23: Ch 4, at nn. 39–43, 44–45, 54, 78, 236; T&C nos. 178, 194, 197

Brigell c Herford = Agnes Brigell of St Michael le Belfrey York c John Herford alias Smyth of St Olave in the suburbs of York (1432–3), CP.F.104: Ch 5, at nn. 13–14; T&C no. 139

Office c Brinmoestiers et Buisson = Office c Jacques Brinmoestiers et Hannette du Buisson (10.iv.45), p. 386, no. 672: Ch 11, at n. 32, 35, 37; T&C no. 1261 (App e11.1, no. 3)

Broelants et Snit = Office c Jan Broelants c Beatrijs vanden Snit (19.iii.54), p. 426, no. 503: Ch 9, at n. 166

Brodyng c Taillor = Joan Brodyng of Gedney Lincoln diocese c William Taillor of Halstead (Leics) residing in Cambridge and Alice Treves of Halstead de facto wife of William Taillor (26.vii.78 to 23.viii.80), fols. 94v–143v; T&C no. 456

Brodnyng c Tailor and Trees = Joan Brodnyng of Gedney Lincoln diocese c William Taillor of Halstead (Leics) residing in Cambridge and Alice Treves of Halstead de facto wife of William Taillor (26.vii.78 to 23.viii.80), fols. 94v–143v; T&C no. 456

Brodnyng c Tailor and Trees = Joan Brodnyng of Gedney Lincoln diocese c William Taillor of Halstead (Leics) residing in Cambridge and Alice Treves of Halstead de facto wife of William Taillor (26.vii.78 to 23.viii.80), fols. 94v–143v; T&C no. 456

Brocke c Oudermoe ten = Maria vanden Broecke c Jan vander Oudermolen (24.x.55), p. 578, no. 867: Ch 10, at n. 183; T&C no. 1160

Office c Brelier et Rieulinne = Office c Jacques le Brelier et Isabelle Rieulinne son ´epouse (20.x.42), p. 189, no. 112, 120, 121; T&C no. 1261 (App e11.1, no. 3)

Brentham c Attehull = John Bretenham of Stretham c Agnes daughter of Nicholas Attehull of Stretham (29.x.77 to 9.vii.77), fols. 73r–76v: Ch 6, at n. 58

Officie c Breiler en Arver = Office c William Bretoun junior and Beatrice widow of Richard le Arver (Canterbury Consistory, ii.1293 to 20.iii.1294), SVSB III 95, SVSB III 97, ChCh II 44, SVSB I 100/3: Ch 11, at nn. 32, 35, 37; T&C no. 1261 (App e11.1, no. 3)

Bridlington (priory) c Harklay = Prior and convent of Bridlington appropriators of Grinton (in Swaledale) and (East) Coaeton c Mr Michael de Harklay official of the archdeacon of Richmond (1318), CPE.11: CH 11; T&C no. 98

Brocke c Oudermole = Maria vanden Broecke c Jan vander Oudermolen (24.x.55), p. 578, no. 867: Ch 10, at n. 166

Broke c Owermo ten = Maria vanden Broecke c Jan vander Oudermolen (24.x.55), p. 578, no. 867: Ch 10, at n. 183; T&C no. 1160


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<td>(22.v.87 to 28.vi.87), cols. 474/5, 475/1, 476/3, 482/10, 483/5, 489/5; Ch 7, at nn. 58; after nn. 71</td>
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<td>Office c Derche et Derche = Office c Nicaise Derche et Marie Derche</td>
<td>(2.xii.52), p. 800, no. 1383: T&amp;C no. 839</td>
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<td>Derot c Chippon = 'Etienne Derot domiciliée à sa maison à la signe de l'image de saint Jean dans la rue Saint-Denis paroisse Saint-Sauveur (Paris) c Laurence Chippon</td>
<td>(27.viii.86 to 3.ix.86), cols. 355/2, 359/3; Ch 7, at nn. 303–6</td>
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<td>Office c Diels en Nouts = Office c Joost Diels en Margareta Nouts</td>
<td>(5.vii.54), p. 452, no. 641: T&amp;C no. 124</td>
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<td>Diericx c Blaect = Jan Diericx alias de Platea c Margareta vander Blaect zijn echtgenote</td>
<td>(2.iii.59), p. 875, no. 1434: T&amp;C no. 1165</td>
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<td>Office c Docx en Beken = Office c Jan Docx verloofde van Hélouq Cotmans en Barbara vander Beken</td>
<td>(28.xi.52), p. 330, no. 420: T&amp;C no. 593</td>
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<td>Dolling c Smith = Alice Dolling c William Smith (Salisbury Consistory Court and Court of Canterbury sede vacante)</td>
<td>(10.vii.1271 to 31.x.1272), Select Canterbury Cases, 127–37: Ch 2, at nn. 1–7, 11, 12, 22, 23, Ch 3, at nn. 2, 20; Ch 4, at nn. 1–3, 8, 20–22, 28, 31, 40, 44, 68, 79, 123, Ch 5, at nn. 8, 7; Ch 7, at nn. 343; Ch 9, at nn. 175; Ch 12, at nn. 3–4, 7; see also Subject Index</td>
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<td>Office et Dommarto c Espine, Espine et Espine = Office et Renaud de Dommarto prêtre vicar de l'église collégiale de Saint-Géry de Cambrai c Martin l’Espine clerc, Crispin l’Espine clerc et Ranier l’Espine clerc</td>
<td>(5.ix.52 to 7.x.52), pp. 775, 783, nos. 1340, 1351: T&amp;C no. 797 n.b</td>
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<td>Doncaster c Doncaster = Joan daughter of Robert son of Stephen of Doncaster c John son of Gilbert of Doncaster</td>
<td>(1351), CPE.69: Ch 4, at nn. 253–4, 271–2; Ch 7, at nn. 53; T&amp;C no. 98</td>
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<td>Office et Donne c Flanniele = Office promu par le noble homme Jean de le Donne dit le bâtarde de Rubaçque c bonne petite fille (bonesta vauncula) Joye Flanniele citoyenne de Cambrai (13.xi.45 to 14.v.47), pp. 472, 673, nos. 821, 1164: Ch 9, at nn. 55, 61–8; T&amp;C no. 837</td>
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<td>Doucotte c Cambier = Martineau la Doucotte et Jean le Cambrer (4.i.46), col. 241/l: Ch 7, at nn. 224; T&amp;C no. 664</td>
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<td>Douche c March = Katharina de Douche c Joost de March (10.xii.54), p. 500, no. 731: T&amp;C no. 1161</td>
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<td>Office c Dourialulx et Planque = Office c Jean Dourialulx et Béatrice de la Planque (11.xi.42), p. 201, no. 381; T&amp;C no. 808</td>
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<td>Durant c Malette = Gilles Downian c Marie Malette (30.iv.43), p. 395, no. 690: Ch 9, at nn. 83; T&amp;C no. 1054</td>
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<td>Douwel et Becforte = Nicaise Donvel alias Casier et Jeanne de Becforte (4.viii.39), p. 122, no. 253: Ch 8, at nn. 7</td>
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<td>Douwe and Roger c Brathwell = William Doussen of North Cave and William Roger of Pontefract c Alice Brathwell of Doncaster (1391), CPE.188: Ch 3, at nn. 61; Ch 4, at nn. 207–9, T&amp;C no. 124</td>
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<td>Drifeld c Dalton = Emma dufrèe of John de Drifeld of North Dalton c John son of John of North Dalton</td>
<td>(1335), CPE.28: Ch 4, at nn. 7; T&amp;C nos. 180, 196, 200</td>
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<td>Office c Driviere = Office c Egiede de Driviere (16.v.53), pp. 538, 541, nos. 795, 801: Ch 9, at nn. 9, 9, at nn. 408–9, T&amp;C no. 1053</td>
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<td>(1364), CPE.87: Ch 4, at nn. 225-9, 233</td>
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<td>Dune c Feucherre = Adam Dune c Simonette Feucherre</td>
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<td>Office c Eeken et Coppoens = Office c Maarten van Eeken et Beatrice Coppoens</td>
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<tr>
<td>Office c Escarsset et Trimpont = Office c Hendrik Tserbaunens en Maria Lamps</td>
<td>(21.xii.52), p. 328, no. 417: T&amp;C no. 963</td>
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<tr>
<td>Office c Espaigne c Formanoir = Office c Jean de Espaigne en Marguerite de Formanoir</td>
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1 The reus in this case may be the reus in the previous case, but the cases are unrelated.
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Estkelyngton c Neusingtone = John de Estkelyngton c Katherine de Neusingtone (Canterbury Consistory, 27.xi.1293), SVSB I 1109: Ch 11, at nn. 38, 42, 45; T&C nos. 1190, 1261 (App e 11.1, no. 10)

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Fischere c Frost and Brid = John Fischere of Wilburton c John son of John Frost of Wilburton and Amy widow of Robert Brid (3.xii.77 to 27.ii.82), fols. 82v-151v: Ch 6, n. 35, at nn. 91–4, nn. 190, 197
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Flament c Arrode = Jeanette fille de Gniol le Flamont c Guillaume Arrode clerc (15.xi.85), col. 218/5: T&C no. 568
Flaminc c Pinkers = Robert Flaminc alias de Cant c Marguerite tsPinkers (18.vii.39), p. 127, no. 263: Ch 9, at nn. 17–19, n. 28
Flandre c Barbieux = de Flandres dans la rue la Grande-Truanderie (6, at n. 245 (17.iii.79 to 22.ix.79), fols. 112r–120r: Ch 6, at n. 41; T&C no. 400 n. a (Table 3.3, n. n)
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Office c Fore, Perrenmans en Grünenuweteric = Office c Jean van den Fore, Margaretha Perrenmans en Willem van den Grünenuweteric (3.vii.59), p. 905, no. 1490: Ch 9, at n. 334; T&C no. 992
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Frothyngham c Bedale = John Frothyngham parish clerk of St Helen on the Walls, York c Matilda Bedale of the same parish (1418), CPE.78, Cons.AB.1: Ch 3, n. 75; Ch 5, at nn. 100–7, 132; T&C nos. 18, 108 (Table 3.3, n. n)
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Gaignerresse and Tomailles = Perrette la Gaignerresse and Bethelien de Tomailles (à propos de Jeanette la Miresse) (14.i.x.85), col. 189/3: Ch 7, at nn. 333–4
Office c Gaigneur and Badoise = Office c Jean le Gaigneur tisserand de textiles domicilié à la signe de l’écu de Flandres dans la rue la Grande-Truanderie (Paris) and Gilette la Badoise résidente près de la signe de
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l'Ours et Lion paroisse Saint-Pierre-aux-Boeufs (Paris) (21.iii.85), col. 83/1: Ch 7, at n. 286; T&C no. 662

Gaingy c Lombardi = Robinette Gaingy c Henquin Lombardi (20–27.iii.87), cols. 447/3, 450/8: T&C no. 560

Gaillart et Ragne = Pierre Gaillart et Margot fille de Jean Ragne (19.viii.87), col. 509/3: Ch 7, at n. 92; T&C no. 595

Galion c Candelesby = Richard Galion of Eaton Lincoln diocese c Hugh Candelesby registrar of the archdeacon of Ely (29.vii.78 to 21.x.78), fols. 97r–99v: Ch 6, at n. 225

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Geffrey c Myntemoor = Alice Geffrey of Trumpington c John Myntemoor of Trumpington priest and canon of Anglesey (OSA) (24.vii.77), fol. 78r: Ch 6, at nn. 119–21; T&C no. 475

Gibbe c Dany and Lenton = Joan Gibbe c John Dany of March and Alice Lenton of March (15.i.77), fol. 61v: T&C no. 479

2 Some of the numbers in Chapter 3 may count the depositions formerly in this file as a separate two-party enforcement case.
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Gilbert c Marche = Joan Gilbert of Winestead c John Marche of Gumbaldthorn (?)Thorngumbald, her husband (1441), E.224: T&C no. 270

Gilbert, Plumbery, HarSENT and HykeneY c Podyngton = Robert Gilbert, Robert Plumbery, Robert HarSENT atte Wode and William HykeneY, parishesioners of Kingston c John de Podyngton rector of Kingston (27.nv.79 to 24.nv.80), fol. 121r–131r: T&C no. 393

Gillebert c Try = Colin Gillebert c Hanette du Try (23.vi.47), p. 677, no. 1170: Ch 9, at n. 38, nn. 46, 49

Girardi et Girardi = Guilot Girardi et Maline sa femme (9.iii.86), col. 274/5: T&C no. 1116

Gobat and Pertesen c Bygot = Stephen Gobat and Stephen Pertesen of Pampisford c Julia Bygot of Sawston (23.vii.80 to 6.ii.82), fols. 143v–160v: Ch 6, at nn. 89–90, 204–5, 264; Ch11, at n. 83; T&C no. 500

Gode and Godholt c Godle and Godholt = Thomas Gode and Matilda daughter of John Godholt (Canterbury Consistory, vii.1294), SVSB III 27: Ch 11, at nn. 36, 42, 45, 47; T&C nos. 1190, 1261 (App e11.1, no. 17)

Godewyn c Roser = Agnes Godewyn daughter of Beatrice sub monte of Clifton c Nigel le Roser of Clifton (1306), CPE.241B: Ch 4, at nn. 78–9, n. 101; Ch 11, at n. 54; T&C nos. 180, 200

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knigh (1368–9), CPE.259: Ch 4, at n. 240; Ch 5, n. 66; T&C no. 126

Payntour and Baron = Thomas Payntour of Lazonby near Penrith Carlisle diocese and Margaret Baron living
in York (1428), Cons. AB.3: T&C no. 151 (App b.4, n. 25)

Pecke and Pyron c Drence = Amy Pecke of Chatteris and Agnes Pyron of Chatteris c John Drence of Chatteris
(24.vi.74 to 2.vi.75), fols. 5v–23v; T&C nos. 400 n. a, 438

Parvi c Charronis = Jeanette la Patée c Jean de Vallibus
(10.i.55 to 7.ii.55), p. 947, no. 502: T&C no. 950

Peeman, Hoevenhen en Cesaris = Office c Jan Peeman, Isabella van Hoevenhen weduwe van
Joost Pipers en Hendrik Cesaris (7.xi.59), col. 1564/5: Ch 9, at n. 326; T&C no. 1002

Peeters en Porten = Office c Paul Peeters en Katharina Vander Porten (28.vi.55), p. 528, no. 779:
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Penesthorp c Waltegrave = John son of Ralph de Penesthorp c Elizabeth daughter of Walter de Waltegrave
(1334), CPE.26: Ch 4, at nn. 257–9; Ch 5, at n. 202; T&C no. 126

Office c Perchan et Sars = Office c Jean Perchan en Jeanne de Sars (18.vi.44), p. 278, no. 502: T&C no. 950

Peryc c Coloyle = Alexander de Percy knight c Robert de Coloyle knight (1323), Ch 12: Ch 4, at nn. 269–70,
278; T&C nos. 96, 127

Peresson c Priggyl = Elizabeth Peresson of Cawood c Adam Priggyl of Cawood (1474), CPE.354: Ch 5, at
n. 177; T&C no. 344

Perier et Barbers = Arnolda fille de Roland du Perier et Roger Barbers (23.vi.85), col. 1424/2: Ch 7, at n. 314

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résidant dans la rue des Rouiers (Paris) (21.vi.87), col. 485v: Ch 7, at n. 230; T&C no. 667

Perre c Meyss = Mathaeus sander Perre alias de Mey c Maria Simyss alias de Diehelbeke (10.i.55 to 7.ii.55),
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Perrises c Perrisses = Jeanne femme de Jean Perriers c le même Jean (16.iii.85), col. 782/2; Ch 10, at n.
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Office c Scellinc en Kinderen = Officie c Egied Scellinc en Katherina der Kinderen (8.xii.55), p. 550, no. 817: T&C no. 890
Office c Schirburn c Schirburn = Alice Schirburn widow of William de Hoghton (Howthton) deceased knight of York diocese c Robert Shirburn (Schirburn) esquire of Mitton in Craven (1451–2), CP.F.187: Ch 11, at nn. 62, 68; T&C nos. 140, 312
Office c Schrovesbury c Curtyes = John Schrovesbury cordwainer of St Edward’s Cambridge c Joan Curteys servant of John Cailly of St Botolph’s Cambridge (10.vii.79 to 21.vii.79), fols. 117r–119r: Ch 6, at nn. 53, 64
Office c Sibille en Fossiaul = Officie c Nicolaas Sibille en Elisabeth Fossiaul (17.xii.85 to 3.iii.85), cols. 79/6, 93/9, 94/6, 130/6, 131/1, 132/1, 145/3, 148/8: Ch 7, at nn. 50, 69
Sergeant c Clerk = Anna daughter of John Sergeant of Ely c Robert Clerk alias Cartere clerk and steward of the bishop in the city of Ely (22.vi.75 to 3.iv.76), fols. 26v–44v: Ch 6, at nn. 113–14; T&C no. 400 n. a Servanse c Huberti = Richardette fille de Gervais de Servanse (sic) c Jean Huberti alias Normanni (9.v.86), col. 289/4: Ch 7, at n. 59, 69
Scargill and Robinson c Park = William Scargill of York and William Robinson servant of Adam Brynnand sergent of Cattal c Alice daughter of Roger del Park of Moor Monkton (1398), CPE:238: Ch 4, n. 35, at n. 212; T&C nos. 366, 370
Scargill and Robinson c Park = William Scargill of York and William Robinson servant of Adam Brynnand sergent of Cattal c Alice daughter of Roger del Park of Moor Monkton (1398), CPE:238: Ch 4, n. 35, at n. 212; T&C nos. 366, 370
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Officie c Sipe en Overbeke = Officie c Willem vander Sipe en Katharina van Overbeke (23.i.56), p. 607, no. 923; T&C no. 892

Skelton and Dalton c Warde = Alice Skelton of Burnby and Margaret Dalton of Burnby c John Warde servant

Officie c Carlisle (bishop) = John de Skelton rector of Kirkland Carlisle diocese c John (Kirby) bishop of Carlisle (1340–2), CPE.48: T&C no. 98

Skelton c Carlisle (vicar general) = John de Skelton chaplain c Mr Richard Pettes vicar general of the bishop of Carlisle (1397), CPE.225: T&C no. 98

Office c Slory and Feltewell = Office c John Slory of Chesterton and Joan widow of John de Feltewell of Chesterton (31.i.78 to 20.iii.82), fols. 108r–162r: Ch 6, at nn. 190–6; Ch 11, at n. 75; T&C nos. 493, 1200; see also Office c Anegold and Andren

Officie c Smet en Beeckmans = Officie c Maarten de Smet verloofde van Katherina Sbrunen en Elisabeth Beeckmans weduwe van Nicolaas Zeghers (27.xi.59), p. 958, no. 1583: T&C no. 993

Smyth c Dalling = William son of Robert Smyth of Easingwold c Margaret daughter of Stephen Dalling of Easingwold (1484–5), CPE.268, Cons.AB.4: Ch 5, at nn. 67–9; T&C nos. 151 (App e3.4, n. 9), 344

Sombeke c Wesembeke = Christine de Sombeke c Jean Wesembeke (25.viii.42), p. 153, no. 303: Ch 10, n. 156

Sorle c Monachi = Lambert du Sorle c Guillemette fille de Jean Monachi (23.vi.85), col. 142/2: T&C nos. 543, 567

Soupparde c Pasquier = Colette la Soupparde du diocèse de Séz c Jean Pasquier (8.v.85), col. 114/1: Ch 7, at n. 112; T&C no. 585

Office c Speckenen et Vettekens = Office c Jean vander Speckenen et Marguerite Vettekens (14.iii.39), p. 81, no. 170: Ch 9, at nn. 24–5; T&C no. 805

Office c Speelman en Strijken = Office c Lieven Speelman en Elisabeth Strijken (17.v.54), p. 438, no. 616: Ch 10, n. 201

Office c Sprenger = Office c Gielbert Desprengher (1.xii.53), p. 403, no. 551: Ch 9, at n. 410; see also Frederick c Sprenger

Spuret and Gillyn c Hornby = Marjorie Spuret of York and Beatrice de Gillyn of York c Thomas de Hornby saddler of York (1394–5), CP.E.159: Ch 4, at nn. 187–90; T&C nos. 124, 370

Spynnere c Deye = Isabel Spynnere of Bourn c Nicholas Deye of Bourn (17.vi.74 to 4.v.75), fols. 10r–22v: Ch 6, n. 117

Stamesvoert c Cluetinck = Maria van Stamesvoert c Jan Cluetinck (27.v.57), col. 7, at n. 102; T&C no. 579

Steenberghe c Ruvere et Brunne = Jeanne de Steenberghe c Jean de la Ruvere et Jeanne le Brunne (12.vii.45 to 19.ii.46), pp. 27, 36, nos. 740, 884: Ch 9, at nn. 282–3; T&C nos. 864, 978

Office c Steene = Office c Martin fils de Hugues vanden Steene (11.vii.44), p. 271, no. 442: Ch 9, n. 70; T&C nos. 805, 845

Stainville, Houx, Monete et [. . .] = Isabelle de Stainville, Jean du Houx, Guillaume Monete et [. . .] (12.xii.86), col. 403/5: Ch 7, at n. 102; T&C no. 379

Staines c Cloote et Woerans = Office c Joost Stael, Katharina vander Cloote en Margareta Woerans (23.i.59), p. 915, no. 1577; T&C no. 993

Office c Staeltins et Vele = Office c Thomas Staeltins et Elisabeth vanden Vele (11.vii.44), p. 271, no. 492: Ch 9, n. 70; T&C nos. 805, 845

Office c Stenereren et Bollents = Office c Pieter van Stenereren en Elisabeth Bollents (3.vii.53), p. 377, no. 507: Ch 9, at nn. 142–3; T&C nos. 884, 1053

Stenkyn c Bond = John Stenkyn of Wimpole c Eva daughter of William Bond (26.v.80 to 23.vii.80), fols. 141v–143r: Ch 6, n. 42

3 Granted the gap in years, it seems unlikely that the appellant in this case is the same man as the appellant in the previous case, but it is odd that two men of the same name should be in trouble for what is basically the same offense in the same place.
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Stistede c Borewell = Margaret Stistede of Witcham c John Borewell of Horseheath (29.x.77 to 18.vi.77), fols. 73v–75r: T&C nos. 459, 457

Officie c Stoeten en Aken = Officie c Jan van Stoeten en Margareta van Aken alias Foris (21.i.56), p. 606, no. 920; T&C nos. 604, 959

Stokebi c Newton = John de Stokebi c Katherine de Newton his wife (Canterbury Consistory, vii.1294), ChAnt S 383: Ch 11, at nn. 42, 46; T&C nos. 1190, 1261 (App e11.1, no. 14)

Striecke c Heylicht = Jan vander Striecke c Katherina uter Heylicht (22.xii.53), p. 410, no. 564: T&C no. 1161

Swardby c Walde = Joan de Swardby c Thomas del Walde potter of York (1372), ChAnt I.11: Ch 4, at nn. 134–5

Suthell c Gascoigne = Elizabeth daughter of John Suthell c Thomas Gascoigne gentleman (1477), CPE.345: Ch 5, at nn. 140–62; after n. 165, at nn. 196–7; T&C nos. 444, 387 (App e5.1)


Officie c Swalmen, Wittebroots en Meyere = Officie c Corneel vanden Swalmen, Margareta Wittebroots en Egied de Meyere (16.vii.54), p. 456, no. 650: Ch 9, at nn. 324–5; T&C no. 1002

Tailor c Reder = Thomas Tailor of Spofforth c Joan Reder of Spofforth (1437), CPE.120: T&C no. 344

Tailour c Beek = Marjorie daughter of Simon Tailour and servant of William de Burton leather-dresser of York c John Beek saddler of York (1372), CPE.121: Notes about this Book, n. 1; Ch 4, at nn. 69–73; Ch 5, n. 37; T&C nos. 196, 200, 300

Talkan c Bryge = Christina Talkan of York c Henry Bryge (1395), CPE.158: Ch 4, n. 252; T&C no. 126

Office c Tanneur et Doulsot = Office c Colin Tanneur et Perette Doulsot fille de Jehannot Doulsot de Villers-en-Argonne (Châlons-sur-Marne Officiality, 4.i.1494), AD Marne, G 922, fols. 62r, 62v: Ch 12, at n. 4; T&C no. 1292; see also Subject Index

Tardieu c Nyglant = Germaine veuve du d’efunt Jean Tardieu c Reinald Nyglant (2.v.85), col. 109/10: T&C no. 596

Tassin c Grivel = Odinet Tassin c Françoise fille de Guillaume Gruvel (28.viii.86), col. 358/3: Ch 7, at n. 167; T&C no. 629

Office c Telier et Veruise = Office c Jean le Telier et Jeanne Veruise (16.xi.46), p. 602, no. 1043; T&C nos. 805, 846

Office c Temmerman en Coninx = Office c Pieter de Temmerman verloofde van Elisabeth Baten en Katherina Tsconinx (28.xii.50), p. 174, no. 150; T&C nos. 788–9, 997

Office c Temmerman en Roex = Office c Jacob de Temmerman alias vander Smessen en Margareta Tsoorx (26.vii.49), p. 135, no. 84; T&C nos. 884, 887

Teweslond and Watteson c Kembthed = Cecily Teweslond of Elsworth and Joan Watteson of Lolworth c Henry Kembthed of Lolworth (21.vii.79 to 24.xi.79), fols. 119r–124r: Ch 11, at n. 81
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Textoris c Nicolai = Perrette fille d’Herve Textoris c Jean Nicolai (24.xi.85), 224/5: T&C no. 723

Thetildorp c Enges = John de Thetildorp c Joan daughter of Peter atte Enges of Patrington his wife (1374), CPE.155: Ch 4, at nn. 230–1

Thiphaene c Thiphaene = Jeanne femme de Bertrand Thiphaene c le meme Bertrand (27.ii.85), col. 64/7: Ch 10, at n. 80; T&C no. 1091

Thomasson et Guione = Colin Thomassin et Jeanette la Guione (14.vi.86), col. 317/2: Ch 7, at n. 316; T&C no. 727

Thomson c Belamy = Robert Thomson of Heton c Alice daughter of Thomas Belamy of Raskelf (1362), CPE.85: Ch 3, at n. 60; Ch 4, at nn. 48, 239; Ch 5, at n. 46; T&C nos. 194, 197, 312

Thomson c Wylson = Robert Thomson of Scawton c Marjorie (Marion) daughter of Robert Wylson (Wilson) of Osgoodby (Grange) (1427–8), CPE.169, 170; Cons.AB.2: Ch 5, at nn. 8–12; T&C nos. 139, 156

Thomis c Jacopts = Jonkerenue Elisabeth Thomis c Egid Jacopts (28.iv.59), p. 890, no. 1461: Ch 10, at n. 152; T&C no. 1164

Thorney (abbey) c Whitteved et al = Abbots and convent of Thorney and the vicar of Whittlesey c William Whitteved, Robert Mersih, William Danib, John Wells, Ralph Em, Thomas Bolesuer, William Chaumbeyn, John Gites and Adam Rich of Whittlesey (17.i.82 to 7.n.82), fol. 160v: Ch 6, at nn. 7–8

Thorson et Dale c Grantham = John de Thornesston c citizen and merchant of All Saints Pavement York and John Dale c Agnes, widow of Hugh (de) Grantham of St Michael le Belfrey York (1410–11), CPE.38: Ch 5, at nn. 83–8

Thorp c Nashier = John Thorp mercer of Pontefract and John Kent minstrel c Agnes widow of the late John Nashier of York (1407), CPE.33: Ch 5, at nn. 179–84, n. 221; T&C no. 368

Thorp and Sereby c Shibshottil = John Thorp of (South) Stainley (Stainley inexta Ripley) Richmond archdeaconry and Richard Sereby late of Scarborough c Agnes Shibshottil daughter of William Northboye (late) of Scarborough (1431–4), CPE.113, 324: Ch 5, at nn. 25–32, 81, 119; T&C no. 111

Thorp c Horton = Katherine Thorpe (p) of St Sampson York c Thomas Horton of St Mary Castlegate York (1465), CPE.208: Ch 5, at n. 224

Office c Thovello et Ree = Office c Soyer de Thovello et Anne vander Ree (17.xc.47), p. 647, no. 1123: T&C nos. 1202, 1210

Threpland c Richardson = John Threpl(eland) alias Richardson (Richardson) of Bradford c Johanna daughter of John Richardson of Bradford (1428–32 [DMS 1432]), CPE.96, Cons.AB.3: T&C nos. 151 (App e.3.4, n. 3), 178, 344

Thukilvil and Fisher c Newsom and Bell = Robert Thukilvil and Alice Fisher c Thomas Newsom and Joan Bell (1428), Cons.AB.3: T&C no. 151 (App e.3.4, n. 18)

Thwates c Thwates = Isabella Thwates (Thwates) alias Hastyngs daughter of Alice Thwates deceased of York c Henry Thwates of Little Smeaton parish of Kirby in Allertonshire (1490–3), CPE.301: T&C no. 36

Thweynig c Fedstony = Robert Thweynig c Cecily daughter of Ralph Fedstony of Willerfoss baddiff of Catton (1436), CPE.119: T&C nos. 178, 344

Thynne c Abbott = Joan Thynne of Sheriff Hutton c John Abbott of Sheriff Hutton (1392), CPE.191: Ch 4, at n. 143; T&C no. 277

Office c Tympont, Bachants et Louints = Office c Simon Tympont, Catherine Bachants et Catherine Louints (29.xc.45), p. 400, no. 700: T&C nos. 909–10

Office c Tiersae et Tierasse = Office c Colard Tierasse and Catherine Tierasse (18.xi.52), p. 795, no. 1373: Ch 10, at nn. 125–194, 196; T&C nos. 839, 1145–50

Office c Tielsecin c Tielsecin en Onsterstrate = Office c Hendrik Tielsecin c Hendrik Tielsecin en Margareta van Onsterstrate weduse van Pieter vanden Eyghere [both of Mechelen] (9.xc.52), p. 301, no. 370: Ch 8, n. 47; Ch 9, at n. 114; T&C nos. 789, 1053

Office c Tiestaar, Howe et Beckere = Office c Florent Tiestaar, Marie vander Howe et Jean Beckere (20.x.42), p. 188, no. 360–1: Ch 9, at nn. 293–302; Ch 11, at nn. 127, 131; T&C nos. 1201, 1262 (App e.1.2, n. 2)

Office c Tieuwendriesche, Canelle et Roelf = Office c Bandonin Tieuwendriesche alias de Voos, Jeanne Canellette alias t’Welde et Ginette (Ghine) Roelf (11.xc.45), p. 449, no. 779: Ch 9, at n. 289

Office c Timmerman en Ratsemeels = Office c Jan Timmerman verloofde van Clara van Galmarden en Agnes Ratsemeels (15.xc.55), p. 387, no. 882: Ch 9, at n. 194, n. 341
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Tiphania c Ferresse = Jean Tiphania c Amelotte la Ferresse veuve du défaire Chrestien (Pierre) Fabri (30.v.86 to 16.vii.86), cols. 326/4, 327/2, 336/7: Ch 7, at nn. 302–4

Tyrrington c Moryz = Walter de Tiryngton of Tadcaster c Agnes daughter of William Moryz (Morice) de facto wife of Walter de Tiryngton (1367–8), CPE:95: Ch 2, at nn. 22–47; Ch 3, at nn. 3, 22; Ch 4, at n. 230; T&C no. 102; see also Subject Index

Tofte c Maynawyring = Margaret de Tofte c William de Maynawyring of Pever (1324), CPE:15: Ch 4, at nn. 45–6; T&C nos. 127, 194, 197

Topclyf c Erle = John de Topclyf of Ripon c Emmota Erle of Wakefield (1381), CPE:124: Ch 4, at nn. 86–8, 103; 110; T&C nos. 123, 195, 253; see also Topclyf c Grenehode

Topclyf c Grenehode = John de Topclyf c John Grenehode (1381), CPE:241T: Ch 4, n. 86; see also Topclyf c Erle

Torner et Caraire = Jean le Torner et Jeannette la Caraire (21.i.85), col. 35/4: Ch 7, at n. 83

Torre c Poole = Ionkeroue katherina vanden Torre c Stefana vanden Poole haer echtgenoot (7.aii.59), p. 877, no. 1437; T&C no. 1165

Touesse c Ruelle = Guillaume Touesse domicilée à la maison de maître Salomon Lesquelen c Marion fille de Jean Ruelle (7–14.xii.84), cols. 6/1, 12/3: T&C nos. 560, 567

Touperon c Broudeee = Jean Touperon alias Masionet c Christiane la Broudeee (4.i.86), col. 241/3: T&C no. 543

Touperon c Touperon = Margarete Tupperon c Jean le Touperon (10.ix.46), p. 578, no. 1003; T&C no. 1150

Traylevange c Jackson = John Traylevange of Yokefield c Agnes widow of Richard son of John alias Jackson of Swinefleet (1348), CPE:61: Ch 4, at nn. 62, n. 97; T&C nos. 113, 115, 195, 198

Traylevange c Jackson = Jean le Torneur et Jeannette la Caraiere

Office c Uillere et Toussans

Truette et Tornacenses

Uilly c Poissote = Denis d’Uilly c Etienne fille de Colin Poissote (9.xii.85), col. 75/5: T&C no. 567

Vane c Vane = Jeanne femme de Gérard Vane c le même Gérard (2.8.ix.85, 9.ix.85, 23.ix.85), cols. 185/2, 188/2, 192/3: T&C no. 1097
Vaucier c Hesselin = Jean Vaucier (Vaucier) c Jeanette la Hesseline fille de Jean Hesselin (22.xii.84 to 22.xii.85), cols. 152, 21/2, 266, 29/7, 35/2, 41/2, 46/3, 48/2, 54/4, 59/5, 66/2, 71/4, 77/5, 78/4, 79/8, 84/5; Ch 7, at nn. 188–90
Varlet c Varlet = Jeanette femme de Mabele Varlet tailleur de pierres (lathamus) c le même Mabelet (8.iii.86), col. 26/1; T&C no. 1111
Vanhout c Hanue = Marie Vanhout c Pierre de Hanue (à propos de Catherine fille de Jean Brunant) (18.ii.47 to 1.iv.47), pp. 635, 648, nos. 1100, 1121; Ch 9, at nn. 164–6, 190; T&C no. 781 n. d
Vat et Bigotte = Jean Vat et Anne Bigotte (10.iv.43), p. 387, no. 676; Ch 9, at n. 361; see also Office et Bigotte c Croiselet
Vauvere c Maindieu = Pierre Vauvere c Jeanette Maindieu (22.vi.85 to 19.viii.85), cols. 141/1, 144/2, 146/4, 150/2, 161/5, 163/3, 168/1, 176/5; Ch 7, at nn. 163–6
Office c Vekemans, Soemans en Brughman = Office c Jean Vekemans, Gertrude Soemans en Gilles Brughm (27.viii.42), p. 158, no. 313; Ch 9, at n. 413; T&C no. 864
Vekene c Thuyne = Angéla vanden Vekene c Hendrik vanden Thuyne alias Bertels (9.i.56), p. 598, no. 907; Ch 10, at n. 178, n. 182
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Verde c Balneolis = Ives Verde c Jean de Balneolis de vanes (Hauts-de-Seine) (18.viii.85), col. 175/4; T&C no. 703
Office c Verdonct in Voirde = Office c Pieter Verdonct en Agnes vanden Voirde (12.xii.56), p. 677, no. 1030; Ch 9, at n. 251; T&C nos. 804, 961
Verboumenen c Verneyen = Catherine de Verboumenen c Henri Verneyen (10.i.39), p. 52, no. 111; Ch 10, at nn. 140–3
Vernacci c Martini = Saraines filia Ugolini Vernacci de Albaro c Junctam filium Martini de Piro (Pisa Archiepiscopal Court, 9.vii.1230), Imbreviaturbuch, no. 51, pp. 136–7; Ch 12, at n. 71; T&C no. 1291
Office c Vernoert, Verhoet et Gheents = Office c Walter Vernoert, Aelis Verhoet alias Doseens en Elisabeth Gheents (19.1.56), pp. 603, no. 917: T&C no. 1262 (App e11.2, before n. 1)
Office c Veteriponte et Auvers = Office c Jean de Veteriponte et Margerite d’Auvers (10.i.85), col. 27/4; Ch 7, at nn. 218–19, n. 284
Vico c Barberium = Diuitis de Vico c Venturam Barberium (Pisa Archiepiscopal Court, 21.v.1230), Imbreviaturbuch, no. 20, p. 105; Ch 12, at n. 70
Vico c Trunfe = Contissa filia Aliss de Vico c Burgundionem quondam Ugolini Trunfe (Pisa Archiepiscopal Court, 16.viii.1230), Imbreviaturbuch, pp. 133–4, no. 47: Ch 12, at n. 73
Villa c Boussout = Pieter de Nova Villa c jonz vrouwe Johanna de Boussout echtgenote van Jan de Bouleinge (20.i.55 to 22.iv.58), pp. 358, 375, 472, 807, nos. 470, 503, 679, 1299; Ch 9, nn. 321–2; T&C nos. 787, 789, 1002; see also Office c Villa en Boussout
Office c Villa en Bousout = Office c Pieter de Nova Villa c jonz vrouwe Johanna de Boussout echtgenote van Jan de Bouleinge (12.x.56), p. 666, no. 1034; Ch 9, nn. 321–2; T&C nos. 787, 789, 1002; see also Villa c Boussout
Villami et Mandole = Colin Villami et Guilmomette la Maudo(e)lee (13.i.85 to 20.iii.85), cols. 298, 347/3, 41/3, 52/7, 57/1, 62/5, 69/1, 82/5; T&C no. 723
Villaibus c Tartas = Eloise de Villaribus domicilié à sa maison à la signe de l’Horloge dans la rue des Arcis paroisse Saint-Merry (Paris) c Jean Tartas (19.vii.85 to 27.i.86), cols. 176/3, 180/3, 183/3, 186/2, 188/7, 189/4, 191/5, 197/9, 202/5, 206/5, 209/1, 210/5, 215/3, 218/1, 221/3, 223/4, 223/4, 2274, 228/6, 229/4, 232/5, 236/7, 243/2, 245/6, 250/1, 252/1; Ch 7, at nn. 221–4
Villette c Capella = Jeanette la Villette servante de Pierre Champenoys c Jean de Capella (17.ii.86 to 31.iii.86), cols. 265/5, 266/4, 286/2; T&C no. 723
Visschmans c Mays = Ingelbert Visschmans c Maria Tumys (24.vii.56), p. 645, no. 998; Ch 10, at n. 185

Despite the difference in the spelling of the names, there can be little doubt that these are the same case, reducing by one the number of Platea’s separation sentences recorded in the text.
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5 The plaintiff in this case and the preceding one may be the same person.
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Index of Persons and Places

This is an index principally of the persons and places that are featured in the cases discussed in this book. Popes, canonists, and authors of modern works discussed in the text may be found in the Subject Index. Similarly, the judges of the principal courts will be found in the Subject Index, as will references to the authors of works discussed in the T&C (but not simple references). Individuals described by their relationship to another ("Joan's father") are normally not indexed unless their names are given. The placenames in Elv diocese found in Table 6.8 and those in Cambrai diocese in Tables 8.10 and 8.11 (and in the surrounding discussions) are also excluded unless they appear elsewhere. Cases excluded from the TCas are similarly excluded here. As in the TCas, references are given to the chapter and footnote number or to the T&C number where the item occurs. If those references are already in the TCas, reference is to the TCas using the short form of the case name. "Titles of honor and status" (e.g., 'esquire', 'demoiselle') and 'occupations and trades' (e.g., 'priest', 'tailor', all the way from 'king' to 'servant', including 'lawyer' and 'court officer') found in conjunction with personal names are gathered under general entries with those names. As in the TCas, prefixes are ignored in forming the main entry, even if the clerk joined them up (e.g., 'Deplatea' is listed under 'Platea'). This caused problems with Dutch names with 'ts-' or 's-' prefixes, so where I have separated them, the entry indicates that they were originally joined by hyphenating the prefix after the Christian name (e.g., 'Clercx, Katherina Ts-'). (In both cases, I have probably made mistakes in identifying the unprefixed form of the name; I was particularly reluctant to separate the prefix 's-', unless I was sure that it was a prefix. I did not separate the prefix 'ver-', which the scribes of our records consistently join up with the main name.) Parties to cases are marked with 'plain' for 'plaintiff' (including private promotors of office cases), 'def' for defendant, simply 'party' (where the moving party cannot be determined), or 'non-party' (where the person could have made a party [e.g., the person with whom a precontract is alleged to have been made] but so far as we can tell, was not). In addition to these and standard abbreviations for the English counties, 'dau' = daughter, 'd´ep' = département (in French placenames), prov = province (in Belgian placenames), 'comm'r' = commissioner, and 'witn' = witness.

Placenames are normalized to the modern spelling of the place with the record spelling given only where there might be doubt as to the identification. Where possible, English placenames are made precise to the medieval parish, using 'in' for subparochial places; French placenames are made precise to the modern département (somewhat different from those in Petit, Registres); placenames in modern Belgium are made precise only to the modern province, because the Vleeschouwers' editions have all the further references. Main entries for placenames are separated from main entries for persons. Surnames are not normalized, so the only persons gathered under the same surname are those where the spelling in the record is exactly the same. All entries are in English without regard to the original language of the record, except for personal titles (e.g., 'demoiselle') and for the cases from Pisa in Ch 12, which remain in Latin.

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