

Striking A Bargain: Breach of Faith and Perjury in English Church Courts, 1460-1500

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Abstract

This thesis explores breach of faith and perjury litigation (*causae fidei laesionis seu perjurii*) in the lower ecclesiastical courts of England in the fifteenth century. As a form of litigation, *fidei laesio* was capacious, allowing litigants to contest broken oaths before an ecclesiastical judge. For the most part, it was used by parishioners to litigate unpaid debts. Despite its ubiquity in fifteenth-century church courts, this thesis offers the first comparative analysis of breach of faith and perjury litigation in late medieval England. The purpose of this thesis is to examine how breach of faith and perjury litigation enabled late medieval parishioners to interrogate the economic and social hierarchies that shaped their everyday lives.

Following an introduction that considers the historiographical relationship between credit and trust, this study consists of four main chapters. Chapter Two traces the development of breach of faith litigation in England from its earliest origins through to its appearance in the canonical writings of fifteenth century bishop, William Lyndwood. Chapters Three, Four and Five constitute case studies that focus on different jurisdictional archives. The third chapter examines the deanery court of Wisbech in Cambridgeshire. Chapter Four studies the perambulatory court of the archbishop of Canterbury, focusing particularly on the courts held in the Kentish communities of New Romney, Dover and Hythe. Chapter Five turns to the commissary court in London, considering the role of breach of faith in England's commercial capital. Each chapter begins with a quantitative analysis of the records, discussing the number of causes that were reported and analysing the value of the debt being litigated. This is followed by a qualitative study of the litigation records, each case study considering how geography, gender and local authority informed the outcomes of these causes in their local context. The conclusion discusses the impact of this research comparatively, contributing to a growing historiography that recognises the central role that oaths played in England's commercialised economy.

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Author's Declaration

I declare that this thesis is a presentation of original work, and I am the sole author. This work has not previously been presented for a degree or other qualification at this University or elsewhere. All sources are acknowledged as references.

Notes on Translations and Transcriptions

Unless otherwise stated, all Latin translations are my own. For the convenience of the reader, the numerous Latin abbreviations found in the court records have been silently expanded. For the purposes of quantitative analysis, place names have been standardised. Names of litigants have been replicated as they appear in the records.

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This thesis is for every single person who thinks they cannot. I promise you, you can.

Chapter 1 : Introduction

1.1: Breach of Faith Litigation in a Social Church

In the fenland hamlet of Newton-in-the-Isle in Cambridgeshire, a community gathered in the parish church of St James to attend court. It was the last day of October in the late 1460s or early 1470s (the record is undated). In the presence of his neighbours, a butcher named William Awsten presented himself to the authorities following a summons. He stood accused of 'violating the faith' of Wisbech resident John Fooke by withholding from him 2s 3d, the cost of six kilderkins of beer that Awsten had likely bought from him on credit. Before those congregated, Awsten denied the allegation and was charged to return on the Saturday after the feast of All Saints to undergo compurgation (date unknown).¹ This form of canonical proof required a defendant to swear an oath of innocence and find a certain number of oath-helpers to swear that they believed the oath to be true.² And so, with the assistance of Christopher Pate and Thomas Edward, Awsten successfully proved his innocence to the court. However, Fooke— displeased to be out of pocket—challenged the purgation. This triggered further litigation, as the deanery judge charged Fooke to appear before the official of the bishop of Ely at the diocesan court later that month. Whether Fooke was successful in recovering this debt cannot be known, as it is here that the entry ends.

Fidei laesionis seu perjurii (breach of faith and perjury) was a form of church court litigation that emerged in England in the twelfth century. The number of causes reached their zenith in the late fifteenth century, where they can be found in one form or another in all English ecclesiastical courts. Yet, this boom was short-lived, and by the third decade of the sixteenth century, cases of *fidei laesio* had largely diminished.³ As a form of litigation, breach of faith could be extremely broad, encompassing any oath that had been broken, from the non-performance of a deed to the delayed payment for goods previously delivered. Oaths were an integral part of market relationships in this period.⁴ As every person in late-medieval England would have known, to

¹ L. R. Poos, *Lower Ecclesiastical Jurisdiction in late-medieval England: The Courts of the Dean and Chapter of Lincoln, 1336-1349, and the Deanery of Wisbech, 1458-1484* (Oxford University Press, 2001), 289: "...proximo die Sabbati post festum Omnium Sanctorum..."

² R. H. Helmholz, "Local Ecclesiastical Courts in England", in *The History of Courts and Procedure in Medieval Canon Law*, ed. Wilfried Hartmann and Kenneth Pennington (The Catholic University of America Press, 2016), 382.

³ This history is explored in Chapter Two, below. For the figures from Canterbury, see Brian L. Woodcock, *Medieval Ecclesiastical Courts in the Diocese of Canterbury* (Oxford University Press, 1952), 89.

⁴ James Davis's work offers the most succinct summary of the historiographical discussion of the emergence of capitalism in the late medieval period, and the role that morality had on the market. James

swear a false oath was a sin. Thomas Aquinas recognised the power oaths carried, stating that while "an oath is in itself lawful and commendable... [it] becomes a source of evil to him that makes evil use of it".⁵ But bargaining, exaggeration and promises went hand-in-hand with an increasingly commercialised society.⁶ Thousands of causes like that between William Awsten and John Fooke survive from English church courts in the fifteenth century, each representative of a perceived disparity between two parties that was triggered by the breaking of an oath. These were but one manifestation of the many "discourses regarding market ethics and commercial morality" that occurred not just between moralists and traders, but amidst the most local, petty transactions.⁷ Yet with a few exceptions, breach of faith litigation has been given scant attention from historians of late-medieval England.

Breach of faith litigation offers historians a means of investigating credit in a local context. But in the vast majority of cases, breach of faith functioned both as an economic and spiritual dispute. It was economic inasmuch as the debt that Awsten found himself in could be measured in real economic terms. For John Fooke, Awsten's debt was six measures of beer. For a group of men who lodged their complaint to London's commissary court in 1483, the debt was the construction of a tabernacle.⁸ With the shortage of coin in fifteenth century England, credit acted as a means of facilitating everyday transactions.⁹ Like the debts litigated in English manor courts, breach of faith litigation offers compelling insight into the low-level credit transactions of a population that rarely left marks on the historical record.¹⁰ An empirical investigation into the function of this litigation tackles these straightforward but overlooked lines of inquiry. The thesis will examine who was entering into credit relations in local courts, how much were these debts were worth, and where such credit networks manifested. The ubiquity of breach of faith litigation in ecclesiastical records across most English dioceses helps to build upon a growing body of

Davis, *Medieval Market Morality: Life, Law and Ethics in the English Marketplace, 1200-1500* (Cambridge University Press, 2012), 22—31.

⁵ *Summa Theologica*, II-II, Q. 89, Art. 2, quoted in Martin Hogg, *Promises and Contract Law: Comparative Perspectives* (Cambridge University Press, 2011), 44.

⁶ Richard Britnell, *The Commercialisation of English Society, 1000—1500* (Cambridge University Press, 1993), 163.

⁷ Davis, *Medieval Market Morality*, 30.

⁸ London Metropolitan Archives, DL/C/B/043/MS9064/2, 12r.

⁹ Coinage was far from ubiquitous in fifteenth century England. For an optimistic overview of money in late-medieval England, see J. L. Bolton, *Money in the Medieval English Economy 973-1489* (Manchester University Press, 2012). For a slightly more sceptical estimation of the availability of bullion in the mid-fifteenth century, see Martin Allen, *Mints and Money in Medieval England* (Cambridge University Press, 2012), 331–9. For a longer discussion on credit, see Section 1.2.2, below.

¹⁰ The most comprehensive study of this is Chris Briggs, *Credit and village society in fourteenth-century England* (Oxford University Press, 2009).

scholarship that has shown that credit was ubiquitous in English communities in the fifteenth century.

Yet, as I will argue, what was being litigated in cases was not simply debt itself, but the promise on which the debt had been made. For the historian R. H. Helmholz, the difference was a technicality, a legal loophole through which thousands of church court litigants slipped.¹¹ But for Awsten and his neighbours, the promise—the oral contract on which village society was built—was an instrument of immense value. This was due to the way in which the reputation of individuals, often referred to as *fama* in church court documents, played a key role in their ability to live and work in communities, free from harassment and suspicion.¹² Thus, it is vital to consider the ways in which litigants used the canon law procedures available to them to negotiate the value of such promises. Beyond the material debt, church courts offered litigants recourse to measure, contest and negotiate their own social credit and that of their neighbours.

In this way, this thesis endeavours to place breach of faith litigation in context of the recent work on the "social church", a term coined by Sethina Watson and Ian Forrest.¹³ In his monograph *Trustworthy Men*, Forrest uses the phrase to recognise the embeddedness of Christianity in all aspects of life in late-medieval England:

"As well as being an amalgam of clergy, bishops, law, and formal institutions, the church was simultaneously an identity, something to which people felt they belonged, and an endlessly shifting constellation of real relationships: their belief, belonging, and identity experienced in relation to specific people."¹⁴

This multivalent understanding is not entirely new: it is possible to find the germination of the concept of a social church as early as Eamon Duffy's celebrated *Stripping of the Altars*, as he endeavours to recontextualise our understanding of the church as something separate or distinct from its practitioners.¹⁵ A similarly early evaluation of sociability can be seen in Katherine French's

¹¹ Richard H. Helmholz, *Oxford History of the Laws of England I: The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford University Press, 2003), 348.

¹² A general introduction can be found in T. S. Fenster and D. L. Smail, 'Introduction', in *Fama: the Politics of Talk and Reputation in Medieval Europe*, ed. T. S. Fenster and D. L. Smail (Cornell University Press, 2003), 1–11; For a closer inspection of *fama* in the English context, see Charlotte Berry, "'Go to hyr neyboris wher she dwelte before': reputation and mobility at the London Consistory Court in the early sixteenth century" in *Medieval Londoners: Essays to mark the eightieth birthday of Caroline M. Barron*, ed. Elizabeth A. New and Christian Steer (University of London Press, 2019), 95–116.

¹³ Ian Forrest, *Trustworthy Men: How Inequality and Faith Made the Medieval Church* (Princeton University Press, 2018); see also Norman Tanner and Sethina Watson, "Least of the Laity: The Minimum Requirements for a Medieval Christian," *Journal of Medieval History* 32 (2006), especially 417–21.

¹⁴ Forrest, *Trustworthy Men*, 4.

¹⁵ Eamon Duffy, *The Stripping of the Altars: Traditional Religion in England, 1400–1580* (Yale University Press, 1992), 2.

perception of the parish as "a dynamic and vibrant association around which the laity could create a community identity", locating religion as existing beyond the boundaries of the church, and shaped by the needs of the local community.¹⁶ My understanding of the ways in which communities of litigants might have participated in local institutions, such as the church courts, has been informed by research that seeks to integrate non-elite members of the parish into practices often perceived as reserved for society's wealthy or spiritual members, such as participation in legal and devotional practices.¹⁷

The breaking down of disciplinary boundaries between social, ecclesiastical and cultural history, recognised as essential by Duffy, has given way to a flurry of research that seeks to investigate the flow of power between the English church, its clergy, and its practitioners, often in a legal context.¹⁸ In the following chapters, this thesis will endeavour to underline the extent to which breach of faith was enmeshed in a socioeconomic view of the world that cannot be easily categorised as purely spiritual or economic; as Lianna Farber argues in her study of medieval trade, "ideas we think of as economic were much more deeply integrated into medieval life, thought, and analytical forms than we tend to realize".¹⁹ Furthermore, this thesis intends to argue that actions that have previously been considered as economic, such as the extension of lines of credit, cannot be extricated from notions of faithfulness in late medieval society.²⁰ In this way, as a "constellation of real relationships", the social church and its local institutions became central in mediating ideas of trust and indebtedness between individuals.²¹ The extensive use of breach of faith litigation in the mid-to-late fifteenth century not only aided the articulation of the authority of the church and its courts, but was central in affirming it.

In late-medieval England, faithfulness, via reputation, came to be the primary social currency of both the ecclesiastical legal system and the elaborate network of credit that bound

¹⁶ Katherine L. French, *The People of the Parish: Community Life in a Late Medieval English Diocese* (University of Pennsylvania Press, 2001), 2.

¹⁷ Bronach Kane, *Popular Memory and Gender in Medieval England: Men, Women, and Testimony in the Church Courts, c. 1200-1500* (The Boydell Press, 2019), 16.

¹⁸ See Shannon McSheffrey, *Marriage, Sex and Civic Culture in Late Medieval London* (University of Pennsylvania Press, 2006); Shannon McSheffrey, "Whoring Priests and Godly Citizens: Law Morality, and Clerical Sexual Misconduct in Late Medieval London", in *Local Identities in Late Medieval and Early Modern England*, eds. Normal L. Jones and Daniel Woolf (Springer, 2007), 50-70; Sandy Bardsley, *Venomous Tongues: Speech and Gender in Late Medieval England* (University of Pennsylvania Press, 2006). Also, Forrest, *Trustworthy Men*; Kane, *Popular Memory*.

¹⁹ Lianna Farber, *An Anatomy of Trade in Medieval Writing: Value, Consent, and Community* (Cornell University Press, 2005), 6.

²⁰ David Graeber, *Debt: The First 5,000 Years* (Melville House Publishing, 2011), 4.

²¹ Forrest, *Trustworthy Men*, 4.

people to each other.²² In order to understand how and why credit was extended to certain individuals rather than others, we must consider the ways in which oaths became a currency of local trade. Those of a lower socioeconomic standing were frequently met with economic decisions that also bore a significant spiritual cost: throughout the records of the church courts, we find the condemnation of those who participated in work on Sundays, and the indictment of women participating in sexwork.

By considering breach of faith and perjury litigation as inherently tied to social relations—both economically and spiritually—this thesis will demonstrate how credit relations were fundamental to the maintenance of social and political hierarchies in late-medieval English communities. The ways in which these imbalances were articulated by litigants and rectified by the courts was deeply localised, like the customary practices found in manor courts. Therefore, while Paul Cavill was correct in asserting that debt in medieval England was "inescapable", a closer study of breach of faith litigation will demonstrate that court practices were far from standardised.²³ Overall, this thesis will contend that a better understanding of breach of faith litigation in late medieval England allows historians a clearer image of how credit relations and obligation worked in fifteenth century localities. Beyond the purview of kings and bishops, lower ecclesiastical courts offered communities a venue in which to negotiate the social, economic and spiritual cost of commodifying faith and sacralising debt, a phenomenon that medievalists have increasingly come to recognise as central to late medieval commercial practices, "from physical spaces to intellectual pursuits, to devotional black markets, to the ordinary exchanges of vows and gifts in promises of marriage".²⁴ Thus, this study of debt, faith and the relationship between the two will seek to show how breach of faith litigation can inform our understanding of both economic credit practices and the sociolegal bonds of obligation that underpinned debt in late medieval England.

1.2: Historiography

Fidei laesio seu perjurii, or 'breach of faith and perjury' was a form of spiritual litigation that sought to enforce promises. As seen in the opening dispute between Fooke and Awsten, these primarily, albeit not exclusively, concerned the enforcement of economic obligations. From a modern

²² Hannah Robb, "Reputation in the fifteenth century credit market; some tales from the ecclesiastical courts of York," *Cultural and Social History*, 15:3 (2018), 297–313: 307.

²³ Paul Cavill, "Perjury in Early Tudor England," in *The Church and the Law, Studies in Church History* 56, eds. Rosamund McKitterick et al. (Cambridge University Press, 2020), 188.

²⁴ Kristin M. S. Bezio, "Introduction," *Religion and the Early Modern British Marketplace*, eds. Kristin M. S. Bezio, and Scott Oldenburg (Routledge, 2022).

vantage, medieval spirituality can seem quite at odds with the economic lives of laity, particularly in the shadow of the Gregorian reforms and the church's renewed commitments to poverty. However, from as early as the twelfth century in England, the medieval church had come to be increasingly involved in the economic machinations of everyday trade, both as an economic entity in its own right and in offering a spiritual guide to its conduct.²⁵ While economic historians have long sought out medieval 'economic thought' in the works of canonists such as Aquinas, it is only in the last twenty years or so that historians have begun to consider the interplay between morality, law and the increasingly commercialised market economy of late medieval England.²⁶

As a form of church court litigation concerning the spiritual ramifications of the non-payment of debts, breach of faith sits at the intersection between three, often sequestered, historiographical fields: social, legal, and economic history. Yet, attempts to extract one component—such as the value of these debts, or the canon law that underpinned the legal action—offer the reader only a partial image of this litigation in practice. As debt recovery, breach of faith seemed to provide only a pallid form of justice, offering no apparent financial compensation, such as the damages that might be pursued in any number of secular courts.²⁷ Yet breach of faith litigation thrived in the second half of the fifteenth century. Reconciliation of these historiographies is essential to a more thorough understanding of how breach of faith functioned, considering the proximity between spiritual and economic indebtedness as it was mediated through the legal institution of the English ecclesiastical courts. In this way, breach of faith might be considered a constituent part of what Diana Wood describes as the 'theological economy', which envisioned economic ideas as "heavily imbued with questions of ethics and morality".²⁸ Yet, unlike Wood's

²⁵ For the early medieval period and the transition towards a more positive response of Carolingian thinkers to economic actors, see Richard Newhauser, *The Early History of Greed: The Sin of Avarice in Early Medieval Thought and Literature* (Cambridge University Press, 2000), 125–131; for an overview of the economic regulation of the church courts, Helmholz offers a comprehensive survey, Helmholz, *OHLE*, 355–386.

²⁶ For groundbreaking work on medieval scholastic economic thought, see John W. Baldwin, "The Medieval Theories of the Just Price: Romanists, Canonists, and Theologians in the Twelfth and Thirteenth Centuries," *Transactions of the American Philosophical Society*, 49:4 (1959), 1-92; Odd Langholm, *Economics in the Medieval Schools: Wealth, Exchange, Value, Money, and Usury According to the Parish Theological Tradition, 1200-1350* (Brill, 1992); Diana Wood, *Medieval Economic Thought* (Cambridge University Press, 2002); James Davis' study remains the preeminent study on the relationship between religion and the market economy in England, see Davis, *Medieval Market Morality*; medieval literary scholars have also taken significant steps forward in dislocating medieval economic thought from scholarly texts and integrating them into depictions of everyday trade, see Farber, *An Anatomy of Trade*; Anne Schuurman demonstrates how ideas of indebtedness were integral to both faith and the market economy, see Anne Schuurman, *The Theology of Debt in Late Medieval English Literature* (Cambridge University Press, 2024).

²⁷ Richard Helmholz has located some examples of what he believes might allude to the 'awarding of damages' in late medieval defamation causes, despite a royal prohibition of doing so, Helmholz (ed.), *Select Cases on Defamation to 1600* (Selden Society, 1985), xxxix.

²⁸ Wood, *Medieval Economic Thought*, 1.

assessment, this thesis argues that the 'theological economy' was not just bound up in the theological texts of scholars, but can be seen in the everyday transactions that came to be litigated in the courts. As has been amply demonstrated by Bronach Kane, the way that canon law was comprehended and practised by litigants of church courts was central to its development.²⁹ While often concerned with monetary credit, breach of faith was not simple debt litigation, but a means of articulating, measuring and negotiating credit and debt "as social indices along which societal norms and ideals of community and market ethics may be traced".³⁰ In what follows, then, I examine three distinct areas of historiography: the church courts as institutions, the English credit economy, and the social history of creditworthiness in late medieval society. Taken together, they can help to outline the proximity between monetary debt and spiritual obligation in the minds of late medieval users of the lower church courts.

1.2.1: Canon Law and the English ecclesiastical courts

Church courts existed as part of an elaborate—practically ubiquitous—network of ecclesiastical justice, from the provincial courts of the English archbishoprics to the courts of local deaneries.³¹ These courts were governed by the tenets of canon law, and their business typically involved the correction of sins, seeing to the administration of wills, and the financial business of churchmen. Given the breadth of their legal purview, these courts—particularly at a local level—were closely involved in the everyday affairs of English men and women, "an omnipresent set of interlocking institutions".³² For much of the twentieth century, the study of canon law has been the remit of legal historians, occupying the fringes between the fields of history and law.³³ As the focus of these studies lay predominantly with the substantive development of legal practice, historians of canon law have explored exhaustively the finer points of the rules of English church doctrine and their scriptural underpinnings.³⁴ For these historians, jurisprudence was the driving force in the

²⁹ Kane, *Popular Memory*, 43—56. The practical development of breach of faith litigation in England is considered in Chapter Two, Section 2.4.

³⁰ Robb, "Reputation," 297.

³¹ Helmholz, *OHLE*, 213–219.

³² Richard Helmholz, "Judges and Trials in the English Ecclesiastical Courts", in *Judicial tribunals in England and Europe*, eds. Maureen Mulholland and Brian Pullan (Manchester University Press, 2003); 102. Naturally, the types of causes litigated in each court differed across the period: For a breakdown of litigation by type, see Charles Donahue Jr, "Roman Canon Law in the Medieval English Church: Stubbs vs. Maitland Re-examined After 75 Years in the Light of Some Records from the Church Courts," *Michigan Law Review* 647 (1974), 660.

³³ Anthony Musson, *Crime, Law and Society in the later Middle Ages* (Manchester University Press), 1.

³⁴ The corpus of work produced by Richard Helmholz is fertile ground for discussion on the subtleties of canon law in the English tradition, especially in how it related to secular jurisdiction. See especially

development of the law, as ideas generated in European universities found their way into the court systems across Europe, including England.³⁵ Given such an emphasis on rules-based studies, historians of the law have concerned themselves with the authority of these rules, and those who wielded them.³⁶ Much of the previous study of breach of faith litigation has been pursued through this technical lens. Richard Helmholz has summarised breach of faith as "a legal remedy for disappointed promises".³⁷ Yet as he acknowledges elsewhere, analysis of canon law in surviving court documents often fails to consider the socioeconomic context in which these laws functioned.³⁸ Canon law and its effects were not limited by the physical or intellectual boundaries of the courtroom. In fact, the role of canon law in the lives of individuals in medieval England cannot be overstated. James Brundage concluding that its influence "permeated the entire medieval social order".³⁹ Yet, for those working in this tradition, how courts functioned as sociopolitical institutions has remained largely beyond the scope of their interest.⁴⁰

Beginning in the 1980s, the ways in which law has been studied by historians has undergone a significant intellectual shift; in particular, steps have been taken to understand how law related to the society in which it was enmeshed, drawing greatly from the fields of legal anthropology and sociology.⁴¹ This reckoning with the law by social anthropologists opened up discussions of the law as it related to power imbalances inherent in legal systems.⁴² Far from the

Helmholz, *Select Cases on Defamation*; Helmholz, *OHLE*, Helmholz, "Writs of Prohibition and Ecclesiastical Sanctions in the English Courts Christian," *Minnesota Law Review* 60 (1976).

³⁵ Dorothy Owen, *Medieval Canon Law: Teaching, Literature and Transmission* (Cambridge University Press, 2009),

³⁶ Indeed, the authority of the medieval English church was foundational in the study of church history in England, epitomised by the dispute between William Stubbs and Frederick Maitland. A good summary can be found in Donahue Jr, "Stubbs vs. Maitland," 647—654.

³⁷ Richard Helmholz, *OHLE*, 359.

³⁸ Richard Helmholz, "Assumpsit and *Fidei Laesio*," *Law Quarterly Review* 91 (1975), 431.

³⁹ James A. Brundage, *Medieval Canon Law* (Longman Publishing, 1995), 96. It is notable that Brundage's work is the first comprehensive survey of medieval canon law in the English language. The late date of its production in many ways marked a turning point, with Brundage taking canon law out of a purely intellectual tradition. In his review of *Medieval Canon Law*, E Peters' notes the complementary nature of the work to Bellomo and Cochrane's *The Common Legal Past of Europe, 1000-1800* that was published in translation in 1995. Like Brundage, Bellomo sought to understand the influence of the *ius commune* by extracting it from the academic strictures in which it was bound. See E. Peters, "James A. Brundage, Medieval Canon Law. (The Medieval World.) London and New York: Longman, 1995. Pp. xii, 260; 1 map," *Speculum* 73.4 (1998), 1122.

⁴⁰ This is not to discredit the significance of traditional legal history; a recent resurgence in the study of legalism has reinforced the need to acknowledge that "many conflicts in this period were articulated and disputed in a legal idiom," Tyler Lange, *Excommunication for Debt in Late Medieval France: The Business of Salvation* (Cambridge University Press, 2016), 22.

⁴¹ Of primary significance is John Bossy (ed.), *Disputes and Settlements: Law and Human Relations in the West* (Cambridge University Press, 1983).

⁴² June Starr and Jane F. Collier, "Introduction: Dialogues in Legal Anthropology," *History and Power in the Study of Law: New Directions in Legal Anthropology*, eds. June Starr and Jane F. Collier (Cornell University

rigid, hierarchical system that might be envisioned from earlier assessments, historians such as Anthony Musson propose an understanding of English law as "not simply an external mechanism regulating daily life, but an integral part of the way in which social relations were actually lived out and experienced".⁴³ Law and social practices were mutually reinforcing, leading historians to argue that court users were not simply passive players in their own court cases, but actors capable of thinking 'legally'; in this way, "what happened in courtrooms was not separate from "real life" but part of its texture".⁴⁴ This 'processual' approach to the law, most readily employed in Chris Wickham's work on dispute-settlement in Tuscan law courts, shifts focus away from the rule-based paradigm of laws to consider the ways in which they operated in "a complex network of strategic practices".⁴⁵ Such an approach reframes the law into something that is practised, not just at court, but in every social context.

It is important to briefly acknowledge the significant impact that the new cultural history movement has had on the recent studies of the ecclesiastical courts, as social historians use witness testimonies to interrogate contemporary discourses on topics highly relevant to this thesis, such as gender, reputation and exclusion.⁴⁶ While commissary records lack depositions that might be used to recover the 'voices' of litigants, this movement has been instrumental in drawing out and contextualising normative attitudes and behaviours of litigants.⁴⁷ Much of the qualitative analysis that follows takes its starting point from these works. Thus, in order to understand breach of faith litigation's influence on cultures of credit in late medieval England, it is essential to recontextualise the practice of lending within the legal setting of the English ecclesiastical courts.

Recent historical interventions have employed these cultural and legal approaches to the study of medieval church courts to further nuance our understanding of the church as embedded in medieval society; in the preface to his book, Robert Swanson writes, "to talk of 'church' and

Press, 1989); For the inequality evident in medieval English juries, see Beckerman, "Procedural Innovation and Institutional Change in Medieval English Manorial Courts," *Law and History Review* 10, no. 2 (1992); Ian Forrest, *Trustworthy Men*.

⁴³ Anthony Musson, *Medieval Law in Context: The Growth of Legal Consciousness from Magna Carta to the Peasants' Revolt* (Manchester University Press, 2001), 2.

⁴⁴ McSheffrey, *Marriage, Sex and Civic Culture*, 13.

⁴⁵ Wickham, *Courts and Conflicts in Twelfth-Century Tuscany* (Oxford University Press, 2005), 304-5.

⁴⁶ There is an immense amount of social history that uses court depositions in their research; see Cordelia Beattie, "Single Women, Work, and Family: The Chancery Dispute of Jane Wynde and Margaret Clerk," in *Voices from the Bench*, ed. Michael Goodich (Palgrave Macmillan, 2006) 177—202; P. J. P. Goldberg, *Communal Discord, Child Abduction, and Rape in the Later Middle Ages* (Palgrave Macmillan, 2008); Kane, *Popular Memory*.

⁴⁷ For a response to this movement, and an overview of its shortcomings, see Tom Johnson, "The Preconstruction of Witness Testimony: Law and Social Discourse in England before the Reformation," *Law and History Review* 32.1 (2014), 127—147.

'society' in pre-Reformation England as though they were two separate entities is blatantly anachronistic".⁴⁸ Notably, there has been a particular interest in unpicking the intricacies of institutional authority and jurisdiction in late-medieval England, as historians return to the importance of the "rules at play" in institutions such as the church courts, and how they aid historians in identifying how the law shaped legal culture.⁴⁹ Tom Johnson presents a comprehensive definition of jurisdiction, not as a fixed or permanent right to enact justice in a geographical area, but as "a series of processes, an ongoing attempt to interpret abstract rights and privileges in relation to contemporary power relationships, and to communicate such interpretations to a wide audience".⁵⁰ This complicates the static and hierarchical image previously ascribed to church institutions in late-medieval England. This is significant, not least because of the jurisdictional pluralism of English society in this period.⁵¹

A more capacious understanding of jurisdiction allows us to interpret the role of extrajudicial actions taken by litigants as part of a conscious expression of legal practice. As Swanson argues in his recent study of arbitration, in order to understand the true reach of the influence of the church and its law on the lives of parishioners, historians must consider the role of the church "beyond the standard pyramid" of ecclesiastical jurisdiction, and consider the role of extrajudicial actions, such as arbitration, as an integral, albeit obscure, part of the legal culture of the church courts.⁵² How such an approach might have impacted the economic relations that flowed between individuals has remained almost wholly overlooked.

Secondly, there is a growing interest in understanding how the participation of communities in creating legal culture impacted how the law functioned. Ian Forrest and Tom Johnson have demonstrated that the common legal practices of communities— what Johnson refers to as 'legalities'— were fundamentally important to the development of legal culture.⁵³ Forrest's study of the institutional developments of ecclesiastical visitation at the end of the thirteenth century locates a culture of surveillance in the hands of the local 'trustworthy men', who

⁴⁸ R. N. Swanson, *Church and Society in Late Medieval England* (Blackwell, 1989), ix.

⁴⁹ John Jordan, "Rethinking *Disputes and Settlements*: How Historians can Use Legal Anthropology," in *Cultures of Conflict Resolution in Early Modern Europe*, eds. Stephen Cummins and Laura Kounine (Routledge, 2016), 40.

⁵⁰ Tom Johnson, "The Tree and the Rod: Jurisdiction in Late-Medieval England," *Past and Present* 237 (2017), 44.

⁵¹ See R. N. Swanson, "Peculiar Practices: The Jurisdictional Jigsaw of the Pre-Reformation Church," *Midland History* xxvi (2001).

⁵² R. N. Swanson, "Arbitration, Delegation, Conservation: Marginalized Mechanisms for Dispute Resolution in the Pre-Reformation English Church" *Studies in Church History* 56 (2020), 180.

⁵³ Tom Johnson, *Law in Common: Legal Cultures in Late-Medieval England* (Oxford University Press, 2019), 151—2.

were tasked with reporting misbehaviour to the authorities. He proposes that by the fourteenth century the leading parishioners in English communities may "have felt a moral obligation to monitor the religion of their neighbours".⁵⁴ This social regulation, intimately tied with the performance of both religion and the law, can be considered an articulation of the social church in late-medieval society, influenced by the normative beliefs of the lay population.⁵⁵

In this way, the appearance of litigation in the church courts was more than just a record of the petty grievances of a parish community. Rather, the breach of faith litigation used in this study should be viewed, not as individual actions, but reflective of a collective approach to legal and financial indebtedness within English communities. However, as explored by many historians, the attitudes of certain groups of people in late medieval England had greater social and economic significance than others, reflective of the deeply hierarchical society in fifteenth-century England.⁵⁶ For this reason, it is not unreasonable to believe that the attitudes regarding debt that appear in breach of faith litigation were informed by the "opinion, discourse and custom" of powerful community members.⁵⁷ This opens up two significant lines of inquiry. Firstly, how might the social status or gender of litigants have informed their relationship with credit practices? Given that women were excluded from 'trustworthy' status attributed to these men by Ian Forrest, how were their credit relationships impacted by the involvement of the church courts? Secondly, as will be discussed in greater detail below, in what ways did the structural inequality of the church court impact litigants' position as both lenders and borrowers?⁵⁸

1.2.2: Credit

It has been almost 100 years since M. M. Postan first delineated and explored the credit practices of medieval England. He conducted this research in response to a teleological understanding of the medieval economy as 'pre-credit', a time when cash was supposed to be the most common medium of exchange.⁵⁹ In many ways, Postan set the agenda for the following generation of historians and their study of credit as mercantile, international and invariably tied to cash. Much

⁵⁴ Forrest, "The Transformation of Visitation in Thirteenth-Century England," *Past & Present* 221 (2013), 34.

⁵⁵ For discussion of this in the early-modern period, see Alexandra Shephard, *Accounting for Oneself: Worth, Status and the Social Order in Early Modern England* (Oxford University Press, 2015).

⁵⁶ For a good summary of rural parish leadership, see Forrest, *Trustworthy Men*, 164–71; see also Marjorie K. McIntosh, *Autonomy and Community: The Royal Manor of Havering, 1200-1500* (Cambridge University Press, 1986), 249; for review of the historiography of urban oligarchies, see Christian D. Liddy, *Contesting the City*, 3–7.

⁵⁷ Forrest, "Visitation," 27.

⁵⁸ This question is explored in detail in the work of Briggs, *Credit*, 100–48.

⁵⁹ M. M. Postan, 'Credit in Medieval Trade', *The Economic History Review* 1.2 (1928), 234–61.

like legal historians who were interested in the purely technical machinations of the courts to understand the law, economic historians' interest in debt litigation has largely been pursued in service of understanding the economy more broadly. For this reason, it must be recognised that there is no single historiography of credit in late medieval England, particularly one that focuses on the everyday transactions that characterise the debt found in breach of faith litigation. Rather, until relatively recently, our understanding of credit has come from a piecemeal agglomeration of studies concerning topics such as the development of market economies, mercantile practices, and long-standing debates on the role of bullion in the English economy.⁶⁰ While credit was significant to the functioning of the economy, it has largely been treated as just one aspect of commerce. As such, this section has elected to consider the historiography of credit thematically, rather than chronologically. We will begin with an overview of the relationship between credit and bullion, before considering the history of both urban and rural credit markets.

For over a century, late medieval England has been characterised by historians as a period 'between': sitting uncomfortably between feudalism and capitalism, it has been viewed with dissimilitude, simultaneously a time of "arrested economic development and decline", and yet paradoxically a period of unparalleled premodern consumption.⁶¹ These contradictions are the result of an extended historiographical debate between economic schools that sought to identify the primary cause for such economic and social change.⁶² The history of medieval credit exists alongside this historiography, tying into it at multiple points. One key historiographical debate concerns the attempts to define whether the fifteenth century was a period of growth or decline as it related to trade, and by extension, access to bullion and credit markets.⁶³ Throughout the fifteenth century, England experienced several periods of acute bullion shortages, and a general

⁶⁰ For debt in market economies, see Richard Britnell, *Growth and Decline in Colchester, 1300-1525* (Cambridge University Press, 1986), 206–8; For mercantile credit, Postan, "Credit"; P. Nightingale, "Knights and Merchants: Trade, Politics and the Gentry in Late Medieval England," *Past and Present*, 169 (2004), 36-62; J. I. Kermode, "Money and Credit in the Fifteenth Century: Some Lessons from Yorkshire," *Business History Review* 65 (1991), 475—501; Tom Graham, "Knights and Merchants: 'English Cities and the Aristocracy, 1377-1509'", Unpublished PhD Thesis (University of Oxford, 2017), 170-8; Maryanne Kowaleski, *Local Markets and Regional Trade in Medieval Exeter* (Cambridge University Press, 1995), 214-6; on the relationship between credit and bullion, see below.

⁶¹ This division is summarised by Christopher Dyer, *An Age in Transition? Economy and Society in England in the Later Middle Ages* (Clarendon Press, 2005), 1—7.

⁶² This debate was largely conducted between M. M. Postan who saw population change as a 'prime driver' of the medieval economy and Marxist historians who saw class conflict as a key influence in shaping economic developments in the period. For a summary, see John Hatcher and Mark Bailey, *Modelling the Middle Ages: The History & Theory of England's Economic Development* (Oxford University Press, 2001), 21—120.

⁶³ James Davis settles with a complex mix of both: see Davis, *Medieval Market Morality*, 197–8.

economic downturn.⁶⁴ How credit was extended in times of dearth has been subject to scholarly debate since as early as the 1970s.⁶⁵ On one hand, 'monetarist' historians such as Pamela Nightingale, Matthew Stevens and Nicholas Mayhew tie the shortage of bullion to the contraction of the credit market. In the shortage or absence of coinage, individual creditors "would reduce their lending, raise the interest demanded, or, in extreme circumstances, cease to lend entirely."⁶⁶ For Nightingale, while credit might be used in the absence of coinage, it could never be separated entirely from the money supply.⁶⁷ This position has been challenged most vociferously by J. L. Bolton who has expressed scepticism towards Nightingale's use of debt recognizance from the merchant staple as evidence of a crisis of credit, while emphasising the role of 'paper money' in medieval credit practices (i.e bonds).⁶⁸ Contracts were written and bonds were documented, offering merchants a means to "alleviate anxiety and impose certainty on economic relationships".⁶⁹ When these transactions failed, the increasingly elaborate court infrastructure of a highly commercialised society offered creditors many options in the pursuit of repayment; local borough and market courts were supported by costlier actions in the common law courts of the King, and the debt registration system of the staple courts.⁷⁰

Yet, one fundamental shortcoming of much of this research is the focus by historians on large-scale and international trading, belying the reality that most credit transactions that occurred between people in fifteenth-century England were less formal than those enrolled within the merchant staple. For the most part, credit was often for small amounts, contracted verbally between members of the same community.⁷¹ The history of urban credit is in many ways tied to the growing awareness by historians of the role of commercialisation in the English economy as

⁶⁴ John Hatcher, "The great slump of the mid-fifteenth century," *Progress and Problems in Medieval England*, eds. Richard Britnell and John Hatcher (Cambridge, Cambridge University Press, 1996), 237–272.

⁶⁵ John Day, "The Great Bullion Famine of the Fifteenth Century," *Past & Present* 79 (1978), 3-54.

⁶⁶ Quote from Nightingale, *Enterprise, Money, and Credit in England before the Black Death, 1285—1349* (Palgrave Macmillan, 2018), 9; Matthew Stevens, "London Creditors and the Fifteenth-Century Depression," *The Economic History Review* 69.4 (2016), 1100; N. J. Mayhew, "Prices in England, 1170-1750," *Past & Present*, 219, (2013), 3-39.

⁶⁷ P. Nightingale, "Monetary Contraction and Mercantile Credit in Later Medieval England," *The Economic History Review* 43.4 (1990), 560–75.

⁶⁸ James L. Bolton, "Howard Linear Lecture 2009: Was there a 'Crisis of Credit' in Fifteenth-Century England?," *British Numismatic Journal* 81 (2011), 152-7.

⁶⁹ Heather MacNeill, "From the memory of the act to the act itself. The evolution of written records as proof of jural acts in England, 11th to 17th century", *Archival Science* 6 (2006), 325.

⁷⁰ Britnell, *Growth and Decline*, 102-4; Goddard, *Credit and Trade*, 4-6.

⁷¹ These communities can be conceived locally, or indeed institutionally. For credit relationships between members of guilds, see Section 3.3.3.

studies on debt in borough and town courts proliferated.⁷² In recent years, historians such as Richard Goddard and Teresa Phipps have deepened our understanding of urban credit practices.⁷³ Nonetheless, a close study of urban credit remains unforthcoming.

The history of rural credit in England is, in many ways, surprisingly recent. While historians such as Postan and Tawney had long recognised the ubiquity of credit in medieval England, it was not until the 1970s that attempts were made to quantify it. In 1975 and 1976, B. A. Holderness published two articles on early modern English credit that challenged the assumption that petty credit in premodern England was intermittent and primitive.⁷⁴ Instead, he argues that the distribution of rural credit "obeyed a clearly defined and explicable logic within a well-developed and sophisticated credit system".⁷⁵ This hypothesis was proven, and expanded upon the following year by the publication of Elaine Clark's seminal work on rural credit in fifteenth-century England.⁷⁶ Here, she outlines some key findings on the nature of credit in the village communities of Writtle in Essex, and Castle Acre and Fulmodestone in Norfolk in the fifteenth century: first, she argues the vast majority of debt litigation that was brought to the manor court of England was conducted between residents of the same village. Secondly, she demonstrates how local credit-debtor relations were "were horizontal in appearance and involved reciprocal indebtedness", suggesting that not only were litigants typically drawn from a similar socioeconomic background, but they were also part of a tangled network of credit wherein creditors were often simultaneously indebted to others.⁷⁷ In 1988, a similar conclusion was reached by Marjorie K. McIntosh in her study of the royal manor of Havering. According to McIntosh, "as long as goodwill between the individuals remained firm, the balances could go uncollected for years", suggesting that long-term, mutual credit relations between individuals were characteristic of debt in Havering in the fifteenth

⁷² See fn. 60. See also R. H. Hilton, "Low-level Urbanisation: The Seigneurial Borough of Thornbury in the Middle Ages," *Medieval Society and the Manor Court*, eds. Zvi Razi and Richard Smith (Oxford University Press, 1996), 503—4.

⁷³ Richard Goddard, "Surviving Recession: English Borough Courts and Commercial Contraction, 1350-1500", *Survival and Discord in Medieval Society: Essays in Honour of Christopher Dyer* (Brepols, 2010), 69—87; Teresa Phipps, *Medieval Women and Urban Justice: Common: Commerce, Crime and Community in England, 1300–1500* (Manchester University Press, 2020).

⁷⁴ B.A Holderness, "Credit in a Credit in a Rural Community, 1660–1800: Some Neglected Aspects of Probate Inventories," *Midland History* 3.2 (1975), 94—116; B. A. Holderness, "Credit in English Rural Society before the Nineteenth Century, with Special Reference to the Period 1650-1720," *The Agricultural History Review* 24.2 (1976), 97—109.

⁷⁵ Holderness, "Credit in English Rural Society," 105.

⁷⁶ Elaine Clark, "Medieval Debt Litigation: Essex and Norfolk, 1270–1490," PhD Thesis (University of Michigan, 1977), 121.

⁷⁷ Clark, "Medieval Debt Litigation," 121.

century.⁷⁸ Following a flurry of research on market economies in the 1990s, historians of rural England started to consider the role of peasant credit networks in the English economy.⁷⁹ Nonetheless, it was not until 2009 that the first monograph-length study of rural credit was published. Here, Chris Briggs' study of village credit in the fourteenth century offers an excellent means of studying continuity between the periods before and after the Black Death, and how social relations may have changed. As was the case in Clark's study of Writtle, Briggs finds no evidence of a group of villagers who acted as lenders for many debtors.⁸⁰ Similarly, Briggs also suggests that the credit was typically lent 'horizontally', primarily between relatively wealthy peasants.⁸¹ However, unlike the long-term and mutual relations that can be seen in Havering and Writtle, the vast majority of debt litigation from the villages in Briggs' study concern discrete, short-term transactions.⁸² This study hopes to contribute to our understanding of rural credit practices in the fifteenth century.

Historians have long recognised the merit in considering the regional nature of the English economy.⁸³ Recently, Richard Goddard has provided the most comprehensive study of regional credit in late medieval England, broken down by decade.⁸⁴ For the most part, his findings are in agreement with the "long-term deflationary trend" that often characterises the fifteenth century.⁸⁵ When compared with the late fourteenth century, the staples of towns such as Canterbury look particularly dismal, with debts registered dropping from almost 50 in the post-plague period of 1353-9 to a mere handful between 1450 and 1459.⁸⁶ While this was partly informed by the rise of London's hegemonic authority over trade in England, England's overseas trade was also acutely low in the mid-fifteenth century, suggesting that there was less credit in circulation for the mercantile classes.⁸⁷ As a result, it stands to reason that credit should have been harder to access for the majority of individuals, particularly urban and rural labouring classes. Perhaps

⁷⁸ M. K. McIntosh, "Money Lending on the Periphery of London, 1300–1600," *Journal Of British Studies* 20.4 (1988), 561; This is echoed in the "informal, friendly and undocumented credit" that Britnell discovered was burgeoning in Colchester in the late fourteenth century. See Britnell, *Growth and Decline*, 103.

⁷⁹ Phillipp Schofield, "Access to Credit in the early fourteenth-century English Countryside," *Credit and Debt in Medieval England c.1180—1350*, eds. N. J. Mayhew and Phillipp Schofield (Oxbow Books, 2002), 106—26.

⁸⁰ Clark, "Medieval Debt," 110-3; Briggs, *Credit*, 130.

⁸¹ Briggs, *Credit*, 173-5.

⁸² Briggs, *Credit*, 30.

⁸³ See, for example, James L. Bolton, *The Medieval English Economy, 1150-1500*, (Dent, 1980), 233-234.

⁸⁴ Goddard's graphs are invaluable for demonstrating the relative change in quantity of debt certificates enrolled in regional staples, *Credit and Trade*, 96- 193, esp. 163- 184.

⁸⁵ Hatcher, "The great slump," 240.

⁸⁶ Goddard, *Credit and Trade*, 183.

⁸⁷ Hatcher, "The great slump," 241.

unsurprisingly, our understanding of the connectivity of credit between town and its regional hinterland is still nascent.⁸⁸ Nonetheless, studies of trades such as the wool and cloth industries have demonstrated long lines of regional credit that existed in fifteenth century England, as "woolmen bought wool on credit from the growers; merchants bought wool from them on credit; and foreign buyers bought the same wool from the merchants in the same way".⁸⁹ In a more local context, John Lee has found that clothiers often delayed payment to spinners in order to increase their own liquidity.⁹⁰ By the fifteenth century, the formal mechanisms of credit were highly sophisticated, with litigation often involving multiple parties.⁹¹ However, the mid-fifteenth century has also been identified as a period when breach of faith litigation surged in popularity.⁹² The extent to which breach of faith played a role in keeping credit circulating within local communities has been almost entirely overlooked, yet one that this thesis will seek to contribute towards answering.

Finally, women's access to credit has also been explored by historians, albeit often in the context of their participation in the market more broadly. Foundational studies such as Bennett's work on brewsters in medieval England have tended to emphasise the marginal position of women in many court records concerning debt litigation.⁹³ In the fourteenth century, evidence from both villages and larger urban centres suggest that women were somewhat limited in their ability to litigate in their local courts.⁹⁴ In the fifteenth century, female representation in courts diminished further, with less than 10 percent of all debt cases in the manor courts of Havering

⁸⁸ Key exceptions to this are Kowaleski, *Local Markets*; Derek Keene, "Changes in London's economic hinterland as indicated by debt cases in the Court of Common Pleas," *Trade and Urban Hinterlands and Market Integration, c. 1300–1600*, ed. J. A Galloway (Centre for Metropolitan History Working Papers Series, No. 3 London, 2000), 59–81;

⁸⁹ Goddard, "Surviving Recession," 75; John S. Lee, *The Medieval Clothier*, (Boydell and Brewer, 2018), 71-2.

⁹⁰ Lee, *Medieval Clothier*, 71.

⁹¹ Adrian R. Bell, Chris Brooks and Tony K. Moore, "The Non-Use of Money in the Middle Ages", in *Money and its Use in Medieval Europe: Three Decades On. Essays in Honour of Professor Peter Spufford*, eds. Martin Allen and Nicholas Mayhew (Royal Numismatic Society, 2017).

⁹² See Woodcock, *Medieval Ecclesiastical Courts*, 89.

⁹³ Judith M. Bennett, *Ale, Beer and Brewsters in England: Women's Work in a Changing World, 1300–1600* (Oxford University Press, 1996), 51–6.

⁹⁴ In rural Cambridgeshire, female debtors were very rare. In Exeter during the same period, women fared only marginally better; Kowaleski suggests as a proportion of the whole, women tended to represent just ten percent of cases in the Exeter borough court. Teresa Phipps' recent work on the Nottingham, Winchester and Chester demonstrate female participation in debt litigation varied from 7% in Chester to up to 17% in Nottingham. See Phipps, *Medieval Women and Urban Justice*; Chris Briggs, "Empowered or Marginalised? Rural Women and Credit in Later Thirteenth- and Fourteenth-Century England," *Continuity and Change* 19.1 (2004), 13–43; Maryanne Kowaleski, "Women's Work in a Market Town," *Women and Work in Preindustrial Europe*, ed. Barbara Hanawalt (Indiana University Press, 1986), 149–55.

and Writtle involving women.⁹⁵ Beyond the question of access, women tended to be involved in debts of a lower value, relative to men in their communities.⁹⁶ While the court records in this thesis are insufficient to explore the lending and borrowing dynamics showcased in Kowaleski's study in such detail, the presence of breach of faith litigation in the church courts should offer an alternative view of female credit practices, one that was theoretically uninhibited by the common law practice of coverture.⁹⁷ This thesis intends to demonstrate that the ability of women to access their local church courts was highly dependent on their relative proximity to the courts themselves, and the ways in which these courts were administered.

As we have discussed, the influence of the market on credit relationships has been practically uncontested. Nonetheless, with some key exceptions, credit has rarely been the primary focus of studies on fifteenth-century England. As a result, it is rare that urban and rural credit are considered simultaneously. Study of breach of faith litigation allows such analysis to occur, as many ecclesiastical jurisdictions envelope both rural and urban communities simultaneously.

Finally, in his study of medieval peasant communities, Phillip Schofield floats the idea that small scale debts between neighbours or family members may have been non-commercial in nature. Instead, these debts, litigated in manor courts for a handful of pennies, might have been "conditioned by influences other than the market", such as social obligation or charity.⁹⁸ Schofield's categorisation of interpersonal exchange as guided by social relations rather than the market opens up the inherent flaw in treating any debts as purely driven by the market. The choice to litigate debts in the church courts as the breaking of oaths rather than in borough or manor courts as debt reflects a complicated relationship between individuals and legal practice that cannot be understood in purely economic terms. As much as credit can be studied as a measure of monetary value or the ability to access markets, it is vital to understand breach of faith litigation

⁹⁵ McIntosh, *Autonomy and Community*, 219; Elaine Clark, "Debt Litigation in a Late Medieval English Vill," *Pathways to Medieval Peasants*, ed. J. A. Raftis (Pontifical Institute of Mediaeval Studies, 1981), 252. Studies of women in central courts from the fifteenth century suggest that women's access became increasingly restricted between the fourteenth and fifteenth centuries, see Matthew Frank Stevens, "London Women, the Courts and the 'Golden Age': A Quantitative Analysis of Female Litigants in the Fourteenth and Fifteenth Centuries," *The London Journal* 37.2 (2012), 80–2; Richard Goddard, "High Finance: Women And Staple Credit in England, 1353-1532," *Women and Credit in Pre-Industrial Europe*, ed. Elise Demineur (Brepols, 2018), 19–44.

⁹⁶ Kowaleski, "Women's Work in a Market Town," 149–51.

⁹⁷ This law legally subsumed married women under the legal personhood of their husbands, though the extent to which it was enforced has been subject to scrutiny over the last decade, see Phipps, *Medieval Women*, 100-1.

⁹⁸ Phillip R. Schofield, *Peasant and Community in Medieval England, 1200-1500* (Palgrave Macmillan, 2003), 138.

and credit as constitutive of social relationships of trust and reputation in late-medieval England. It is to this topic that we now turn.

1.2.3: Creditworthiness

In pre-modern England, the closeness between reputation and credit cannot be overstated. It has been almost thirty years since Craig Muldrew's extensive work on the role of creditworthiness in the early-modern English market, which has transformed how early modernists approach credit and obligation in ever-growing "chains" of credit.⁹⁹ For Muldrew, the strength of these chains was predicated on ideas of trustworthiness; in the absence of material accumulation, credit acted as means of transmitting not just an individual's monetary value, but their trustworthiness in a society that was becoming increasingly reliant on the market as the site "where social status was communicated".¹⁰⁰ The extent to which this was indeed a phenomena of the sixteenth century has only recently been challenged by historians.¹⁰¹ In fact, the ideas posited by Muldrew have been explored in varying capacities by a variety of medievalists. This section seeks to draw together ideas of creditworthiness in medieval historiography and interrogate the ways in which these ideas might be employed to better comprehend breach of faith litigation.

As discussed above, socio-legal scholarship has been instrumental in understanding the ways in which the law informed and was informed by socioeconomic relations. For example, Robert Palmer's work on law and authority in the wake of the Black Death connected rising amounts of debt litigation with the increasingly coercive legal mechanisms that sought to coerce "the upper classes [of English society] to abide by their obligations".¹⁰² This recognition of the coerciveness of debt litigation has been taken forward by Daniel Lord Smail's interrogation of fourteenth-century Marseille, demonstrating the ways in which debt recovery through official legal channels could be a deeply hostile action. He argues that those who chose to pursue debt litigation in Marseilles were demonstrating deep contempt for their debtor:

"Which was more important to the creditor, the money or the moral and social sanction? A purely economic perspective would suggest the former. The fact that

⁹⁹ Craig Muldrew, *The Economy of Obligation: The Culture of Credit and Social Relations in Early Modern England* (Palgrave, 1998), 148.

¹⁰⁰ Martha Howell, *Commerce Before Capitalism in Europe, 1300-1600* (Cambridge University Press, 2010), 29.

¹⁰¹ See Forrest, *Trustworthy Men*, 13.

¹⁰² Robert C. Palmer, *English Law in the Age of the Black Death, 1348-1381: A Transformation of Governance and Law* (University of North Carolina Press, 1993) 91.

creditors were typically selective about whom they chose to sanction, and did not necessarily follow the dictates of financial rationality, suggests the latter."¹⁰³

The ways in which this might have proven damaging for an individual in late-medieval society was tied to the idea that to extend credit to an individual was an expression of trust. Thus, to revoke said trust "turned affection to hatred", and could have a marked impact on one's reputation.¹⁰⁴

Significantly, historians have come to argue that the reputation of individuals was socially produced; it could not exist in the absence of a community to witness it. When writing about reputation as *fama*, Thelma Fenster and Smail acknowledge that "*fama* is the public talk that continually adjusts honor and assigns rank or standing as the individual grows up".¹⁰⁵ While consensus was not necessarily integral to one's *fama*, "it was understood that one's acts would be discussed and evaluated, and that some sort of *fama* would eventually emerge".¹⁰⁶ As a social tool, *fama* was powerful enough to motivate litigants to participate in legal practices, and yet, as time passed, *fama* came to be increasingly linked not just to reputation but common knowledge of communities, such as proof of events such as marriage.¹⁰⁷

In this way, reputation bore many similarities to the way that medieval theologians reckoned with how to assign value to goods. In order for a sale of goods to be legally valid, the price had to be agreed upon and consent of both parties needed to be reached.¹⁰⁸ Canonists, lawyers and writers alike spent much time considering the "natural" value of things.¹⁰⁹ This is most apparent in the rationalisation of the idea of the "just price" of a commodity, Thomas Aquinas observing that it "cannot be determined absolutely, but consists rather in a common estimation".¹¹⁰ In this way, both reputation and credit, as representations of the value of things that are mutable, were negotiated within communities, with communal knowledge of both acting as a means of legitimation.¹¹¹ Indeed, in her study on commerce in late-medieval Europe, Howell has

¹⁰³ Daniel Lord Smail, *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264–1423* (Cornell University Press, 2003), 138.

¹⁰⁴ Smail, *Consumption of Justice*, 135.

¹⁰⁵ Fenster and Smail, "Introduction," 3; For more recent discussions of *fama*, particularly in England, see Charles Donahue Jr, "Proof by Witnesses in the Church Courts of Medieval England: An Imperfect Reception of the Learned Law," in *On the Laws and Customs of England: Essays in Honour of Samuel E. Thorne*, eds. Morris S. Arnold, Samuel E. Thorne, Thomas A. Green (University of North Carolina Press, 1981), 151; Charlotte Berry, *The Margins of Medieval London, 1430-1540* (University of London Press, 2022), 171–199.

¹⁰⁶ Fenster and Smail, "Introduction," 4.

¹⁰⁷ Forrest, "Transformation of Visitation," 23-7.

¹⁰⁸ Farber, *An Anatomy of Trade*, 44-5.

¹⁰⁹ Wood, *Medieval Economic Thought*, 132-58; Farber, *Anatomy of a Trade*, 38—92.

¹¹⁰ Davis, *Medieval Market Morality*, 58.

¹¹¹ Indeed, this is particularly noticeable when this process failed; as discussed by Charlotte Berry, the movement of people away from their communities was often the last resort to those trying to escape their

emphasised just how pervasive this was: "buttressed by the personal word of an individual and public acknowledgement of that bond, credit acquired substance, and only when trust failed would a borrower be obliged to pledge his plate or jewels".¹¹²

Oaths were central to this process. Routinely used as oral contracts in both moments of great spiritual significance such as marriage, as well as in the everyday buying and selling of goods, oaths were the glue that held communities together.¹¹³ These everyday transactions, "full of implied agreements and tacit expressions of faith", occurred at all levels of society, and were enmeshed in ideas of obligation, local knowledge and trust.¹¹⁴ Yet, built into these transactions, were the subtle but clear hierarchies that dictated life in English society. In his study of the "trustworthy men" (*fidedigni*) of medieval communities, Ian Forrest lays out an image of village life where, in the dealings of men, discrimination "was inherent to the act of trust".¹¹⁵ In this way, the ability to extend one's faith to another through an oath, critical to securing credit, was commensurate with an act of social inclusion or exclusion.

Throughout these developments, however, medievalists paid little attention to Craig Muldrew's thesis on creditworthiness, and how *fama* might have offered a similarly mediatory function. Recently, Hannah Robb has expressed scepticism to the argument at the very heart of Muldrew's thesis which posits that the sociability of credit emerged in the sixteenth century. Using a close analysis of the language of credit present in the depositions of York's Cause Papers, Robb's findings drag Muldrew's hypothesis back at least a century, arguing that "the market ethics of the fifteenth century were similarly embedded in the social and cultural norms intrinsic to a market based on interpersonal interactions".¹¹⁶ Reputation was the primary driver in litigation such as defamation, debt and theft in the York Cause Papers, as these actions were underpinned by this social currency that was not only comprehensible in the courts, but a "commodity with a tangible value worth defending before the courts".¹¹⁷ However, just like the relationship between creditor and debtor, we cannot assume that the relationships that Robb encounters in the Cause Papers were equal, or indeed representative of typical credit relations. As documents produced in the highest court in the archdiocese of York, the Cause Papers are constitutive of socioeconomic relations between men and women of considerable means. It remains to be seen

poor *fama*. And yet, such movements could be deeply disruptive, causing suspicion. See Charlotte Berry "Reputation and mobility," 95–116.

¹¹² Howell, *Commerce Before Capitalism*, 28.

¹¹³ Cavill, "Perjury in Early Tudor England", 183–6.

¹¹⁴ Forrest, *Trustworthy Men*, 41,

¹¹⁵ Forrest, *Trustworthy Men*, 40.

¹¹⁶ Robb, "Reputation," 310.

¹¹⁷ Robb, "Reputation," 304.

whether we can reconcile these chains of credit with the inequality that is so characteristic of debt litigation in Smail's fourteenth-century Marseilles, or with the concept of trustworthiness in late medieval England.

In this way, beyond simple economic exchanges, the study of breach of faith litigation in this thesis attempts to locate everyday credit in the landscape of trust and obligation in late medieval England. Fundamentally, this thesis posits that for the users of the court, their understanding of credit was enmeshed in ideas of faithfulness and creditworthiness. Any attempts to divorce credit from these spiritual ties was simply "not borne out in the evidence of day-to-day life".¹¹⁸ Thus, this thesis offers two main contributions. On a purely practical level, it deepens our understanding of *fidei laesio* causes, detailing the credit that was litigated in three separate ecclesiastical jurisdictions. Secondly, I argue that the highly localised nature of breach of faith litigation allows historians insight into the ways in which communities contested and measured acceptable forms of creditworthiness. Taken into a broader consideration, a social history of breach of faith litigation contributes to an emerging historiography that seeks to study credit, not simply as an economic measure of value, but as a social, legal and spiritual category of analysis.

1.3: Methodology and Sources

This thesis consists of three case studies, the data deriving from three different English ecclesiastical courts: the deanery court of Wisbech, the commissary court of London, and the perambulatory consistory court of Kent. They have been selected as they offer insight into three distinctive population groupings, covering a relatively narrow timeframe of about thirty years. While these courts have all been subject to individual research projects, breach of faith in England has never been studied comparatively.¹¹⁹ In other contexts, comparative studies of both law courts and credit successfully demonstrate that these institutions were highly sensitive to their regional geographies.¹²⁰ Bringing the causes from these courts into conversation with each other serves to illuminate both the similarities and the discontinuities between courts in a way that has been previously overlooked. The sources themselves were central in informing how this thesis came to be structured. However, the large number of extant documents, particularly in the archdiocese of

¹¹⁸ Bezio, "Introduction."

¹¹⁹ Brian Woodcock's early study of Canterbury's ecclesiastical court records acts as the blueprint for later research: Woodcock, *Medieval Ecclesiastical Courts*; Richard Wunderli's analysis of London's church courts often present data in relation to Woodcock's findings. See Richard M. Wunderli, *London Church Courts and Society on the Eve of the Reformation* (Medieval Academy of America, 1981).

¹²⁰ For variations in mercantile credit practices, see Goddard, *Credit*, 147–93; for extended conversation about 'local legal cultures', see Johnson, *Law in Common*.

Canterbury, necessitated a careful selection of records in order to explore the ways in which geography impacted economies of faith. These case studies— showcasing a range of population densities— have been selected to cut across the social and economic boundaries that have been traditionally drawn around urban and rural studies of credit markets. However, as three different kinds of court— a court of the deanery, a court of the commissary, and a court of the archbishop— it is essential to outline the extent to which breach of faith and the transactions that underpinned this litigation are comparable. In order to do this, I will briefly outline the structure of the courts themselves, before discussing the methodological approach taken to them.

1.3.1: The Courts

The sources that are utilised in this thesis were products of the ecclesiastical courts that heard these causes.¹²¹ Courts were mostly organised by diocese. At the bottom rung of this hierarchy was the court of the rural deanery; these courts offered a venue of litigation for residents of an assemblage of neighbouring parishes that fell under the dean's jurisdiction.¹²² They were often supported by the local laity who acted in the capacity of churchwardens, men charged to investigate misdeeds in their local community. This was considered the lowest level of ecclesiastical justice offered in medieval England and is represented in this study by the deanery court of Wisbech.

Proximate to this in London, the commissary court sat a rung above these deaneries in the ecclesiastical legal hierarchy. Named for the Bishop of London's appointed judge— the commissary-general— this court sat regularly near St Paul's Cathedral. While the commissary-general also heard causes for the suburban deaneries of Middlesex and Barking, the commissary court can be considered the "local" church court to those who lived within the jurisdiction of the city of London.¹²³ Indeed, in form and function, there is little to differentiate London's court records from those in the deanery of Wisbech. For Helmholz, these were courts that "possessed none of the trappings of legal sophistication...[they] rarely had lawyers serving in them, and might even have a presiding judge who had only 'on the job' legal training".¹²⁴

¹²¹ The records used are as follows: for London, four volumes of London's commissary court are consulted, London Metropolitan Archives (henceforth LMA) DL/C/B/043/MS9064/1–4; for the records from Canterbury, Kent History and Library Centre (henceforth KHLC) DCb/J/X 8.3 and DCb/J/Y 1.10, with consultation made to DCb/J/Y 2.8; for Wisbech, I have used L. R. Poos, *Lower Ecclesiastical Jurisdiction* which transcribes Cambridgeshire Archives VC 2.

¹²² See Robert W. Dunning, "Rural Deans in England in the Fifteenth Century," *Historical Research* 40 (1967), 207–13; Swanson, *Church and Society*, 2–4.

¹²³ Wunderli, *London Church Courts*, 13. For a diagram of the entire court hierarchy in London, c. 1500, please see Wunderli, *London Church Courts*, 9.

¹²⁴ Helmholz, *OHLE*, 207.

By contrast, consistory courts were the courts of bishops, functioning on a diocesan level. Typically, they heard more complex civil suits, and employed the use of legal practitioners such as proctors and advocates to act on behalf of litigants. It is from consistory courts that most late-medieval court depositions survive. As in London, the courts considered in Chapter Four on Canterbury's jurisdiction were also overseen by a commissary-general working on behalf of the archbishop. While offering the services of a consistory court, the courts at Dover, Hythe and New Romney also fulfilled the same legal role as those in London and Wisbech: they were the local church courts.

In reality, many English church courts defy such neat categorisation, with diocesan order often influenced by shifting categories such as "size and the resident population", the perambulatory nature of the courts, and the customary practices of localities.¹²⁵ While the administration of these courts varied broadly, the general composition of the courts, and who their agents answered to, was hierarchical; when causes could not be resolved locally, court authorities could elevate these disputes to their bishop or archbishop.¹²⁶ However, litigants were not bound to seek justice locally; for the most part, the decision of where one might initiate their case was at the discretion of the plaintiff.

Overall, this thesis considers 2256 breach of faith cases across three separate jurisdictions that were heard between the years 1460 and 1491. As was the case for all church court litigation in late medieval England, they were recorded by the courts' clerks in an abbreviated Latin, employing formulaic language to summarise causes. For London and the consistory courts in Kent, all transcriptions and translations were done using the records themselves. The evidence from Wisbech is drawn from the published edition of the court returns by L. R. Poos, who offers the reader an extensive discussion in his introduction of the structure of the manuscript and his approach to dating.¹²⁷ Significantly, Poos' meticulous transcription of the documents allows for a consistent methodological approach to analysis.

This thesis takes a two-pronged methodology to understanding breach of faith and perjury: each case study begins with a quantitative overview of the data, before undertaking a qualitative assessment of the documents. The research questions of this thesis are driven primarily by the historiographical absence of an empirical study of breach of faith litigation. While legal historians have effectively detailed the processes of the litigation, and the canon law that underpinned it, a

¹²⁵ Helmholz, "Judges", 103; Johnson, *Law in Common*, 19–54.

¹²⁶ Despite its age, R. L. Storey's summary of the incoherence of English diocesan administration in the fifteenth century is still highly useful, R. L. Storey, *Diocesan Administration in the Fifteenth century* (1959), 1–26.

¹²⁷ Poos, *Lower Ecclesiastical Jurisdiction*, xxxviii–xlii.

demographic study of who participated in *fidei laesio* causes is entirely lacking. Similarly, the treatment of breach of faith litigation as a measure of debt has been limited to a nominal quantification of the figures, typically presented as an average sum. In developing a more comprehensive quantitative dataset, this thesis enables a study of breach of faith litigation in geographically distinctive settings, demonstrating the truly local nature of ecclesiastical justice in late-medieval England. With a clear quantification of the trends of individual localities, the foundational quantitative work enabled me to further our understanding of the late medieval English courts as spaces where legal culture was highly localised, informed by geographies of political authority and economic trade.

1.3.1(b): Court Procedures

Despite the extensive research undertaken by historians, there is still considerable uncertainty surrounding the daily comings and goings of the lower ecclesiastical courts in late-medieval England. Questions of how litigants appeared before the ecclesiastical judges, who was in attendance during individual sessions, and how court outcomes were circulated are far better understood in theory than in practice.¹²⁸ This section aims to offer a brief summary of two different types of court litigation in late-medieval England that offered litigants a way of contesting broken promises: *ex officio* causes, where defendants were directly accused by the court of criminal behaviour, and instance litigation, which allowed plaintiffs to bring their grievances with a named defendant before an ecclesiastical judge.

For many crimes, this difference between *ex officio* and instance litigation was clear. *Ex officio* cases were commonly heard in lower ecclesiastical courts and have typically been characterised as crimes against the community, or against God.¹²⁹ Sexual crimes such as adultery, fornication and scolding are characteristic of *ex officio* causes. By contrast, instance litigation was often contested in the consistory court; for example, litigation concerning the marriage of two individuals naturally concerned two or more parties in dispute.¹³⁰ However, the fluid nature of ecclesiastical jurisdiction in late-medieval England meant that this demarcation was not fixed.¹³¹ For certain types of litigation, such as defamation and indeed breach of faith, how these causes were litigated was dependent on a variety of factors, such as access to legal professionals, cost, and custom. This section will set out how breach of faith functioned in the

¹²⁸ The most comprehensive study of canon law procedures in English ecclesiastical courts is Helmholz, *Oxford History of the Laws of England*, esp. 311—354, 599—642.

¹²⁹ Helmholz, *Oxford History of the Laws of England*, 599—600.

¹³⁰ For marriage litigation, see McSheffrey, *Marriage, Sex and Civic Culture*, 110—20.

¹³¹ Wunderli, *London Church Courts*, 12.

courts considered in this thesis, before outlining both their legal differences and underlying similarities.

Much breach of faith litigation started with an exchange. For example, let us consider the dispute between Randolph Catton of the parish of St Margaret Bridge Street in London and Fr Thomas Purveys.¹³² At some point before the first of September 1481, Catton entered into an agreement— be it for the requisition of services, or the purchasing of goods— that resulted in him owing money to Purveys. This was likely an exchange of words, but may equally have included a gesture to solidify this exchange, "the raised hand as a sign of an oath, the slap as a sign of a deal or bargain, and the clasp as the sign of a new partnership".¹³³ Such a signal doubled to offer a physical assurance to the other party of one's good intentions, while also signalling to any witnesses out of earshot that an agreement had been made.¹³⁴ Between the making of this agreement and the appearance of this cause in the records of London's commissary, little can be said about what transpired between the men. However, on 1 September 1481, Catton was charged to appear before the court for breaking his faith with Purveys to the sum of 16s.

Who was responsible for reporting such crimes to the local ecclesiastical courts is a question that historians have long puzzled over. In London, there was no officer responsible for seeking out wrongdoers.¹³⁵ In the deanery of Wisbech, by contrast, there were lists of designated *inquisitors*, noted at the beginning of court proceedings.¹³⁶ These men were responsible for investigating crimes in their parishes. As parish leaders, historians have also discussed the role that churchwardens played in reporting parochial wrongdoings at clerical visitations, although in Wisbech it is noticeable that *inquisitors* and churchwardens were identified as distinct categories of men.¹³⁷ Others have speculated that *appartiors*, or summoners, were uniquely poised to sniff out gossip as they delivered their court summons to local residents.¹³⁸ Yet, beyond these petty officers, historians have also discussed the culture of surveillance in late medieval England that

¹³² LMA, DL/C/B/043/MS9064/3 79v.

¹³³ Forrest, *Trustworthy Men*, 48.

¹³⁴ On the impact that these gestures had on medieval trade, see Davis, *Medieval Market Morality*, 201, 205.

¹³⁵ Wunderli, *London Church Courts*, 37.

¹³⁶ See below, 3.2.

¹³⁷ For a conversation that questions the significance of churchwardens, see Forrest, *Trustworthy Men*, 164—6.

¹³⁸ For the summoners of London, see Richard Wunderli, "Pre-Reformation London Summoners and the Murder of Richard Hunne," *The Journal of Ecclesiastical History* 33.2 (1982): 209—24. For a fuller historiography of this, see 4.4.1.

emboldened what Johnson has called "close-knit reporting networks" of lay people in towns and cities to pass on wrongdoings to court officials, both religious and secular.¹³⁹

Regardless of how it appeared, once a suspect of a crime was reported to the church court authorities, an *inquisitio* tended to follow. This was true in both the commissary of London and the deanery of Wisbech. As a form of proceeding, the *inquisitio* was the backbone of all *ex officio* litigation in English church courts.¹⁴⁰ This process removed the need for an accuser, placing the pursuit of prosecution in the hands of the ecclesiastical judge. This form of legal proceeding was heavily reliant on the *fama* of both the suspect and the accuser, with courts often dismissing cases if the allegations were found to be made maliciously, or the allegedly poor *fama* of the defendant was discovered to be unfounded. In theory, this prevented personal grudges from being taken out in church courts. However, despite the communal nature of *fama* in late-medieval England, Helmholz has found that the *fama* of the accused did not always represent a community's impression of the defendant, but instead was often reported by individuals.¹⁴¹ It was this practice that allowed breach of faith litigation to be pursued in commissary courts in an *ex officio* format despite each case being essentially a dispute between two individuals. For breach of faith litigation, it seems entirely reasonable to believe that a disenfranchised party, such as Thomas Purveys, may well have been responsible for reporting the alleged breach of faith directly to court authorities. For this reason, we must assume that, despite their *ex officio* nature, some litigants were specifically choosing to litigate these disputes in commissary courts, rather than trying to recover their debts in secular courts.

The *inquisitio* began with the public citation of the accused. This was done either via a letter to a parish clergy, who was then responsible for reporting the summons to the accused, or via delivery from a summoner directly, typically in the street outside of their residence.¹⁴² Evidence that survives describing these interactions demonstrates how hostile these confrontations could be.¹⁴³ Given the public nature of *fama* in late medieval English society, the very act of summoning an individual to court might have compelled an innocent defendant to appear before the commissary judge to repair their challenged reputation. Following his citation on the first of

¹³⁹ Johnson, *Law in Common*, 72.

¹⁴⁰ This was a much-defanged form of the continental inquisition process. See Helmholz, *Oxford History of the Laws of England*, 607.

¹⁴¹ Helmholz, *Oxford History of the Laws of England*, 610.

¹⁴² Tom Johnson, "Legal Ephemera in the Ecclesiastical Courts of Late-Medieval England," *Open Library of Humanities* (2019), 12.

¹⁴³ Ian Forrest, "The Summoner," *Historians On Chaucer: The 'General Prologue' to the Canterbury Tales*, ed. Stephen Rigby with the assistance of Alistair J Minnis (Cambridge University Press, 2014), 421–42.

September, Randolph Catton appeared before the commissary judge three days later. Here, Catton represented himself before the judge with no discernible legal representation present in the court records. This was common in lower ecclesiastical courts in this period, and there is little evidence to suggest any of the breach of faith causes that were presented to the deanery court of Wisbech or the commissary court of London were litigated by legal practitioners.¹⁴⁴ This initial meeting consisted of the next step in the *inquisitio* process. Though not recorded, the commissary judge asked whether Catton was guilty of the accused crime. For litigants who confessed, they were assigned public penance and the case concluded. However, Catton denied the allegation that he had broken his faith for 16s. Instead, he stated that he owed Purveys 6s 8d but denied ever giving his faith in the exchange. Such a clarification was significant. As will be discussed in Chapter Two, the power of the church court lay in its ability to litigate the oath, not the debt owed.

Catton's denial led to the next phase of legal proceedings: compurgation. This form of proof was standard in the English church courts, requiring the defendant to raise a certain number of witnesses to appear in court, capable of speaking to the good reputation of the defendant. At the initial meeting, a judge often allocated the terms on which compurgation was to be performed. This included setting out how many witnesses were required.¹⁴⁵ Though very common, compurgation was not guaranteed. If one's *fama* was sufficiently poor, the number of required compurgators might be set unrealistically high, or compurgation might be denied altogether.¹⁴⁶ In Catton's case, as in many breach of faith cases in London's commissary, compurgation was never undertaken. Instead, it was reported in the records that on 26 September 1481, Catton was dismissed with the consent of Purveys, concluding the *ex officio* process. The vagueness of this result alludes to the space allowed for out of court settlements to occur as an unofficial conclusion to church court litigation in late-medieval England.¹⁴⁷ For those unsuccessful in defending themselves, there were several potential outcomes, such as penance (often commuted to a fine), suspension, or excommunication. The frequency of each of these outcomes was not consistent between courts and will be discussed in greater detail in the coming chapters.

Instance litigation, such as the litigation that occurred in the consistory court of Kent, was a lot more legally complex than the *ex officio* litigation of the deanery of Wisbech and London's commissary court. These causes tended to require the employment of legally trained professionals, and cost significantly more money than the 12d or 14d that was typically charged

¹⁴⁴ Wunderli, *London Church Courts*, 10.

¹⁴⁵ Wunderli, *London's Church Courts*, 43-4; Helmholz, *Oxford History of the Laws of England*, 608—12.

¹⁴⁶ Helmholz, *Oxford History of the Laws of England*, 614.

¹⁴⁷ On arbitration see Wunderli, *London's Church Courts*, 43-4. See also 3.4.1, below.

to the defendant for litigating in London's commissary court.¹⁴⁸ However, before considering the procedures of instance litigation, it is important to recognise that the forthcoming chapter that deals with instance litigation does not concern breach of faith litigation, but perjury. The definition of perjury was a capacious one, with fifteenth-century bishop William Lyndwood declaring that perjury occurred in three ways: "by swearing against one's conscience, by swearing to something unlawful, or by breaking an oath".¹⁴⁹ This final definition of perjury meant that the legal overlap of perjury and breach of faith litigation was practically indistinguishable in the everyday functions of the church courts. Indeed, in some courts, such as the diocese of Hereford, this litigation was often referred to as a *causa fidei laesionis et periurii*.¹⁵⁰ However, for reasons that are unclear, breach of faith was not litigated in the consistory court of Kent. This was not because breach of faith couldn't have been litigated in these courts; *fidei laesio* causes appear in the records of both York and London's consistory.¹⁵¹ Despite a very different legal process, in a purely functional way, this may have been because perjury in the consistory court of Kent fulfilled the same service as breach of faith litigation in the courts in London and Wisbech.

While instance litigation could be a complex process with many steps, we might abridge it to three key stages: the period leading up to trial, the trial itself, and the sentencing.¹⁵² The first step in initiating a suit typically involved the plaintiff or their legal representative—the proctor in Kent's consistory—approaching the court to make a complaint. This was either in the form of an oral complaint or a written libel. The judge (or the keeper of the judge's seal, the registrar) was then asked to cite the defendant.¹⁵³ It was at this point that court proceedings began to be recorded in the courts book, the *liber correctionum*. Citations were instructed to contain some key elements, such as the "the name and style of the judge, the name of the plaintiff, the name of the defendant, the nature of the cause being brought (in general terms), and the time and place in which the defendant was to appear".¹⁵⁴

Providing the citation was successful, both parties, or their appointed proctors, appeared in court, where the plaintiff presented a copy of the written libel to both the judge and the

¹⁴⁸ Wunderli, *London's Church Courts*, 54.

¹⁴⁹ William Lyndwood, *Provinciale* (Oxford, 1679), 56b: "jurando contra conscientiam: jurando illicitum: vel veniendo contra juramentum." For a longer discussion on this, see Cavill, "Perjury," 186.

¹⁵⁰ Herefordshire Archive and Records Centre, HD4/1/96 52.

¹⁵¹ For breach of faith in York's consistory, see Donahue, Jr, "Stubbs vs. Maitland," 656—661. For breach of faith in London's consistory courts, see Shannon McSheffrey, "About the Consistory," *Consistory: Testimony in a Late Medieval London Church Court*, 2022, <https://consistory.org/category/breach-of-faith-debt/>

¹⁵² Wunderli, *London's Church Courts*, 8.

¹⁵³ Helmholz, *Oxford History of the Laws of England*, 318.

¹⁵⁴ Helmholz, *Oxford History of the Laws of England*, 319.

defendant. A court date was then agreed upon wherein the defendant might respond. This response was the *litis contestatio*, where the accusations of the plaintiff were either rebuked or accepted by the defendant. It is notable that, in many consistory court cases, "suits were settled by compromise before the *litis contestatio*".¹⁵⁵ This is certainly the case in a majority of perjury causes litigated in the consistory courts of the archdiocese of Canterbury. For example, in a case from 6 June 1464, William Stare of Hythe brought a case against Thomas Myll of Selling, who was cited by the *apparitor* Rumfeld.¹⁵⁶ Before a libel could be presented, or a defence mounted, it was reported that the case was *dimittitur et concordet*, that is dismissed with concord reached. Such an entry into these records was common, pointing towards a settlement being reached before these men embedded themselves into a lengthy legal case. In fact, less than 10 percent of causes considered in the case study of Canterbury's consistory court refer to the issuing of a libel.

When a settlement was not reached, the second stage of instance litigation concerned *probatio*, which was the trial itself. Unlike in *ex officio* litigation, proof by notoriety was rarely undertaken and the burden for proof was typically higher in the consistory court. Furthermore, it lay in the hands of the plaintiff.¹⁵⁷ According to Helmholz, this phase was often purposefully vague in the procedural handbooks of ecclesiastical lawyers as there were several ways to obtain proof, such as inquests, confessions, oaths and written evidence.¹⁵⁸ However, the most common form of proof in the consistory court was the production of witnesses who were charged with responding to either plaintiff's articles and defendant's interrogatories. Concerning the perjury litigation of Canterbury's consistory, these depositions do not survive, though very few causes seemed to have resorted to a full trial. Instead, we are offered a heavily abbreviated summary of events and a great number of outcomes, including confession to owing the debt, continued denial, and the reaching of settlements.

The final stage of this litigation involved the delivery of a sentence to anyone found guilty, the timeframe in which this sentence must be carried out, and any related costs. For a small number of perjury causes in Kent's consistory court, this was excommunication.¹⁵⁹ For many more, it was the dismissal of a cause following the agreement of the defendant to repay a debt within a particular time frame. Notably, these causes were carefully monitored by the court

¹⁵⁵ Helmholz, *Oxford History of the Laws of England*, 328.

¹⁵⁶ Kent History and Library Centre, KHLC DCb/J/X B.3, 41v.

¹⁵⁷ Helmholz, *Oxford History of the Laws of England*, 328.

¹⁵⁸ Helmholz, *Oxford History of the Laws of England*, 327—41.

¹⁵⁹ See 4.4.2, below.

authorities. In several cases, we see evidence of failed agreements inducing a sentence of excommunication, sometimes months after the repayment plan was established.

When comparing *ex officio* breach of faith litigation with civil perjury suits, it seems difficult to reconcile the two at first glance. Civil and criminal procedures looked very different, and in practice, were very different to experience as litigants. This is a point the Brian Woodcock is keen to make in his discussion of the difference between perjury and breach of faith litigation in Canterbury's church courts.¹⁶⁰ However, as observed by many historians, the boundaries between these courts were often blurry. For example, Helmholz acknowledges that defamation was one such crime that eluded categorisation, "where either criminal or civil procedure was sometimes appropriate because of the quasi-criminal nature of the slanderous speech".¹⁶¹ As previously mentioned, breach of faith litigation also straddled the line between a criminal and civil suit inasmuch as it could be heard before the commissary court as an office case and as a civil suit brought by a plaintiff. In both breach of faith and perjury, the allegation was the same— the breaking of an oath— and in many suits across all three case studies considered in this thesis, the desired outcome was reconciliation, debt repayment, or revenge. As historians, we can only guess at the motivations of plaintiffs. Nonetheless, be it straightforward *ex officio* litigation, or the labyrinthine processes of instance litigation, fifteenth-century plaintiffs found a way to use the courts to best serve their own interests.

1.3.2: Quantitative Research

The difficulty of using these court records as evidence lies in the terseness with which they are composed. *Fidei laesio* causes in the lower church courts are frequently brief in length and highly formulaic in structure. While the legal process was conducted in English, ecclesiastical courts used Latin to formally record the causes in their court books. As written depositions were not kept in lower ecclesiastical courts, recovering the 'voice' of litigants using these records is untenable. However, the formulaic nature of the records offers an excellent opportunity to quantify a variety of aspects of breach of faith litigation; this approach resulted in the development of a database for each case study.

These databases are individually adjusted to capture the available evidence from each jurisdiction, yet there are several factors that were common to all breach of faith litigation: this includes but is not limited to the date, the amount of money that was being contested, the gender of the litigants, the parish in which they resided, the number of excommunications incurred, and

¹⁶⁰ Woodcock, *Medieval Ecclesiastical Courts*, 89—92.

¹⁶¹ Helmholz, *Oxford History of the Laws of England*, 316

the court agents involved in the process. Beyond this, information has been extracted from datasets whenever possible, based on information consistently provided within a jurisdiction. The quantification of this evidence, therefore, offers the reader more than a new dataset for the study of debt in parish communities. Instead, the records have been configured to create new temporal and spatial ways of seeing breach of faith litigation that have previously been overlooked. When studied holistically, this data can be utilised to elucidate socioeconomic trends such as the number of female creditors, the role of summoners in court, and the sums of debt litigated that would not be possible through qualitative analysis alone.

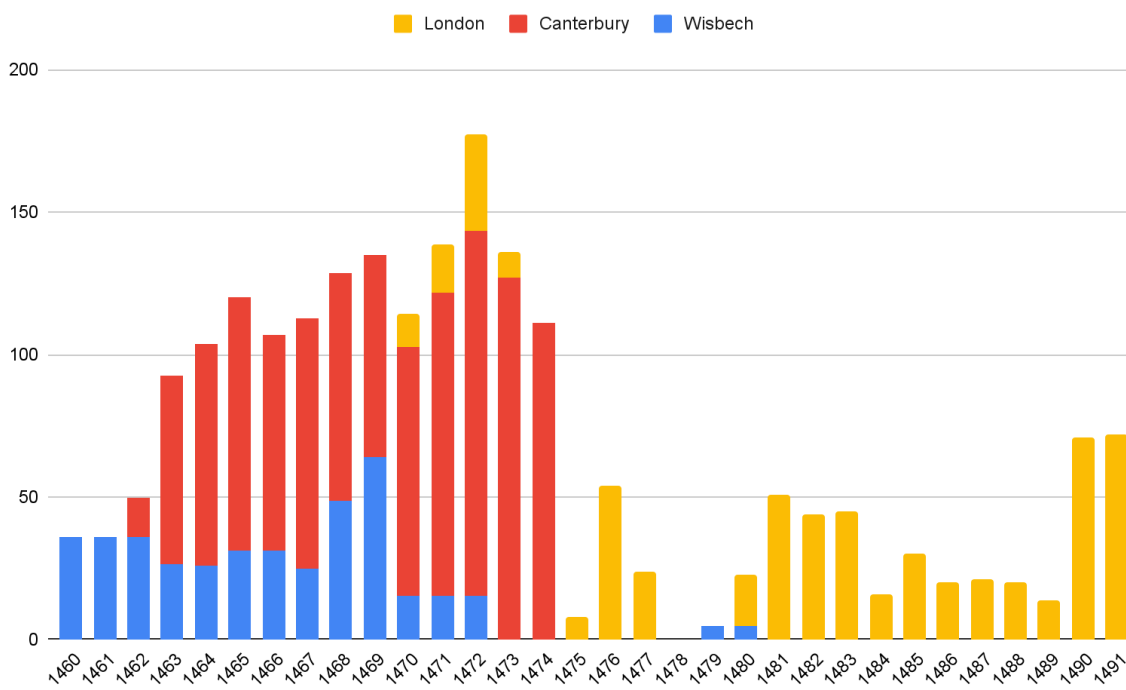


Figure 1.1: Breakdown of breach of faith and perjury litigation by year, collated using the data from the jurisdictions of London, Wisbech and the archdiocese of Canterbury.¹⁶²

The number of causes heard before the courts was not consistent across the three jurisdictions in question: this is reflected in the distribution of the causes by year. Over half of all breach of faith litigation in this study comes from the consistory court of Canterbury, between 1462 and 1474. This is visible in the surge of causes in Figure 1.1 between these dates. The period of 1470–1472 are the only years in this study where there is chronological overlap between

¹⁶² For the purposes of this visualisation, the number of causes per year in Wisbech has been derived from averaging the number of cases heard in Wisbech over the periods established by L. Poos in his study of the manuscript Cambridgeshire Archives VC 2. For example, between 1460 and 1463, 152 breach of faith cases appear in the records. This number has been divided by three to find an average number of cases per year. For a longer assessment of dating in the deanery court of Wisbech, see Chapter 3 below.

the three jurisdictions. The variation in the number of breach of faith cases can be qualified by contextual information.¹⁶³ For example, given the lower population, it would be illogical for a community as small as Wisbech to be doing as much business as the consistory court of Canterbury, which had jurisdiction over several large port towns. Similarly, breach of faith litigation constituted a lower overall proportion of the causes heard in London's commissary court. This was likely due to the number of alternative courts available to litigants living in London, such as the sheriff's court.¹⁶⁴ These nuances are considered in greater detail in the forthcoming chapters. Due to the poor survival of documents, there are periods where much less data is available, particularly c.1478—1480. While these gaps are significant, the overall thrust of the research remains the same: this thesis is not seeking to develop a coherent picture of "standard" credit practices in church courts, but to outline the diversity of breach of faith litigation by jurisdiction.

In the handful of studies that have quantified breach of faith litigation in English ecclesiastical courts, historians have typically used the mean amount of debt sued for in order to make assessments on the nature of litigation: this was 12s 1d in Canterbury in 1483, 13s in Hereford in 1492, and 3s 3d in the prebendal court of Ripon in 1460.¹⁶⁵ This thesis argues that given the breadth of sums litigated in these courts, a mean sum fails to truly represent the majority of debts sued for. As an alternative, I argue that a comparative approach is required, using the mean in tandem with the median sum, which was often far more representative of the low levels of credit being contested. While historians have treated the debt in these causes as "petty", quantitative analysis demonstrates that many of the sums were even more modest than previously reported.¹⁶⁶ By bringing attention to the median debt sued, this thesis underlines the disparity between very large and very small sums of money litigated in the same setting. In doing so, I argue that there were several fundamentally different motivations for utilising breach of faith litigation: while one was certainly the recovery of debts, a close study of the data suggests that many causes were enacted to open channels of communication, compel appearance, and generate communal knowledge of the existence of a particular debt.¹⁶⁷

¹⁶³ Briggs offers similar analysis of variation in amount of civic litigation in manor courts, in Chris Briggs "Manor Court Procedures, Debt Litigation Levels, and Rural Credit Provision in England, c. 1290–c.1380," in *Law and History Review* 24.3 (2006), 525.

¹⁶⁴ Penny Tucker, *Law Courts and Lawyers in the City of London 1300–1550* (Cambridge University Press, 2007), 84–130.

¹⁶⁵ Helmholz, *OHLE*, 363; Hannah K. Robb, "Credit and the Sociability of Credit in York Archdiocese in the Fifteenth Century," Unpublished PhD Thesis (University of Manchester, 2019), 32.

¹⁶⁶ Helmholz, *OHLE*, 363.

¹⁶⁷ Briggs, "Manor Court Procedures," 540.

Therefore, the study of breach of faith litigation as evidence of 'typical' credit relationships is problematic. As acknowledged by Briggs in his study of credit in fourteenth century manor courts, the litigation that came before the lower ecclesiastical courts represents unsuccessful credit relationships.¹⁶⁸ In this way, we must presume that these causes are representative of only a fraction of the credit agreements created in the course of daily life in late medieval English communities.¹⁶⁹ Furthermore, given the pluralistic nature of late medieval jurisdiction, it must be acknowledged that breach of faith litigation can only ever represent a partial picture of the broad social and credit networks in communities. Nonetheless, the range of sums litigated, from as low as 4d to as high as several pounds, suggests that the church courts did not preclude the pursuit of certain amounts of money, as was the case in many common law courts.¹⁷⁰

Finally, with the focus of this thesis on the social indebtedness articulated through breach of faith litigation, I have elected to exclude any consideration of testaments in the quantification of breach of faith litigation. Firstly, in regard to the posthumous accounting for goods, the church courts were sole legal overseers of testament. In these instances, the settlement of debts necessitated ecclesiastical involvement. Secondly, this thesis intends to set out that breach of faith litigation was often representative of ongoing, socially dynamic relationships wherein the creditworthiness of individuals was integral to the articulation and sustainability of these relations. While there was a small number of breach of faith cases in the records from Wisbech that concerned the settlements of estates, they were functionally dissimilar in their purpose to cases that occurred *inter-vivos*.¹⁷¹

1.3.3: Qualitative Research

While there is much to be learnt about breach of faith litigation through quantitative analysis, the variations in local practices can often only be gathered from a closer inspection of the motivations of litigants. The qualitative research that follows is built on almost forty years of the study of court records as "narratives".¹⁷² As previously mentioned, the distinct lack of "voice" of those testifying before the commissary courts makes the study of the language of credit untenable in these cases.

¹⁶⁸ Chris Briggs, *Credit*, 15-6.

¹⁶⁹ Nightingale has argued that the debt litigated in the staple courts of the fifteenth century are representative of one-fifth of all credit relationships. Nightingale, "Money contractions", 565-6; Richard Goddard believes this to be a conservative estimate, see Goddard, *Credit*, 15.

¹⁷⁰ S. F. C. Milsom, *Historical Foundations of the Common Law* (Butterworths, 1981), 212.

¹⁷¹ A summary of the testamentary cases from Wisbech can be found in Chris Briggs, "Availability of Credit in the Countryside, 1400-1800", *Agricultural History Review* 56 (2008), 21.

¹⁷² Some key texts from the new cultural history movement are Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and their Tellers in Sixteenth-Century France* (Stanford University Press, 1987); Goldberg, *Communal Discord*.

Nonetheless, the production of these records within their legal context suggests that what was being reported, if not true, was at least *credible*.¹⁷³ While breach of faith litigation was formulaic in structure, extraneous details become noteworthy, pointing towards broader cultural discourses that were embedded in late-medieval English society. In particular, it is possible to see how litigants sought to reflect notions of trustworthiness and convey ideas of obligation through the recording of rituals of making faith.¹⁷⁴

This approach to the study of legal records as social discourses has been complicated in recent years, as historians have sought to recentre the role of the court in the production of these discourses. Notably, Tom Johnson has proposed a measure of caution in treatment of witnesses as simply "conduits of discourse".¹⁷⁵ While litigants were evidently aware of these cultural ideas and narratives, it must be assumed that they were not simply reflections of this discourse, but capable of manipulating it to their own ends.¹⁷⁶ Thus, this thesis seeks to reassign litigants their agency; the breaking of one's faith was not a shorthand for debt litigation.¹⁷⁷ Instead, this thesis proposes that, for those who took great pains in taking these causes to court, breach of faith "constituted a social reality".¹⁷⁸

In conversation, a combined study of qualitative and quantitative analysis offers insight into these courts both as reflections of a broad culture of credit common to English church courts, and as an intimate snapshot of credit between individuals and their neighbours. Following an overview of the data, each case study elects to pull out key trends from the data that may be pronounced in particular courts. For example, while women appear in all courts in varying numbers, they are overrepresented in London, at a period when women's appearances before the courts was already in significant decline. Similarly, a closer inspection of how debt was quantified in rural communities using various objects helps to aid in our understanding of how litigants related to material goods. In this way, these case studies consider a broad swathe of thematic studies that all contribute to an understanding of obligation that traverses the dichotomies often identified in the historiography: breach of faith litigation offers insight into the

¹⁷³ Goldberg, *Communal Discord*, 33.

¹⁷⁴ See chapter on Wisbech, below.

¹⁷⁵ Johnson, "Preconstruction," 127.

¹⁷⁶ For further discussion on the preconstruction of testimony in pre-modernity see, Bronach C. Kane, "Ecclesiastical Court Records for Social and Cultural History," *Research Handbook on Interdisciplinary Approaches to Law and Religion* (Edgar Elgar Publishing, 2019), 37-53, esp. 48.

¹⁷⁷ Bronach Kane has done extensive work on the agency of women in the church courts, see Bronach C. Kane, "Women, Memory and Testimony in the Medieval Ecclesiastical Courts of Canterbury and York," in Kane and Williamson (eds), *Women, Agency and the Law, 1300-1700* (Pickering and Chatto, 2013) 43-62.

¹⁷⁸ Johnson, *Law in Common*, 16.

interrelationship between urban and rural credit, between economic self-interest and the common good of the collective, and the impact of ideas of gender on women's autonomy in the courts.

1.4: Outline

This thesis consists of four chapters: an account of the legal development of breach of faith litigation before the fifteenth century, and three case studies, arranged both chronologically and by population from lowest to highest. Each case study consists of two sections, intended to reflect the two primary interventions that this thesis makes to our knowledge of breach of faith; each case-study chapter begins with an empirical investigation of the data, before utilising this data to consider the ways in which these records informed ideas of social and economic obligation in their communities, as outlined above.

Following this introduction, this thesis begins by exploring the development of breach of faith litigation in England from the twelfth century, as it relates to the emergence of debt practices in the common law. It challenges the notion perpetuated by historians that breach of faith was considered just another form of debt litigation by tracking the ways in which the jurisdictional dispute between the English Crown and his clergy articulated a separation between the spiritual obligation of oaths and the economic debt of these disputes. This chapter will argue that English canonist William Lyndwood's assessment of breach of faith and perjury as a "mixed" crime bears serious consideration. In order to understand the balance between economic and social debt that was being negotiated, it is significant to recognise that many church court litigants were intimately aware of the mixed quality of breach of faith litigation as a more intuitive reflection of pre-existing social practices; as a blending of secular and spiritual practices, breach of faith would have been comprehensible to many, as it closely aligned with other mercantile practices of the day.

Chapters Three, Four and Five constitute three empirical studies of breach of faith litigation in three geographically distinctive English communities. The decision to survey different community formations was made to better explore the flexibility of lower ecclesiastical courts in England at this time. As much as is possible, this thesis will attempt to make sense of these variations, such as explaining why the use of excommunication in the courts at Canterbury was far more common than in London's commissary. Each case study in this thesis, therefore, sets out to demonstrate the ways in which ideas of obligation and credit were articulated differently while recognising that certain behaviours, attitudes and strategies were commonly practised.

Chapter Three considers breach of faith litigation in the fenland deanery of Wisbech, Cambridgeshire. Records transcribed by Lawrence Poos constitute some of the only published accounts of local ecclesiastical courts; indeed, the same records have been used previously to

explore the nature of breach of faith litigation in the fifteenth century.¹⁷⁹ Covering the years 1460 to 1472 and 1479 and 1480, these records constitute the earliest exploration of breach of faith litigation in the thesis. An empirical study of the data paints a familiar picture of rural credit and low-value exchanges of goods. In particular, the use of material goods showcases a credit market that was not strictly tethered to specie. Yet, Wisbech also acts as a useful starting point to consider the ways in which parishioners might use oaths to economically and socially bind themselves together into unequal partnerships. For this reason, this chapter considers two thematic studies. Firstly, this chapter will explore how guilds, prominent entities in rural Cambridgeshire, utilised breach of faith litigation to consolidate their role as spiritual and economic creditors within the community. Secondly, the prominent use of arbitration and suspension in these records suggests that to Wisbech residents, the courts played a key role in the creation of a public knowledge of indebtedness. Thus, the careful articulation of these processes in the records illustrates the role that these courts might play in the reinforcement of ideas of creditworthiness. These hierarchies were central in the function of lower ecclesiastical courts, even as they took distinct forms across different communities.

In Chapter Four, discussion turns to how disputes over social and economic obligation manifested in the consistory courts of the archdiocese of Kent from 1462 to 1478. This chapter considers the church courts in three coastal communities: New Romney, Dover and Hythe. Unlike Wisbech and London, disputes in these courts appear in the form of perjury litigation. While perjury was not identical to breach of faith, it ostensibly served Kentish litigants in the same way. Following a discussion on the value of these debts, this chapter uses the extensive data available from the records to consider the extent to which geography and gender could have an impact on how users conceptualised their credit networks. As in the previous chapter, discussion then turns to consider two notable features of the courts that impacted how local litigants may have used them: this section begins by considering the prominence of summoners in these communities. As the court of the commissary-general was perambulatory, the summoner acted as a permanent representation of the court's authority in these communities. His engagement with local communities positioned him as a key conduit through which church court litigation flowed. This chapter then discusses the prolific use of excommunication in the courts. Here, I argue that excommunication was a tool of social and economic coercion, carefully employed to create a heightened sense of alienation to individuals who found themselves in debt. Overall, this chapter uses comparative analysis to consider the local nature of church court practices in society.

¹⁷⁹ Briggs, "Availability of Credit,".

Furthermore, it endeavours to prove how the courts offered a framework that allowed a plaintiff to open lines of communication, and bring third parties into that conversation, such as proctors, local summoners and perhaps entire communities. In doing so, it forced many of the defendants in these courts to renegotiate their economic and social relationships with their creditors.

Finally, Chapter Five turns to consider the commissary court in London, between 1470 and 1492. While anomalous in its scale and population density, London offers insight into a highly commercialised city, where economic relationships were closely entwined with civic identities. This chapter begins by contextualising *fidei laesio* in this urban landscape of debt litigation. Following an assessment of the value of debt in these courts, the second section of this chapter investigates who used the commissary courts. Firstly, I discuss why breach of faith litigation was particularly prominent in only a handful of parishes in London, arguing that authority of courts within these communities was underpinned by its continued use by a broad community of parishioners. Secondly, I consider the role of women in these courts. While all three case studies consider female participation in the credit economy, London's commissary seems particularly well represented in these courts, relative to their rural counterparts. This chapter will argue that before the commissary, women overwhelmingly represented themselves and their own interests. Finally, this chapter considers how parties tried to make use of social inequalities to recover debt from those who possessed less social credit, such as servants and sexworkers. In doing so, this chapter emphasises the role of reputation in doing business in the most commercialised community in late medieval England.

By studying multiple courts, with distinct geographies, this study intends to nuance our understanding of the relationship between debt and faith in a variety of fifteenth-century communities. In the conclusion, I offer a brief synthesis of the key research discussed in the thesis, focusing particularly on the geography of the courts and questions of gender. This comparative analysis is followed by some suggestions of avenues for further research. Overall, this thesis intends to argue that breach of faith litigation in late medieval England offers historians a uniquely clear depiction of credit in late medieval England as more than a measure of one's ability to acquire goods. It allows us to interrogate the ways that credit affected one's social, spiritual and legal experience in English society in the fifteenth century.

Chapter 2 : The History of Breach of Faith in England

2.1: Introduction

On 17 September 1470, Richard Crackynthorpe of the parish of St Andrew's Hubbard traversed the short distance across London to appear before the city's commissary court, held in the shadow of St Paul's Cathedral at St. Paul's Chain.¹⁸⁰ He had been summoned after it had reached the ears of the church authorities that he had 'broken his faith' (*fregit fidem*) with a man named John Rede. According to the records, Crackynthorpe owed Rede for a "gowncloth" valued to the sum of eight shillings. However, when Richard appeared before the court's judge, a curt note was made by the clerk that Richard had denied that he had made faith in the first place. This was not a denial that John had ever leant or sold him the cloth—the debt incurred was real enough—but an assertion that Richard had never pledged his faith to repay him. Richard was told to appear before the judge the following Wednesday to clear his name, when he was promptly dismissed. The reasoning behind this dismissal can only be inferred from the shorthand Latin in the document, which suggests that Richard had successfully undergone compurgation and cleared his name.

For John Rede, it is likely that his reason for reporting Richard's broken promise to the church courts was a pursuit of a repayment for the credit that he had extended to Richard. Yet, despite the focus on the price of the cloth- a rare and illuminating detail in London's commissary records- such breach of faith litigation was ostensibly not concerned with the monetary debt itself. In fact, since the thirteenth century, the church courts had no jurisdiction to hear cases of debt.¹⁸¹ Instead, the court's primary concern was the promise—the one Richard successfully argued that he had never made; without the promise, the case was untenable in the venue of the church court, demonstrated most clearly by Richard's dismissal. And so, for John, the case was about debt; for the court authorities, however, it was about the pledge made between the two men. If the promise was found to be truthfully made, then spiritual and secular recourse looked approximately the same: repayment of that which was promised, and a penalty. In secular courts, this penalty came in the form of damages to be paid to the creditor. In the church courts, penance was expected.

Alongside the sins of fornication, adultery, or marital disputes, *fidei laesio seu perjurii* appears to sit awkwardly under the umbrella of ecclesiastical jurisdiction whose primary concern was the correction of sin. As such, historians have puzzled over the persistent use of breach of

¹⁸⁰ LMA, DL/C/B/043/MS9064/1, fo. 42r.

¹⁸¹ On material debts in London, see Section 5.2.1, below.

faith litigation in the late-medieval period. Unpaid debts were easily pursued in secular courts as an increasingly sophisticated common law system developed locally and centrally.¹⁸² In terms of their functionality, secular courts were more beneficial to lenders as overdue debts could be supplemented by damages; sheriff and manor courts could enforce payment through the seizure of goods.¹⁸³ The consideration of breach of faith litigation as a form of financial recompense underpins much of the literature on the topic, and it is clear that overwhelming attention has been placed by historians on breach of faith as debt litigation.¹⁸⁴ The purpose of this chapter is to argue for the treatment of breach of faith litigation in the late-medieval period as more than a church court equivalent of debt recovery. To do so first requires a brief introduction to the concept itself, breaking down breach of faith into its constituent parts; oral promises that underpinned many mercantile exchanges were deeply significant in late-medieval culture, and the foundation of breach of faith litigation. The promissory nature of breach of faith is also what linked it to concerns of perjury in the church courts, a connection that requires elaboration.

Secondly, this chapter will consider the key reasons why historians have reduced the significance of promises exchanged to verbal formalities, utilised to obscure the underlying intentions of the lender in debt recovery. This approach is not without merit, as medieval communities relied heavily on the exchange of goods on credit. Debt in medieval England was, to use Paul Cavill's description, "inescapable".¹⁸⁵ The fact that laity could contest and negotiate debt or obligation in a court venue, without the costly involvement of lawyers or written proof of the debt incurred, allowed many litigants to access legal recourse that was otherwise unavailable to them. However, as this section will argue, the historiography fails to consider the inherent value of the promise itself in any serious manner, continually identifying the debts and obligations that underlay breach of faith litigation as somehow out of context in the ecclesiastical court: because the debts were worldly, they were inevitably secular. This section will argue that this thinking precludes the enormous social value of debts incurred in fifteenth-century England.

As section three explores, the duality of breach of faith as it was concerned with both material and spiritual exchange was baked into the history of ecclesiastical jurisprudence in England. The dispute that persisted between subsequent kings and the English church divided the action of breach of faith into two different contests: one concerned the litigation of the promise, and the second concerned litigation of the debt. In fact, both the church and state were happy to

¹⁸² John Hudson, *The Oxford History of the Laws of England II* (Oxford University Press: Oxford, 2012), 537—73.

¹⁸³ Briggs, *Credit*, 79-81.

¹⁸⁴ Briggs, "The availability of credit," 22.

¹⁸⁵ Cavill, "Perjury," 188.

interpret debt and obligations on a sliding scale. For example, despite their material quality, church tithes were a spiritual debt that belonged to the jurisdiction of the church courts; yet the selling of the right to collect these tithes made "spiritual things become temporal, the tithes become chattels", according to a letter issued by the court of Edward I in 1280.¹⁸⁶ This section will identify the development of breach of faith in this context, outlining key moments of jurisdictional tension in order to demonstrate that, until the end of the thirteenth century, consensus on the matter was far from settled. The simplification of breach of faith litigation into a mere guise for debt litigation obscures rather than illuminates the complexity of this litigation.

Following the circulation of the writ of *Circumspecte Agatis* by Edward I in 1286, the narrowing definition of what was considered appropriate to litigate in the church courts put an end to a nationwide dispute over where debt belonged: in the courts of the laity. Indeed, given the auspicious survival of manor court rolls— or perhaps because of them— the historian's understanding of the landscape of local debt in the fourteenth century was overwhelmingly secular. Nonetheless, the jurisdictional division between church and the king's authority was never firm. The fourth section here briefly surveys the ways in which the dispute between church and state evolved as oaths became the concern of a much broader cross-section of society. This greatly informed how debt was perceived, not simply as a financial burden, but as a reflection of one's creditworthiness. In doing so, this section will suggest that the enforcement of this jurisdictional division between a debt and its underlying obligation never truly signalled a separation in the minds of fourteenth century litigants.

The understanding of breach of faith as a guise for debt litigation remains at odds with the perspectives of a key commentator of church court actions in the fifteenth century: canonist William Lyndwood, to whom the final section turns. Lyndwood's description of breach of faith and perjury as "mixed" crimes has been often considered the tacit recognition that these causes were simply charades for the enrolment of debt litigation in an otherwise hostile venue.¹⁸⁷ Rather than reading this interpretation of breach of faith as a 'legal fiction' employed to use the church courts to litigate petty trade, this section will explore the treatment of breach of faith as a more complex legal formulation than simple debt litigation. In doing so, this section will posit the truthfulness of Lyndwood's interpretation of breach of faith as mixed: a simultaneous exchange of the secular and the spiritual, the material and the social.

¹⁸⁶ F.M Powicke, and C. R. Cheney, *Councils & Synods with Other Documents Relating to the English Church, Vol. 2, part 2 1265—1313* (Clarendon Press, 1964—1981), 875. "... *quia per venditionem res spirituales fiunt temporales et transeunt decime in catalla.*"

¹⁸⁷ Helmholz, *OHLE*, 359.

Ultimately, this chapter will argue that like Lyndwood, many church court litigants recognised the mixed quality of breach of faith as a more intuitive reflection of pre-existing social practices; as a blending of secular and spiritual practices, breach of faith would have been comprehensible to many. Furthermore, while debt may be one reason why breach of faith became useful in the courts, obligation carried with it its own social debts and dues, only partially related to the material debt. These moments of tension between litigants offer the historian access into the social nature of canon law in late medieval communities, as processes of exclusion and hierarchy.

2.2: Canon Law and the Principles of Breach of Faith

To understand why historians have underestimated the significance of the promise in breach of faith litigation, it is essential to understand how breach of faith worked, both in canon law and in practice. In the earliest work on the subject— Edward Fry's 1889 assessment of breach of faith— he identifies the seedlings of a court Christian as early as in St Paul's first letter to the Corinthians, noting how Paul prompted the Corinthians to resist litigating in lay courts.¹⁸⁸ Comparatively early, in Pliny the Younger's letter to Trajan about the Christians over whom he governed, Pliny observes that the Christians had "bound themselves by an oath... not to break their faith".¹⁸⁹ From the ascension of emperor Constantine I (311-337) onwards, large assemblies of bishops debating doctrine became a primary means of establishing church law.¹⁹⁰ The textual remains of these meetings, percolating through the writings of early Christian theologians, became influential from the beginning of the twelfth century when canon law "began to separate itself from theology... and soon acquired a distinct identity as an autonomous discipline", focused in centres of legal learning such as Bologna, Paris and Oxford.¹⁹¹

These universities and the scholars they produced were essential in the promulgation of key manuals for the education and practice of canon law by trained jurists.¹⁹² Alongside this period of intellectual propagation (and perhaps because of it), canonists began to keep copies of papal decretals that were issued by the pope to settle individual disputes. These rapidly formed into

¹⁸⁸ Edward Fry, "Specific Performance and *Laesio Fidei*," *Law Quarterly Review*, 5.3 (1889), 235.

¹⁸⁹ Fry, "Specific Performance, 235.

¹⁹⁰ James A. Brundage, *Medieval Canon Law*, 7—8.

¹⁹¹ James A. Brundage, *The Medieval Origins of the Legal Profession: Canonists, Civilians and Courts* (London: University of Chicago Press, 2008), 76.

¹⁹² James A. Brundage, "The Practice of Canon Law," *The History of Courts and Procedure in Medieval Canon Law*, eds. Wilfried Hartmann and Kenneth Pennington (Washington, DC: Catholic University of America Press, 2016), 51; Brundage, *Medieval Origins*, 80–90.

collections, which in turn were adopted into curricula, producing a multitude of commentaries and glosses by canonists from which canon lawyers could draw.¹⁹³ Practically, this codification of canon law across Europe was also significantly "driven by the needs of the expanding ecclesiastical courts".¹⁹⁴ It offered canon lawyers and church court judges a reference point for contemporary spiritual decision-making that had been issued by Rome. With its emphasis on dialectical argumentation that sought to resolve contradictions in doctrine, Gratian's *Decretum* was an immediate success.¹⁹⁵

For the development of breach of faith litigation in England, Gratian's *Decretum* (1140) and its gloss by Johannes Teutonicus (1216-7) was deeply influential.¹⁹⁶ Gratian was very clear about what constituted an oath. In Book 22, he states that "the Lord wills that there be no distance between our oath and our speech".¹⁹⁷ In essence, so Gratian implies, there was no difference between a promissory oath and words spoken plainly, suggesting that breaking a promise became "tantamount to perjury and lying".¹⁹⁸ It is for this reason that many church courts conceptually tied together the two crimes, often referring to breach of faith litigation as *fidei laesio seu perjurii* (breach of faith and perjury). Nonetheless, Wim Decock also states that, without Teutonicus' gloss, the *Decretum* was far more concerned with the moral ramifications of lying than how such a belief might impact the legal delineations of promises; in fact, how to force a person to perform an obligation using canon law would remain contentious long after the completion of the *Decretum*.¹⁹⁹

Gregory IX's *Liber Extra* (1234), however, writes on the significance of pacts in a Christian context, drawing from an early Christian council at Carthago (348). This canon concerns a broken agreement between two bishops, the details of which remain unspecified, and ultimately unimportant to Gregory IX. For the pope, what was essential was the sentiment: the council deemed that "agreements should be kept as bare as possible".²⁰⁰ Bare in this instance derives

¹⁹³ Brundage, *Medieval Origins*, 90–1.

¹⁹⁴ Ian Forrest, *The Detection of Heresy in Late Medieval England* (Oxford University Press, 2005), 20.

¹⁹⁵ Brundage, *Medieval Canon Law*, 47-53.

¹⁹⁶ It was Teutonicus' gloss that argued that oaths "added materially" to the simple promise. See Helmholz, "Local Ecclesiastical Courts in England" in *The History of Courts and Procedure in Medieval Canon Law*, eds. Wilfried Hartmann and Kenneth Pennington (Washington, DC: Catholic University of America Press, 2016), 378.

¹⁹⁷ *Decretum Gratiani*, ed. Anders Winroth, 629: C 22. q.5. c.12. "... ideo Dominus inter iuramentum et loquelam nostram nullam vult esse distantiam..."

¹⁹⁸ Wim Decock, *Theologians and Contract Law: The Moral Transformation of the Ius Commune* (Nijhoff Publishers, 2013), 126.

¹⁹⁹ Decock, *Theologians and Contract Law*, 127-8.

²⁰⁰ *Corpus Iuris Canonici*, ed E. Friedberg (Ex officina Bernhardi Tauchnitz, 1879), 204: *Decretals* X 1.35.1: "*Pacta quantumcunque nuda servanda sunt.*"

from the Roman law understanding of oral agreements as either 'dressed' or 'naked'. These naked or bare agreements (*pacta nuda*) relied on the belief that, based on the principles of good faith (*bona fida*), informal promises could be used to compel an individual's action even though they were not legally enforceable in civil law.²⁰¹ In the religious context, the bareness of the words did not lessen their spiritual significance. Rather, from a canon law perspective of the *Decretum* and the *Liber Extra*, the words themselves were sufficient to compel a Christian to act virtuously, regardless of whether an oath was sworn. Gregory IX's canon concludes with a statement that stresses one of the key purposes of oath-making: "Let the peace be preserved, let the agreements be kept."²⁰² And so, there was a fundamental understanding among those making use of the writings of canonists that one of the express purposes of agreements being litigated in the church courts was that peace was both reached and sustained.²⁰³

In this context, let us return to the court records and the litigation between Rede and Crackynthorpe. The entry, and all other entries from London's commissary, was presented in extremely abbreviated Latin, as follows: "[Defendant] *fregit fidem* [plaintiff] *pro* [amount]." This was the premise of all breach of faith causes: a promise that was made between two individuals had been broken by the defendant, and this 'promise' was reduced to a monetary value by the plaintiff. Breach of faith could encompass many different kinds of cases, such as the breaking of a contract by a servant for not working a full term of employment, or the failure of a local member of a guild to pay dues owed to their fraternity.²⁰⁴ It could also encompass promises of the future delivery of goods or services, as was the case in a breach of faith case from Barking in Essex when Richard Laverock was presented for failing to build a new church porch despite already being paid in advance.²⁰⁵ What was essential to breach of faith, then, was an exchange of words. From these words, an obligation was implied.

Albeit difficult to extricate from the records themselves, it is evident from surviving consistory court depositions that the way that English court litigants emphasised the significance of oaths in the church courts was through the ritualisation of the words and gestures of the promise. Despite the formulaic court entries, these words were often highly specific. Historians

²⁰¹ David Johnston, *Roman Law in Context*, 2nd ed. (Cambridge University Press, 2022), 92.

²⁰² *Corpus Iuris Canonici*, 204: X 1.35.1. "*Pax servetur, pacta custodiantur.*"

²⁰³ Piotr Alexandrowicz, "Canon Plerique (c.56) of the Fourth Lateran Council Within the Development of the Principle *Pacta Sunt Servanda*", *The Fourth Lateran Council and the Development of Canon Law and the ius commune*, edited by Atria A Larson and Andrea Massironi (Turnhout, Belgium: Brepols, 2019), 221—233: 225—6.

²⁰⁴ For a fuller exploration of the different types of promises litigated through breach of faith, see Forrest, *Trustworthy Men*, 37—40.

²⁰⁵ Forrest, *Trustworthy Men*, 38.

have long recognised the significance of the words and gestures of the marriage bond; the survival of a huge body of evidence from consistory courts demonstrates the particular attention paid by court authorities to the difference between words of present or future consent, of whether a party had promised to marry, or given their faith to do so.²⁰⁶ Similarly, for breach of faith litigation, the action of making faith was not simply metaphorical, and it was clear that the words that were said and the actions taken mattered a great deal. For example, in a 1487 breach of faith case from London's consistory court, a surviving deposition goes into extensive detail about the ways in which a man named Christopher Manser promised to repay his debt owed to John Palmer.²⁰⁷ Following the bargain struck over a meal, the two men went to a local churchyard, and Manser, "taking him by the right hand, swore by his faith that he would faithfully fulfil that promise".²⁰⁸ While lower church cases largely lack the details of these promises, it can be assumed that rituals of gesture and spoken words lay behind many of the promises that were presented to the commissary judge. In the opening case, above, the eight shillings being contested was a sizable sum of money; the ability by Crackynthorpe to prove that he had not taken an oath suggests that the encounter had occurred publicly, and the men had anticipated that witnesses were necessary, even if written proof was not.

In cases where an oath was made between neighbours or individuals known to one another, a freer attitude was likely taken regarding formulaic words. Indeed, the exchange of goods on words of good faith alone suggests a preexisting, potentially amicable relationship between the men. Yet, in the breakdown of relations, a lack of written evidence also explains why so much time was spent in court, trying to ascertain what, specifically, had been said and done when marriages and financial debts were brought into question: the gestures and words mattered, particularly in the enforcement of promises by church authorities.²⁰⁹ As previously discussed, the emphasis on gesture and the heightened register of many of these exchanges is not necessarily in line with the view of canon law doctrine at the time, which focused on the spoken word. It is apparent, then, despite words being sufficient to compel Christians to act in good faith, the heightened gestures of breach of faith litigation developed extra-legally, independent of church doctrine. For the participants, these gestures may have acted as another layer of formality, as was the case with written agreements.

²⁰⁶ Charles Donahue Jr, *Law, Marriage, and Society in the Later Middle Ages: Arguments about Marriage in Five Courts* (Cambridge: Cambridge University Press, 2008), 46-63; Shannon McSheffrey, *Marriage Sex and Civic Culture*, 22.

²⁰⁷ LMA MS DL/C/A/001/MS09065 f. 13v-14r.

²⁰⁸ LMA MS DL/C/A/001/MS09065 f. 13v-14r.

²⁰⁹ R.N. Swanson notes that probate jurisdiction also constituted, in many ways, a form of *fidei laesio*, as it bound executors to perform the will: Swanson, *Church and Society*, 167.

In his work on trust in late-medieval communities, Ian Forrest has explored the extent to which gestures were used, particularly in the exchange of goods between neighbours or friends.²¹⁰ In the case of *Palmer c. Manser*, its presence in the consistory court, and the evidence from the depositions, suggest that this was a long-running and costly dispute. Manser had failed to deliver on his promise multiple times, and so, in retaliation, every aspect of the plaintiff's deposition was constructed in a manner to underline the legitimacy of the oath sworn.²¹¹ This was likely done with the intention of emphasising its broken nature. While it is far more difficult to ascertain the contexts of agreements from the commissary courts, what is evident from the above depositions, and observed by Forrest, is that late-medieval court goes "recognised a distinction between ordinary moral and legally enforceable obligations".²¹² Therefore, it is apparent that in the community of church court litigants, there was a fundamental tension between the authority of the spoken word as a strong enough tool to bind people together, as purported in canonical treatises, and the desire by the laity to employ the use of rituals and objects to make spoken promises more 'real'.

Thus, the purpose of bringing a debtor to the commissary courts could be manifold. On one hand, as is the case with Rede, repayment of the debt was likely the desired outcome. However, for others, proof that the obligation existed at all may have been a positive step in improving relationships; breach of faith in the commissary court was almost always concerned with oral agreements, characterised by Helmholz as "commerce of a low level".²¹³ Yet, how much of this jurisdictional purview was by design? In the following sections, I contend that the treatment of breach of faith litigation as low-value debt— understood as discrete, one-time exchanges of credit or goods— was a result of a continuous, deliberate separation of material debts from their social obligations first by medieval common lawyers and subsequently, for quite different reasons, by historians. Furthermore, as I will demonstrate in forthcoming chapters, despite the low value of the debts being litigated, the stakes were very high.

²¹⁰ Forrest, *Trustworthy Men*, 43-4.

²¹¹ The constructed nature of testimony in medieval courts has a robust scholarship. For a discussion on the constructed nature of legal testimony, see P. J. P. Goldberg, *Communal Discord*, 15-9; For a critical commentary on the role of the historian in the deconstruction of testimony in the courts see Johnson, "Preconstruction," 133–44.

²¹² Forrest, *Trustworthy Men*, 44.

²¹³ Helmholz, *OHLE*, 363.

2.3: The 'Secularisation' of Breach of Faith in the Historiography

A fundamental problem with much of the historiography of breach of faith, sparse as it is, lies in the treatment of breach of faith litigation as secular debt negotiation in a different guise. This is understandable; contemporary legal commentators such as the author of *Glanvill* considered breach of faith litigation a legitimate means by which one could pursue debt recovery in the late twelfth century.²¹⁴ Yet the modern treatment of breach of faith litigation fails to sufficiently consider the spiritual and social aspects of breach of faith that cannot be easily encapsulated within debt litigation of the secular courts. This can be partially explained by the fact that breach of faith records have remained relatively untouched beyond the realms of legal history. Before considering the work of these historians in detail, I would like to offer a preliminary overview of the main movements in the study of breach of faith litigation, reflective of three distinct periods in the development of legal history as a discipline.

The initial flurry of interest in breach of faith litigation occurred at the very inception of academic legal history in the late nineteenth century, with historians such as Maitland and his contemporaries immersing themselves in the legal traditions of the medieval world, considering the law on its own terms.²¹⁵ Breach of faith litigation was then reassessed in the 1970s and 1980s, mostly by a giant of English legal history, Richard Helmholz. His comprehensive analysis of breach of faith litigation is summarised in *The Oxford Laws of England*, which remains both pertinent and technically insightful.²¹⁶ However, with only a cursory acknowledgement of the social obligation of debt, his focus remained staunchly within the parameters of legal history. Around the same time that Helmholz published his first study of breach of faith, Charles Donahue Jr offered a re-evaluation of the Stubbs-Maitland dispute by considering the extent of judicial authority held by the English church in York's Cause Papers during the fourteenth century.²¹⁷ Donahue's study characterises over 40% of cases that appeared before the ecclesiastical court as cases that "ought" to have been heard in the common law courts, a classification that raises more questions than it answers.²¹⁸

²¹⁴ "Upon the debtor's appearing on the day appointed in court, if the creditor has neither pledge nor sureties nor any other proof, unless the mere faith of the other, this will not be received as any proof in the King's Court. Yet, he may proceed for the breach or violation of faith in the Court Christian." This passage is discussed at length in section 2.4, below; Ranulf de Glanvill, *A Translation of Glanville*, trans. J. Beames (J Byrne and Company, 1900), 212.

²¹⁵ For a commentary on the development of legal history in this period, see Jonathan Rose, "Studying the Past: The Nature and Development of Legal History as an Academic Discipline," *The Journal of Legal History* 31.2 (2010), 111—5.

²¹⁶ Helmholz, *OHLE*, 358—368.

²¹⁷ Donahue Jr., "Stubbs vs. Maitland," 647—712.

²¹⁸ Donahue Jr., "Stubbs vs. Maitland," 660.

In the past three decades, the use of legal sources in the study of social and economic history has broadened the potential modes of interpreting these legal sources.²¹⁹ In particular, two contributions offer conceptual interventions that are worth considering as we map out the emergence of breach of faith litigation in medieval England. Firstly, Chris Briggs' work on credit in the fifteenth-century countryside uses breach of faith records from the deanery of Wisbech to investigate the decline of credit in the peasant economy in the fifteenth century.²²⁰ Secondly, in the initial chapters of his book, *Trustworthy Men*, Ian Forrest considers the historical origins of faith in agreements in late medieval society, of which breach of faith litigation plays a central role.²²¹ Both meaningfully contribute to the argument that this chapter seeks to make: in treating breach of faith as an alternate form of debt recovery, its comprehension as a socially dynamic act becomes obscured.

Firstly, I would like to return to the late nineteenth century, to consider two arguments presented, initially by Edward Fry in July 1889, and then by Pollock and Maitland in *History of English Law Before the time of Edward I v.2*, first published in 1898.²²² In the *Law Quarterly Review*, Edward Fry offered a preliminary survey of *causa fidei laesionis seu perjurii* or 'causes of breach of faith or perjury' in pre-modern Europe. It was the first long-form investigation of breach of faith litigation in English. Fry's primary concern with *fidei laesio* was its historical influence on the common law practice of 'specific performance'.²²³ This concept concerns a court-enforced compelling of an individual to perform specific contractual obligations, primarily found in land law. Despite the prevention by the king for the church courts to have cognizance of lay debts, Fry identified the capacious character of pledging one's faith; he writes that the specific purpose of the proceedings at court were to compel,

"the delinquent party to do the very thing undertaken; on the man who had married a woman and refused her the rights of matrimony to take her home; on the man who refused to execute the deed according to his promise to execute the deed."²²⁴

For Fry, the use of breach of faith as a form of debt recovery was just one aspect of a broad contract of obligation, whose influence spilled over into a multitude of spaces. Fry's treatment of these diverse examples of oath-making as related to *fidei laesio* accurately represents the

²¹⁹ For this a full discussion of the historiography of law, see Section 1.2.1 in my introduction.

²²⁰ Briggs, "The Availability of Credit."

²²¹ Forrest, *Trustworthy Men*, 33—62.

²²² Edward Fry, "Specific Performance"; Frederick Pollock and Frederic W. Maitland, *History of English Law Before the time of Edward I v.2* (Cambridge University Press, 1898), 197.

²²³ For a discussion on writs of specific performance, see Milsom, *Historical Foundations*, 211—243. The characteristics of these writs, also described as writs of covenant, are discussed below, in Section 2.4.

²²⁴ Fry, "Specific Performance," 241.

significance of the oath in English society. Debt as an obligation to one's creditor was just one part of why parties might pledge their faith.

Frederick Pollock's work takes an equally broad approach to breach of faith litigation. In an article from 1893, also concerned with early English contracts, Pollock observes that in deeds after the Conquest, covenants were affirmed "by means of faith", demonstrating the extent to which faith was used as a legally binding agreement.²²⁵ This perception would evolve, and in *History of the Laws of England*, Pollock and Maitland paint a vivid picture of breach of faith occupying a "border-land" between the king and church's jurisdiction that could be contested.²²⁶ Notably, for Maitland, there was a direct link between the development of the law of contracts and breach of faith litigation which he categorised as the physical placing of one's good faith or their word, into the hands of a creditor, "so his worldly honour can be regarded as an object that is pawned".²²⁷ In all likelihood, this embodiment referred to by Maitland was simply metaphorical; however, in light of recent studies of medieval law as experiential— or "an integral part of the way in which social relations were actually lived out"— Maitland speaks presciently to the embodied religiosity of the late-medieval world.²²⁸ The materiality of faith as something that was used as a gage for securing credit has not been given enough space in the historiography; it is to this materiality that I will turn in my case study on the court of the deanery of Wisbech. Nonetheless, Maitland's treatment of breach of faith as occupying a space between ecclesiastical and secular jurisdiction was an accurate one, reproduced in subsequent literature.

Following Pollock and Maitland's fundamental works, scant attention was offered to breach of faith litigation for the next seventy years.²²⁹ However, beginning in the 1970s, legal historians such as Charles Donahue and Richard Helmholz would return to the ecclesiastical courts of England with a legal eye. Over the course of his career, Richard Helmholz's work has surveyed almost every aspect of breach of faith litigation, from the nature of the underlying obligation to the machinery of the courts themselves. These findings are summarised in his contribution to *The Oxford History of the Laws of England*.²³⁰ Fundamentally, Helmholz argues that, for canonists and church court litigants alike in breach of faith litigation, "the underlying contract retained its temporal character... In the spiritual forum, it was the oath that was being

²²⁵ F. Pollock, "Contracts in Early English Law", *Harvard Law Review* (1893), 396.

²²⁶ Pollock and Maitland, *History of English Law*, 198.

²²⁷ Pollock and Maitland, *History of English Law*, 192.

²²⁸ Musson, *Medieval Law in Context*, 2.

²²⁹ One major exception to this was Brian L. Woodcock, *Medieval Ecclesiastical Courts*. His findings are discussed in greater detail in Chapter 4, below.

²³⁰ Helmholz, *OHLE*.

enforced, not the underlying obligation. In the temporal forum, the reverse was true".²³¹ As we have seen with the opening case of *Crackynthorpe c. Rede*, Helmholz is correct to describe the multivalence that characterised not simply breach of faith litigation, but all debt agreements. Yet, Helmholz exaggerates the bifurcation of the debt and the promise into discrete jurisdictions, describing the action as a "purely verbal trick" employed by clever litigants.²³² While he goes on to heavily qualify this assessment, the separation of the debt from the underlying promise, as identified by Helmholz, did not emerge organically. As the following section will argue, this separation was a direct outcome of the jurisdictional dispute between church and king.

Beyond the study of breach of faith as legal history, these records have remained relatively obscure. In 2008, Chris Briggs published an article that sought to explain why breach of faith became increasingly significant in the fifteenth century, linking its emergence with the perceived decline of the rural credit market. Briggs was working from the field of economic history, seeking to untangle the workings of the rural English credit economy. For this reason, it is unsurprising that Briggs' treatment supports Helmholz's estimations of breach of faith as debt litigation. Yet, in comparing the manor courts of Cambridgeshire with surviving church court records of the same region, Briggs also outlines the key jurisdictional differences between the courts. Echoing sentiments found in both Maitland and Donahue, Briggs' article concludes that "the services that the church courts offered to creditors were almost certainly not as good as those offered by a fully-functioning manor court".²³³ If we treat breach of faith litigation as a form of debt recovery, this was true: just as the king had the authority to seize goods and chattels following unpaid debts, so too could manor courts use force to recover creditor's goods.²³⁴ Yet breach of faith litigation existed long before the decline of manor courts, and persisted into the early sixteenth century, suggesting that there was more that this form of litigation offered to litigants than a means of recovering debt. By reducing breach of faith litigation to rural credit relationships, much like Helmholz, Briggs eclipses a fundamentally social aspect of breach of faith litigation.

In recent years, there has been a growing historiography dedicated to studying the social value of swearing oaths in late medieval England. In 2018, Ian Forrest sought to explore the institutional inequality of the English church, and the ways that the faith of parishioners might articulate this. To Forrest, breach of faith was constitutive of the everyday obligations and interactions that made up the "pattern of human connection".²³⁵ Forrest complicates the treatment

²³¹ Helmholz, *OHLE*, 358.

²³² Helmholz, *OHLE*, 359.

²³³ Briggs, "Availability of Credit," 22.

²³⁴ Briggs "'CAN'T Pay' and 'WON'T pay' in the Medieval Village," *Common Knowledge* 17.2 (2011), 368.

²³⁵ Forrest, *Trustworthy Men*, 5.

of breach of faith as tantamount to secular debt obligation by recognising the power that verbal oaths had in the legal transactions of goods. While secular courts were bound by the strictures of written evidence such as bonds, these documents failed to "apprehend value or 'goods' that are not easily measureable", instead "expressions of faith and trust could be used to heighten promises so that they were more than mere transactions".²³⁶ Oaths not only altered the legal status of a transaction, but critically, they were indicative that "faith entailed decisions to trust this person rather than that one".²³⁷ By recognising the close link between trust and the law, Forrest's work shines a light on the social hierarchies that were not only created by the institution of the church, but upheld by the judicial strength of its courts.

The purpose of tracing the treatment of *fidei laesio* through its brief historiography is not to dismiss the work of any particular historian or subfield. Rather, I wish to reconcile conceptions of breach of faith as either financial trickery or a spiritual equivalent of a secular process: much to the anxiety of common lawyers, breach of faith was capacious. This broadness has allowed both medieval litigants and their historians to characterise this form of litigation to fit their own requirements. A key aim of this thesis is to demonstrate that disparate treatment of breach of faith as one or the other fails to reflect just how closely linked the spiritual and the material was in fifteenth-century English society.

2.4 The Doctrinal History of Breach of Faith in twelfth- and thirteenth-century England

As is well documented by historians of English law, the twelfth and thirteenth centuries were characterised by significant legal and political developments. This was a time when consolidation of justice under the figure of the king was made possible by a growing royal administration and proliferation of the written document that such an administration necessitated.²³⁸ This period was also characterised by ongoing disputes between the English crown and the bishops, particularly over the rights and liberties of the ecclesiastical courts.²³⁹ One question at the heart of these

²³⁶ Forrest, *Trustworthy Men*, 37.

²³⁷ Forrest, *Trustworthy Men*, 40.

²³⁸ John H. Baker, *An Introduction to English Legal History* (Butterworths, 1979), 10—21; John Hudson, *The Formation of English Common Law: Law and Society in England from King Alfred to Magna Carta* 2nd ed. (Routledge, 2018), 136—7.

²³⁹ Jurisdictional dispute had an early origin date in England. In the century before the murder of Thomas Becket, there was an early, and fundamental divergence between spiritual and secular opinions on the determination of jurisdiction. For early kings, jurisdiction was decided by the nature of the crime, so that spiritual crimes should be heard in ecclesiastical courts and all other matters were determined by lay justice. For clerics, canon law suggested that status was the determining feature; clerics should litigate in church

discussions was who had the right to litigate debt in all its complex formations. This uncertainty was far from unique to debt litigation, nor to the ecclesiastical courts; the limits of jurisdiction in medieval England were permeable, contestable and often debated.²⁴⁰ Courts and their users were competent at negotiating an increasingly dense legal landscape, finding lacunae in which to slip through in order to have their causes heard.²⁴¹ However, the focus on the right to litigate cases of debt and obligation by both the king and the church was central in the development of breach of faith, not just in its recorded form, but as it was conceived by commentators such as William Langland, and its fifteenth century practitioners.

This section intends to highlight key moments of jurisdictional rupture and continuity in the pre-history of fifteenth century breach of faith litigation. While rupture is perhaps too violent a word to use for much of the dispute, which R.N Swanson described as a “fairly constant attrition on ecclesiastical jurisdiction”, the fundamental change in approach towards oral agreements between the rule of Henry I and Henry II cannot be overstated.²⁴² Therefore, let us begin by considering a treatise composed during the reign of Henry I. This is an unusually early starting point in discussions of common law: indeed, Paul Brand makes a compelling case for proactive legal consolidation beginning under Henry II's government.²⁴³ Nonetheless, predating that consolidation by about fifty years, the *Leges Henrici Primi* (1115) establishes significant legal precedents that echo the sentiment of the church's approach to issues of obligation, contending that regardless of jurisdiction, agreements should be kept.²⁴⁴ In spite of the turmoil that would follow, this was a sentiment that carried through the centuries, suggesting both a continuity that underpinned many of these disputes, and the interconnectedness of ecclesiastical and secular authority in the realm.²⁴⁵ As the English legal system became increasingly complex over the late twelfth and early thirteenth century, this section considers the legal ramifications of this

courts, while the crimes of the laity were under the jurisdiction of the king. Hudson, *The Formation of English Common Law*, 120.

²⁴⁰ Thomas J. McSweeney, *Priests of the Law: Roman Law and the Making of the Common Law's First Professionals* (Oxford University Press, 2019), 8—16.

²⁴¹ Hudson identifies that litigants were “forum-shopping” as early as 1136 under the rule of king Stephen. In the fourteenth century, petitions were made to the Chancery against the jurisdictional right of the military court- the Court of Chivalry- to hear debt litigation cases; similarly, local secular courts had developed to censure a vast array of moral prohibitions under the guise of public “misconduct”. At their heart, these infractions were spiritual ones. Jurisdictional lines were far from clear, see Hudson, *Formation*, 120; see also Musson, *Law in Context*, 12–15.

²⁴² Swanson, *Church and Society*, 141.

²⁴³ Paul A. Brand, *The Making of Common Law* (The Hambledon Press, 1992), 77–102.

²⁴⁴ Richard L. Keyser, ““Agreement Superseded Law, and Love Judgement:” Legal Flexibility and Amicable Settlement in Anglo-Norman England,” *Law and History Review* 30, no. 1 (2012).

²⁴⁵ Throughout the period, many of the royal clerks were ecclesiastical men. See Baker, *English Legal History*, 133—5.

formalisation concerning issues of debt. I argue that the dispute between subsequent kings and church officials was essential in the bifurcation of the sworn promise and the debt that was contested during all breach of faith litigation. Rather than emerging organically, I will argue that the intolerance of thirteenth-century common lawyers towards causes that sat on jurisdictional boundaries forced breach of faith litigation into a status of legal fictionality, wherein the oath became arbitrarily separated from any material debt under dispute. This was central in influencing the ways in which breach of faith was understood by both churchmen and the laity in the fifteenth century court records.

While it is hard to ascertain when, exactly, breach of faith coalesced into a legal action in England, pledging one's faith was utilised by chroniclers as early as the first quarter of the twelfth century to demonstrate the exchange of serious promises.²⁴⁶ In Eadmer's *Historia Novorum*, Edward the Confessor allegedly pledged his faith (*interposita fide sua*) to William the Conqueror that he would grant the Norman his throne.²⁴⁷ As a religious man working from Canterbury, Eadmer was well-versed in the writing of hagiography and likely drew on the language of oath-making familiar to him.²⁴⁸ The early date of such actions and the gravity of the exchange are significant, suggesting that oaths as binding agreements were a well-established precedent on the island before the onset of any jurisdictional disputes between the secular and ecclesiastical powers.²⁴⁹ While constantly in flux, these disputes began in earnest under the rule of Henry II.

Despite a decree from William I in 1070 declaring that "no bishop or archdeacon shall henceforth hold pleas relating to the episcopal laws in the hundred court", under the reign of Henry I, bishops sat alongside lay leaders in a single judicial space and heard causes deemed to be ecclesiastical in nature.²⁵⁰ Legal jurisdictions were not yet defined, and the king often acted in the capacity of the "secular arm" of the church, employing the temporal power to enforce spiritual punishment, such as excommunication.²⁵¹ In this format, where bishops sat in hundred courts, it was the "procedures rather than the courts" that were distinguished.²⁵² And so, when it came to

²⁴⁶ Maitland and Pollock's *History of English Law Before the time of Edward I* points towards multiple origins of swearing faith, one from early English practice, the other from Roman Law. See Pollock and Maitland, *History of English Law*, 186–7.

²⁴⁷ Fry, 'Fidei Laesio', 238,

²⁴⁸ See Charles C. Rozier, "Between history and hagiography: Eadmer of Canterbury's vision of the *Historia novorum in Angliā*", *Journal of Medieval History* 45:1, 1—19.

²⁴⁹ Baker, *English Legal History*, 339.

²⁵⁰ Helmholz, *OHLE*, 297—8.

²⁵¹ Helmholz, *OHLE*, 111.

²⁵² Keyser, "Agreement Superseded Law," 58.

justice, neither the king nor his clergy saw any need to disentangle the ecclesiastical from the secular.²⁵³

This is evident in the treatise titled *Leges Henrici Primi*, a document that historians have ascribed to an unknown French speaker interested in the compilation of early English laws.²⁵⁴ Here, many of the rights of the church were embroiled with the rights of the king, as described most clearly in Book 11, titled "concerning ecclesiastical pleas belonging to the king". Yet, Henry I's jurisdiction was limited in its reach, his judges often acting in the capacity of advisor in disputes between individuals, rather than those with a final authoritative say.²⁵⁵ Depending on the severity of the crime, local elites in attendance often cast judgement, as described by the *Leges*.²⁵⁶ In this way, judicial authority was somewhat more diffuse than in later periods, and subject to consensus. This push towards settlement and compromise is manifest within *Leges Henrici Primi*, which states that, between two contracting parties, "if anyone had made an agreement in other terms, he is entitled to have it observed".²⁵⁷ This was not strictly at the expense of other laws— in fact, Ibbeston argues that twelfth-century royal courts were "little concerned with personal obligations".²⁵⁸ Yet, the author of the *Leges Henrici Primi* states explicitly, "it is generally true that agreement prevails over the law".²⁵⁹ This preference for conciliation suggests that there was a clear market for actions like breach of faith litigation in the absence of legally-binding obligations. Such a need is markedly similar to canon lawyers' desire for *nuda pacta*, discussed above, not as binding obligations, but rather as compromises.²⁶⁰

Inevitably, this legal proximity underwent a dramatic shift during Henry II's reign, whose tenure was significant in the conflict with the church for two reasons. Firstly, Henry is credited with the strengthening of the administration of justice in the king's name through actions such as the foundation of the general eyre, and the encouragement of trial by jury.²⁶¹ This would have

²⁵³ Here, the text draws on Church fathers such as Jerome and Gregory the Great to establish the clerical rights of priests and bishops. Notably, however, chapter 5, 12 asserts that "judicial proceedings shall always be conducted at the place where the offence has been committed," *Leges Henrici Primi*, trans. L. J. Downer (Clarendon Press, 1972), 89. Here and in the following discussion, all translations have been done by Downer.

²⁵⁴ Hudson, *OHLE II*, 869.

²⁵⁵ Hudson, *OHLE II*, 256–60.

²⁵⁶ *Leges Henrici Primi*, 98.

²⁵⁷ *Leges Henrici Primi*, 183.

²⁵⁸ David J. Ibbeston, *A Historical Introduction to the Law of Obligations* (Oxford University Press, 2001), 13.

²⁵⁹ *Leges Henrici Primi*, 165.

²⁶⁰ There is a long and contentious debate over the ways in which canon and Roman law influenced the early formations of English law. For a brief overview, see McSweeney, *Priests*, 8–16.

²⁶¹ Brand, *The Making of The Common Law*, 82–4.

dramatically increased the number of litigants that would have experienced "major and regular" contact with the royal government.²⁶² Secondly, as the creation of England's first common law treatise— *Glanvill*— might reveal, Henry's legal and administrative reforms sought to bureaucratize a legal system which had previously operated largely on customary practices. It was, to use Hudson's phrase, "the birth of red tape", as experienced at the local level.²⁶³ While debates on how royal courts should operate continued into the thirteenth century, it is clear that questions of jurisdiction were of paramount importance to Henry II, particularly in light of the political tumult that characterised Stephen's reign.²⁶⁴

As one part of a series of reforms, the constitutions of Clarendon in 1164 were a key point of departure from the attitudes that characterised the *Leges Henrici Primi*, perhaps prompted by Henry II's tempestuous relationship with the English clergy.²⁶⁵ Firstly, the constitutions elected to style Henry as the pinnacle authority over all law on the island, describing the procedural hierarchy of the church court system in chapter 8.²⁶⁶ For example, if a case needed to be elevated from the court of the dean, it would go to the bishop's court, and then to the court of the archbishop. According to the Constitutions, if the archbishop failed to settle the dispute it would then "be brought before the king that by his command the dispute be settled in the archbishop's court, for it is not to proceed further without the king's consent".²⁶⁷ While this was a means of preventing the cause from being settled in Rome without the king's consent— a precursor to the writ of *Praemunire* in the fourteenth century— it also made the king the *de facto* authority on where legislation— both secular and ecclesiastical—ought to be heard.²⁶⁸ This extension of Henry's jurisdiction, and indeed his right to do so, was characteristic of his regime, and would be highly influential for subsequent monarchs.

The involvement of the king in the affairs of the ecclesiastical courts would have had even greater bearing on the fifteenth constitution, which confined all debt litigation to the king's

²⁶² Hudson, *Formation*, 122.

²⁶³ Hudson, *Formation*, 136.

²⁶⁴ Hudson, *Formation*, 119–22.

²⁶⁵ Hudson, *Formation*, 127–31.

²⁶⁶ Albert B. White and Wallace Notestein, *Source Problems in English History* (Harper & Brothers, 1915), 373: Constitutions of Clarendon, Chapter 8: "As to appeals which may arise, they should pass from the archdeacon to the bishop, and from the bishop to the archbishop. And if the archbishop fails in furnishing justice, the matter should come to the lord king at the last, that at his command the litigation be concluded in the archbishop's court; and so because it should not pass further without the lord king's consent."

²⁶⁷ White and Notestein, *Source Problems*, 373. See also Daniel Gosling, "Church, State, and Reformation: The Use and Interpretation of praemunire from its Creation to the English break with Rome," PhD Thesis (University of Leeds, 2016), 23.

²⁶⁸ This did not simply concern debt, but was also deeply concerned with landholding, and the disambiguation between what constituted a lay fee and alms.

jurisdiction. It stated that "pleas concerning debts owed with faith interposed, or without the interposition of faith, shall be in the jurisdiction of the king".²⁶⁹ The specific recognition of faith in the assize demonstrates that as early as the 1160s, the pledging of one's faith was a commonplace practice in the exchange of goods, emphasising the legal proximity between debt and oaths. As we shall see, this proximity would become increasingly scrutinised under the common law system: the institutional divide between debt and oaths, between the verbal promise and the provision of written evidence, such as deeds and charters, became a crucial factor in determining where litigation should be heard.²⁷⁰

Ultimately, Henry's attempt to consolidate royal control over the church courts failed.²⁷¹ Nonetheless, his involvement in all matters of debt, with no concessions offered to breaches of faith, demonstrates the preoccupation that both secular and church courts had with the jurisdiction over the exchange of goods and services as Henry attempted to channel an increasing volume of business through the king's court.²⁷² By the time the treatise *Glanvill* was completed (1187-8), the conditions that had been set out in the constitutions of Clarendon had been alleviated, particularly concerning where debt could be heard. Instead, the first real attempt at legally prying apart debt and oaths was made. Chapter 12 of the tenth book of *Glanvill* decrees that,

"Upon the debtor's appearing on the day appointed in court, if the creditor has neither pledge nor sureties nor any other proof, unless the mere faith of the other, this will not be received as any proof in the King's Court. Yet, he may proceed for the breach or violation of faith in the Court Christian."²⁷³

²⁶⁹ William Stubbs (ed), *Select Charters and Other Illustrations of English Constitutional History from the Earliest Times to the Reign of Edward the First* (Clarendon Press, 1921), 167: "Cap. xv *Placita de debitis quae fide interposita debentur, vel absque, interpositione fidei, sint in justitia regis.*"

²⁷⁰ Baker, *English Legal History*, 339.

²⁷¹ Gosling, "Church, State, and Reformation," 23—4.

²⁷² John Hudson, "Constitutions of Clarendon, Clause 3, and Henry II's Reforms of Law and Administration" in *Laws, Lawyers and Texts: Studies in Medieval Legal History in Honour of Paul Brand*, eds. Susanne Jenks, Jonathan Rose and Christopher Whittick (Brill, 2012), 19.

²⁷³ *Glanvill*, X, 12; much of the earliest evidence from church courts derives from the province of Canterbury at the beginning of the thirteenth century. This evidence is only somewhat useful to our understanding of the workings of lower ecclesiastical courts as we cannot assume that the processes were the same once a case was elevated to the archbishop. Nonetheless, Adams and Donahue observe that as early as the archiepiscopacy of Hubert Walter, the archbishop might delegate causes that arrived before him to members of the lower orders, such as abbots from the locality who might know more about the dispute in question. Bishops might be bypassed as Walter received appeals from archdeacons and deans of his province seeking judicial guidance or permission to act. Regardless of where the courts were sitting, all such evidence suggests an adherence to a comprehensive legal framework. *Glanvill*'s mention of the court Christian as an alternative course of action to seek restitution was likely referencing a well-established course of action. See Norma Adams and Charles Donahue Jr, *Select Cases from the Ecclesiastical Courts of the Province of Canterbury c. 1200-1301* (Selden Society, 1981), 2-14.

Paul Brand asserts that, despite the broad territory staked out by *Glanvill* over all debt litigation (nominally, if not practically, at the expense of local courts), its primary concern was to "assert lay jurisdiction over debt litigation involving laymen".²⁷⁴ Therefore, much as it was a treatise to assert royal authority, *Glanvill* was clearly somewhat rhetorical. For the matter at hand, it was the beginning of a conscious segmentation of debts from the oaths that characterised breach of faith litigation, as *Glanvill* remained silent about the role of justice in the enforcement of obligations through writs of covenant. Instead, deference to the church courts occurred only when debt was not actionable in the courts of the king because of a lack of evidence. Therefore, the author's need to specify the different types of proof, including "the mere faith of the other", suggests a deference to both the practical role that the church courts could play in credit relations, and the reality of debt recovery in the period. In practice, faith was a sufficient tool with which to enter into credit relations. While the king's court had no way to provide legal recourse, the ecclesiastical court's ability to investigate and punish perjury proved a useful alternative.²⁷⁵

While there may have been an ideological claim by the king to oversee debt, it is evident that both practical enforcement of the law and the utility of faith-based promises also played a role in the broader understanding of breach of faith litigation as what Maitland describes as occupying a jurisdictional space that was "neither very spiritual nor very temporal".²⁷⁶ By the 1180s, *Glanvill*'s inclusion of breach of faith in discussions of debt litigation suggests that the church courts had already started to fill the legal gap left by common law, that would, ultimately, fail to encompass all debts and obligations until the enforcement of the laws of *assumpsit* in the sixteenth century.²⁷⁷

The king's claim as arbiter of legal jurisdiction in England was an ongoing point of contention with the church, whose freedom had been confirmed in the first chapter of *Magna Carta* "in perpetuity", and litigation in the thirteenth century evolved to reflect this.²⁷⁸ Yet, as noted by Baker, the jurisdictional boundaries were often disputed "between private litigants in particular

²⁷⁴ Paul Brand, "Aspects of the Laws of Debt", in *Credit and Debt in Medieval England*, ed. P. R. Schofield and N. J. Mayhew (Oxbow Books, 2002), 20.

²⁷⁵ It is also apparent that by the time of *Glanvill*'s production, there was a legal distinction between actions to recover debts and actions to enforce agreements; contracts and agreements were legally distinct, "though the precise nature of this distinction is shadowy in the extreme." Ibbetson, *A Historical Law of Obligations*, 18.

²⁷⁶ F. W. Maitland, *Roman Canon Law in the Church of England: Six Essays* (London: Methuen, 1898), 56.

²⁷⁷ Helmholz, "Assumpsit and Fidei Laesio," 263-289.

²⁷⁸ *Magna Carta*, trans. David Carpenter (Penguin, 2015), 39; Andrew M. Spencer discusses the king's position above common law. Spencer, *Nobility and Kingship in Medieval England: The Earls and Edward I, 1272-1307* (Cambridge University Press, 2017), 66-8.

cases".²⁷⁹ As early as the first quarter of the thirteenth century, the conditions of debts and obligations were being investigated by royal lawyers, their limits tested. It was in this period that writs of prohibition developed.²⁸⁰ These writs were documents issued by the Chancery to prevent an ecclesiastical court case from legally continuing if it was thought that the issue in question was being litigated in the wrong jurisdiction. Because of their cost, they were used primarily on more expensive church court litigation, such as the cases that were heard in the consistory court. Nonetheless, *Bracton's Notebook*, compiled during the reign of Henry III, contains a handful of exemplars of writs of prohibition heard at the Chancery, denoting the ways in which church court users could be apprehended for the misuse of the courts. In a case brought in 1229, a writ of prohibition halted a breach of faith case enacted to recover a horse worth 20 shillings and 7 pence. As no faith was promised, this debt was, by definition, a secular one, and when questioned why he brought such a debt to the church courts, the accused explained that he "could have justice there sooner".²⁸¹ Rather than the social glue that bound individuals to each other, the interposition of faith in an agreement became the wedge that was used by royal lawyers to divorce debt litigation from its social context.

This interference in ecclesiastical affairs sparked decades of complaints by the clergy. At the Legatine council of London in 1239, ecclesiastical representatives reported to the pope's official, Otto of Tonengo, that the "prohibitions of the lord King" were being widely misused.²⁸² Judges reported that they were being physically detained by Londoners so that "nobody might bring a case in the ecclesiastical forum, whether of perjury or breach of faith, of usury or of fraud... except only in relation to a will and marriage". While it is hard to ascertain the veracity of this claim, the sentiment reflects the hard line that Henry III took with matters of jurisdictional overlap.²⁸³ In a series of articles from the king's government, reported in Matthew Paris' *Chronica Maiora*, Henry III declared that "suits of breach of faith and perjury are prohibited by the King... An ecclesiastical judge is prohibited from all causes brought against the laity, unless they concern marriage or testament".²⁸⁴

²⁷⁹ Baker, *Introduction to Legal History*, 138.

²⁸⁰ See G. B. Flahiff, "The Writ of Prohibition to Court Christian in the Thirteenth Century I," *Mediaeval Studies* 6 (1944), Helmholz, "The Writ of Prohibition to Court Christian before 1500," in *Canon Law and the Law of England* (Hambleton Press, 1987), 59-76.

²⁸¹ Henry Bracton and F. W. Maitland (ed.), *Bracton's Note Book: a collection of Cases Decided in the King's Court During the Reign of Henry the Third* (Cambridge University Press, 1887), 291.

²⁸² Powicke and Cheney, *Councils & Synods*, 283.

²⁸³ There are several examples of this. For an overview of these disputes, see D. F. Gosling, "Praemunire," 62.

²⁸⁴ Matthew Paris and Henry Richard Luard (ed.), *Chronica Maiora* iv (London 1877), 614: "*Lites de fidei laesione et perjurio prohibentur a rege, quando super his conveniuntur laici coram iudice ecclesiastico.*"

This sentiment is echoed in *Bracton*, which likely informed much of what was being debated in the disputes between church and state.²⁸⁵ The authors of *Bracton* were forceful with the limitation of hearing debt cases in the church court, stating that contracts, "whether on account of the ecclesiastical status of the parties or because of the breach of an oath" were to be heard in a secular court.²⁸⁶ With an intended audience of other English jurists, *Bracton* was a treatise that sought to prove that "the rules applied in the English courts were perfectly in accord" with both Roman and canon law, "even when this was manifestly not the case".²⁸⁷ It seems that, for the king and his lawyers, these causes were of immense importance as they were places where jurisdictional overlap was at its most pronounced and thus subject to contestation: this is particularly true if we consider that Henry III's article on breach of faith was the first decree in a series designed to limit the liberties of the church more broadly, coming before issues of clerical tithing— a highly contentious issue in itself— and questions of bastardy.²⁸⁸

In their pushback against the secularisation of breach of faith litigation, the English clergy elected to underscore the function of faith in these agreements. At the council of Canterbury at London in 1257, two significant references to breach of faith were made. Firstly, as part of a series of proposals made by a council of English archbishops and bishops to defend the rights of the Church, these clergymen tacitly recognised that they were not to hear causes concerning the goods and lands of the laity in the church courts: "Ordinary judges will not hear grievances of the laity concerning lay fees or chattels".²⁸⁹ However, this was offered with a caveat that defended the clergy's right to administer penance, should it be discovered that an oath had been broken concerning these goods.²⁹⁰ At the same gathering, clergymen also expressed complaints levied against the king. Here, the 27th complaint lays out the misuse of writs of prohibition when the laity broke the terms of their contracts. "[I]f among the laity, the giving of faith occurs in a contract, or

Prohibetur ecclesiasticus iudex tractare omnes causas contra laicos, nisi sunt de matrimonio vel testamento." For speculation on the authenticity of these articles, see Powicke and Cheney, *Councils & Synods*, 419, fn. 3.

²⁸⁵ Paul Brand discusses the dating of *Bracton* at great length, arguing that major parts of *Bracton* were already in existence by the 1220s rather than the previously argued date of the late 1240s. See Brand, "The Age of *Bracton*," in *The History of English Law: Centenary Essays on 'Pollock and Maitland'*, ed. John Hudson (Oxford University Press, 1996), 66-73. McSweeney argues that in the century following its creation, the proliferation of the treatise was high, with fifty-two copies surviving. McSweeney, *Priests*, 240.

²⁸⁶ From David Millon, "Circumspecte Agatis Revisted," *Law and History Review* 2, no. 1 (1984), 111.

²⁸⁷ McSweeney, *Priests*, 25.

²⁸⁸ Paris, *Chroinca*, 614.

²⁸⁹ Powicke and Cheney, *Councils & Synods*, 537: "*Ordinarii iudices ad querelam laici feodo vel catillis non cognoscent.*"

²⁹⁰ Powicke and Cheney, *Councils & Synods*, 537-8: "*Si tamen super huiusmodi, fide data vel sacramenti violationem sive per facti evidentiam seu alio modo legitime constiterit mortaliter sic peccans legitime commonitus ad condignam penitentiam agendam compellatur.*"

someone breaks an *iusiurandum* or *iuramentum*, and the judge wills to hear the mortal sin in order for penance to be urged, a royal prohibition is extended."²⁹¹ As we have seen by our opening case from London's commissary courts, this was standard practice: like all church court litigation, breach of faith was concerned with the correction of sin. However, the complaint then goes on to explain that as a result of the excessive use of royal prohibitions, "the salvation of souls is hindered... on account of the oath containing chattels".²⁹² Whether this was a cynical move by the English clergy to protect their legal privileges, or earnest concern for the spiritual health of the nation, it is clear that the English clergy felt it necessary to lay out in clear terms a means by which they could distinguish breach of faith litigation from secular debt: and so, with an emerging common law focused on decrying the litigation of debt in the church courts, the English clergy elected to focus on the spiritual cost of the breach of faith litigation. They did this by positing that the focus of the royal judges on the materiality of these promises was causing the spiritual damnation of the same litigants.

These sentiments were reiterated in earnest in the following year at the Council of the English Clergy at Merton and Westminster. In the 10th entry, the clergy established that breach of faith litigation had taken on a character that necessitated the involvement of the spiritual courts. The passage opens,

"...since certain lay people frequently contract with one another and often with clerics, the validity of these contracts is strengthened by the giving of faith or the physical rendering of an oath".²⁹³

In this short passage, the cause made for the involvement of ecclesiastical judgement is set out.²⁹⁴ As we have seen, from as early as the 1160s, it was common practice in the creation of secular contracts to strengthen an agreement through the use of oath-making.²⁹⁵ However, as the entry continues, the practice of obtaining royal writs of prohibition allowed the laity to disregard the significance of the oath. In response, the clergy threatened to excommunicate those who elected

²⁹¹ Powicke and Cheney, *Councils & Synods*, 544: "*si inter laicos in contractibus interveniat fidei datio, vel infringat iusiurandum quis, iuramentum, vel fidem, et iudex velit cognoscere de tali peccato mortali saltem ad penitentiam iniungendam, porrigitur regia prohibitio.*"

²⁹² Powicke and Cheney, *Councils & Synods*, 544. "...*salus animarum impeditur... occasione quod ratione catallorum prestitum fuerat iusiurandum.*"

²⁹³ Powicke and Cheney, *Councils & Synods*, 578: "*Sane cum connulli laici adinvicem et plerumque cum clericis contrahentes, ipsos contractus fidei datione vallent aut corporali prestito iuramento...*"

²⁹⁴ This is followed in 1261 by a reiteration of much of the same sentiment and is discussed in Section 2.6, below.

²⁹⁵ See p. 60, above.

to "avoid the examination of perjury and injury to faith in this way".²⁹⁶ Evidently, by the mid-thirteenth century, common law had evolved sufficiently to allow litigants to challenge the involvement of the church in their disputes. As common law jurisdiction expanded, litigants started to utilise this power offered to them to undermine the spiritual authority of the church courts. However, according to Richard Helmholz, writs of prohibition seem to have been used infrequently.²⁹⁷ The apprehension expressed by the clergy was probably exaggerated. Nonetheless, statements such as those delivered at the aforementioned councils can be understood as a response to the assertion of royal authority through common law to hear all causes concerning debts and chattels in the thirteenth century.

Following Edward I's ascension to the throne in 1272, complaints such as the ones outlined above continued to be voiced. While there was no overt shift in position by the king on his right to litigate debt, Edward's awareness of the blurred jurisdictional boundaries manifested itself in a writ from 1280.²⁹⁸ In a response to grievances presented by his clergy, Edward acknowledged that the king had no right to interfere in cases concerning oblations, observances, or mortuaries. However, he prohibited the selling of spiritual tithes in the church courts, because Edward believed that by selling them, "spiritual things become temporal, and the tithe becomes chattels".²⁹⁹ The alchemical nature of tithes and chattels serves to demonstrate that despite the judicial dispute surrounding debt and oaths, there was little difference between the materiality of goods and their spiritual impact in late medieval England.³⁰⁰ While no explicit mention of breach of faith occurs here, this statement reinforces the idea that disputes over the exchange of chattels belonged to the king's court, while simultaneously entertaining the idea that conditions of trade were mutable. As such, the "becoming" of spiritual obligations into secular goods through the

²⁹⁶ Powicke and Cheney, *Councils & Synods*, 578: "*ut super perjurio et fidei laesione examen ecclesiastici iudicis sic declinent*".

²⁹⁷ Helmholz argues that between 1293 and 1501, he has found approximately 52 writs, of which, six are related to breach of faith. These numbers are low, but it might be argued that they concerned a period when the legal limits of breach of faith had already been tested and defined. Furthermore, Helmholz recognises that the disciplinary measures decreed by Archbishop Boniface at the Council of Lambeth (discussed below), styled in opposition to writs of prohibition, represented a coherent and "serviceable series of actions" to reinforce the jurisdictional boundaries of the church courts. See Helmholz, "Writs of Prohibition, especially 1023–30.

²⁹⁸ Edward was not popular with the English clergy. Following his ascension to the archiepiscopacy in 1279, archbishop of Canterbury John Pecham was proactive in criticising Edward's interference in affairs of the English Church. See Michael Prestwich, *Plantagenet England* (Clarendon Press, 2005), 129-130.

²⁹⁹ Powicke and Cheney, *Synods and Councils*, 875: "... *quia per venditionem res spirituales fiunt temporales et transeunt decime in catalla*."

³⁰⁰ It wasn't until the late fourteenth century that it was decided that tithes were not subject to secular oversight. Swanson, *Church and Society*, 144.

action of a sale (*venditionem*) inverses the actions of tithing, wherein the payment of a church fee or tithe could render the material payment of money into an act of piety.

It is in this context that we turn to perhaps the most significant writ to be issued regarding breach of faith litigation, *Circumspecte Agatis* (1286). This document was composed by Edward's government, following an extended dispute with the clergy of Norwich that sought to clearly articulate jurisdictional boundaries of the church courts.³⁰¹ The extent to which this royal writ was groundbreaking, as argued by E.B Graves, or a simple reiteration of well-established precedent is unimportant here.³⁰² Fundamentally, *Circumspecte Agatis* conferred the rights of the church courts to litigate breach of faith cases as it was comprehended in the fifteenth century: ecclesiastical judges could hear these causes providing that money was not demanded, neither to repay the underlying debt nor as pecuniary penance. To do so would be considered usurious. The wording of the decree is clear. Addressed collectively with the crimes of laying violent hands on a cleric and defamation, the decree states that "it has been granted formerly that pleas... may be held in the Court Christian, provided money not be demanded; but the proceedings may be taken for the correction of sin; and likewise for breach of faith".³⁰³ While nominally to prevent secular debts being heard in the church courts, it is noteworthy that the first step in penance for breach of faith litigation was reimbursement. This would have necessitated the returning of goods, or their financial equivalent. However, under *Circumspecte Agatis*, neither the judge nor the creditor could forcibly compel the debtor to pay in cash. Debtors could elect to do so, and indeed many did, however it established a real and tangible difference between secular debt litigation where creditors could charge interest (so historians have speculated), and the breach of faith litigation that came before ecclesiastical judges.³⁰⁴

Despite the involvement of the king, the policing of jurisdictional borders occurred at the local level. Yet, the debate that characterised the twelfth and thirteenth centuries was important, nonetheless as it established the "correct" legal position, leaving breach of faith litigation to function in a state of fictionality: the contracting of goods and debts was not to be litigated in church courts, and yet the oaths that underpinned these exchanges were inextricable from the goods themselves.³⁰⁵

³⁰¹ E. B. Graves, "Circumspecte Agatis," *The English Historical Review* CLXIX (1928), 1—20.

³⁰² This is David Millon's fundamental argument, "Circumspecte", 105-27.

³⁰³ Henry Gee and William J. Hardy, *Documents Illustrative of English Church History* (Macmillan, 1914), 83-5.

³⁰⁴ On collecting interest on debts see Davis, *Medieval Market Morality*, 67; Wood, *Medieval Economic Thought*, 181—2.

³⁰⁵ In 1285, following the second statute of Westminster, marriage litigation was also forced into two distinct legal categories of the 'lay' marriage and the 'spiritual marriage'. See Frederik Pedersen, "Marriage

It is in this context that we might consider *Circumspecte Agatis* and its aftermath. Ideologically, the separation of debt and promise in breach of faith litigation functioned to render the king's courts as the only legitimate venue for people of substance to recover debts. As with the petty debt that would proliferate in local courts in the fourteenth century, the debt in breach of faith litigation was of no interest to the royal justices beyond the extension of the king's rights to decide the destination of a court case. Edward I's inquisition into the behaviour of Norwich's clergy was not replicated across the kingdom; by 1333, complaints were being levied to Edward II that there were too many writs of consultation being issued.³⁰⁶ These writs were a means by which to legally challenge the writ of prohibition, and suggest that breach of faith litigation, whether for the purposes of debt recovery or spiritual purgation, remained important through the fourteenth century.

2.5: The Fourteenth-Century Landscape

Following the extensive debate surrounding breach of faith litigation in the thirteenth century, the silence in the following century suggests that the contest between crown and clergy had largely run its course.³⁰⁷ Indeed, even when hostilities intensified at the end of Edward I's reign, authorities were no longer concerned with establishing the jurisdictional limits of breach of faith litigation: from Edward I's reign, the dividing line was clear.³⁰⁸ A brief survey of surviving fourteenth-century bishops' registers suggests that, with the exception of some incidents at the regional level, breach of faith litigation no longer occupied a space of jurisdictional contest that it once had.³⁰⁹ This did not reflect the broader political climate; the statutes of *praemunire*, enacted

Contracts and the Church Courts of the Fourteenth Century," in *To Have and to Hold: Marrying and its Documentation in Western Christendom, 400–1600*; 287-331.

³⁰⁶ *Rotuli parliamentorum Angliae hactenus inediti 1279- 1373*, eds. H. G. Richardson and George Sayles (London: Royal Historical Society, 1935), 226.

³⁰⁷ Prestwich suspects this peace was due to the fact that Edward was abroad at the time. Michael Prestwich, *Edward I* (Methuen, 1988), 257-8.

³⁰⁸ Prestwich, *Edward I*, 540-54.

³⁰⁹ Just as the Norwich clergy were identified as overreaching their jurisdiction on over 100 occasions before the writ of *Circumspecte Agatis* was issued, a series of incidents are recorded and set down in bishop Walter de Stapeldon's register from Exeter in the early fourteenth century. Stapeldon's clergy were accused of forcing men to litigate "secular" matters in the church courts, excommunicating those who refused or sought to enforce writs of prohibition, and using writs of caption to have the sheriff imprison them. These men petitioned the king, Edward II, who issued the letters that survive, entreating the bishop to stop. According to Edward, these jurisdictional breaches were at the "disinheritance of the crown, and the damaging of our dignity." Rev. F. C. Hingeston-Randolph, *The Register of Walter de Stapeldon, Bishop of Exeter A.D 1307—1326* (George Bell & Sons, 1892), 418. In the register of Roger Martival, bishop of Salisbury, a writ of prohibition has been preserved. Using the language of Bracton, Edward II states that Martival did not have the right to hear a cause concerning "the chattels or goods of Humphrey de Bohun,

three times between 1353 and 1393, and the statutes of Provisors, enacted in 1351 and 1390, demonstrate that the tension between the church (or more specifically, the pope) and the king persisted into the fourteenth century.³¹⁰ However, as this section will argue, while a legal partition had been successfully established between the secular and the spiritual elements of debt, the same cannot be said for those thinking about the proximity of debt and indebtedness in the fourteenth century.

Beyond the existence of writs of prohibition, insufficient evidence survives to comment definitively on the extent to which breach of faith was used in fourteenth-century church courts. A survey of the courts of the Dean and Chapter in Lincoln, 1336—1349 suggests a general absence of breach of faith causes from the records of rural Lincolnshire.³¹¹ While this should not be perceived as characteristic of all ecclesiastical courts in the fourteenth century, it is noteworthy that a similar dearth can be seen in York's consistory court: between 1300—99, only 5% of causes concerned breach of faith litigation.³¹² However, the absence of discussions on breach of faith litigation in the fourteenth-century bishop registers and court rolls does not mean that duality at the heart of *fidei laesionis* had been untangled. Instead, as society became increasingly commercialised in the fourteenth century, conversations on the spiritual value of indebtedness came to be had by a much broader audience than canonists or members of the clergy.

These conversations were being conducted by both lay and clerical communities. For Joel Kaye, the fourteenth century marks a turning point for the philosophical analysis of money and economic thought, arguing that the increased monetisation of society led to a change in how scholars at the universities of Oxford and Paris examined the world. While the fourteenth century was still characterised by equality in trade as an ideal, he argues that scholars' desire to quantify the natural world derived from their experience in the market; these men were thinking about "what money measured and how money measured".³¹³ By the beginning of the fourteenth century, philosophers such as Duns Scotus and Henry of Ghent believed that the reputation of a merchant "could be valued in monetary terms and licitly added to the re-sale cost of his goods".³¹⁴

earl of Hereford and Essex," unless they concerned testament or marriage. See Susan Reynolds (ed.), *The Registers of Roger Martival Bishop of Salisbury 1315–1330 V. III* (Canterbury and York Society, 1964), 69.

³¹⁰ Gosling "Praemunire," 27.

³¹¹ In total, the Dean and Chapter heard less than 25 causes between 1336 and 1349. L. R. Poos, *Lower Ecclesiastical Jurisdiction in Late Medieval England: The Courts of the Dean and Chapter of Lincoln, 1336—1349* (Oxford: Oxford University Press, 2001), 1—266.

³¹² Donahue, "Roman Canon Law," 659.

³¹³ Joel Kaye, *Economy and Nature in the Fourteenth century: Money, Market Exchange, and the Emergence of Scientific Thought* (Cambridge: Cambridge University Press, 2004), 139.

³¹⁴ Kaye, *Economy and Nature*, 140.

There is also evidence that such a change in theology was being echoed in a cultural shift in literature that increasingly catered to wealthy lay audiences.³¹⁵ Here, increased attention was paid to debt and indebtedness in literature of the fourteenth century as metaphors for a man's honour. Literary historians have long recognised the metaphorical power of debt in late medieval literature. For Derek Pearsall in his assessment of *Piers Plowman*, the "commercial metaphors are the stock-in-trade of both biblical parables and Franciscan exempla".³¹⁶ In this way, literary scholars have tended to view the economic study of debt and the theological ruminations on ideas of debt as entirely separate fields. Yet, as Anne Schuurmann argues in her recent study of the theology of debt, insufficient attention has been paid to the economic theology of fourteenth-century authors such as Langland and Chaucer.³¹⁷ Schuurman challenges the separation of theology from discussions of the market, arguing, like Kaye, that "these texts inscribe debt as a productive, even a transformative, economic relation precisely through, not in spite of, their expression of penitential themes".³¹⁸ By the fourteenth century, literature had become a venue in which the value of a man's oath could be litigated.

In this way, we might argue that breach of faith litigation represented a familiar tension between material economic concerns and spiritual mores that became increasingly complex as the fourteenth century progressed. While a lack of surviving records from the ecclesiastical courts hinders our understanding of how giving faith developed as an instrument of credit, we might catch glimpses of it elsewhere. Practices in other courts— such as the use of compurgation in English manor courts— demonstrate how willing people were to make use of oaths to examine the credit of men and women in their communities. The swearing of an oath was the oldest form of trial in the manorial court records, and despite the development of alternate forms of trial such as the use of juries and written evidence, oaths remained a highly useful way of testing the character of litigants, particularly in debt litigation.³¹⁹ As with all litigation in these courts, the frequency with which wager of law was employed varied greatly,

³¹⁵ See Davis, *Medieval Market Morality*, 44—45, 53—5.

³¹⁶ Derek Pearsall, "Introduction," *Piers Plowman: A New Annotated Edition of the C-text: Exeter Medieval Texts and Studies* (University of Exeter Press, 2008), 29.

³¹⁷ Anne Schuurman, *The Theology of Debt*, 1-13; 50-81. In a similar vein, Kenneth Pennington argues that medieval people did not imagine the same borders between fields that largely exist in modern ideas of law, theology and economics. Kenneth Pennington, "The 'Ius Commune', Suretyship and Magna Carta," *Rivista internazionale di diritto commune* 11 (2000) 255—57.

³¹⁸ Schuurman, *Theology of Debt*, 12.

³¹⁹ Beckerman, "Procedural Innovation," 203—212. Despite its persistence historians seemed to have reached a consensus that wager of law was an "inferior form of trial" by the end of the thirteenth century. See Beckerman, "Procedural Innovation," 206; Zvi Razi and Richard Smith, *Medieval Society and the Manor Court* (Clarendon Press, 1996), 52; Mark Bailey, *The English Manor c. 1200– c. 1500* (Manchester University Press, 2013), 173.

and historians have demonstrated the extent to which the practice of manor courts was deeply localised.³²⁰ Nonetheless, this thesis will show that the continued use of compurgation in local ecclesiastical courts, as in manor courts, is representative of a broader understanding of justice that closely binds individuals and their debts to ideas of reputation, regardless of the legal venue in which a debt was contested. For English litigants, regardless of the legal forum in which they found themselves, the reputation required to swear one's oath was a fundamental component of all economic exchanges.

Taken together, lack of discourse on breach of faith litigation in the fourteenth century does not necessarily signal a pause in discussions on the intersection of oaths and material debts. Instead, as demonstrated through the various developments in literature, theology and the law, the fourteenth century marks an expansion of these conversations far beyond members of the king's court and the English church.

2.6: William Lyndwood's *Provinciale*

While there is little evidence to be found in the fourteenth century, William Lyndwood's *Provinciale* lies at the heart of our understanding of the canonical perspective of perjury and breach of faith in England in the fifteenth century. Previously, Lyndwood's representation of breach of faith and perjury in church court litigation has been interpreted by historians as central in revealing the artifice behind these forms of litigation.³²¹ It was Lyndwood's discussion on how to use libels to "avoid royal prohibitions" that prompted Richard Helmholz to characterise the advice as "a purely verbal trick" used in order to conduct secular business.³²² I would like to consider an alternative reading of Lyndwood's treatment of breach of faith and perjury in the *Provinciale*, building on the nuanced impression offered by Paul Cavill's study of perjury in early Tudor England. While Cavill acknowledges that Lyndwood "advised only technical compliance" with the central authorities to prevent church courts from hearing debt litigation, he recognises that this delineation was a result of hostility from common lawyers.³²³ Lyndwood's assessment of these crimes as mixed is both a result of the formation of common law in the thirteenth century, as previously discussed, and the

³²⁰ Briggs, "Manor Court Procedures," 519—58; on manor court juries, Larson summarises the local nature of customary courts observing how "each study of the jury is a local study." Peter. L. Larson, "Village Voice or Village Oligarchy: The Jurors of the Durham Halmote Court, 1349 to 1424," *Law and History Review* 28.3 (2010), 676.

³²¹ Discussed above, Section 2.3.

³²² Helmholz, *OHLE*, 359.

³²³ Cavill, "Perjury," 198.

tacit recognition by the canonist that despite the fictionality of the court proceedings, the oath was an integral aspect of breach of faith litigation.

As a trained canon lawyer, Lyndwood's work and education placed him at the heart of the discussions of canonical jurisprudence in England in the early fifteenth century. Before his role as a bishop of St David's between 1442 and 1446, Lyndwood worked at Canterbury under the archbishop Henry Chichele, to whom the *Provinciale* offers acknowledgement.³²⁴ In such a role, Lyndwood would likely have found himself overseeing extensive church court litigation.³²⁵ In both a practical and ideological capacity, Lyndwood's writing may have played a key role in interpreting canon law on behalf of a broad spectrum of clergymen, to whom Lyndwood speaks.³²⁶ Significantly, the text was broadly circulated, first as a manuscript before becoming one of the first English legal texts to go into print in 1483, demonstrating contemporary acceptance, in spite of its 'unofficial' status; unlike Raymond of Penafort's assemblage of canon law in the *Decretals*, which was written at the behest of Gregory IX, *Provinciale* was never explicitly commissioned.³²⁷ Nonetheless, it was Gregory's *Decretals* that Lyndwood copied both in theme and structure; the text of *Provinciale* is split into five books and 240 chapters.³²⁸ These chapters are divided into two distinct sections, characteristic of many medieval glosses. On one hand, Lyndwood accumulated statutes issued by the Archbishop of Canterbury, both historical and contemporaneous, into a singular text. These were located towards the centre of each folio and offer a fairly comprehensive survey of the canons endorsed by consecutive archbishops, from the council of Oxford in 1222, to those of Chichele in the fifteenth century.³²⁹ Surrounding these passages, Lyndwood offered extensive commentaries on key canonical questions: it is in these glosses that we find his extensive writing on oath-taking.

The key passage on the church's role in litigating breach of faith cases comes in a discussion of perjury, and opens by stating, "the question of whether a bond is owed by someone and whether it binds or not, pertains to the church".³³⁰ In context, this gloss on perjury appears as a commentary attached to the Archbishop of Canterbury, Boniface of Savoy's address at the Council of Lambeth in 1261. While Boniface's canons are largely dismissed by Lyndwood as little

³²⁴ Paul Cavill, "The First Readers of Lyndwood's *Provinciale*," *Ecclesiastical Law Journal* 24.1 (2022).

³²⁵ C. R. Cheney, "William Lyndwood's *Provinciale*", *The Jurist*, 21 (1961), 407.

³²⁶ Cavill, "The First Readers."

³²⁷ J. A. Watt, "The Papacy," *The New Cambridge Medieval History V*, ed. David Abulafia (Cambridge University Press, 1999), 125.

³²⁸ Cheney, "William Lyndwood," 408.

³²⁹ John Baker, "Famous English Canon Lawyers: IV William Lyndwood, LL.D. († 1446): Bishop of St. David's." *Ecclesiastical Law Journal* 2.10 (1992), 269.

³³⁰ Lyndwood, *Provinciale*, 315o sv. *perjurio*.

observed in the mid-fifteenth century, Lyndwood nonetheless lays out the purpose of glossing them to "show in what respect they harmonise with the common law and where they can be based upon canon law".³³¹ During the council of Lambeth, Boniface launches a searing condemnation of the exercise of lay power with the intention of hindering spiritual jurisdiction, emphasising that those who heard cases meant for spiritual courts "such as perjury, breach of faith... automatically fall under the sentence of excommunication".³³² While this largely incorporates much of what was said at the Council of Merton (1258), discussed above, Cheney and Powicke observe the linguistic development that occurs when these canons circulate, from provisions (*providemus*) and ordinances (*ordinamus*) in 1258, to statutes by 1261, ratifying them into permanent fixtures of English ecclesiastical canon.³³³ That Lyndwood elected to use this council to discuss the jurisdictional limits of breach of faith and perjury, particularly emphasising the threat of excommunication, seems intentional as it establishes what was at stake in the encroachment of jurisdictional boundaries.

Indeed, a key theme of Lyndwood's discussion on perjury was the overarching question of jurisdiction.³³⁴ He is practical in his advice, acknowledging the role that the secular courts had to play in hearing cases concerning oaths. Regarding perjury, he writes:

"when another person's interest is at stake and the matter is about upholding an oath, then the judge can be not only an ecclesiastical judge but also secular, as long as it is not called into question whether the oath is permissible or not".³³⁵

In the secular courts of the early fifteenth century, writs of *assumpsit* and covenant both offered legal recourse for misfeasance or nonfeasance of an obligation, respectively.³³⁶ Yet, the ineffectiveness of these forms of litigation made them an impractical and expensive alternative to church courts, where the treatment of oaths was already "deadly serious".³³⁷ Nonetheless, Lyndwood does his due diligence, elaborating on the conditions necessary to decide the best venue for litigation.³³⁸ It is these conditions that lead Lyndwood to explain that perjury "is not

³³¹ Lyndwood, Lib II, tit. 2, c. 1. ver *contingit*; translated in Powicke and Cheney, *Councils & Synods*, 662.

³³² Lyndwood, *Provinciale*, 315.o.

³³³ Powicke and Cheney, *Councils & Synods*, 663.

³³⁴ Notably, this gloss was written while he was working as an official of the court of Canterbury. Cheney, "William Lyndwood's *Provinciale*," 407.

³³⁵ Lyndwood, *Provinciale*, 315.o, "... *quando verlatur alterius interesse, et agitur ut juramentum servetur, tunc potest esse iudex non solum ecclesiasticus, sed Saecularis; dummodo non revocetur in dubium, an juramentum sic licitum, necne...*"

³³⁶ Palmer, *English Law in the Age of the Black Death*, 62-91.

³³⁷ Cavill, "Perjury", 188; Forrest, *Trustworthy Men*, 15.

³³⁸ These caveats are deeply pragmatic. For example, if there is doubt surrounding the validity of the oath made, then the matter should be referred to an ecclesiastical judge. However, a secular judge has precedence in jurisdiction "if approached first" (...*si primo adeatur...*) demonstrating that ultimately, the fluid

merely an ecclesiastical crime but a mixed one".³³⁹ In context, it is evident that when Lyndwood refers to the "mixed" nature of perjury, he is discussing the forum in which it is litigated.

Yet, one cannot help but consider the overwhelming emphasis placed on the role of the oath in determining the correct venue. In the second half of the passage on perjury, Lyndwood elects to focus particularly on the "the practice of libel in perjury causes, to evade royal prohibitions".³⁴⁰ Here, Lyndwood describes a standardised format of reporting perjury that emphasises the breaking of an oath during the exchange of material goods. This form could be utilised by the reader to avoid invoking a writ of prohibition. This is considered by historians to be the most overt expression of masking the 'true' material debt in the guise of the committing of religious crimes such as breach of faith and perjury. It states that:

"[Person] A presents [Person] B to the Judge, that the same [Person] B by the pledging of his faith, or otherwise promising by his oath, bound himself to Person A, that he would faithfully pay the *decem* on a certain day. Because, with the said day having been reached, by not keeping his promise of this kind, indeed by recklessly coming against it, [Person B] reprehensibly violated his same oath and faith, falsely alleging that he was not bound canonically by his faith nor to any other bond of faith..."³⁴¹

Albeit a discussion of perjury, the text reflects the general formation of almost every breach of faith case that appeared before the lower ecclesiastical courts of England in the late medieval period. And so, beyond the literal mixing of jurisdiction that Lyndwood discusses in the gloss, it is evident that many breach of faith cases concerned two issues which fundamentally operated on two different timescales: the debt itself (the *decem*), that was concerned with a worldly debt, and the promise to repay that debt, which had been pledged, according to Lyndwood, against the debtor's eternal soul.³⁴² In the thirteenth century, as the church scrambled to retain their right to hear these causes, it is clear that the ecclesiastical courts were forced to treat these issues— inherently mixed in nature— as purely spiritual matters. By the fifteenth century, what has been considered a neat

nature of the courts system of the early fifteenth century was dictated largely by the plaintiff's choice of venue.

³³⁹ Lyndwood, *Provinciale*, 315.o.

³⁴⁰ Lyndwood, *Provinciale*, 315.o. sv. *perjurio*; The significance of ecclesiastical libels in preventing breach of faith litigation being heard in common law courts has been considered by Richard Helmholz. He concludes that the common law's inability to prevent debt cases being heard in church courts was a structural flaw, where the vagueness of the libels sent to the king's courts, and their emphasis on perjury (as described by Lyndwood), was sufficient evidence to prevent their removal. Helmholz, "The Writ," 73-4.

³⁴¹ Lyndwood, *Provinciale*, 315.o.

³⁴² Lyndwood, 108.o.

workaround for debt litigation, should rather be treated as the inevitable byproduct of the extensive development of debt litigation in common law.

While the evidence from the administrative records of bishops largely ignored business of this level in their registers, it is apparent that in addressing the issue in such pragmatic terms, Lyndwood was likely commenting on the multitude of *fidei laesione* causes that were being presented at Canterbury. By the time of the production of the *Provinciale*, the church courts had overseen breach of faith litigation for at least two hundred years, and their authority to do so remained relatively unchallenged from 1286. Lyndwood's discussion of breach of faith and perjury in the *Provinciale* suggests that the author was more concerned with discussing the practicalities of hearing breach of faith cases than litigating the church court's right to hear them. In fact, the entire doctrinal basis of Lyndwood's words derive from the authority of his predecessors, as he draws together the political positions of English archbishops with the authoritative canonical underpinnings of canon lawyers. While this format typifies doctrinal discussions, seminal in the formation of canon law, it might be argued that Lyndwood's deference to the past equally characterises a broader, contemporary attitude to law at the time.³⁴³ Much like the ruminations of the council of Carthago— that the primary objective of courts was concord— the *Provinciale* reflected a predisposition to the power of "communal memory" that characterised late medieval legal culture.³⁴⁴ For example, in Book 2 of the *Provinciale*, Lyndwood takes a particularly pragmatic approach to celebrating vespers, noting that local custom might affect the length of holiday celebrations and the observance of holy days.³⁴⁵ Deference to communal practices, which dictated local practice in courts throughout England, was given ample recognition in church courts.

We might conclude that William Lyndwood produced the *Provinciale* not just as a means of emulating the *Decretals*, but to impart practical wisdom to his audience after his years of experience in ecclesiastical courts. While historians have framed Lyndwood's advice on perjury as a method of evading common law infringement, Lyndwood's description of the crime of breach of faith and perjury as mixed reflects a society that refused to see a harsh division between the secular and the spiritual when discussing debt and indebtedness. More than a linguistic sleight of hand, the *Provinciale* reunites the duality of debt both as a material obligation and a spiritual state.

³⁴³ Anthony Musson, "Appealing to the Past: Perceptions of Law in Later Medieval England," *Expectations of the Law*, ed. Anthony Musson (Woodbridge: Boydell and Brewer, 2001), 165—80.

³⁴⁴ Kane, *Popular Memory*; P. J. P. Goldberg, "'I Know What You Did Last Summer': Knowledge as Power among Parochial Clergy in Later Medieval England, in *Aspects of Power and Authority in the Middle Ages*, 196.

³⁴⁵ Lyndwood, *Provinciale*, 99-101, sv. *De Feriis*.

2.7: Conclusion

The purpose of this chapter was to retrace the history of breach of faith litigation in England, both in its legal development in the ecclesiastical courts, and in its treatment by historians. While historians have deftly explored the functions of breach of faith litigation as a form of debt recovery, this chapter has highlighted the fundamental role that oaths played in breach of faith and perjury litigation in late-medieval England. From as early as the twelfth century, the jurisdictional struggle between the king and the English Church over debt litigation saw the partitioning of financial debt away from the social contract that was formed when verbal agreements were made. However, as recognised by the numerous petitions to the king by churchmen in the second half of the thirteenth century, such a division was the result of a dispute that failed to reflect the everyday practices of English society, who relied heavily on oaths to conduct business. Separation between the material debt and the spiritual oaths in breach of faith litigation was never a practical reality. Furthermore, as society became increasingly commercialised, the oath became an instrument of credit that could not be sufficiently measured in the central courts of the king, nor in the customary courts of the manor. Instead, the value of one's credit became a measure of one's social standing, increasingly discussed in the literature produced for the mercantile classes such as Chaucer and Langland. Promises in late medieval England mattered, as did the oaths that offered them legal weight.

This chapter argues that the study of breach of faith causes as straightforward debt litigation occludes a key function of breach of faith and perjury litigation that was fundamentally social in nature. While this is apparent in all forthcoming case studies, it is particularly clear in Chapter Four's study of the diocesan courts of Canterbury, where a majority of litigants make no mention of the monetary debt that the defendants have incurred. Instead, litigants of these courts were overwhelmingly focused on litigating the promises that had been broken. With a recognition that debt recovery may have motivated many litigants in these courts, this thesis advocates for a return to William Lyndwood's understanding of breach of faith and perjury litigation in lower ecclesiastical courts as a 'mixed crime' that was both spiritual and secular in nature. *Causae fideo laesionis seu periurii* showcase how closely intertwined ideas of economic debt had become with spiritual and social indebtedness by the fifteenth century. In the following three chapters, this study will demonstrate the ways that breach of faith litigation was an integral part of the credit economy in both rural and urban England between 1460 and 1491.

Chapter 3 : The Deanery of Wisbech

3.1 Introduction

Sometime between 1469 and 1472 the court of the deanery of Wisbech congregated to hear causes from the town and its surrounding parishes in the church of St Peter and St Paul in Wisbech.³⁴⁶ Situated in the shadow of a neglected Wisbech castle, it was here that Richard Sorell was charged to appear for violating his faith with a local chaplain, Richard King, by withholding 9d owed to him.³⁴⁷ Following Sorell's non-appearance, the court's record states that concord was eventually reached between the parties, due to the intervention of the dean on behalf of Sorell. However, for this reason, the dean (self-referential in the document as "I", *ego*) charged Sorell to pay his court fee for assisting in reaching concord.³⁴⁸ Such was the cost of a peaceable settlement.

This cause and its solution offer a glimpse into a lively credit market that operated across Cambridgeshire's fenland, one that was built largely on the honest word and deeds of members of a community that, at first glance, placed great importance on the authority of the court of the deanery. Yet, this type of litigation and its appearance in the ecclesiastical courts were not just a reflection of the authority of the local church court and its administrator. Rather, the socioeconomic make-up of Wisbech and its hinterlands had a profound impact on the ways in which debt was conceived and recorded in this court. As with King and Sorell, breach of faith litigation offers insight into the often-contentious engagements between townsfolk, the local gentry and members of ecclesiastical fraternities. Thus, this chapter aims to set out two things: firstly, it will paint a picture of a busy rural credit market, relatively unaffected by the mid-century 'slump' posited by John Hatcher.³⁴⁹ Secondly, this chapter intends to demonstrate how the authority of

³⁴⁶ The broad range offered for dates in this chapter follow the dating conventions available in printed edition of the records of the court of the deanery of Wisbech. Poos, the editor of this edition, experienced significant difficulty in dating these records as they have been bound out of order. See L. R. Poos, *Lower Ecclesiastical Jurisdiction*, xxxix-xl.

³⁴⁷ The castle was the locus of secular power in the town, located in the figure of the constable. Throughout the fifteenth century it endured long cycles of decay and attempts at renewal. A full rebuild was undertaken between 1478 and 1483 by the newly elected Bishop Morton of Ely. Please see David Stone, *Decision Making in Medieval Agriculture* (Oxford University Press, 2005), 23-5.

³⁴⁸ Poos, *Lower ecclesiastical jurisdiction*, 275, "...debet feodum quia ego decanus concordavi cum Ricardo Kyng pro illo..."

³⁴⁹ Hatcher, "The Great Slump," 237-72.

the deanery court to litigate indebtedness was underpinned by a lay community of court users who saw great value in the practice of law.

The first section of this chapter will lay out a summary of my quantitative analysis of breach of faith litigation in the court of the deanery. This section will consider the quantity of litigation between 1460 and 1480, before quantifying the value of the debt litigated. The purpose of this quantification is to outline the fact that, despite rather high levels of litigation exhibited in these records, the value of debts litigated in these courts remained low, used by a large breadth of litigants. As a means of offering a comparative analysis with Canterbury and London, the second section will then comment briefly on the litigants brought before the court, looking at gender and geography of breach of faith in Wisbech. This section will then turn to consider the ways in which local religious fraternities utilised the courts to enforce the repayment of debts.

Once this data has been quantified, the remaining section of this chapter will consider the ways in which breach of faith litigation was used in practice. Here I will demonstrate how leading men in this community used these courts to reinforce social norms, drawing on both the formal authority of the courts and the threat of diminishing social capital that fuelled breach of faith litigation. To do this, I will investigate the function of two types of court procedure: arbitration and suspension. I will argue that both arbitration and suspension encouraged informal agreements to be reached by employing the threat of ecclesiastical sanctions. Altogether, this chapter hopes to offer an insight into the nature of rural credit in the fifteenth century, following on from the accomplished research of Elaine Clark. Furthermore, this chapter builds on the work of Ian Forrest to argue that breach of faith litigation in Wisbech and its hinterlands can expand our understanding of the intimate relationship between reputation and creditworthiness in rural communities by outlining who was excluded from these transactions, and how the authority of the court could impact behaviour of local residents.³⁵⁰

3.1.1: Wisbech, an Economic and Legal Overview

While a clear understanding of Wisbech's local demography in the fifteenth century is tricky, a sense of the catchment area for the court of the deanery will help to contextualise the quantification of breach of faith litigation that follows. Alan Dyer estimates that the population of Wisbech remained relatively static from the fourteenth to the sixteenth century, based on the lay subsidies of 1377 and 1525, in which he estimates a population of about 1638 people.³⁵¹ More

³⁵⁰ Forrest, *Trustworthy Men*, 163-200.

³⁵¹ Alan Dyer, *Decline and Growth in English towns, 1400–1640* (University of Wales Press, 1995), 65.

recently, Michael Gilbert has revisited these figures, offering a slightly higher estimate of approximately 1720 individuals in 1327 and 1774 people in 1525.³⁵² If we take these numbers as guidelines rather than stable figures, it is apparent that Wisbech was a relatively small urban community, surrounded by a series of largely rural parishes of Leverington, Newton, Elm, and Tydd St. Giles. Inclusive of these communities, the regional population in the fifteenth century can be estimated to be between 4000 and 5200 people.³⁵³ The deanery also acted as the local church court for parishes that lay beyond the manorial hundred of Wisbech, such as for Whittlesey to its west, and the chapelry of Emneth, just over the diocesan border of Norfolk, near Elm.³⁵⁴ The wide geographical sprawl of these parishes across the fenlands existed in sharp contrast to the densely clustered villages and their parishes in southern Cambridgeshire.³⁵⁵ This gave way to a very different form of governance in the Isle of Ely, divided into only three administrative hundreds.

In theory, the bishop of Ely acted as both seigneurial and spiritual lord of the Isle of Ely, leading Bainbridge to describe the region as an “amalgam of ecclesiastical, manorial and baronial jurisdictions”.³⁵⁶ However, from the turn of the fifteenth century, the bishop’s demesne of Wisbech Barton experienced significant economic decline, reflective of wider trends in demesne leasing in the fifteenth century.³⁵⁷ By 1429, the entirety of the Bishop of Ely’s land had been leased for an annual income of £48, further declining to £37 by 1480.³⁵⁸ There was an even more intense drop in the value of the lease of the market and fair at Wisbech, which fell by 47% between 1410 and the 1440s.³⁵⁹ Yet, as Chris Dyer argues, the economic decay depicted in seigneurial records may fail to offer a holistic image of society in the fifteenth century, where “new buildings were being

³⁵² Michael Gilbert, "The Changing Landscape and Economy of Wisbech Hundred, 1250–1550," Unpublished PhD Thesis (University of Leicester, 2017), 128.

³⁵³ Michael Gilbert, "Changing Landscape," 128; For a visualisation of the changing population in the administrative Hundred of Wisbech between 1327 and 1525, see Gilbert, "Changing Landscape," 130; I use the term “relatively small” here as Wisbech just about falls in Christopher Dyer’s classification of a ‘small town’ as a community with a population of between 300 and 2000 inhabitants. While it is larger than communities such as Hythe and New Romney, discussed in the following chapter, its credit practices bear many similarities with smaller fenland communities. This is discussed below, section 3.2.1. On the classification of ‘small towns’ see Dyer, “Small Places with Large Consequences: The Importance of Small Towns in England, 1000—1540*,” *Historical Research* 75, no. 187 (2002), 2.

³⁵⁴ Poos, *Lower Ecclesiastical Jurisdiction*, xxvi; Virginia Bainbridge provides a large map of all Cambridgeshire parishes, see Virginia R. Bainbridge, *Gilds in the medieval countryside: Social and Religious Change in Cambridgeshire, c.1350- 1558* (Boydell Press, 1996), 30-1.

³⁵⁵ Bainbridge, *Gilds*, 22.

³⁵⁶ Bainbridge, *Gilds*, 131.

³⁵⁷ For a useful summary, see F. R. H. Du Boulay, "Who were farming the English Demesnes at the End of the Middle Ages," *The Economic History Review* 17.3 (1965): 443-455; For Wisbech in the early fifteenth century see Stone, *Decision Making*, 156-86.

³⁵⁸ Stone, *Decision Making*, 156.

³⁵⁹ Stone, *Decision Making*, 40.

constructed, land was being carefully cultivated... [as] villages came together in parish churches and guildhalls".³⁶⁰ By considering a broader range of sources, we might paint an image of Wisbech that was not entirely catastrophic, as suggested by Lee in his article on the Cambridgeshire villages of Outwell and Upwell. His study of the bequests to religious guilds in wills of smaller landholders, the refurbishment of the houses of the gentry, and their access to the thriving credit market litigated at Wisbech all point to economic vitality, an image of cautious optimism.³⁶¹

The sense of general decline is reflective of the estimated wealth of taxpayers in the lay subsidies. Despite the steadiness of population, Wisbech went from being the town with the fourth most taxable wealth in a 50 miles radius of Cambridge in 1334, to being the fourteenth in 1524-5.³⁶² Furthermore, there was a noteworthy reduction in the number of taxpayers between these years, with 862 registered in 1377 and only 252 noted in 1524, though this may in part have to do with the higher taxation threshold, rising from ten shillings worth of moveable property in 1327 to one pound in 1524-5.³⁶³ In this way, the redistribution of wealth over the course of the fifteenth century occurred in two important ways in Wisbech. Firstly, John S Lee ascribes the economic decline of Wisbech to a more general economic shift in the region towards growing cloth-making centres, such as Hadleigh and Bury St Edwards in Suffolk, and Colchester in Essex.³⁶⁴ Secondly, there was a very clear demographic shift within the administrative hundred of Wisbech that saw an increasing flow of people migrating from the rural hinterlands around Wisbech into the town itself. This was largely the result of a change in farming, as pastoral farming replaced the arable farming commonly practised at the beginning of the fourteenth century; pastoral farming would have required a significantly smaller labour force in the smaller parishes around Wisbech.³⁶⁵

This consolidation of larger tracts of land into the hands of fewer people was particularly acute in parishes such as Tydd St Giles, suggesting to Gilbert a "growing disconnect between population and prosperity".³⁶⁶ As I will argue below, the economic health of Wisbech, visible in the development of Wisbech's parish church, was influenced by those who controlled the local administrative institutions of debt and indebtedness- that is, the religious guilds, the deanery's

³⁶⁰ Dyer, *An Age of Transition?*, 125.

³⁶¹ John S. Lee, "Decline and growth in the late medieval fenland: the examples of Outwell and Upwell," in *Proceedings of the Cambridge Antiquarian Society CIV*, ed. Halliday (Cambridge Antiquarian Society, 2015), 142-3.

³⁶² John S Lee, *Cambridge and its Economic Region, 1450-1560* (University of Hertfordshire Press, 2005) 32.

³⁶³ Dyer, *Decline and Growth*, 31; Gilbert, "Changing Landscape," 127.

³⁶⁴ Lee, *Cambridge*, 32-3.

³⁶⁵ Stone, *Decision-Making*, 160-1; Gilbert, "Changing Landscape," 131.

³⁶⁶ Gilbert, "Changing Landscape," 161-2.

court and the men who operated them.³⁶⁷ As we come to review breach of faith litigation in the 1460s, it becomes apparent that many of the causes in the courts were not simply an expression of credit available in the local market, but an articulation of the ways in which trust became an essential commodity in credit transactions.

3.1.2: The Courts at Wisbech

The changing economic landscape likely played a significant role in the ways in which people litigated their debts in Wisbech. As previously discussed, this was a period of jurisdictional decline for manor courts, particularly in the litigation of debt and detinue cases. For example, Chris Briggs' work on rural credit in fifteenth-century England shows a comprehensive reduction in the number of debt cases in three Cambridgeshire manor courts over the course of the fifteenth century.³⁶⁸ Elsewhere, in courts such as those in the ancient demesne manors of Havering, McIntosh argues that the ability to compel litigants to appear before the courts had become far more challenging by the mid-fifteenth century.³⁶⁹ However, the extent to which this decline was consistent throughout the country has been contested, where certain "hundred courts remained vigorous forums of civil litigation, as for example at Launditch (Norfolk), Lothingland and Mutford (Suffolk), and Warminster (Wiltshire), where the surviving rolls attest to their intense activity".³⁷⁰ While historians have traditionally viewed civil litigation in the manor courts as a secondary function of the courts themselves (becoming increasingly redundant as the manor as an economic unit deteriorated), Johnson argues that the continued promulgation of law by these courts long after their supposed 'death' represented a conscious reclamation of these institutions by manorial tenants.³⁷¹

Rather than treating the secular courts as in competition with their ecclesiastical counterparts, we might envision courts as a constantly shifting constellation of jurisdictions.³⁷² This might have been particularly acute in Wisbech; as L. R. Poos outlines, the Bishop of Ely was not simply the dean of Wisbech's spiritual superior; he also held secular responsibilities, such as "gaol delivery and peace sessions, the Wisbech hundred court, and courts variously termed leets, hallmoots, and 'curie bondorum' for his manors of Elm, Leverington, Newton, Tydd St Giles, and

³⁶⁷ On the fabric of the church of St Peter's and Paul's in Wisbech, see Gilbert "Changing Landscape," 223-225; For the administration of guilds, see 3.3.3, below.

³⁶⁸ Briggs, "The Availability of Credit," 14.

³⁶⁹ McIntosh, *Autonomy and Community*, 199-200.

³⁷⁰ Johnson, *Law in Common*, 23.

³⁷¹ Briggs, "Rural Credit," 14; Johnson, *Law in Common*, 22.

³⁷² On the processual nature of jurisdiction, see Johnson, "The Tree and the Rod," 35—44.

Wisbech Barton".³⁷³ While hundred courts in Ely met every three weeks in the thirteenth century, the frequency with which these rural courts congregated is hard to perceive by the 1460s.³⁷⁴ Nonetheless, by the end of the century, there was very little debt recorded in the manorial court returns of Wisbech Barton, suggesting that the deanery court had become the primary space for petty debt by the mid-fifteenth century.³⁷⁵ As the bishop of Ely became less involved with the secular administration of the manor, secular courts might have offered fewer advantages in pursuing justice than their ecclesiastical counterparts, which were often flexible enough in scope to encompass the needs of locals. By 1460, the absence of the bishop's influence from the jurisdiction in Wisbech may have been keenly felt.³⁷⁶

This hypothesis is supported by the evidence of the numerous activities of guild fraternities in Wisbech, outlining how many of the secular responsibilities for the town may have been taken into the hands of local laity; according to Gilbert, this included building a new town bridge, repairing flood defences and the establishment of a school.³⁷⁷ While these activities were characteristic of the good works and charity encouraged by fraternities in the period, surviving bailiff's accounts rolls also suggest that the collection of income on behalf of the bishop from local manorial holdings such as fisheries, mills and the fees of court had also been farmed out to fraternities.³⁷⁸ While legal officials such as the bailiff and constable were representative of the bishop's manorial authority in the community, their courts may have proven somewhat less practical in the eyes of local residents. After all, if ecclesiastical jurisdiction offered direct access to their lord's representative and his consistory court at Cambridge, was there any benefit in litigating affairs before his bailiff?³⁷⁹

This emphasis on ecclesiastical authority may be similarly glimpsed from the ways in which the built landscape of Wisbech was treated over the course of the fifteenth century. Unlike Wisbech castle, site of the hundred court that was in a state of prolonged disrepair and subjected to the flooding that plagued the fens, the amelioration of the church St Peter and St. Paul can be

³⁷³ Poos, *Lower ecclesiastical jurisdiction*, lvi.

³⁷⁴ E. Miller, *The Abbey & Bishopric of Ely: The Social History of an Ecclesiastical Estate from the Tenth Century to the early Fourteenth Century* (Cambridge University Press, 1969), 223—4.

³⁷⁵ Poos, *Lower ecclesiastical jurisdiction*, lvi.

³⁷⁶ Based on the number of ordinations recorded from Wisbech in the fifteenth century, it seems that the bishop rarely spent time in Wisbech, despite the ease with which the journey could be made. See D Atkinson, Ethel M. Hampson, E. T. Long, C. A. F. Meekings, Edward Miller, H. B. Wells, G. M. G. Woodgate, 'Wisbech: Relations between the bishops of Ely and the town of Wisbech', in *A History of the County of Cambridge and the Isle of Ely: Volume 4*, City of Ely; Ely, N. and S. Witchford and Wisbech Hundreds, ed. R. B. Pugh (Victoria County History, 2002), 246.

³⁷⁷ Gilbert, "Changing Landscape," 255.

³⁷⁸ Atkinson et al., *History of the County of Cambridge*, 251-252.

³⁷⁹ Poos, *Lower ecclesiastical jurisdiction*, xxxii.

seen in the expansion of the south chapel and addition of new windows.³⁸⁰ As visible in the records of the court of the deanery, the church courts and their connected buildings received a steady flow of income; bequests to churches were common in wills, and penance was often translated into payments made for the fabric of local churches.³⁸¹

In the courts records of the deanery of Wisbech between 1460 and 1480, the number of causes involving breach of faith stands at 438. While poor survival of secular court returns requires caution, it is reasonable to argue that the debt being contested in these courts offers a relatively full picture of the range of debt that might be circulating through rural fenland communities.³⁸² Though alternative legal venues could be sought, they were not immediately accessible to those seeking recourse for petty sums such as the majority of debts sued for in the deanery. For wealthy residents of the isle of Ely, the king's courts of Chancery and Common Pleas were available to use. Lee has identified that between 1450 and 1509, the average debt owed by a Wisbech resident recorded in the Patent Rolls was over £6.³⁸³ After Cambridge, it was the second most common Cambridgeshire town to be recorded in these rolls. As was the case in London in the mid-fifteenth century, this suggests that local leaders in Wisbech, such as resident merchants and the lower gentry often occupied a space of both creditor to a local economy and debtor to more prosperous individuals who were increasingly coming to be based in London.³⁸⁴ With these demographic and legal changes in mind, we might begin to build a picture of the ways in which indebtedness was being expressed in the deanery court of Wisbech, and by whom.

Before turning to statistical analysis of these documents, one final comment might be paid to the nature of litigation in Wisbech during this period. In his introduction, Poos observes that, in comparison to Lincoln, the Wisbech records were "particularly rich" resources for the study of issues of social order, "of sorts that might also appear at other times and places in local secular courts such as manorial tribunals or leets".³⁸⁵ While a certain amount of concern for comportment was typical of all three ecclesiastical courts in this study—such as defamation or the widespread indictments of adulterous men and women—the courts of the deanery demonstrate a particular concern for behaviour that lay well beyond their legal remit. For the most part, these causes fall

³⁸⁰ Gilbert, "Changing Landscape," 223.

³⁸¹ W. O. Ault, "Manor Court and Parish Church in Fifteenth-Century England: A Study of Village By-Laws," *Speculum* 42.1 (1967), 61–6.

³⁸² This is, of course, without the acknowledgement of the informal trade that women likely participated in, which was eclipsed by the processes of the court. See, 5.3.3 below.

³⁸³ Lee, *Cambridge*, 101.

³⁸⁴ Jennifer I. Kermode, "Merchants, Overseas Trade, and Urban Decline: York, Beverley, and Hull, c. 1380-1500," *Northern History* 23 (1987), 62- 73.

³⁸⁵ Poos, *Lower Ecclesiastical Jurisdiction*, lxiii.

under what Marjorie K. McIntosh has categorised as “disorder”, that is any actions that “violated good order, control, appropriate rule or governance, and discipline”.³⁸⁶ The deanery brought people to court for nightwalking, for laying of violent hands on members of their community, and policed church disturbances, including accusing John Reynold of being a “common storyteller”.³⁸⁷ Thus, it is apparent that the increased use of the court of the deanery for the litigating of debts cannot be fully divorced from the treatment of the court of the dean as a vehicle through which common ideas of good behaviour were conveyed. This is particularly significant when we consider that indebtedness was not just an economic state, but a social one.

3.2: The Quantification of Debt

The following statistics were collated from the L. R. Poos’ *Lower Ecclesiastical Jurisdiction in Late-Medieval England*, an edited volume of the records from the court of the deanery of Wisbech.³⁸⁸ The records have been transcribed from a manuscript consisting of 111 folios, written in various fifteenth-century hands. As Poos states in his comprehensive introduction, the documents concerning Wisbech follow no coherent order, having been bound into a manuscript at least once since their production in the fifteenth century. The numbering from the nineteenth-century collation indicates that twenty-two folios of the original court records have been lost since its binding.³⁸⁹ To circumvent this, Poos made use of a range of dates to estimate when causes were litigated while assembling the edited volume, an approach that this chapter has also adopted, quantifying the number of breach of faith cases by range, rather than per year. This is visible in Table 3.1.

This chequered history of the documents prevents dating these records to specific years, which as a result, limits the chronological assessments that are possible for the data. The records are typically arranged under headings of “*capitulum generale*”, or a meeting of the chapter general, that sat approximately twice per year.³⁹⁰ These meetings tended to be overseen by an official of the bishop of Ely and necessitated the congregation of the local clergy after which a court was conducted. These records are then further subdivided by parish, where, in the absence of a list of clergymen, a list of churchwardens and *inquisitors* (lay men charged with investigating

³⁸⁶ Marjorie K. McIntosh, *Controlling Misbehaviour in England, 1370-1600* (Cambridge University Press, 1998), 68.

³⁸⁷ Poos, *Lower Ecclesiastical Jurisdiction*, 405.

³⁸⁸ Poos, *Lower Ecclesiastical Jurisdiction*, 270-592.

³⁸⁹ Poos, *Lower Ecclesiastical Jurisdiction*, xxxix-xl.

³⁹⁰ Poos, *Lower Ecclesiastical Jurisdiction*, xxix; xlii-xliii.

wrongdoings) is noted before the causes.³⁹¹ Despite overseeing two meetings per year, it is apparent from the records that the court itself sat more frequently, albeit without consistent oversight of the bishop of Ely or his representative. As in both Canterbury and London, the records from the deanery court were working documents, with additional information being added to them as the court case progressed over several sessions.

For these reasons, how many causes were heard per session also proves somewhat difficult to quantify. Nonetheless, between folios 26r and 34r, three 'capitulum generale' headings, ordered chronologically, can be quantified to survey the number of cases that took place over one calendar year, running from June 1462 to June 1463. Within this period, 223 cases appeared before the court of the deanery, excluding 18 enrolments of testaments. Of these, 76 were instances of breach of faith litigation, consisting of 32.6% of all causes heard, and concerning debt valued to a total of £19 19s 7½ d.³⁹² If there were ten court sessions per year, as was typical for Canterbury's consistory court, this averages out to approximately 7.6 new breach of faith suits initiated in each court session. Given the overall number of causes in this case study, 76 causes in 1462 alone seems relatively large. Across the twelve-year period of 1460-1472, the number of causes averages to a mean of approximately 35.6 new causes per year. However, as is clear from Figure 3.1, be it through improved survival of records or an elevated litigiousness among residents, the average number of causes heard in 1460-3 was higher than the mean, standing at 41.3.

³⁹¹ For the role of churchwardens, please see Beat Kumin, *Shaping the Community: The Rise and Reformation of the English Parish, c.1400-1560* (Scholar Press, 1996), 22-41.

³⁹² While high, this is not necessarily unusual: in Bedfordshire's county court between 1332-3, 48.6% of causes concerned debt litigation. See P. R. Schofield, "Access to Credit," 106-26. On the decline of the manor court after the Black Death, see J. S Beckerman, "Procedural Innovation," 244-5.

Table 3.1: Breach of Faith cases Wisbech, 1460 — 1480.

Date (Approximate)	No. of cases heard.
1460 — 63	111
1463 — 64	54
1465 — 66	65
1467	8
1467 — 69	77
1468 — 69	50
1469 — 72	63
1479 — 80	10
TOTAL	438

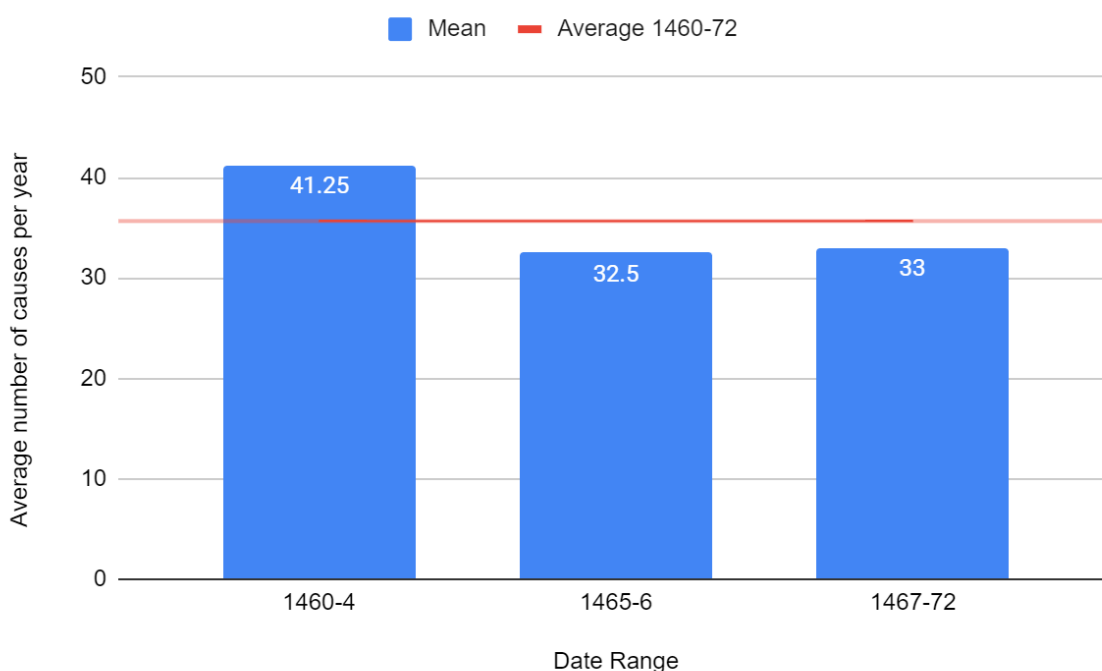


Figure 3.1: Average number of breach of faith causes per year in Wisbech, 1460-72.³⁹³

A perfunctory comparison with debt in manor courts in the fourteenth and fifteenth centuries outlines the sheer volume of breach of faith litigation occurring in Wisbech in this period.

³⁹³ These causes have been grouped based on their estimated date ranges offered by Poos, as shown in Table 1.1. The mean of each range was found by totalling the number of causes in each group and dividing by the number of the years. For this reason, these figures are highly speculative.

Not only did the amount of debt litigated in Wisbech in the 1460s eclipse the dwindling amount of debt litigated in manor courts in the mid-fifteenth century, it was three times higher than the average number of new complaints enrolled in the manor courts of Willingham and Oakington between 1349 and 1400.³⁹⁴ When considered in comparison to our other case studies, the amount of litigation in Wisbech is also quite large: in Canterbury, the average number of causes per year varied considerably, but averaged out to approximately 92.25 causes per year, and 10.4 new causes per court session. However, subdivided into the three separate court sessions of Dover, Hythe and New Romney, the average number of causes litigated per year fluctuated: in 1463, Dover heard thirteen breach of faith cases while the court at New Romney heard thirty-four. In London, by contrast, where there were a variety of options available to litigants for the recovery of debt, the mean number of causes per year was just under twenty-eight.³⁹⁵ Given the relative population of the area, the density of breach of faith litigation in Wisbech would have been far greater than in London, where the population of individual parishes could reach as high as about 1000 people.

Beyond the assumption that the deanery court functioned as the primary court in which people litigated debt, there can be no definitive answer as to why Wisbech's court was so busy, particularly at the beginning of the 1460s. The economic implications of the amount of debt litigation being contested at court has been disputed by many historians. On one hand, some historians have argued that the rise of debt litigation in the courts was a sign of the contraction of credit due to issues of market uncertainty, such as during periods of bad weather, disease, or instability.³⁹⁶ Chris Briggs and Mark Koyama have posited that credit in rural and village society was "of comparatively limited value", as it had the potential to be doubly affected by any crisis which would have impacted both creditor and debtor in a single community.³⁹⁷ Given the severity of the economic depression that characterised the export trade in 1450s, the peak in causes at the beginning of the 1460s might suggest an ongoing scrambling by local mercantile creditors to recover debts that had been overextended in previous years.³⁹⁸ The stagnation of the economy may have been further accentuated by a genuine shortage of available bullion, which historians

³⁹⁴ For fifteenth-century credit in manor courts, see Briggs, "Availability of Credit," 11-2; For a survey of rural credit in the late fourteenth century, see Briggs, *Credit*, 176-213.

³⁹⁵ These figures will be explored in greater detail in the coming chapters. See Sections 4.2 and 5.2, below.

³⁹⁶ This was the case in Wakefield manor courts during the agrarian crisis of 1315-18, see Christopher Dyer, *Standards of Living in the Later Middle Ages: Social Change in England, 1200-1520* (Cambridge University Press, 1989); for the fourteenth century, see also Briggs, "Manor Court Procedures," 532-4, and Briggs, *Credit*, 18-28.

³⁹⁷ Chris Briggs and Mark Koyama, "Pledging and Credit Markets in Medieval England," Working Papers 5, Department of Economic and Social History at the University of Cambridge, 7.

³⁹⁸ For discussion on the 'delay' in debt litigation, see Briggs, *Credit*, 187.

such as Pamela Nightingale have argued would have played a key role in the amount of credit people were willing to extend.³⁹⁹

However, as historians of credit have long recognised, response to these factors was highly localised.⁴⁰⁰ Notably, evidence from fifteenth-century manor courts suggests that some credit relationships could stretch on unpaid for years, implying that short-term economic shocks might have had limited impact on debts based on reciprocity and trust.⁴⁰¹ Briggs' work on rural credit in fifteenth-century Cambridgeshire demonstrates that economic factors alone are insufficient in explaining the amount of credit that was contested in courts; he argues that the inefficiency in the operations of manor courts may have inspired a lack of trust in creditors that prevented their pursuit in these courts.⁴⁰² To this end, it seems reasonable to conclude that the density of breach of faith causes in Wisbech in the 1460s suggests a confidence in the efficacy of the court to function as expected. But what specifically was expected of a deanery court regarding breach of faith litigation? The following sections on the value of debt, its form, and the gender of litigants sets out to elucidate who exactly was participating in the credit market, and for what ends.

3.2.1: Value of Debt

In total, there were 438 *fidei laesio* causes in the court returns between 1460 and 1480. These concern entries that make explicit reference to breach of faith litigation in the format of “[X] violate faith towards [Y], withholding [sum]”.⁴⁰³ Of the 438 breach of faith cases found in the records, 384 (87%) make explicit reference to the value of the contested debt. These causes encompass a huge spectrum of values, with debts from as small as the 3.5d to the sizable 43s at issue between John Lee and Robert Clerke, visible in Figure 3.2. Despite this range, the average sum that was sued for in these courts stood at just over 4s (54.3d). In comparison with the debt of Canterbury and London, which stood at 109d and 189d respectively, Wisbech's average debt was significantly lower.

Across the period, the average amount of debt declined quite noticeably, dropping from 69.3d in 1460–3 to 43.7d in 1469–72 (Figure 3.3). While our access to data on rural debt in fifteenth-century England is limited, the value of debt found at Wisbech echoes the mean amounts

³⁹⁹ Nightingale, “Monetary Contraction, 267-9; Mayhew, “Population, Money Supply, and the Velocity,” 254.

⁴⁰⁰ For an extended discussion, see Introduction, Section 1.2.2.

⁴⁰¹ For long-term debt see, Clark, “Medieval Debt,” 119; McIntosh, *Autonomy and Community*, 169; Kowaleski, *Local Markets*, 208.

⁴⁰² Briggs, “Availability,” 19–23.

⁴⁰³ [X] *violat fidem erga* [Y] *detiando* [sum].

of debt that were contested in both the prebendal court of Ripon in 1460, a meagre 3s and 3d (39d), and the court of the abbey town of Ramsey, where 82% of causes were for less than 5s (60d).⁴⁰⁴ Similarly, Briggs' study of fourteenth-century manor courts in Cambridgeshire found that 75% of all causes were for 5s and under.⁴⁰⁵ As argued by Richard Goddard in his study on late-medieval borough courts, "the larger and more economically vibrant the town, the higher the amounts pursued in court".⁴⁰⁶ Thus, the range of modest average sums disputed in Wisbech reflects the 'typical' creditscape found in similarly-sized towns in late-medieval England. However, as is apparent in Figure 3.2, approximately 100 (22%) causes litigated in the deanery of Wisbech concerned sums for between 1s than 2s, and 63% of total causes concerned debts under 4s. In this way, the mean value of debt fails to convey how, for many litigants, 54d represented debts that were higher than what they presented to the courts. Use of the median debt— a modest 29d— offers a much clearer image of just how small-scale typical credit transactions were in late-medieval Wisbech.

At the other end of the scale, several high-value debts found their way before the dean; consisting of just 26 cases (6.7% of total), this small proportion of causes constituted thirty-four percent of the total amount of money litigated in these courts between 1460 and 1480. This finding is consistent with larger debts sued for in both Canterbury and London. The strong correlation ($r = 0.99$) between these two variables across all three courts suggest that the debts being litigated in Wisbech were not unusually large or small relative to the total amount of debt being litigated in these courts.

⁴⁰⁴ Robb, "Credit and the Sociability," 32; Goddard, *Credit*, 149. At its peak, DeWindt and DeWindt estimate that Ramsey's population was between 1000-1500 people. See Anne DeWindt and Edwin DeWindt, *Ramsey: The Lives of An English Fenland Town* (Catholic University of America Press, 2006), 1.

⁴⁰⁵ Briggs, *Credit and Village*, 59.

⁴⁰⁶ Goddard, "Surviving Recession," 74.

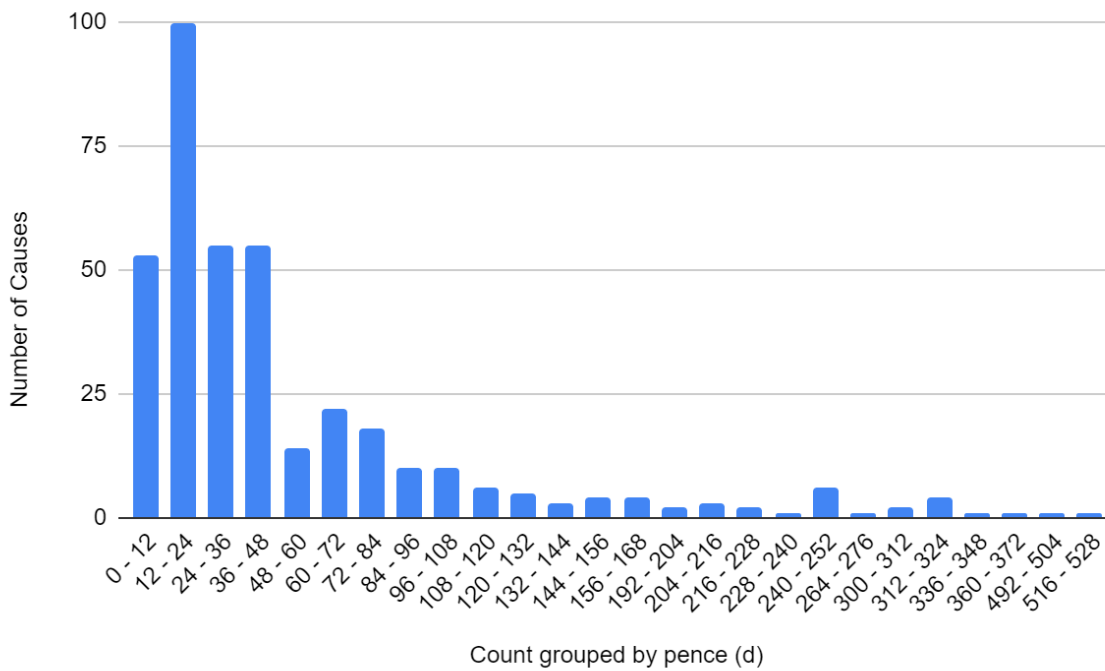


Figure 3.2: Distribution of the breach of faith cases in pence (d) from the deanery of Wisbech.

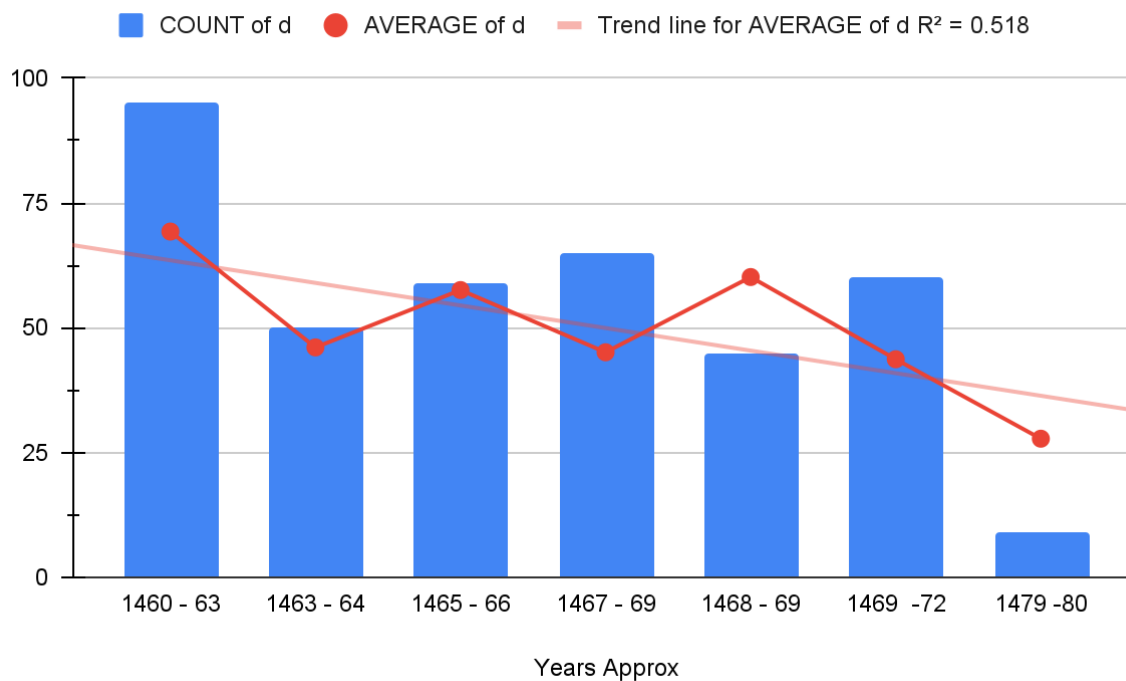


Figure 3.3: Falling average of debt in the deanery of Wisbech, 1460-80.

Yet there is a clear change to the average amount of debt that was contested over the period. If we compare the falling average of debt in Figure 3.3 with the consistent median debt across the period in Figure 3.4, we might surmise that the number of people litigating for these larger debts in Wisbech decreased over the 1460s, while smaller transactions were pursued consistently. Both quantitatively and qualitatively, there does not seem to be any noticeable difference in the ways that low- and high-value debts were litigated in the courts; as will be discussed below, the value of debt seemed to have no bearing on the use of court mechanisms such as suspension or arbitration. This was categorically not the case in the courts of Canterbury.⁴⁰⁷ But in Wisbech, debts of all values underwent the same legal processes. For example, when Margery Corys appeared before the court for owing Simon Whyk 3½d, she confessed and agreed to settle the debt within three weeks. This process was almost identical to a case that involved the litigation of 9s that occurred between 1469 and 1472, which the debtor eventually confessed to and agreed to pay back. If the problem was not necessarily institutional, it is possible that the fundamental change in the value of the debt contested lay in a change in access to larger lines of credit. As demonstrated by historians such as Kowaleski and Lee, many merchants lived in a precarious state between acting simultaneously as creditors and debtors, and a change in the velocity of coinage might have negatively impacted their ability to extend credit.⁴⁰⁸ For this reason, a reduction of large-scale credit transactions in Wisbech may have been impacted by incidents such as the national recoinage instituted by Edward IV in 1464, as circulation was temporarily reduced.

⁴⁰⁷ See Section 4.4.2.

⁴⁰⁸ Kowaleski, *Local Markets*, 204; Lee, *The Medieval Clothier*, 111.

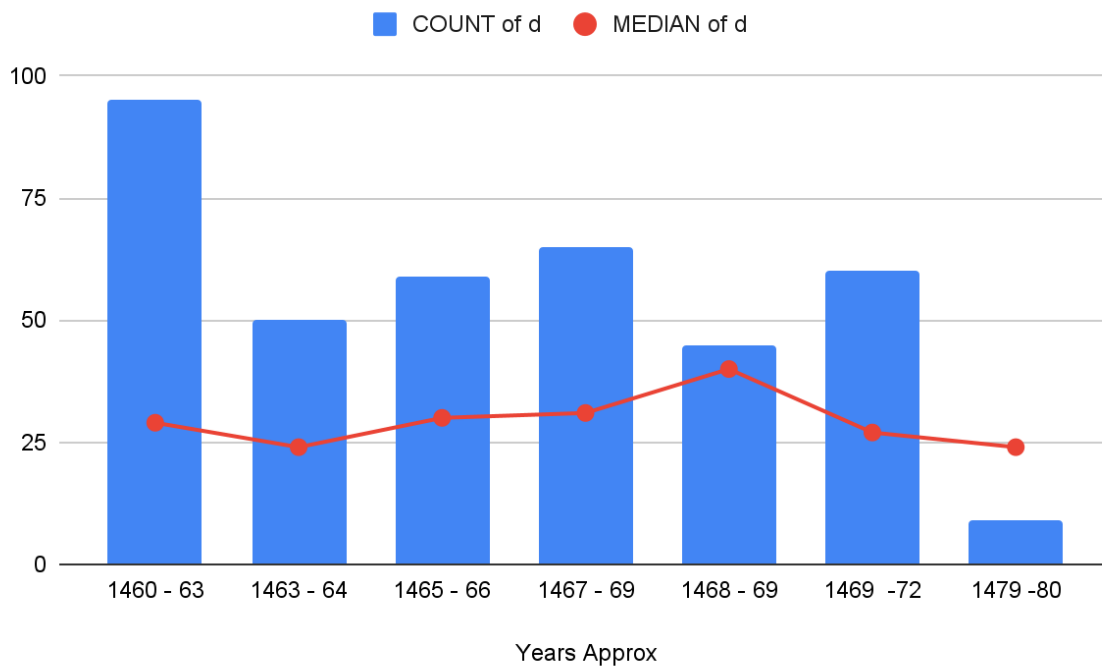


Figure 3.4: Median debt in the deanery of Wisbech, 1460-80.

3.2.2: Material Debt

Of the 438 cases of breach of faith in the Wisbech records, 66 (14.8%) cases report debts that were at least partly valued in material terms. Of these 66 causes, 26 concern goods where no value is mentioned, and 34 cases concerned goods assigned a specific value. Four entries concern causes that represented a mixture of goods and money, such as when Thomas Manning was accused of owing a woman named Alice Roray 17d for beer and 12d “on account of borrowing”.⁴⁰⁹ Finally, in two instances the creditor offers the debtor a choice in the form of reimbursement. For example, in a straightforward breach of faith cause, it was recorded that the parties met, and the defendant agreed to pay the plaintiff “2s 5d or give him six “cussyn clothes” equal to the same amount.”⁴¹⁰

For the most part, the items exchanged were often seasonal goods such as food (encompassing both harvestable and produced foods) that could be easily quantified, with beer and ale being the most traded item. These were often measured in kilderkins and dussens, while grain was treated in measures such as bushels and pecks.⁴¹¹ The items traded represent a range

⁴⁰⁹ Poos, *Lower Ecclesiastical Jurisdiction*, 379: “...xvij d. pro cervisia et xij d. ex mutuo”.

⁴¹⁰ Poos, *Lower Ecclesiastical Jurisdiction*, 278.

⁴¹¹ Poos. *Lower Ecclesiastical Jurisdiction*, lxxv.

of goods, from bags, linen, and fishing rods to onion seeds and a dozen bunches of garlic. Yet, there is a clear difference made by the courts and their agents between the nature of such items. While “a bushel of grain” was translated into its Latin equivalent, there are examples of items that were simply left untranslated, such as the cushion cloths. One was likely remarkably familiar, and easy to substitute for currency, while the other– the vernacular interloper– was evidently much less common. Overall, the goods that were traded were likely easy to find in the local Wisbech markets. As will be discussed in greater detail below, the practice of delivering consumable goods before receiving payment not only suggests a trust in the debtor that likely derived from an established relationship, but further generated trust: it presupposed trust that the debtor would be honest when it came to settling the debt, often long after the goods had been consumed or sold.⁴¹²

The practice of using goods to trade was not unusual in fenland economies. In their study of the leet court in the fenland town of Ramsey, Anne and Edwin DeWindt found evidence of “a wide variety of goods” being employed in credit transactions. Like at Wisbech, these included animals, textiles, fenland products such as peat and rushes, as well as the payment of services such as the “farm of a windmill”.⁴¹³ The studies are not totally comparable: it is unclear what proportion of the overall number of debt cases concerned goods and services, and their study of Ramsey’s court records encapsulates a much longer period, c.1200-1600. Nonetheless, the similarities in goods between Ramsey and Wisbech suggest a culture of credit that often incorporated payment in kind.

By contrast, in the consistory court of Canterbury, there were only four instances where debts were quantified in harvestable goods, all occurring between 1469 and 1475. In London between 1470 and 1490, only ten breach of faith causes concerned the exchange of goods. Beyond the development of local trading practices, one possible answer for this trend may lie in the availability of coinage for Wisbech residents. In his work on rural credit in the fourteenth century, Chris Briggs tempers the monetarist position, which posits that credit and money supply tended to expand and contract together.⁴¹⁴ Instead, he argues that there was likely a local variation on the impact of bullion shortages on rural lending practices.⁴¹⁵ Could the increased trading of goods in Wisbech reflect the bullion crisis that was particularly intense in the mid-fifteenth century? Coupled with the aforementioned recoinage of Edward IV, it is possible that a

⁴¹² On the generative nature of trust, please see Ian Forrest and Anne Haour, “Trust in Long Distance Relationships,” *Past and Present Supplement* 13 (2018), 190-213: 205.

⁴¹³ DeWindt and DeWindt, *Ramsey*, 51.

⁴¹⁴ See 1.2.2, above.

⁴¹⁵ Briggs, *Credit*, 210.

shortage of bullion would have been felt more intensely in Wisbech than in the coastal communities of Canterbury.⁴¹⁶

The lack of access to coinage in the preceding decades may have fostered a culture that was less reliant on bullion to do business. Unlike in larger towns, where work could be closely guarded by guilds, “an inadequate supply of specie [in rural communities] may not have formed the formidable obstacle to lending... since repayment in labour or kind was for the rural lender a practical alternative”.⁴¹⁷ This sentiment may have been particularly acute for those who were trading in small sums of money, as the shortage of silver coins was particularly noteworthy even after the recoinage efforts of Edward IV.⁴¹⁸ A memorandum from the dean’s court documenting a reckoning between a chaplain William Redyk and a local gentleman Laurence Everarde, may offer some insight into the ways in which debt was recorded in these courts. Dated to 20 October 1467, it was agreed before the dean that Everarde owed Redyk 20s “of legal English tender”.⁴¹⁹ This was to be repaid in increments of 20d to William or his attorney at periodic intervals over the coming years until the debt was repaid. The term ‘English legal tender’— particularly common in secular debt, such as at Merchant Staples— removed any opportunity for Everarde to pay in kind. Yet, the need to explicitly state the form of repayment suggests that it was in no way guaranteed or presupposed in the court of the deanery. Although difficult to ascertain, the presence of debt valued in items may suggest that residents of medieval Wisbech were capable of envisioning debt as a measure that was not intrinsically connected to cash but had its foundations in trust.⁴²⁰ If this was the case, then a bullion shortage may have had limited impact on their ability to lend.

Therefore, in comparison with the debt of Canterbury and London, it is possible that the relative wealth of communities like Wisbech may have played a role in how reluctant people were to extend larger lines of credit, particularly following the mid-century recoinage. For petty debts, these sums were relatively easy to substitute as payments in kind. However, as larger value debts became less commonly litigated in the deanery court, a lack of bullion may have prompted creditors to pursue more formal avenues of debt litigation, where instruments such as bonds became increasingly useful in the enforcement of debt recovery. Thus, the frequency of low-value

⁴¹⁶ For the recoinage of the mid-fifteenth century, see N. J. Mayhew, “The Monetary Background to the Yorkist Recoinage of 1464–1471,” *The British Numismatic Journal* 44 (1974), 72-73.

⁴¹⁷ Briggs, *Credit*, 211.

⁴¹⁸ Briggs, “Availability of Credit,” 11. One 1492 entry into the London Consistory court underlines just how suspicious individuals could be about coin when a vicar was reported to argue that the money payment of tithes “was worthless.” London Metropolitan Archives, MS DL/C/A/001/MS09065 98v-99r. For a transcription, see Shannon McSheffrey, “Office c. Barle”, *Consistory: Testimony in a Late Medieval London Church Court*, accessed April 27, 2024, <https://consistory.org/2022/01/09/office-c-barle/>.

⁴¹⁹ Poos, *Ecclesiastical Jurisdiction*, 372. “xx s. *legalis monete Anglie*.”

⁴²⁰ Clark, “Medieval Debt Litigation,” 108—9.

exchanges found in this data suggests that much like manor courts of earlier periods, the credit market that appears in these records was the community's primary source of credit.⁴²¹

3.3: Court Litigants

Two primary concerns occupy the work of those who study the nature of local, village-level credit: who was litigating debt in these local courts, and what function did this credit serve in their everyday lives? Both Chris Briggs' study of fourteenth-century Cambridgeshire and Elaine Clark's study of the small Essex town of Writtle in the early fifteenth century offer some common answers to both questions. Firstly, both Briggs and Clark found that rural credit transactions were often 'horizontal' in nature, conducted between two people of approximately the same economic standing.⁴²² Particular creditors did not typically act as creditors for the entire village. Instead the extension of credit was a responsibility that was decentralised, with lending happening between a complex network of residents.⁴²³ Furthermore, Briggs argues these transactions were often conducted between landholding, relatively affluent members of their community: "in these 'midland' villages, most credit circulated only among the landed peasant households— most notably, the 10-acre holders, the half-virgaters, and the virgaters".⁴²⁴ However, Briggs also acknowledges that for certain communities, such as the fenland parish of Littleport, credit was universal in nature, its litigation involving most, if not all, households in the community.⁴²⁵ A vast majority of credit relations were established between neighbours, both for the purposes of consumption and in some cases, for low level investment. However, as emphasised by Clark's work, credit in these communities was "an intricate system that entailed economic judgement, village habits of social congress and court procedure; all were enmeshed".⁴²⁶ This section will briefly consider who participated in breach of faith litigation and the role that geography played in these dynamics, before considering how court procedure reproduced the social dynamics that underpinned these relationships.

⁴²¹ Briggs and Koyama, "Pledging," 9.

⁴²² Clark, "Medieval Debt Litigation," 121; Briggs, *Credit*, 147; Historians such as Schofield who were working primarily on credit in the early fourteenth century paint a much more unequal picture of village credit. See Phillip R. Schofield, *Peasant and Community*, 138—41.

⁴²³ Briggs, *Credit*, 147; Clark, "Medieval Debt Litigation," 110.

⁴²⁴ Briggs, *Credit*, 148; This assessment was first made by M. M. Postan in 1966. See M. M. Postan, "Medieval Agrarian Society in its Prime: England", *The Cambridge Economic History of Europe I, The Agrarian Life of the Middle Ages*, 2nd edn, ed. M. M. Postan (Cambridge University Press, 1966), 627.

⁴²⁵ Briggs, *Credit*, 110.

⁴²⁶ Clark, "Medieval Debt Litigation," 113.

3.3.1: Gender

While the presence and absence of women litigating breach of faith will be considered more thoroughly in the following chapters, a brief overview of the credit landscape for women in Wisbech might contribute to the relatively paltry information available on the topic of rural credit in late medieval England. For the most part, historians of late medieval England have observed a general absence of women litigating debt in the manor courts.⁴²⁷ Regarding evidence from the fourteenth century, both Briggs and Judith Bennett observe a decline of female involvement in debt litigation after 1350.⁴²⁸ Clark's study of Writtle in Essex offers an interesting comparison to Wisbech. Although it was almost certainly smaller in population, its relative proximity to London likely ensured that it had access to the far-reaching credit market of London that sprawled far beyond the city's limits in the fifteenth century.⁴²⁹ Much like McIntosh's study of late medieval Havering, Clark depicts women as involved in almost every aspect of the economy, estimating that women consisted of 14% of lenders and 10% of borrowers in the manor courts over the course of the fifteenth century.⁴³⁰ This is greater than in Wisbech, where individual women appear in just twenty-eight causes (7.3%) as lenders, and thirty-five causes (8.9%) as borrowers. As will be further explored in forthcoming chapters, the percentage of female litigants at court was contingent on many factors, including the geography of the court itself. One in three debtors in London were women, which likely reflected both a more commercialised landscape and an ease of access to the courts that was not possible to women in rural communities. In Canterbury, 10.1% of debtors were women, and only 4.3% of creditors. However, women living in the urban parishes of Hythe, Romney and Dover were far more likely to appear in court than their rural counterparts. To this end, as a patchwork of rural and semi-rural communities, the low representation of women in the deanery of Wisbech echoes the general exclusion of women from local courts.

Therefore, breach of faith litigation in Wisbech was practised predominantly by men. Of the 438 breach of faith entries, 348 cases (79.6%) occurred between individual men. There are fifteen instances where men and women act as a single litigating unit and of these, all but one concerned married couples.⁴³¹ When litigating in common law courts, married women were subjected to the laws of coverture, which characterised husbands and wives as single legal entities. Regardless of when they came into her possession, a woman's chattels became the

⁴²⁷ This topic is summarised in Chris Briggs, "Empowered or marginalized," 13—43.

⁴²⁸ Briggs, "Empowered," 16-9; Judith M. Bennett, *Ale, Beer and Brewsters*, 52—5.

⁴²⁹ See Keene "Changes in London's economic hinterland," 59—81.

⁴³⁰ Clark, "Medieval Debt Litigation," 117.

⁴³¹ Poos, *Ecclesiastical Jurisdiction*, 270, 275, 289, 290, 295, 335, 391, 393, 477, 480, 491, 493, 590 589. The other concerned a woman in partnership with her son, see *ibid.*, 480.

property of her husband when they married, and unless formally acknowledged as a *femme sole*, a woman had no legal authority to trade independently of her husband. Yet, despite the extensive research that has nuanced our understanding of coverture in late-medieval England, it remains unclear what impact this legal status had on a woman's right to represent herself and her legal interests in ecclesiastical courts.⁴³² It is noteworthy then, that the court of the deanery of Wisbech functioned in a similar way as its secular counterparts, with women largely categorised by their marital status.⁴³³ For example, between 1469 and 1472, the butcher William Reynold and his wife violated faith with a prolific creditor of the community, John Fooke, for withholding from him six kilderkins of ale to the value of 2s 3d.⁴³⁴ Given the specification of his occupation as a butcher, William's wife was likely the person doing business with Fooke. However, William's appearance in conjunction with his wife suggests that she was not expected to represent herself alone.⁴³⁵ This may not have been the case for single women or widows. In one breach of faith cause between Katherine Costen and Margery Algood, it was reported that Costen's fiancé appeared before the court on her behalf "as she was ill", suggesting that the court expected Costen in court rather than a male relative.⁴³⁶ Similarly, in two instances, female plaintiffs were clearly identified as widows of deceased men. Their relationship to their husbands may have functioned to underline that the debt was in fact theirs to collect.⁴³⁷

Of the three case studies in this thesis, women are the least represented at Wisbech. Taken in conjunction with the firm and frequent identification of women in relation to their male relatives, we are given an impression of the deanery court as representative of a more conservative community than their urban counterparts when it came to gender hierarchies.⁴³⁸ However, the absence of women from breach of faith litigation did not necessarily translate to a

⁴³²

⁴³³ See Cordelia Beattie, *Medieval Single Women: The Politics of Social Classification in Late Medieval England* (Oxford University Press, 2007), 62-95; it is noteworthy that while there has been much debate on the ways in which canon law impacted the formation of common law, little focus has been given to the potential impact that common law might have had on canon law, such as issues of coverture. See fn. 546.

⁴³⁴ Poos, *Ecclesiastical Jurisdiction*, 289; the kilderkin as a measurement is discussed in the introduction of the edition. One kilderkin equals to sixteen gallons, and four kilderkins equal to one 'd', what Poos believes to be a 'dussein' or 64 gallons, *Ecclesiastical Jurisdiction*, lxx.

⁴³⁵ In contrast to this, Fook presents a woman named Johanna Halle to appear at about the same time her husband's will is recorded in the rolls, suggesting, as was conventional, that widows represented their own interests. Poos, *Ecclesiastical Jurisdiction*, 290.

⁴³⁶ Poos, *Ecclesiastical Jurisdiction*, 419.

⁴³⁷ Whether this title functioned to signify a category of wealth, as posited by Carlin, is unclear in these records. See Martha Carlin, *Medieval Southwark* (The Hambledon Press, 1996), 175. While Alice, the widow of Hamo Parfay was given a substantial portion of his will, George Childerhouse, husband to Alice leaves no further traces in the records. He may be a relative of William Childerhouse, alderman of the Trinity Guild in Wisbech, discussed below.

⁴³⁸ Goldberg, "'I Know What You Did Last Summer'," 196.

general absence of women from the court records themselves. This is outlined in Cordelia Beattie's study of the enrolment of married women's wills in the deanery court of Wisbech. Interestingly, Beattie discovered that women who left wills in the deanery typically had the support of men who were "well connected to the court", such as churchwardens.⁴³⁹ As will be discussed below, the courts also served to amplify the voices of male figures of authority within the community of Wisbech. Taken together, the absence of women in breach of faith litigation and the emphasis on male authority in Wisbech, reinforced the belief that the ability to extend one's trust in late-medieval England "was explicitly, and tacitly, constructed as a facet of local elite masculinity in the language of ecclesiastical governance".⁴⁴⁰ Breach of faith became a venue to contest one's relative authority within their community.

3.3.2: Geography of Jurisdiction

When the data is broken down by area, it becomes apparent that how people extended credit was informed by where they lived. In Table 3.2, the mean and median debt litigated over are broken down by the areas delineated by the courts records themselves. Significantly, this table is not representative of a subdivision by parish, as Wisbech and Whittlesey both contain distinctive parishes whose residents are rarely identified as being from one or the other. Similarly, Leverington was commonly surveyed with Parson Drove, despite these villages being separated by almost ten kilometres. The borders between Wisbech and the surrounding parishes were porous, and the concentrated population in Wisbech likely encouraged business to happen in town.⁴⁴¹

Patterns of credit can be teased out by comparing these numbers with the overall mean summarised by Figure 3.2. While 68.5% of breach of faith cases are for sums equal to or less than four shillings (48d), these low value debts appear to have occurred more often in three areas: Wisbech and Leverington (which collectively make up 52% of all breach of faith cases in the records) and Tydd St Giles, the northernmost parish of the isle of Ely. Elm and neighbouring Emneth, located south of Wisbech, straddle both the overall mean (53d) and median (29d), suggesting that while the debt being litigated over was higher than in urbanised Wisbech, those litigating were likely of a similar demographic. At the very top of this table sit two anomalous

⁴³⁹ Cordelia Beattie, "Married Women's Wills: Probate, Property, and Piety in Later Medieval England," *Law and History Review* 37.1 (2019), 53.

⁴⁴⁰ Forrest, *Trustworthy Men*, 234.

⁴⁴¹ This is perhaps best demonstrated by the 51 cases wherein Wisbech residents can be explicitly identified as lenders to people living in the hinterland, though it is significant that this number may have been significantly more.

regions: Newton, about seven kilometres from Wisbech, and the remote town of Whittlesey, a small community about 25km south-west of Wisbech.

Table 3.2: Breach of faith cases in the court of the deanery of Wisbech by parish.

Area	Number of Causes (BOF)	Average (in d)	Median (in d)
Elm	34	54.8	26.5
Emneth	53	52.4	32
Leverington with Parson Drove	85	47.1	30
Newton	25	89.1	66
Tydd St Giles	14	38.6	24.5
Whittlesey	53	79.7	44
Wisbech	119	43.3	18
Grand Total	384	54.3	29

Why the levels of credit in these communities were particularly high might only be guessed at. While the court of the dean sat in Whittlesey on occasion, distance from Wisbech and the other parish churches which hosted the court may have prevented many Whittlesey residents from pursuing causes for petty sums in the local ecclesiastical court. This may have been especially true if such a process included appearing before the bishop's official in Wisbech in subsequent sessions, as travel to and from Wisbech without the use of a horse would have taken multiple days and incurred expenses. Such reluctance is offset by the use of the court by wealthier parishioners. For example, John Asplond of Whittlesey, identified in the court as a *generosus*, appears in the records several times, suing for debts that were, on average, in excess of 100d. Given the variety of goods mentioned in these cases, Asplond likely acted as a wholesale trader of goods for the entire area, extending these goods on credit to many beyond the limits of his parish. By litigating in the church court of Wisbech, Asplond almost certainly avoided the hassle of pursuing debts in individual hundred courts. Rather, the church courts offered a place for Asplond to register, in detail, the extent to what he was owed in a shared jurisdiction.⁴⁴²

⁴⁴² Beyond practicality, it is also possible that the inclusion of Asplond's title of gentleman was a means of leveraging his status and reputation against his debtors. A similar occurrence can be found in the courts in Kent. See the section on officeholding in the following chapter, section 4.3.2(b).

The reason for a high mean and median debt in the parish of Newton is harder to explain. While it may be possible that there was a concentration of affluent parishioners living in Newton during the period in question, Gilbert's analysis of the per capita wealth of these communities between 1327 and 1524 offers no indication that Newton was unusually wealthy relative to their neighbouring parishes.⁴⁴³ Nonetheless, in the records, there are eight cases where a creditor is identified as being "of Newton". Of these, the mean value of the debt stands at 81d, significantly higher than average, though lower than the mean from Newton itself.⁴⁴⁴ Assessment of the debts owed to local fraternities further suggest that Newton's guilds were the best capable of acting as sources for large lines of credit (Table 3.3), such as the 40s owed by Robert Ward to the fraternity of St Katherine in Newton.⁴⁴⁵ Albeit impossible to prove, there may have been a particular culture among residents of Newton that had faith in the recuperative powers of the church courts. Despite the relatively small area encompassed by the jurisdiction of the church court at Wisbech, it can be argued that how the court was used was influenced in no small part by the socioeconomic geography of Wisbech and its hinterland.

Table 3.3: Cases of withheld sums from religious guilds in the court of the deanery of Wisbech.

Area	Number of Causes (Guild)	Average (in d)	Median (in d)
	2	7.5	7.5
Elm	4	14.3	11.5
Leverington with Parson Drove	6	59.6	14
Newton	7	280.3	160
Tydd St Giles	4	15	12
Whittlesey	1	84	84
Wisbech	24	27.5	14
Grand Total	50	70.6	14

⁴⁴³ Gilbert "Changing Landscape," 145–7.

⁴⁴⁴ Poos, *Lower Ecclesiastical Jurisdiction*, 285, 339, 343, 383, 410, 422, 489, 551.

⁴⁴⁵ Poos, *Lower Ecclesiastical Jurisdiction*, 586.

3.3.3: Fraternities

There is little evidence to suggest the existence of career creditors in rural societies in fifteenth-century England.⁴⁴⁶ Nonetheless, it is apparent that in Wisbech, religious guilds were integral in extending credit to local inhabitants. Much like breach of faith litigation, religious guilds were multipurpose, binding members together into a complex network of relations that were simultaneously moral, social, and economic in nature. Despite its relatively small population size, membership in religious fraternities was of paramount importance to residents of Wisbech, and the visibility of the fraternities in the deanery's court requires pause. In the ten years between 1460 and 1470, the church court recorded many instances of individuals charged with the "withholding" of goods or payments from the numerous fraternities that occupied the medieval landscape. However, the economic and moral reach of these institutions was not limited to guild members; by the end of the fifteenth century, Wisbech's Trinity Guild had the "largest portfolio of property in the Hundred apart from the Bishop of Ely", suggesting that guilds were at the heart of many economic and spiritual encounters in the town.⁴⁴⁷

The presence of land-rich peasants in Wisbech coincided with a particular interest by the same demographic in the participation of the religious guilds that not only predominated in this part of England, but were an increasingly significant part of communal politics.⁴⁴⁸ Gervase Rosser estimates that if there were three guilds per parish, there would be about 30,000 guilds in late-medieval England.⁴⁴⁹ Regarding Cambridgeshire specifically, Virginia Bainbridge's study of the presence of guilds notes that, of the 350 guilds included in the study, 113 were first mentioned in the fifteenth century, a number that would continue to grow into the sixteenth century.⁴⁵⁰ Corroborating evidence from Wisbech suggests that Wisbech and its hinterlands were very much in step with the region more broadly, with Herbert Westlake estimating there to be six guilds in Wisbech and a further five more in Wisbech Barton more broadly.⁴⁵¹

Concerning breach of faith, there was a close connection between leading members of the fraternities and the economic prosperity of Wisbech, one that seemed to grow increasingly prevalent through the fifteenth century. By the late-fifteenth century, the Trinity Guild at Wisbech and its members held a significant number of properties around two of Wisbech's marketplaces,

⁴⁴⁶ Clark, "Medieval Debt Litigation," 9.

⁴⁴⁷ Gilbert, "Changing Landscape," 249.

⁴⁴⁸ Forrest, *Trustworthy Men*, 213-6.

⁴⁴⁹ Gervase Rosser, "Going to the Fraternity Feast: Commensality and Social Relations in Late Medieval England", *Journal of British Studies* 33.4 (1994), 431.

⁴⁵⁰ Bainbridge, *Gilds*, 33.

⁴⁵¹ Herbert Westlake, *The Parish Guilds of Mediæval England* (London Society for Promoting Christian Knowledge, 1919), 138-48.

including a message owned by the alderman of the guild between 1479 and 1489, Robert Digby. In this period, it was common for particular classes of lay men to take on spiritual and administrative leadership in parish business. Although Digby never appears in the records for breach of faith litigation, it is noteworthy that between 1460 and 1463, Digby is cited alongside William Childerhouse as a churchwarden for St Peter and Paul's in Wisbech. The aldermen of the Trinity Guild tended to be selected from "a clique of wealthy landowners, tradesmen and merchants...who could afford to contribute to the Guild and to fund good works in the town".⁴⁵² For this reason, it is perhaps unsurprising to find that the fraternities and their members were so embedded in the networks of debt in the broader community.

Occupying the role of creditor was not uncommon for guilds in late-medieval Cambridgeshire, and many maintained an available line of credit for its members and, at times, non-members.⁴⁵³ The role of corporate creditor can begin to be understood from a 1453 chantry licence that Trinity Guild in Wisbech purchased from the King that ensured "succession and a common seal for the business of the fraternity or gild in perpetuity".⁴⁵⁴ The purchase of this licence at this moment in their long history is worth considering. While individual members could be drawn from most social levels within a community, its corporate status, that is the collective power of these guilds, was wrapped up in their ability to govern both individual members and the spiritual and economic markets they occupied. For guilds, success in attracting members often meant economic success as members were compelled to leave their goods to the guilds, an increasingly common consolidation of the time. Thus, as observed by Rosser, these institutions were central in establishing the norms that characterised the "language and gestures of mutual trust".⁴⁵⁵ While the church courts at Wisbech adopted an increasingly central role in the facilitation and maintenance of communal access to credit, the lending habits of guilds may have been central in the constant negotiation of who was offered access to these often tenuous lines of credit.

It is in this context that the line between breach of faith litigation and the withholding of guild dues begins to blur, encompassing an extended network of economic obligations couched in spiritual terms. Sometime between 1468 and 1474, a man named Henry Bukk was accused of violating faith with the alderman of the guild of Mary Magdalene for "withholding from John Grey for his lunch in the said guild".⁴⁵⁶ In the following admonition, Henry is rebuked once more for "breaking faith with the same John withholding from him 10d". Similarly, in Leverington at the

⁴⁵² Gilbert, "Changing Landscape," 251; Bainbridge, *Gilds*, 137.

⁴⁵³ Rosser, *The Art of Solidarity*, 157-8.

⁴⁵⁴ Bainbridge, *Gilds*, 146-7.

⁴⁵⁵ Rosser, "Going to the Fraternity Feast," 441.

⁴⁵⁶ Poos, *Lower Ecclesiastical Jurisdiction*, 278.

beginning of the decade, William Lenoth violated faith with John Digby for “withholding from the guild of St Trinity 6d”, before getting admonished for detaining “from the said John 4d from his person”.⁴⁵⁷ The duality of these cases may suggest that in fact, the debt owed to the guilds were part of a larger debt owed to the aldermen. In this way, it may have truly been men rather than their institutions that governed who was permitted to participate in the credit economy.

This is perhaps best seen in a case where an alderman of the guild of St Leonard in Leverington, Thomas Hill was presented to the deanery for the “withholding of payment” from brewer, John Fooke.⁴⁵⁸ This seems to be a rarity in the Wisbech records itself, indicating that guilds may have had little trouble accessing money to pay for perishables outright. Yet, in response to this alleged debt, Hill responds with legal fortitude. The sum in question was for a (relatively) small 6s 8d, accrued over three years, for what the court roll describes as 4 ‘dussein’ of beer or 256 gallons. The appearance of this case in the records may demonstrate that Fooke was tired of waiting for repayment. However, on appearance, Hill denied the allegations. This may have been particularly difficult for Fooke to prove as the beer— all 256 gallons of it— was likely already consumed. When compelled to undergo compurgation by three hands on the Thursday after the feast of the Annunciation, Hill requested that the event be deferred until the arrival of the bishop— almost six weeks later—wherein he successfully cleared his name. Besides acting as alderman of his guild, Hill was also warden of his parish. In selecting his witnesses, he chose fellow churchwarden Richard Fring, and two men, Thomas Gilling and John Plummer. Notably, Gilling would go on to act as churchwarden alongside Hill between 1467 and 1469, while Plummer adopted the role of *inquisitor*. It is clear, then, that despite Fooke being a very prevalent creditor in his own community of Wisbech, and extending credit to other residents of Leverington, Hill rightly suspected that his position as alderman of the guild at Leverington, along with his position of a court authority, put him in an advantageous position when litigating, particularly before the bishop. This position was bolstered, in turn, by the good standing of his neighbours who acted as witnesses. Acting on behalf of one’s guild, we may therefore surmise, was to act as an individual in both the act of borrowing and lending. When it came to credit relations, it was individual men, rather than institutions such as church courts or fraternities, who played the decisive role.

Taken together, a parishioner’s ability to access credit, either in the form of obligations or cash loans, seems to have been predicated on several traits: firstly, in a vast majority of cases, there was an expectation that the borrower was male. How much he could access may have been dependent on where he was from, but the typical amount litigated for was approximately two

⁴⁵⁷ Poos, *Lower Ecclesiastical Jurisdiction*, 342.

⁴⁵⁸ Poos, *Lower Ecclesiastical Jurisdiction*, 318.

shillings. His relationship to social and economic institutions such as guilds or the court of the dean may have been utilised to signify his creditworthiness to those around him, or that he was willing to submit to the masculine authority of wealthy, local officials who derived their power from the bishop. Overwhelmingly, breach of faith functioned to service the economic and social needs of such borrowers.

3.4: Functions of the Court

As recognised by Elaine Clark in her study of debt in fifteenth-century manor courts, trust was a fundamental part of debt litigation in the fifteenth century: “pleas of debt, detinue and trespass, when set alongside one another, suggest that litigation may be analysed so as to describe the manner in which the formation of social ties were aided... by transactions that were part of the distributive system”.⁴⁵⁹ This capaciousness has been echoed more recently in Hannah Robb’s study of breach of faith and defamation in York’s Consistory Court, where she argues that the pursuit of debts in a formal institution allowed the “the plaintiff as a consumer of justice... to defend and define the moral codes of their social and economic community”.⁴⁶⁰ This section aims to consider the workings of the courts themselves, paying particular attention to the ways in which court functions such as arbitration and suspension, could work to strengthen the role of the court in reaffirming the (sometimes unequal) relationship between parties in this rural community.

3.4.1: Court Procedure; Arbitration and Suspension

It is apparent that as much as possible, men in Wisbech and its hinterlands sought the court’s’ legitimising function to record significant moments of change in economic and social relationships. This is particularly apparent in two functions of court procedure: arbitration and the penalty of suspension. For the most part, these processes were not influenced particularly by the value of debt being litigated; seemingly inconsequential sums became drawn out processes of social and economic negotiation. Arbitration and its role in English law and judgement has been explored in historiography for at least fifty years. For R. L. Storey and John G. Bellamy, increased levels of arbitration in late-medieval England were a reflection of the broad failure of royal jurisprudence, triggered by the political instability of the War of the Roses.⁴⁶¹ These early assessments were fundamental in shaping the characteristics of arbitration as actions of a ‘weak’ legal system, trying

⁴⁵⁹ Clark, “Medieval Debt Litigation,” 10.

⁴⁶⁰ Robb, “Reputation,” 307.

⁴⁶¹ John G. Bellamy, *Crime and Public Order in England in the Later Middle Ages* (Routledge and Kegan Paul, 1972); R. L. Storey, *The End of The House of Lancaster* (Barrie and Rockliff, 1966).

(often unsuccessfully) to bring violent nobles to heel.⁴⁶² It was against this backdrop that Edward Powell first posited that arbitration might have worked "in conjunction with litigation" as a strategy to "secure the favourable resolution of a dispute".⁴⁶³ While Powell also recognised that arbitration was an integral part of ecclesiastical litigation, the focus of the article considered arbitration in secular jurisdictions.⁴⁶⁴ In following decades, historians have taken Powell's insight, and broadened this line of interrogation to encompass questions of legal privileges, monopolies, and ideas of 'good lordship' in a multitude of courts, both ecclesiastical and secular.⁴⁶⁵ However, with a few notable exceptions—such as Robert Swanson's recent article on church court arbitration—the overwhelming emphasis of arbitration as occurring between members of the English gentry or urban elites has precluded the role that it might have played in the everyday relations that coloured English lower church courts.⁴⁶⁶

The frequency of recorded arbitration should not be overstated; in the 1245 cases from Canterbury, less than one percent of perjury causes allude to arbitration procedures. For Wisbech, these causes are rarer still. It is only in London, in about three percent of breach of faith cases, that we see a formal approach taken to arbitration procedures. In this way, the statistical evidence that these results produce is negligible. Despite this, the number of causes that end ambiguously in all three case studies suggest that much of the arbitration that did occur was outside the courts. This can be perceived in the references made to "concord" being reached that occurred in approximately 10% of cases. By contrast, there are just a handful of examples where formal arbitration was recorded in breach of faith litigation.⁴⁶⁷ Nonetheless, with a clearly recorded arbitration process, these examples can be illuminating. In one case, between cobbler Robert Johnson and a man named John Hammond, a dispute over 2s 2d resulted in the election of four

⁴⁶² Bellamy, *Crime and Order*, 114-20; Storey, *Lancaster*, 121-3.

⁴⁶³ Edward Powell, "Arbitration and the Law in England in the Late Middle Ages," *Transactions of the Royal Historical Society* 33 (1983); 57.

⁴⁶⁴ Powell, "Arbitration," 52-4.

⁴⁶⁵ Barbara Hanawalt, 'Of good and ill repute': *Gender and Social Control in Medieval England*, 35- 52; Christopher Dyer, "Small-town conflict in the later Middle Ages: events at Shipston-on-Stour," *Urban History* 19.2 (1992), 183-210; Carole Rawcliffe, "The great lord as peacekeeper: arbitration by English noblemen and their councils in the later Middle Ages," *Law and Social Change in British History*, eds. J. A. Guy and H. G. Beale (Royal Historical Society, 1984), 34–55; Anthony Musson and Edward Powell, *Crime, Law and Society in the Later Middle Ages* (Manchester University Press, 2013), 187-210; Lorraine Attreed, "Arbitration and the Growth of Urban Liberties in Late Medieval England," *Journal of British Studies* 31.3 (1992), 205–35.

⁴⁶⁶ Swanson, "Arbitration, Delegation, Conservation," 165–81.

⁴⁶⁷ For a detailed and insightful example, see Forrest, *Trustworthy Men*, 57. In this dispute between vicar Edmund Roray and a man named Robert Bunch over the nonpayment of 20s in tithes, 40s was the fine for the failure to comply with the arbitration. This cause was eventually settled after a compromise was reached: if Bunch paid 3s 6d for oil and 4s for tithes, Edmund agreed to waive the remaining debt to "nourish love" between the parties.

men to act as arbitrators in the subsequent dispute. The sum is small enough to be considered insignificant. However, the decision to impose four named men to act in arbitration might suggest a particular animosity between these litigants. This is further expressed by the statement that a 40s penalty would be imposed on the “party that does not adhere to the arbitration”.⁴⁶⁸ While the severity of the penalty suggests that noncompliance was not really a viable option, the disparity between the money contested and the penalty also indicates the overwhelming significance placed on the value of local men’s ability to pursue peaceable agreements. As much as possible, men in Wisbech and its hinterlands sought the court’s legitimising function to record significant moments of change in economic and social relationships.

While excommunication for breach of faith will be discussed at length in the next chapter, one noteworthy feature in the deanery court of Wisbech was the frequency with which ecclesiastical suspensions were dealt out to litigants. At Wisbech, 33% of all breach of faith causes resulted in suspension, higher than the 20% of causes in Canterbury. While Richard Wunderli notes the prolific use of suspension and excommunication in London’s commissary, this is a trend that does not seem to map onto the number of suspensions issued for breach of faith litigation.⁴⁶⁹ These figures fluctuated quite significantly from 10% of causes in 1472 to 30% of causes in 1485.⁴⁷⁰ This suspension *ab ingressu ecclesiae* theoretically functioned to prohibit individuals from entering their parish church, excluding them from the religious life of their community.⁴⁷¹ In Wisbech, this was often for two particular reasons: the first was the suspension of those who failed to abide by the actions agreed upon by the litigants at court. For breach of faith litigation, this was often the failure to adhere to the repayment plan set out by the courts. The second was triggered by an automatic process known as *lata sententia* against those who failed to appear before the court when summoned.⁴⁷²

An overview of the average value of debt between causes that culminated in suspension suggests that the debt incurred had no apparent impact on the way these causes were pursued. Instead, as noted by historians of excommunication, contumacy seems to have played a key reason for the use of suspension.⁴⁷³ For example, in the parish of Leverington, a chaplain named William Bisshop enrolled separate *fidei laesio* causes against men named Thomas Reynalde and

⁴⁶⁸ Poos, *Ecclesiastical Jurisdiction*, 313: “...parte non parente laudo et arbitrio predictorum electorum...”

⁴⁶⁹ Wunderli, *London Church Courts and Society*, 46

⁴⁷⁰ Wunderli, *London Church Courts and Society*, 108.

⁴⁷¹ Helmholz, *OHLE*, 621.

⁴⁷² Alexander Murray, *Conscience and Authority in the Medieval Church* (Oxford University Press, 2015), 178-80.

⁴⁷³ See Richard Helmholz, “Excommunication in Twelfth Century England”, *Journal of Law and Religion* 235 (1994), 237; Tyler Lange, *Excommunication for Debt*, 55.

Martin Bryce, for which both men were suspended.⁴⁷⁴ In Reynalde's case, the matter was settled once arbitration with a *fideiussor* had occurred, and Reynalde had appeared before the court to swear that concord with Bisshop had been reached. For Bryce, his defence before the dean was to swear that he had never been cited at all, suggesting that the court's summoner had failed to issue Bryce with an official summons to appear in court.⁴⁷⁵ Without formal notice, Bryce argued that the triggering of a suspension for non-appearance was unjust.

What is perhaps notable in the aforementioned cases was the fact that, like excommunication, suspensions could be employed as a means of forcing individuals back into the court to clarify their legal position, promote arbitration, or seek reconciliation. Unlike excommunication, receiving a suspension from the church court did not signify an official change in legal status unless the suspension became a formal charge of excommunication. However, with only seven (1.6%) suits resulting in excommunication at Wisbech, it seems that excommunication was considered quite a severe punishment for creditors and court agents to pursue.⁴⁷⁶ As will be discussed in the next chapter, the alienation triggered by excommunication may have seemed counter-productive to the fostering of long-term social and economic relationships that characterised smaller communities of the period.⁴⁷⁷ As is visible with Bryce and Reynalde, suspension of these men ultimately resulted in the swearing of oaths, publicly declaring their intentions to abide by the legal and spiritual authority offered by the court. For this reason, suspension might be considered a means of rearticulating expectations for the upholding of promises and the repayment of debts within the local community.

Nonetheless, the high rate of suspension in Wisbech, paired with the low levels of excommunication, may suggest an awareness of Wisbech residents that the court of the dean was limited in what it could achieve through suspension alone.⁴⁷⁸ While historians have tended to disregard the exclusion of individuals from the church as a 'weak' legal action, this spiritual threat could also be supplemented by financial threats.⁴⁷⁹ For example, in a cause between John Herberd and Willian Goodlomb, Herberd was accused of violating his faith with his neighbour for

⁴⁷⁴ Poos, *Lower Ecclesiastical Jurisdiction*, 298.

⁴⁷⁵ For the role of summoners in the courts see, Section 4.4.1 below.

⁴⁷⁶ Poos, *Lower Ecclesiastical Jurisdiction*, 314, 351, 461, 462, 526, 541; A further two men experienced excommunication for withholding the final testament of individuals, see Poos, *Lower Ecclesiastical Jurisdiction*, 340, 457.

⁴⁷⁷ Section 4.4.2, below.

⁴⁷⁸ See Briggs, "Can't pay, won't pay."

⁴⁷⁹ The history of viewing lower ecclesiastical courts as practising "inferior" law is a long and enduring tradition. See F. W. Maitland, *Roman Canon Law in the Church of England*, 42-3; S. F. C. Milsom, "Law and Fact in Legal Development," *The University of Toronto Law Journal* 17.1 (1967), 4; Charles Donahue Jr, "Stubbs vs. Maitland," 674; On the robustness of excommunication, please see Chapter Four, below.

ten pence. On 10 July he was suspended, and two weeks later appeared in court to swear that he would satisfy the aggrieved party “within seven days after the feast of St Michael’s (29 September) under the pain of double”.⁴⁸⁰ Whether this fine was to be rewarded to the court or the plaintiff is unclear, but the fact that Herberd was given two months to find the money suggests a balanced attempt at enforcement.

In another instance in 1470—1, Edmund Sutton of Leverington found himself in three simultaneous breach of faith suits, suggesting that Sutton may have been facing significant economic hardship. One was with the aforementioned William Bisshop of Leverington, to whom Sutton owed 4s 2d for “grains and others”, another was 4s owed to a man named William Pocock. The third debt was easily the most protracted cause, with a man named Thomas Gilling, one of Leverington’s *inquisitors*.⁴⁸¹ Gilling, perhaps more cognizant of the coercive powers of the church court than most, eventually supplemented Sutton’s third suspension with the presentation of a written directive to appear before a judge in St Sepulchre church in Canterbury, presumably at the archiepiscopal level. This journey would have been expensive and time-consuming for Sutton to complete, especially when the remedy was one that might have been reached before the dean, as he was charged to repay Gilling the debt owed to him in two equal portions: one by the feast of Michaelmas on 29 September, and the other by Christmas.

It is apparent that for those who had the means, it was possible to challenge decisions made in court at the deanery at a higher, more expensive ecclesiastical court.⁴⁸² While one might assume that these causes might have involved the recovery of significant sums of money, the debts seem to be peripheral to the court action itself. This is illustrated in a case where a man named Hugo Berforth pursued the recovery of 1s that was being withheld from him by Simon Bukk. After the defendant was charged to undergo compurgation with two witnesses, Berforth protested the cause, elevating the case to Ely.⁴⁸³ Not only does this case demonstrate that litigants such as Berforth were willing to risk spending significantly more money for justice at a higher, more expensive court, but that the outcome of the case had social significance – well beyond the one shilling value – that Berforth considered worth the time and effort required to contest the dean’s decision.⁴⁸⁴ This is a phenomenon that we will see time and again with breach of faith

⁴⁸⁰ Poos, *Lower Ecclesiastical Jurisdiction*, 299: “...Comparuit... et juravit satisfacere parti infra j septimanam proximam post festum Sancti Michaelis proximum futurum sub pena dupli.”

⁴⁸¹ Poos, *Lower Ecclesiastical Jurisdiction*, 297, 299, 286.

⁴⁸² Poos, *Lower Ecclesiastical Jurisdiction*, 286.

⁴⁸³ Poos, *Lower Ecclesiastical Jurisdiction*, 277.

⁴⁸⁴ This is also prevalent in a late-medieval European context, see Smal, *The Consumption of Justice*, 133–59; Lange, *Excommunication for Debt*, 66.

litigation, and has been observed by historians regarding matters of reputation, such as in cases of defamation.⁴⁸⁵ In the case of Wisbech, this practice was apparent for even the smallest of debts.⁴⁸⁶

As this thesis will continue to explore in the following chapters, the ways in which instruments of enforcement such as arbitration, suspension and excommunication functioned in the courts varied quite significantly between lower ecclesiastical courts in England. For this reason, it is possible to consider their use in local courts as a means of examining how an individual's reputation was measured in these different communities, and the court's role in acting as a broker of this trustworthiness. For example, prolific use of suspension in Wisbech, paired with an avoidance of excommunication speaks to a desire by both the court's leaders and its users—two groups in Wisbech which had considerable overlap—to utilise the court for the purpose of reconciliation. However, as demonstrated by the calculations of litigants such as Thomas Gilling and Edward Sutton, such 'peaceable' settlements might have been highly coercive in numerous ways, often forcing defendants to choose between the material cost of reconciliation or social cost of a poor reputation.

3.5: Conclusion

This chapter offers the following conclusions regarding breach of faith litigation in the urban society of Wisbech in Cambridgeshire. Firstly, the volume of litigation in the court points to a lively credit market that encompassed a broad subsection of the community. While the high number of causes in the court seems unusual relative to the population size of the Wisbech and its hinterlands, it is unlikely that the deanery court of Wisbech 'shared' much of the business of debt litigation with other local courts. As we have seen, litigating debt in a jurisdiction where both plaintiff and defendant were known to the authorities was tactically advantageous, especially for creditors — particularly when litigants lived in different towns. Despite the courts taking place during what was likely an acute bullion shortage, the quantification of breach of faith litigation demonstrates how credit offered residents of Wisbech a way of keeping goods flowing—this is perhaps most apparent in the substantial proportion of causes that mentioned the trade of material goods.

Regarding those presented to the court, breach of faith litigation was primarily litigated by local men, reflecting scholarship on rural courts. The debts litigated concerned fairly modest sums

⁴⁸⁵ See Robb, "Reputation," 304; Berry, *The Margins of Late Medieval London*, 171-200.

⁴⁸⁶ Nonetheless, it must be recognised that access to higher courts was almost entirely dependent on the ability to pay.

of money, suggesting that the courts likely attracted a broad demographic of litigants. For creditors in the area, whose credit network stretched far beyond the limits of the Cambridgeshire fens, the deanery court also acted as a site for enrolment, noting down debts that had been incurred. The particular prevalence of fraternities in communal lending practices reflects the dual nature of lending in English village society as both spiritual and economic: on one hand, charity was a central motivator of these fraternities, reflective of a broader social obligation to the poorer members of village society.⁴⁸⁷ On the other hand, the growing ties between wealthy villagers and participation in guild activities showcases the central role that guilds could play in dictating who could access credit in these communities.

Beyond these pragmatic functions, this chapter has also demonstrated the ideological role that church court litigation might have played, particularly when used by leading members of Wisbech's community. It is essential to recognise that the absence of women from these records did not suggest an absence of women from Wisbech's marketplace, as we see examples of both creditors and fraternities happy to lend women both money and the use of their assets, such as cows.⁴⁸⁸ Instead, women's absence from these records underlines the normative nature of the courts when articulating ideas of masculine trustworthiness in society: the recording of male churchwardens, the use of titles such as 'gentleman', and the role of the public swearing of oaths all point to a community of litigious men and women that were acutely aware of the power that the courts could have in the creation and maintenance of public opinion. Thus, bringing the dispute before the dean may have been the first step towards a resolution between aggrieved parties, or indeed a mode of invoking the public pressure needed to enforce a delayed repayment. Fundamentally, through financial or spiritual pressure, the deanery court of Wisbech was a largely effective means of keeping the credit of a village community in circulation. Rather than a natural economic occurrence, this balance was mediated carefully through the court, binding litigants together in a close network of debt and faith. In the coming chapters, we will consider how these relationships functioned on a wider scale, both geographically and demographically.

⁴⁸⁷ Schofield, *Peasants and Community*, 138; Rosser, *The Art of Solidarity*, 157.

⁴⁸⁸ Poos, *Lower Ecclesiastical Jurisdiction*, 353.

Chapter 4 : The Consistory Court of Canterbury

4.1: Introduction

This chapter concerns the church court records from a series of courts held along the Kentish coast in the name of the Archbishop of Canterbury and his commissary-general: St Nicholas in Romney, St Martin in Dover and in St Leonard in Hythe. As three of the king's Cinque Ports, these communities were closely linked, sharing strong civic identities and legal traditions.⁴⁸⁹ Given the mercantile nature of the ports themselves, and the legal infrastructure that was constructed to support such endeavours, the question of why inhabitants might turn to an ecclesiastical jurisdiction for economic recourse looms large. Unlike Wisbech, where the court of the deanery seems to have filled a judicial lacuna with the deterioration of authority of the local manor court, the legal culture of these port towns was relatively robust.⁴⁹⁰ In the Cinque Ports, court proceedings were legitimated and memorialised alongside civic ceremonies in the towns' customals.⁴⁹¹

These factors were integral to the way breach of faith was litigated in Kent's ecclesiastical courts. As will be explored in greater detail below, an analysis of the users of Canterbury's church courts for breach of faith litigation points tentatively to the monopolising of the courts by a demographic that was overwhelmingly male and legally literate. This chapter argues that, unlike the petty debt litigation that occurred in both Wisbech and London's commissary, the disputes of perjury in these courts were largely concerned with litigating the reputation of individual litigants. This chapter explores breach of faith and perjury litigation as the legal articulation of these bonds of obligation, building on the idea posited by Michael Clanchy when he stated that mutual obligation was the "most fundamental of all bonds in medieval society".⁴⁹² While recovery of money lost was certainly a consideration to many litigants, the records highlight both the social and spiritual cost of the breaking of promises.

⁴⁸⁹ Sheila Sweetinburgh, "Mayor Making and other ceremonies: shared use of sacred space among the Kentish Cinque Ports," *The Use and Abuse of Sacred Space in Late Medieval Towns* (Leuven University Press, 2006), 166.

⁴⁹⁰ Jones, *Gender and Petty Crime*, 13–8; for a longer discussion of courts in Wisbech, please see above, Section 3.1.2, and Briggs, "The Availability of Credit."

⁴⁹¹ Sweetinburgh, "Mayor Making," 165.

⁴⁹² "Michael Clanchy, "Law and Love in the Middle Ages." in *Disputes and Settlements: Law and Human Relations in the West*, ed. John Bossy (Cambridge University Press, 1983), 64.

This chapter is split into two sections. The first considers the nature of the litigation in the diocese of Canterbury through a close study of the data. The enormous volume of business that passed through the courts in the 1460—70s was a testament to the court's local appeal. However, as this section will demonstrate, those who were litigating in these venues did so in a very particular way, as credit relations between neighbours were dealt with in a way that prioritised enduring neighbourly relations over the harsh penalties offered to debtors from further afield. By considering the gender of litigants, the value of the debt contested, and the geography of litigation in Kent's courts, I will establish the character of a 'typical' plaintiff and defendant that appeared before the commissary judge.

The second section argues that the utility of a shared legal jurisdiction was bolstered by the mechanisms of the church court that functioned for this very purpose: to make Canterbury's consistory court the venue *par excellence* to negotiate contested obligations. This section will discuss two such mechanisms that operated in both formal and informal capacities. Firstly, I will consider the role of the summoner in the courts. Summoners were plagued with a reputation for lechery and extortion. However, in practice, the summoner also acted as a conduit through which church court authority flowed. Their embeddedness in local communities made them key figures in both local knowledge and court practice. Secondly, we will look at the special role that excommunication played in the process of negotiation in Canterbury's courts. This section demonstrates that while excommunication was used in more serious disputes as punishment, it could be integrated by plaintiffs into the broader conciliatory function of the courts themselves when policing parochial affairs. Significantly, I will argue that it "intensified the perception and pressures of jurisdictional plurality", as posited by Johnson's work on urban legal cultures.⁴⁹³

An initial survey of the litigation suggests a fundamental difference in both form and content from the ecclesiastical jurisdictions of London and Wisbech. Unlike elsewhere, causes were initiated by the plaintiffs themselves rather than the judiciary, and the charge brought to court was not breach of faith but perjury, understood to comprise both the swearing of false oaths, and lying under oath.⁴⁹⁴ Even at court, these disputes were often carried out by proctors, a small group of men who were intimately familiar with the court processes and personnel.⁴⁹⁵ However, at the centre of these causes was the same motivation that powered the courts of both London and

⁴⁹³ Johnson, *Law in Common*, 64.

⁴⁹⁴ Paul Cavill has identified perjury in this way. As with breach of faith, an understanding of perjury is wrapped up in a canonical understanding of making oaths. Cavill, "Perjury," 185; Richard Helmholz offers a clear and succinct overview in R. H. Helmholz, *The Spirit of Classical Canon Law* (University of Georgia Press, 2010), 146–152.

⁴⁹⁵ Helmholz, *OHLE*, 222–5.

Wisbech; in some instances that was ill-will, in many other cases, it was the desire for the opening of lines of legally sanctioned communication. Both were made available in the geographically broad jurisdiction of Canterbury's archbishop.

4.1.1: Kent in the 1460s: A Socioeconomic Overview

As discussed in the previous chapter on Wisbech, the mid-fifteenth century marked a period of great economic change in England. As we will see, in Kent, this was characterised by severe economic instability and widening inequality, as money flowed into fewer hands. This was exacerbated by insurgent politics and the persistence of heretical religious practices in the region. Considered in tandem, these factors paint a picture of a society wherein oaths became an important signifier of identity; the very ability to take an oath in the first place may have become a marker of social, political and economic trustworthiness in the archdiocese of Canterbury.

There were several changes that influenced the distinctive economic landscape of Kent in the mid-fifteenth century. First, and most notably, was the sharp downturn in the export of cloth and wool exports in the 1440s and 1450s that reached a low point in 1465.⁴⁹⁶ For cloth workers, this decline would have seen entire communities face serious economic hardship: in Wealden villages, many of which were served by the ecclesiastical courts of New Romney and Hythe, Mavis Mate estimates that as many as 25% of men might have worked in some capacity in the cloth trade.⁴⁹⁷ By 1449, in the midst of a Burgundian ban on English imports, there was great apprehension in Parliament on the "ydell" cloth workers affected by this downturn, as unemployment "proveketh them to synne and myschevous lvyng".⁴⁹⁸ For those who retained their jobs, it is equally apparent that the bullion famine of the period further impacted their income, as a statute from 1463/4 reported how labourers working in the cloth and wool manufacturing trade "have been driven to take a great part of their wages in pins, girdles, and other unprofitable wares."⁴⁹⁹ While payment-in-kind was likely common in rural communities, as was the case in

⁴⁹⁶ John Lee, "Crises in the Late Medieval English Cloth Trade," *Crises in Economic and Social History: A Comparative Perspective*, eds. A.T. Brown, Andy Burn and Rob Doherty (Boydell and Brewer, 2015).

⁴⁹⁷ Mavis Mate, "The Economy of Kent," *Later Medieval Kent, 1220– 1550*, ed. Sheila Sweetinburgh (Boydell, 2010), 19.

⁴⁹⁸ From John Munro, *Wool, Cloth and Gold: The Struggle for Bullion in Anglo-Burgundian Trade, 1340-1478*, 141 fn. 40.

⁴⁹⁹ Edward IV c. 1, *Statutes of the Realm*, 406; In a poem from the same period, a similar complaint is made on the payment of cloth labourers as the author complains that "Lytyll þei take for theyre labour, yet half ys merchaundyse," suggesting that this may have been an issue faced by labourers in the industry for an extended period of time, *Historical Poems of the XIVth and XVth Centuries* (Oxford University Press: London, 1959), 171.

Wisbech, non-perishable goods were evidently less useful as payment than goods that might be consumed or used.

While wool and cloth production were just one industry among many for those living in Kentish communities, they constituted the country's most profitable export, whose reduction undoubtedly exacerbated broader economic decline. This is succinctly described by Mate who observed that "[t]he farmer who could not sell his wool was likely to postpone rebuilding his barn. Carpenters and thatchers, as well as cloth-workers, could not rely on finding as much employment as they wished. Lords had difficulty finding lessees".⁵⁰⁰ This struggle would have been particularly acute for lesser producers as there is evidence to suggest that, like in Wisbech, wealthier men might profit from low prices of land and goods. This was certainly the case for larger cloth manufacturers, who relocated their businesses from larger towns such as Canterbury, into village communities where lower production costs and less guild restrictions gave them a competitive advantage over smaller producers.⁵⁰¹

The impact these changes had on debt relations have yet to be comprehensively studied in Kent. However, initial work on rents in Kentish manors suggest that not only did some landlords struggle to lease their land, tenants were also unable or, indeed, unwilling to pay their annual rents. In Wye 1463/4, it was reported that there were over twenty years of arrears mounting up, valued to £401 9s 5d. At Otford, in 1460/1, one third of all rents were expected by the manor to remain unpaid.⁵⁰² What this might suggest, particularly when considering breach of faith and perjury litigation in the consistory court of Canterbury, is that for many Kentish residents of the 1460s and 1470s, the state of being in debt was not just entirely commonplace, but an integral part of life.

This economic precarity played a significant role in sparking political insurgence. This is exemplified by clothier Jack Cade's 1450 revolt, in which thousands of Kentishmen marched on London to protest Henry VI's government, demonstrating disaffection towards their local constables and county clerks.⁵⁰³ Mate underlines that these men were not economically marginal but people of quite considerable income.⁵⁰⁴ Assessments of their goods reveal in some cases "the high standard of living that some Kentishmen were able to achieve", because of the drop in population over the previous century. It is noteworthy that these men very likely constituted a very

⁵⁰⁰ Mate, "The Economy of Kent," 18.

⁵⁰¹ Lee, "Crises."

⁵⁰² Mate, "The Economy of Kent," 18, fn. 31.

⁵⁰³ Jones, *Gender and Petty Crime*, 23; I. M. W. Harvey, *Jack Cade's Rebellion of 1450* (Oxford: Clarendon Press, 1991), 37–42.

⁵⁰⁴ Mate, "The Economy of Kent," 20.

specific class of people who, in the following decades, would seek remedy for broken promises in the archbishop's ecclesiastical courts. However, disaffection among any socioeconomic group was not universal, and Harvey observes that for many, such as Canterbury's "close-knit group from the city's ruling faction", their support of rebellion may have been lukewarm at best.⁵⁰⁵ Factionalism took root among the gentry as loyalties were split between Yorkist and Lancastrian allegiance.⁵⁰⁶ Furthermore, while it was a far cry from the heretical fervour of the 1420s, there was a persisting current of Lollardy in Kent in the mid-century, finding a particular audience "in textile-producing centres with their literate craftsmen who had established links with towns and ports".⁵⁰⁷ The persistence of Lollardy may have been particularly concerning for those engaged in lending and borrowing as rejection of oath-taking came to be affiliated with heretical practices.⁵⁰⁸ Thus, we might imagine that the ability to participate in economic and social exchanges that were litigated in *fidei laesio* causes, may have acted as a social signal to members of society attuned to such actions.

The coastal nature of these communities likely had a huge role in the social and economic lives of inhabitants in Dover, New Romney and Hythe. Economically, this encompassed a range of activities, such as fishing, the local and international transportation of goods and people, shipbuilding, and the extended economic ecosystem that supported such maritime activities.⁵⁰⁹ Fishing was a largely seasonal activity; in Kent, members of the Cinque Ports benefitted from the shoals of herring that migrated down the east coast of Britain in autumn. Many residents of Hythe, New Romney, and Dover made the journey to the herring fair in Great Yarmouth, where the annual event attracted fishermen from across the North Atlantic.⁵¹⁰ Beyond this, evidence suggests a broad range of other marine species that might be fished over the course of a year, with the general health of species such as herring being quite high in the mid-1450s.⁵¹¹ The extent

⁵⁰⁵ Harvey, *Jack Cade's Rebellion*, 103–4.

⁵⁰⁶ Malcolm Mercer, "Kent and National Politics," *Later Medieval Kent, 1220–1540*, 251–6.

⁵⁰⁷ Lee, "Crises".

⁵⁰⁸ Cavill, "Perjury," 188.

⁵⁰⁹ For a general overview of the economic activities of maritime trades, see Maryanne Kowaleski, "Maritime Trade and Industry in Medieval Kent," in *Maritime Kent Through the Ages: Gateway to the Sea*, eds. Stuart Bligh, Sheila Sweetinburgh (Boydell and Brewer, 2021), 215–33; For shipbuilding in Hythe, see Gillian Draper, "Timber and Iron: Natural Resources for the Late Medieval Shipbuilding Industry in Kent," in *Later Medieval Kent, 1220–1540*, ed. Sheila Sweetinburgh (Woodbridge, 2010), 59, 68.

⁵¹⁰ Maryanne Kowaleski, "The Seasonality of Fishing in Medieval Britain" in *Ecologies and Economies in Medieval and Early Modern Europe: Studies in Environmental History for Richard Hoffmann*, ed. Scott G. Bruce (Brill, 2010), 119–22.

⁵¹¹ Sheila Sweetinburgh, "Fishermen in Late Medieval and Tudor Kent," in *The Routledge Companion to Marine and Maritime Worlds, 1400–1800*, ed. Claire Jowitt, Craig Lambert and Steve Mentz (Routledge, 2020), 205; Sweetinburgh, "'Ready to go to the Sea': Maintaining Fishing Families in Late Medieval Hythe,"

to which this was a financially lucrative pursuit depended on a multitude of factors, such as the nature of the fishing and size of the boats in use. Mark Bailey estimates that, by the fifteenth century, the money allocated to the fishermen themselves was likely paltry, many "using fishing to provide an occasional though somewhat risky source of supplementary income".⁵¹² According to the maltote accounts of Hythe in 1412-3, at least 21% of householders in the town could be identified as fishermen.⁵¹³ While the communities of New Romney and Dover may have been slightly less reliant on fishing than Hythe, documents across the fifteenth century demonstrate a sustained involvement in maritime life through the maintenance of harbours, and the purchasing of vessels.

Maryanne Kowaleski has demonstrated that by the fifteenth century, Sandwich was the preeminent centre for the import and export of alien goods in Kent, benefitting from a large harbour, its close proximity to London and the better farming lands in Kent.⁵¹⁴ In particular, the 1460s saw Sandwich benefit massively from the anti-alien sentiments directed by Londoners against Italian merchants who relocated much business to centres such as Sandwich and Southampton.⁵¹⁵ However, Dover was a prime mover of people and goods across the Channel to Calais, a service that likely proved lucrative to those who had the means to provide passage.⁵¹⁶ Furthermore, despite its size, evidence suggests that Hythe was similarly participating in the export of goods to Calais from the mid-fifteenth century, bolstered by the jurats of the town's continued maintenance of the harbour which often suffered extensive build-up of shingle.⁵¹⁷ We might also assume that all three centres were connected by much more localised trade, as found by Susan Rose's study of Southampton in the fifteenth century.⁵¹⁸

in *Maritime Kent Through the Ages: Gateway to the Sea*, eds. Stuart Bligh, Sheila Sweetinburgh (Boydell and Brewer, 2021), 390.

⁵¹² Mark Bailey, "Coastal Fishing off South-East Suffolk in the Century after the Black Death," *Proceedings of the Suffolk Institute of Archaeology and History* 37 (1990), 102-114: 107.

⁵¹³ Maryanne Kowaleski, "The Medieval Cinque Port of Hythe," *Romney Marsh Irregular* 38 (2011), 10.

⁵¹⁴ Kowaleski, "Maritime Trade," 218.

⁵¹⁵ Kowaleski, "Maritime Trade," 219; for Italians in Southampton during the War of the Roses, see Alwyn A. Ruddock, *Italian Merchants and Shipping in Southampton, 1270–1600* (The Wykeham Press, 1951), esp. 166–186; While such a depiction of Sandwich suggests prosperity, it must be acknowledged that despite the flow of Italian merchandise through it, Sandwich in the early 1460s was still reeling from devastation at the hands of a French attack in 1457. See Helen Clarke, Sarah Pearson, Mavis Mate, Keith Parfitt, Sheila Sweetinburgh, Bridgett Jones, Allan T. Adams, et al., *Sandwich: The 'Completest Medieval Town in England': A study of the Town and Port from its Origins to 1600* (Oxbow Books, 2010), 147.

⁵¹⁶ Kowaleski estimates that Hythe's population stood at approximately 700 people in 1400. See Kowaleski, "The Medieval Cinque Port," 12 fn. 18. On Hythe's exports, Kowaleski, "Maritime Trade," 221.

⁵¹⁷ Kowaleski, "The Medieval Cinque Port," 7-9.

⁵¹⁸ Susan Rose, "The Port of Southampton in the Fifteenth Century: Shipping and Ships' Masters," *Proceedings of Hampshire Field Club Archaeological Society* 61 (2006), 174-81.

Spatially, the economic activities of these coastal communities impacted how they functioned socially. As discussed by Kowlaeski and Johnson, the seasonality of fishing, and the interconnectedness of maritime work such as shipbuilding, brought with it the movement of people.⁵¹⁹ This included both short- and long-distance travel. Regarding the former, records from Lydd, on the outskirts of New Romney, saw the seasonal migration of fishermen out onto a shingle headland named Dungeness, where they shared cabins with fishermen from the West Country. Here, the activities of these fishermen were supported by Lydd through the provision of beacons, a watch, and a cannon, meant to protect against French raids that plagued the south-eastern coast in the 1450s and 1460s.⁵²⁰ As will be discussed in greater detail below, such seasonal movement of fishermen undoubtedly impacted the economic standing of women in these communities; in the absence of male relatives, it stands to reason that women should be better represented in the public life of these communities.⁵²¹ With this in mind, both Kowaleski and Johnson make an argument for a distinct maritime "subculture" which "often evolved especially early and strong cooperative institutions to protect against the dangers of maritime life".⁵²²

However, cooperation was also perforated by suspicion, as the outward migration of residents was exacerbated by the influx of non-residents and aliens, who were disproportionately represented in coastal communities across England.⁵²³ While historians have argued that the presence of immigrants in communities sparked stricter policing by urban authorities, little attention has been placed on how such migration patterns may have impacted the extension of credit and expressions of faith.⁵²⁴ Most notably, despite the disproportionate presence of both women and foreign-born residents in the public life of these communities, these figures are largely absent from the perjury litigation of Canterbury's ecclesiastical courts.

When considered in context, expressions of trust in Kent— be it in the extension of credit, shared religious beliefs, or political affiliations— were factionalised, divisive and complex. If we

⁵¹⁹ Kowaleski, "The Seasonality of Fishing," 120-2; Johnson, *Law in Common*, 91-2.

⁵²⁰ Mark Gardiner, "A Seasonal Fishermen's Settlement at Dungeness, Kent," *Medieval Settlement Research Group* 11 (1996), 18-20.

⁵²¹ Maryanne Kowaleski, "The Demography of Maritime Communities in Late Medieval England," in *Town and Countryside in the Age of the Black Death*, eds. Mark Bailey and Stephen Rigby (Turnhout: Brepols, 2012), 89.

⁵²² Maryanne Kowaleski, "Peasants and the Sea in Medieval England," *Peasants and Lords In the Medieval English Economy: Essays in Honour of Bruce M. S. Campbell*, eds. Maryanne Kowaleski, John Langdon, and Phillipp R. Schofield (Turnhout: Brepols, 2015), 353– 76: 369; Johnson, *Law in Common*, 89–93.

⁵²³ For example, in Suffolk, 54% of Suffolk's foreign-born residents lived in coastal communities, Kowaleski, "Demography of Maritime Communities," 106.

⁵²⁴ Christian D. Liddy, and Bart Lambert, "The Civic Franchise and the Regulation of Aliens in Great Yarmouth, c. 1430– c.1490," in *Resident Aliens in Later Medieval England*, eds W. M. Ormrod, Nicola McDonald and Craig Taylor (Turnhout: Brepols, 2017): 125-143.

consider the growing number of *fideo laesionis seu periurii* cases being pursued throughout the fifteenth century in Canterbury, the integration of perjury into the legal toolbox of Kentish men and women allowed the laity to contest these social, economic and political divisions in a legal setting. As this chapter will demonstrate, the recovery of debt may have been only a secondary concern of many of the litigants who found themselves embroiled in litigation.

4.1.2: An Itinerant Court

The case studies of Hythe, New Romney and Dover have been selected as they contain an almost entirely unbroken series of commissary court proceedings covering the years 1462-1474. These courts were part of a broader judicial ecosystem that centred on the cathedral city of Canterbury. The authority of the consistory court of Canterbury could be felt in every corner of the region, dwarfing many other geographically defined jurisdictions such as hundreds or manors. What was most apparent from the distribution of ecclesiastical courts in Kent was not their "status" as ecclesiastical courts, but the underlying concern by the ecclesiastical administration that they were accessible in the first place. In absence of a consistory court, Sandwich was served by an archdeaconry court, as were the northwestern deaneries. While there may have been a technical difference between the hierarchy of these courts, there is little evidence to suggest that litigants pursuing causes elevated to the consistory from these regional courts had sought first justice in the courts of New Romney, Dover or Hythe. Rather, the humble debts litigated in Hythe, New Romney and Dover's courts— such as the debt between Roger Saundyr and John Norkyn that was assessed by the judge to be valued at 12d— were likely similar to those being litigated in the courts of the deans and archdeaconries around Kent.⁵²⁵

In Canterbury, the consistory court sat on Mondays and Tuesdays. On Wednesdays, Thursdays and Fridays, the courts administrative agents, such as the judge and the clerks, travelled in a circuit, hearing cases from Hythe, Romney and Dover, respectively. The court rarely sat in Canterbury in the same week that the circuit was completed. On occasion, this triggered a need for plaintiffs and defendants (or their representatives) to travel to Canterbury where the cause might continue before the sitting of their next local court. On one hand, this increased the speed with which litigation might be concluded, as it enabled litigation to occur more than once every circuit which was approximately every five to six weeks. However, this displacement of the dispute to Canterbury may have proved burdensome for those forced to travel great distances to seek a resolution. A stark example of such can be found in a case between two men hailing from

⁵²⁵ KHLC DCb/J/X/8.3 41r: "*iudex taxat experi(ri?) ad 12d*". For an extended discussion on the manufactured nature of ecclesiastical court hierarchy in England, see above, section 1.3.1.

the parish of Lydd in Romney Marsh.⁵²⁶ Following the initial meeting in April 1464 in Romney, where the defendant was suspended for non-appearance, the defendant next appears in the records one month later on Monday, May 28th in the chapel of All Saints in Canterbury Cathedral when he was absolved and charged to pay 12d. The cause then continued in Romney at the following session on 7 June. As is discussed below, it seems that excommunication could have been a strong reason to compel the defendant to travel the 27 miles to Canterbury to obtain judgement. This ability to force litigants to travel suggests that despite the large geographic area covered by the courts, its authority was far from abstract.⁵²⁷

This may offer a preliminary explanation for the large number of perjury causes heard in the courts: while plaintiffs may have had to travel to initiate suits before the commissary judge, the jurisdiction of the archbishop was shared between litigants in a way that that of manor and hundred courts may not have been.⁵²⁸ If we take Spencer Dimmock's work on Lydd as indicative of the patchwork nature of jurisdiction in Kentish communities, a turn towards a shared jurisdiction offered by the church court seems reasonable. For example, the urban population of Lydd was estimated to be around 1000 people at the turn of the sixteenth century, and we might take the population of the parish of Lydd to be of comparable size. However, by the middle of the fifteenth century, the legal landscape was extremely dense, as the parish encompassed seven manors and sub-manors, while the town itself lay under the jurisdiction of the town's bailiff of the manor of Aldington.⁵²⁹ This does not include the town's borough court, nor does it account for litigation that could be taken to the court of the Cinque ports—the Warden's court at Dover—which derived its authority from the king.⁵³⁰ Between 1466 and 1477, Lydd's townsmen were embroiled in a legal battle with the abbot of Battle, lord of the manor in the Dengemarsh, over who had the right of wreck in the area.⁵³¹ In seeking out a shared jurisdiction such as that which was offered by the consistory court, litigants might have been attempting to sidestep the social and political minefield that faced them in the fractious plurality of secular courts. In this way, it is perhaps unsurprising

⁵²⁶ After the legal centres of Dover, Hythe and Romney, the Cinque Port member town Lydd produced the most plaintiffs in the records, suggesting that its close proximity and economic ties to New Romney may have played a role in attracting plaintiffs to the court in the first place.

⁵²⁷ Johnson, *Law in Common*, 26.

⁵²⁸ The inability of plaintiffs to litigate debt in their "home" courts, which could occur when creditors lent money to residents of another manor, has been explored by Chris Briggs, "Seignorial Control of Villagers' Litigation Beyond the Manor in later medieval England," *Historical Research* 81 (2013), 399–422; It is also essential to acknowledge that access to royal courts became increasingly easy over the fourteenth century. See Musson, *Law in Context*, 135–74.

⁵²⁹ See Spencer Dimmock, "Class and the social transformation of a Late Medieval small town: Lydd c. 1450-1550," Unpublished PhD Thesis (University of Kent, 1998), 65–9.

⁵³⁰ Dimmock, "Class and the social transformation," 64.

⁵³¹ Dimmock, "Class and the social transformation," 183.

to find that of the 74 causes that involved plaintiffs from Lydd, in 34 instances was the defendant also from Lydd.

4.1.3: Perjury, not Breach of Faith

Before we consider the data, it is necessary to outline the nature of the litigation in question. Practically speaking, the 1245 causes that consist of this case study were not breach of faith, but cases of perjury. As explored in Chapter Two, the doctrinal history of perjury in England followed a very similar path as that of breach of faith litigation with the two often being mentioned in the same constitutions.⁵³² Gratian's lengthy discussion of oaths in his *Decretum* has been aptly summarised by Richard Helmholz, who argued that for the use of oaths to be valid in swearing, they "must be consistent with three requirements: truth, discretion, and justice".⁵³³ If oaths did not adhere to such standards, they were to be analogous to perjury. William Lyndwood's treatment of perjury was lengthier and penned explicitly for the English context in which he worked. Here, Lyndwood tacitly recognises the jurisdictional hazards of litigating perjury in the church courts: on one hand, Lyndwood acknowledges the secular nature of many of these causes, offering church plaintiffs and their advocates a template to follow to avoid the invocation of a writ of prohibition.⁵³⁴ On the other hand, to litigate spiritual matters such as perjury in the common law courts would invoke immediate and automatic excommunication.⁵³⁵ Lyndwood's template, while elaborate, bears marked similarities to the perjury litigated in the Canterbury courts.⁵³⁶ For example, a perjury case from Dover in 1467 appears as follows:

"In a perjury case, Richard Palmer of St Peter's Dover versus William Swanton of the parish of St Mary's in the same. [The plaintiff] cited by John Martyn. The defendant was represented by Ramsey, the defendant [appeared] personally. The plaintiff claimed/sued for 6 shillings because a declaration of faith was made. The defendant confessed, to pay in the next [court] under the pain of excommunication."⁵³⁷

⁵³² See especially Section 2.4, above.

⁵³³ Helmholz, *The Spirit of Classical Canon Law*, 149.

⁵³⁴ Lyndwood *Provinciale*, 315.

⁵³⁵ Lyndwood *Provinciale*, 315.

⁵³⁶ Lyndwood, *Provinciale*, 315o sv. *perjurio*. For a longer discussion on Lyndwood, please see above, Section 2.6. Translation: "[Person] A presents [Person] B to the Judge, that the same [Person] B by the pledging of his faith, or otherwise promising by his oath, bound himself to Person A, that he would faithfully pay the decem on a certain day. Because, with the said day having been reached, by not keeping his promise of this kind, indeed by recklessly coming against it, [Person B] reprehensibly violated his same oath and faith, falsely alleging that he was not bound canonically by his faith nor to any other bond of faith..."

⁵³⁷ KHLc DCb/J/X/8.3 140r, "*In causa periurij Rici Palmer de parochia Sancti Petri Dovor contra Willelmus Swanton de parochia Sancti Marie ibidem. Citatus per Johannem Martyn. Actor per Ramsey. Reus*

These perjury cases ostensibly served the same function as breach of faith litigation in Canterbury's courts; while the legal composition is different, they operated much the same.⁵³⁸ The oath that bound individuals to each other in breach of faith litigation was also central to the agreement reached in the exchange of 6s between Palmer and Swanton. It seems counterintuitive that the solution for such an allegation was the expectation that Swanton promise to pay Palmer back. However, this was what followed. With his faith as collateral, Swanton swore to pay Palmer back under the pain of excommunication. Such a solution gave Swanton the opportunity to repair his reputation while also allowing Palmer to recover the debt owed. Much like the many breach of faith cases explored in this thesis, the details of the debt are relatively unimportant as the records did not function as an itemised list of debts owed. Instead, the central importance of the litigation to the commissary judge was not the debt but the correction of the sin; for the plaintiff, it was the enforcement of the promise sworn.

The reason for such a regional variation in how broken promises were litigated is not an easy question to answer. On one hand, the use of perjury rather than breach of faith litigation in these courts may have been straightforward convention, as there is no evidence of breach of faith litigation appearing in these courts whatsoever. This is not the case elsewhere in the archdiocese of Canterbury. In a *liber correctionem* that concerned office cases from the town of Canterbury in 1468, William Pape from Godmersham was presented to the court because he allegedly violated his faith for not paying the chaplain of his parish wages or a stipend.⁵³⁹ This entry echoes the form and function of breach of faith litigation in both London and Wisbech's courts; Pape was summoned to court to respond to the allegations levied against him, either through investigation by local clerics or summoners, or via the conduits of rumour and gossip. Therefore, it is possible that how the litigants came to appear before the court judge was important in establishing which form the litigation took.

Officially, breach of faith litigation was conducted *ex officio*, functioning to anonymise the accuser, and invoking a sense of communal disapprobation.⁵⁴⁰ By contrast, instance litigation was initiated by specific parties, visible in the perjury case above. While Woodcock argues that there was a fundamental difference between the two types of litigation, positing that instance litigation

personaliter, Actor petit ex fide facta vj s. Reus fatetur ad solvendum in proxima sub pena excommunicatione."

⁵³⁸ This led Brian Woodcock to group these crimes in his study of Canterbury's church courts. Woodcock, *Medieval Ecclesiastical Courts*, 89-92.

⁵³⁹ KHLC DCb/J/Y/1.11 7r.

⁵⁴⁰ In these allegations, we often find examples of "common" scolds, whores or defamers. By 1492 in London, we see our first example of a "common breaker of oaths" levied against a person; LMA, MS DL/C/B/043/9064/6 f. 40r.

"demanded regularity of session and efficient dispatch" in a way that *ex officio* causes did not, this is not always borne out by the evidence.⁵⁴¹ In practice, both breach of faith and perjury concerned the same two parties: the party who broke their promise and the aggrieved. Given the inevitable passage of time between the promise being made and broken, it is probable that the majority of breach of faith litigation was initiated by the injured party rather than a court agent, such as a summoner or, in the terminology used at Wisbech, an *inquisitor*. This reality would have been well understood by church court litigants in this period.

More than convention, evidence from the courts, as will be explored in the data below, suggests that the local (and perhaps regional) legal culture may have played a key role in framing how disputes were contested in ecclesiastical courts. As previously discussed, the jurisdictional density of Kent in the fifteenth century made litigation an involved and sometimes arduous process. With residents of these towns heavily involved in policing the economic practices of both borough and maritime courts, they may have been cognizant of the risk of explicitly litigating debt in the ecclesiastical courts.⁵⁴² In contrast to breach of faith litigation in London and Wisbech, there is almost no detail of debts in the records of Canterbury's consistory court. Only one in five perjury causes (21%) make explicit mention of any sums of money whatsoever. This absence of detail must not be taken as a lack of interest in the debt itself. Like Forrest's assessment of verbal agreements, "the seriousness of the agreement was enhanced, and not diminished, by the lack of an official record".⁵⁴³ Instead, the focus on the breaking of oaths, by both plaintiff and the court, points to the value of oaths in broadcasting reputation within this specific socioeconomic community. When people were taken to court for perjury, their ability to participate in economic relationships was being challenged. This chapter will demonstrate how plaintiffs used an inability to litigate debt in the church courts to pursue an alternate path to recovering outstanding debts, one that emphasised the significance of the broken promise in these disputes and the disrepute it brought to the defendant. Unlike in Wisbech, where the court was plugging a jurisdictional gap, or London, where the frequency of courts allowed for rapid conclusions to litigation, perjury litigation in the courts of Dover, Hythe and New Romney offered creditors a means of opening lines of communication with their debtors while distancing themselves from the monetary aspect of the debt. In doing so, these records make clear the significance of an individual's reputation in the construction and maintenance of economic relationships in late medieval England—a significance that creditors were happy to exploit in pursuit of long-term economic stability.⁵⁴⁴

⁵⁴¹ Woodcock, *Medieval Ecclesiastical Courts*, 30.

⁵⁴² See chapter 2, above.

⁵⁴³ Forrest, *Trustworthy Men*, 37.

⁵⁴⁴ See Forrest, *Trustworthy Men*, 33-62; Robb, "Reputation," 303-307; McIntosh, "Money Lending," 561.

4.2: The Quantification of Perjury

In this section, I will consider the quantified data from two different manuscripts, originating from the archive of the Archbishop of Canterbury.⁵⁴⁵ In total the number of perjury causes recorded in this period stands at 1132. From the outset, it is apparent that this is a significantly larger dataset than the 581 cases from London (1470-1492), and 428 from Wisbech (1460-1472; 1479-1480). While there are several obstacles in directly comparing these records to those found in London and Wisbech, the mean number of cases that occurred per annum offers insight into the relative industry of the courts themselves. In the courts at Hythe, Romney and Dover, the average number of perjury cases presented across the three courts between the full calendar years of 1463 and 1474 stands at 92.3. By comparison, the average number of annual cases at Wisbech in 1462/3 was 76, whereas in London's commissary courts- which were in session several times per week- the mean number of cases per year stood at 27.6.⁵⁴⁶ Even accounting for the lacunae in the records from London and the piecemeal nature of the documents at Wisbech, the records from Canterbury are indicative of a well-ordered and reliable court system that was utilised regularly by litigants far beyond the parochial limits of Hythe, Romney and Dover.⁵⁴⁷

While the numbers in Figure 4.1 showcase a steady increase in court business across the period in question, the distribution of the cases was not split evenly across the three courts. The courts at Hythe (Figure 4.2) and New Romney (Figure 4.3) demonstrate a consistent use across the 1460s. Yet, with Hythe quite a bit smaller than New Romney, these figures fail to reflect the difference between the two in population size.⁵⁴⁸ As will be discussed, both courts seem to have served their rural hinterlands, as many plaintiffs travelled from neighbouring parishes to pursue justice.

⁵⁴⁵ These documents are now stored at the Kent History and Library Centre, KHLC DCb/J/X/8.3 and KHLC DCb/J/Y/1.10.

⁵⁴⁶ As discussed in Chapter Five, Wunderli's study of London's commissary notes the inconsistent number of cases heard annually in the courts, fluctuating between a few hundred to over 1300 cases in 1472.

⁵⁴⁷ Houlbrooke estimates that, in total, the Consistory court of Canterbury in the second half of the fifteenth century "never heard fewer than 400 cases per year and sometimes more than 800": Ralph Houlbrooke, "The Decline of Ecclesiastical Jurisdiction under the Tudors," *Continuity and Change: Personnel and Administration of the Church of England*, eds. Rosemary O'Day and Felicity Heal (Leicester University Press, 1979): 239– 257: 240.

⁵⁴⁸ As discussed, estimating population size can prove difficult. Nonetheless, Kowaleski has estimated that the population of Hythe c.1400 was 700. See Kowaleski, "The Medieval Cinque Port," 12 fn. 18. Concerning New Romney, Sweetinburgh estimates that in 1381, there were approximately 970 taxpayers in New Romney. This has led her to estimate that the population of the town to be approximately 1500. See Sheila Sweetinburgh, "The social structure of New Romney as revealed in the 1381 Poll Tax returns," *Archaeologia Cantiana* 131 (2011), 6—9.

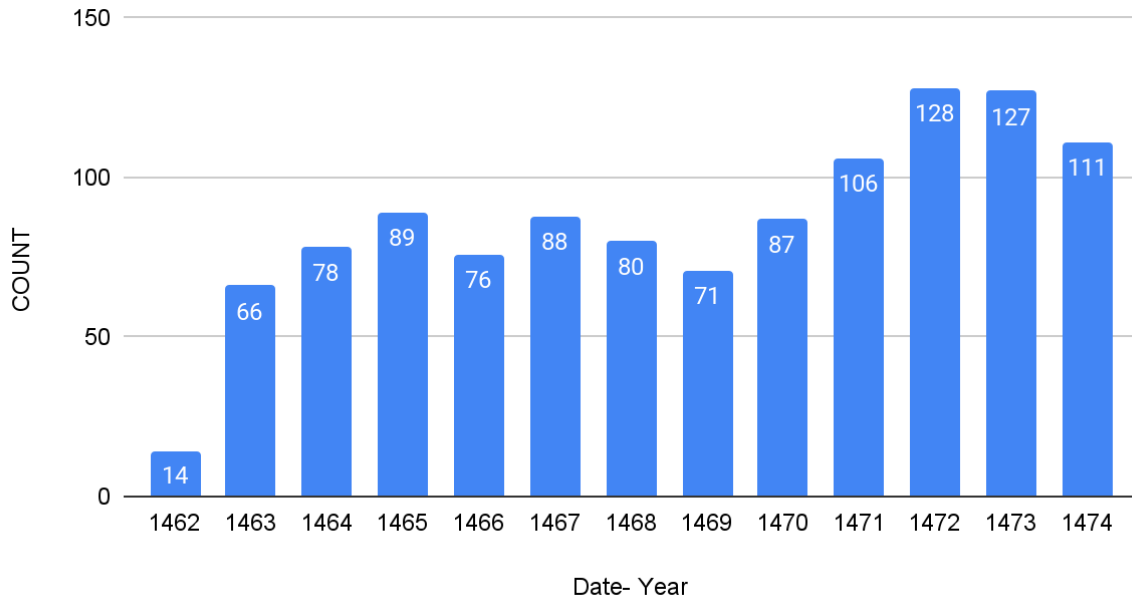


Figure 4.1: Count of perjury causes from the Kent consistory in Romney, Dover and Hythe.⁵⁴⁹

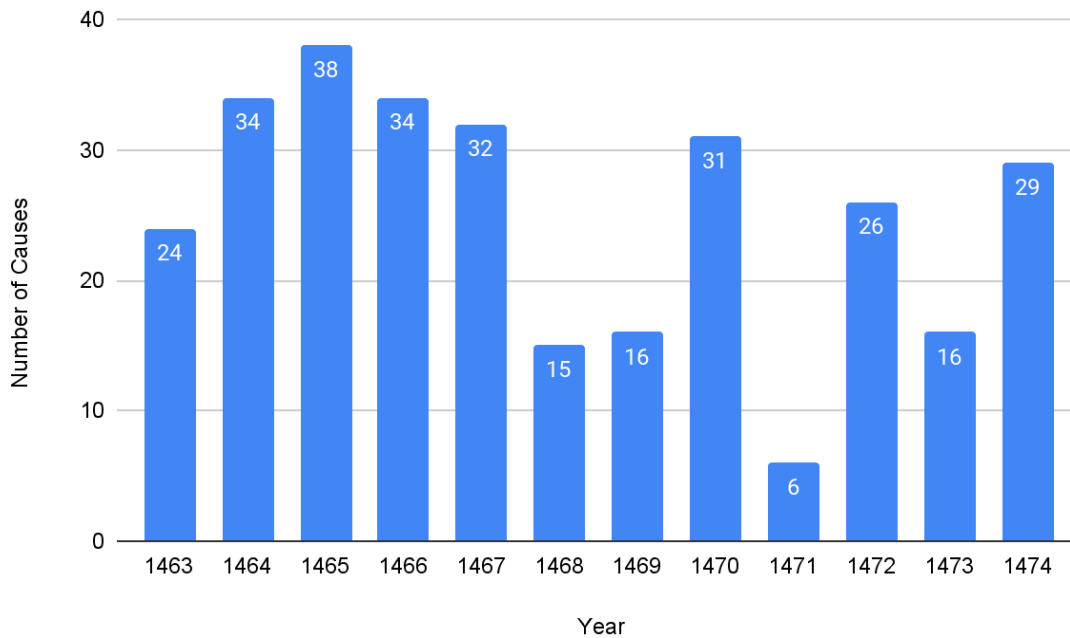


Figure 4.2: Count of perjury causes in the church of St. Leonard Hythe, 1463-74.

⁵⁴⁹ The low number of causes in 1462 is not representative of a change in trends but simply reflects the incomplete nature of the records themselves. Houlbrooke seems to have taken 1462 as the beginning of a fifteen year expansion in the consistory court's business. However, as this chapter offers only a partial view of the business of the consistory, I cannot comment on the veracity of this claim, Houlbrooke, "The Decline," 240.

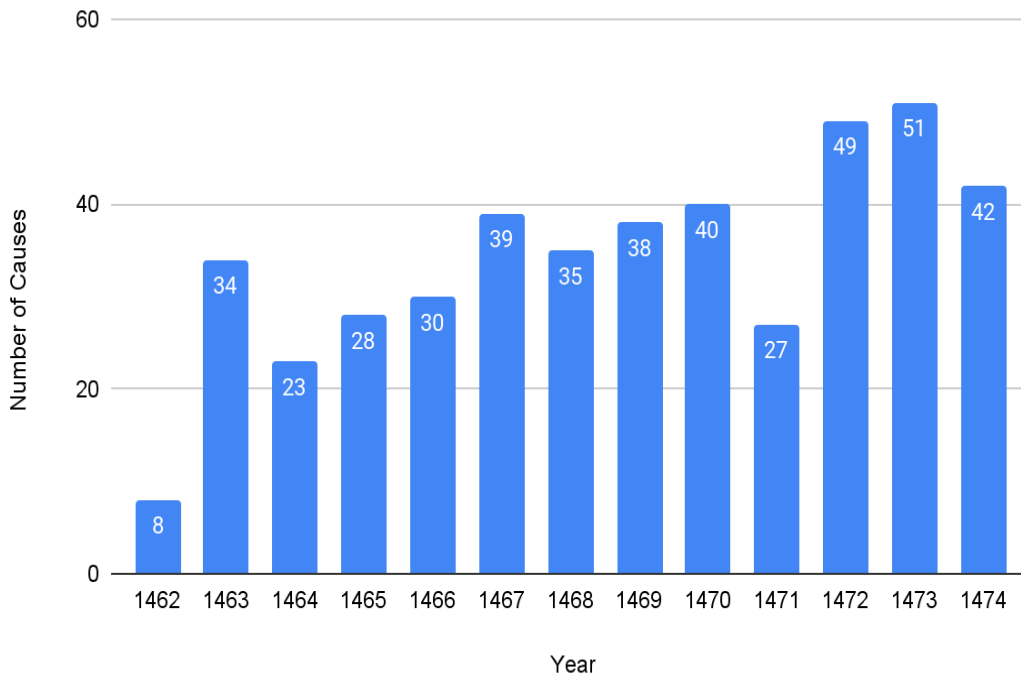


Figure 4.3: Count of perjury causes in the church of St. Nicholas New Romney, 1463-74.

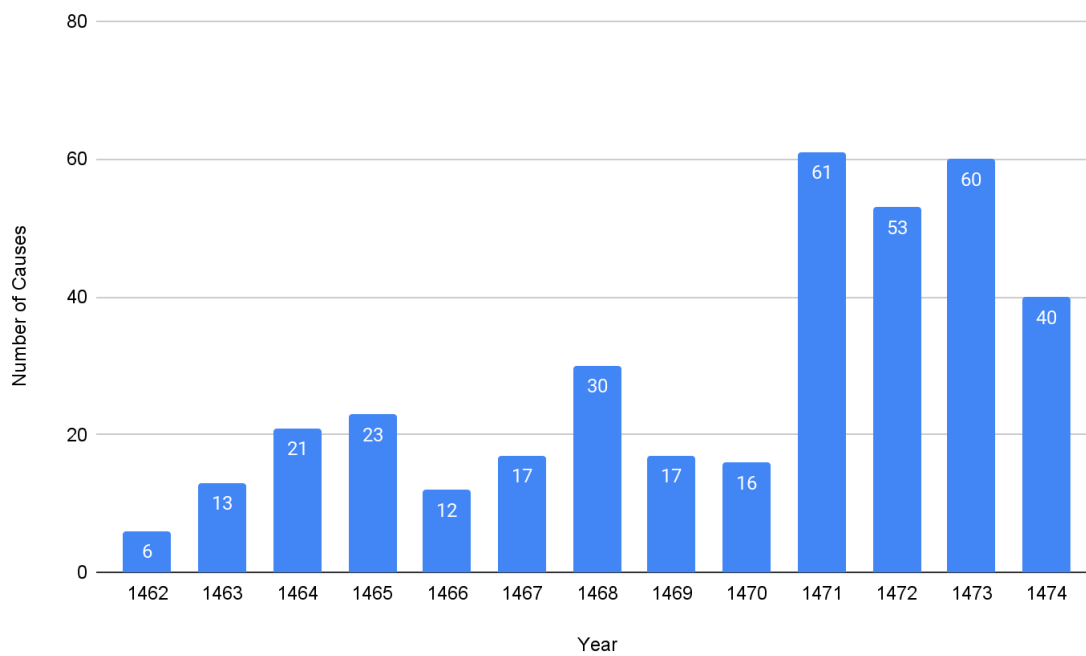


Figure 4.4: Count of perjury causes in the church of St Martin Dover, 1463-74.

As is visible in Figure 4.4, it is only at the beginning of the 1470s that Dover's court became disproportionately popular as a venue. The exact reason for this increase cannot be fully known, although a study of the documents themselves does not suggest that some cases from Dover's courts were missing. The drop in cases in the courts of Hythe and New Romney in 1471 may suggest a preference by plaintiffs to litigate in Dover's court. Alternatively, the amount of litigation in courts may have been influenced by economic factors, as Sheila Sweetinburgh's study of taxation records in Hythe notes that 1471 was a particularly bad year for the fishing of mackerel.⁵⁵⁰ As discussed in the previous chapter, access to credit may have been contingent on access to bullion, and so an economic contraction, such as drop in catch numbers, may have caused creditors to be more reluctant to extend credit in the first place.⁵⁵¹ At the same time, the elevated levels of litigation in the following year may suggest the opposite to be true: as credit was required to ensure continued economic circulation in times of dearth, this rise in numbers could indicate that people were beginning to seek out repayment from money lent in the previous year. Beyond speculation, what is clear is that despite the geographical proximity of these communities, the trends point to legal culture being highly localised.

4.2.1: Value of Debt

Despite the large number of perjury cases in the court records, the number of causes in the consistory court that made explicit mention of the value of the debt owed is very low. Of the 1132 cases, just under a quarter (22%) of causes record a clause where the plaintiff claims the loss of a quantifiable sum of money. In London, this number stands at 85%, increasing to 87% of cases in the records from Wisbech. Woodcock suggests that the increase in numbers of causes over the fifteenth century reflects a secular court system that could not keep up with demand for petty debt litigation.⁵⁵² In this way, using actions in the church courts might have helped enforce the observance of secular obligations.

This explanation is only partially satisfactory. A survey of consistory court documents from the early sixteenth century shows a near total disappearance of causes that litigated particular sums of money, likely reflecting the emergence of the law of *assumpsit* at the end of the fifteenth century.⁵⁵³ At the time, *assumpsit* was an action that allowed individuals to be brought to court if

⁵⁵⁰ Sweetinburgh, "Maintaining Fishing Families," 391.

⁵⁵¹ See above, Section 3.2.

⁵⁵² Woodcock, *Medieval Ecclesiastical Courts*, 91.

⁵⁵³ Cavill has argued that the development of this common law action is crucial to the decline of breach of faith litigation, see Cavill, "Perjury," 202.

an individual promised to undertake an act that was subsequently not undertaken.⁵⁵⁴ In this way, it was the first functional way to compel an individual to satisfy a promise under common law. It may be possible then, that the reason for so few cases making mention of sums of money in the consistory court was because the debt was not necessarily of primary concern to litigants: rather, as with *assumpsit*, litigants were choosing to litigate broken promises. As will be discussed in the following sections, the inclusion of sums of money may have had a certain impact on judicial outcomes, thus, the choice of plaintiffs to include the value of the debt in litigation should be considered intentional.

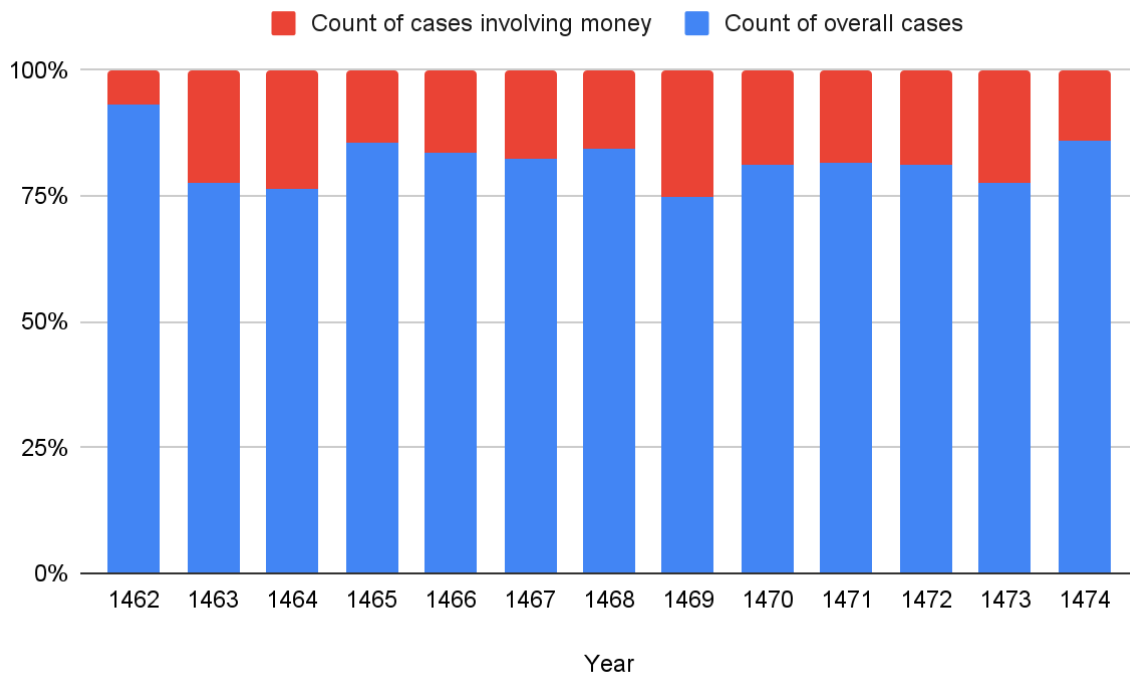


Figure 4.5: Count of perjury causes from the Kent consistory mentioning debt.

At first glance, there are few similarities between the money litigated in Canterbury courts and those at London or Wisbech. Quantification of the 263 causes with values demonstrates that the median sum of litigated over was 60d. In London, this number was 80d (6s 8d), whereas in the deanery court of Wisbech, the median amount litigated over stood at just over two shillings (29d).⁵⁵⁵ Yet beyond an initial survey, a breakdown of the sums of money litigated in these court

⁵⁵⁴ See John H. Baker, *Oxford History of the Laws of England VI* (Oxford University Press, 2003), 839–874, esp. 846–852.

⁵⁵⁵ Based on these results, one might argue that an increase in population allowed litigants access to larger lines of credit. See Goddard, *Credit*, 74.

records documents patterns consistent with the sums found at London and Wisbech. For example, it is apparent that the nature of litigation (instance versus office) seemed to have had relatively little impact on the amounts being contested. At Canterbury, money under the value of one mark was characteristic of 81.1% of cases in the records. In London, where the median debt was slightly higher, 77% of the cases concerned sums under one mark. In Wisbech, 94% of cases concerned sums under one mark. In this way, we might argue that the results from all three case studies serve to reflect the expected socioeconomic profile of the residents of these communities. Wisbech was a small, rural deanery court that exported its more serious crimes to be heard in Ely; if larger sums required litigation, it was evidently occurring elsewhere. Nonetheless, the distribution of causes reflects the general distribution found in Canterbury.

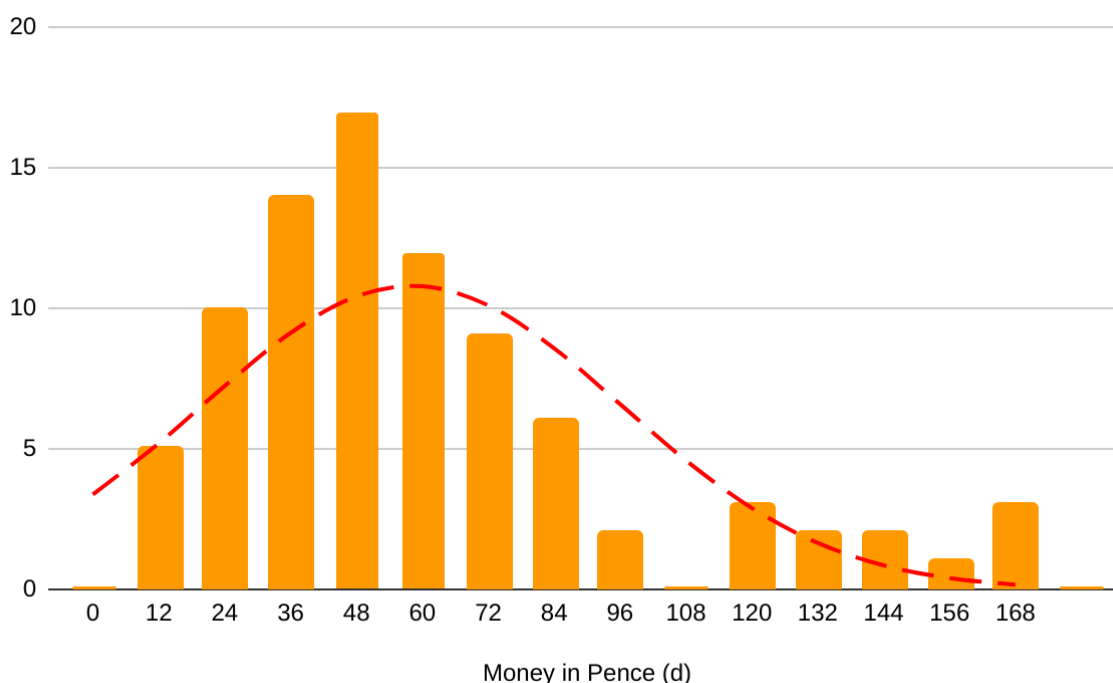


Figure 4.6: Distribution of sums of money from Hythe/Romney/Dover under 13s 4d, 1462–1474.

	Mean (d)	Median (d)	Mode (d)
St Leonard, Hythe	85.9	56.5	80
St Martin, Dover	94.3	72	80
St Nicholas, Romney	127.4	60	36

Table 4.1: The mean, median and mode values of debt litigated in Kentish Courts.

Like the distribution of cases between courts, a study of the mean and median of debts in each Kentish court may nuance our understanding of debt in these communities.⁵⁵⁶ Across all three, it must be acknowledged that each court demonstrates a full range of debts. As is visible from Table 4.1 and echoed in the statistical analysis of all courts in this study, the mean, mode and median amounts of debt suggest a positively skewed distribution, indicating that the vast majority of causes were concerned with relatively modest sums of money. In both Hythe and Dover, this distribution was not quite as extreme as in New Romney, where sums as low as 6d were contested in October 1468 and sums as large as £6 were litigated in the same court just ten months previously. The proximity between the mean, mode and median in the court at Dover suggests a smaller range of debt than in Hythe, perhaps signifying, albeit obliquely, a court that was used for more consistent sums of money. As the following section will argue, a close study of known named litigants tentatively gestures towards the use of the courts in Dover by men of a significant local standing. The lower mean and median value of debt in St Leonard, Hythe might indicate a community where the amount of credit extended was lower than in the more urbanised community of Dover.

The great disparity in the figures for New Romney requires some further explanation. Of the 120 causes from the court at New Romney that explicitly mention the value of the debts incurred, 20% are for sums over the value of 13s 4d. Nonetheless, the mode of 36d suggests that much of the debt litigated was for relatively modest sums, with 45% of causes concerned with values under 4s. As will be explored in greater detail below, geography may have played a crucial role in how people used the courts, especially at New Romney. While the perceived limits of Kentish towns were far from fixed, this was particularly true of New Romney. For example, over half of the freemen of the town listed between 1433 and 1523 were from places more than six miles from the town's urban heart, suggesting a more diffuse network of wealthy men than in centres such as Dover.⁵⁵⁷ Despite a variation in these granular details, the enrolment of these disputes with all three Kentish church courts may reflect a conscious consolidation of litigation by plaintiffs across the region. It is to these litigants we now turn.

⁵⁵⁶ It must be acknowledged that given the low number of causes that concern monetary debt, these findings are speculative.

⁵⁵⁷ Sweetinburgh, "Kentish Towns: Urban Culture and the Church in the Later Middle Ages," *Later Medieval Kent, 1220–1540*, eds. Stuart Bligh, Sheila Sweetinburgh (Boydell and Brewer, 2021), 152; A. F. Butcher, "The Origins of Romney Freeman, 1433–1523," *The Economic History Review* 27.1 (1974), 16–27.

4.3: Court Litigants

As discussed in the previous chapter, how people used the courts was dependent on a multitude of factors such as age, wealth, gender, and a working knowledge of the legal system.⁵⁵⁸ Alongside demography, local economic, and geographic landscapes also played a key role in shaping the legal landscapes of late-medieval England. Crucially, the legal landscape in turn influenced how people related to each other, how they did business, and how they understood and engaged with ideas of legality.⁵⁵⁹ As small towns with special legal and trading privileges, the function of the consistory court within these urban communities was almost certainly different to that of the deanery of Wisbech, both in who used it, and their reasons to do so. This section considers the demographic make-up of the court litigants in the Kentish courts, which simultaneously encompassed both small towns of Kent and their rural surroundings. To do this, this chapter will begin by considering the complex geography of these courts, showcasing the broad catchment area of the church courts' jurisdiction. I argue that proximity to court played a role in how these courts were used. I will then turn to consider the gender breakdown of litigants. While relatively few women appeared before the judge, those who did require some consideration. Finally, using sources such as the Annals of Dover, I will consider the nature of the well-off, officeholding men that found their way before these courts. Taken together, this section argues that, while petty debts made up a small percentage of causes, the primary function of the consistory court within these communities was not debt recovery. Rather, perjury litigation in these courts allowed men to reinforce ideas of communal obligation and trustworthiness that was characteristic of the culture of self-governance seen in small towns at the time.⁵⁶⁰

4.3.1: The Geography of Jurisdiction

Due to the large number of causes, and the meticulous recording of the parishes of both plaintiffs and defendants, a spatial breakdown of litigation in the Kentish courts is possible. As can be seen in the following maps (Figures 4.7, 4.8 4.9), the perambulatory courts attracted litigants from across both Kentish marsh and weald. Of the 1132 causes under consideration, 975 cases include parishes of litigants that can be identified with certainty. Of these, 80% of cases emerged from disputes where litigants lived within 6.67 miles of each other (10.73km). While perhaps an

⁵⁵⁸ For further discussion on this see 3.3, above.

⁵⁵⁹ Johnson, *Law in Common*, 153–83.

⁵⁶⁰ Gillian Draper, "Urban Privilege? The Advantages and Enjoyment of Cinque Ports' Status in the Middle Ages," *Maritime Kent Through the Ages: Gateway to the Sea*, eds. Stuart Bligh, Elizabeth Edwards and Sheila Sweetinburgh (Boydell and Brewer, 2021), 284.

unusual measurement, the legal treatise attributed to Bracton, *De Legibus et Consuetudinibus Anglie*, defines the term "neighbouring" as residing within six and two-third miles of a market.⁵⁶¹ According to Bracton, this was the maximum distance that an individual might be able to travel to market by foot, set up a market stall, sell their wares and return home in a single day. While the incurrance of debt in late-medieval England does not necessarily imply a market relationship, it offers clear insight into ideas of proximity in medieval England.

On average, plaintiffs travelled 8 kilometres to court and defendants travelled 6.4 kilometres. How many journeys to court each case required is hard to ascertain from the records themselves, as the documents denote a prolific use of proctors in the consistory.⁵⁶² When delegated responsibility, these men had the right to speak on behalf of those who hired them, which may have prevented litigants from needing to take multiple journeys to court.⁵⁶³ Nonetheless, the journeys taken to court by plaintiffs and defendants, or their proctors, are visible in Figures 4.7 and 4.8: travel from within 10.73 kilometres has been demarcated by thick black lines, showcasing just how accessible ecclesiastical justice was to rural communities in Kent during this period. Notably, with the exception of some communities that lay between two court towns, such as Folkestone and Dymchurch, it is apparent that the court functioned to allow most litigants to appear in the courts that were geographically closest to them. This decision ensured that most journeys to and from court lasted a day at most. While difficult to perceive, convenience likely played an integral role in the efficacy and prolific use of these courts.

Where people elected to litigate was almost certainly informed by the ease of movement around Kent. For example, while the trip from New Romney to Dover was an arduous overland route, this may have been eased by nautical transportation, and the use of courts by mariners or merchants may offer an explanation of defendants coming from as far afield as King's Lynn to answer charges. Dover was connected to Canterbury by a main road, offering court agents a direct route back to the city following the court proceedings on Fridays.⁵⁶⁴ While Hythe was a relatively minor town in comparison to Dover and New Romney, its location almost equidistant between the other courts was highly useful for litigants who were seeking a convenient intermediate location. Positioned at the end of a main overland route that passed through Ashford and Smeeth, it would have allowed for a relatively easy passage for many court users who lived

⁵⁶¹ Britnell, *Commercialisation*, 83.

⁵⁶² On the multidimensional nature of a proctor's work in this period, see Brundage, *The Medieval Origins*, 259–78.

⁵⁶³ In total, evidence of proctors appearing on behalf of plaintiffs can be seen in 509 instances, and on behalf of defendants in 305 cases.

⁵⁶⁴ Terence Lawson and David Killingray (eds), *An Historical Atlas of Kent* (Phillimore, 2010), 67.

further inland. In fact, despite being over 10km from Hythe, court users from Smeeth consisted of one of the best represented groups of litigants to appear before the court at Hythe between 1462 and 1474. Hythe's popularity as a court thus may be explained by its geography despite its relative insignificance as a population centre.

Table 4.2: Distance Travelled to Court by Defendants.

Distance travelled (km)	Count
≤ 10	758
≤ 20	146
≤ 30	12
> 30	18
Total	934

Table 4.3: Distance Travelled to Court by Plaintiffs.

Distance travelled (km)	Count
≤ 10	635
≤ 20	135
≤ 30	54
> 30	36
Total	860

As can be seen in Figure 4.9 the visualisation of the geographic relationship between plaintiff and defendant showcases that the vast majority of litigation that occurred in these courts was what Bracton might understand as between neighbouring litigants. This is represented on the map by both the dark solid lines, and the dark dotted lines. The former depicts litigants who lived within 3km of each other; 32.9% of the 975 causes derive from the same town or parish.⁵⁶⁵ The dark dotted lines showcase causes that were between litigants who lived between 3km and 10.78km from each other, demonstrating just how well connected the Cinque Port towns were with their hinterlands. Similarly, despite the slightly longer distances between the Cinque Ports, there seems to be particularly good connections between litigants in these coastal towns, suggestive of the ubiquity of coastal trade that characterised the Kentish coastline in this period, and the collective economic interest these communities may have shared.⁵⁶⁶ For the most part, we might conclude that disputes were largely local.

⁵⁶⁵ For the underlying quantitative analysis of these distances, people residing within the same parish have been ascribed a placeholder distance of 0.1.

⁵⁶⁶ Kowaleski, "Maritime Trade," 220-222; Spencer Dimmock, "English Small Towns and the Emergence of Capitalist Relations, c. 1450-1150," *Urban History*, 28.1 (2000), 5–24: 8.

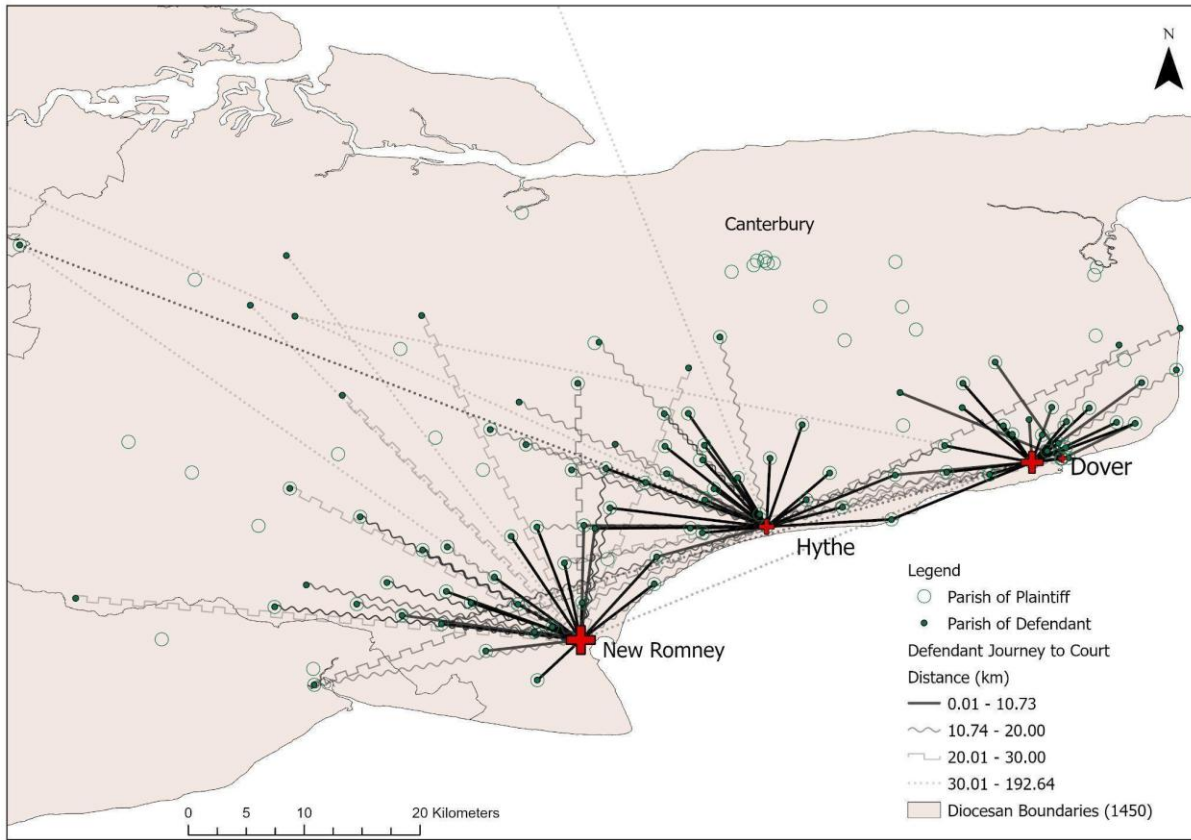


Figure 4.7: Defendants' Journey to the consistory court, 1462-74

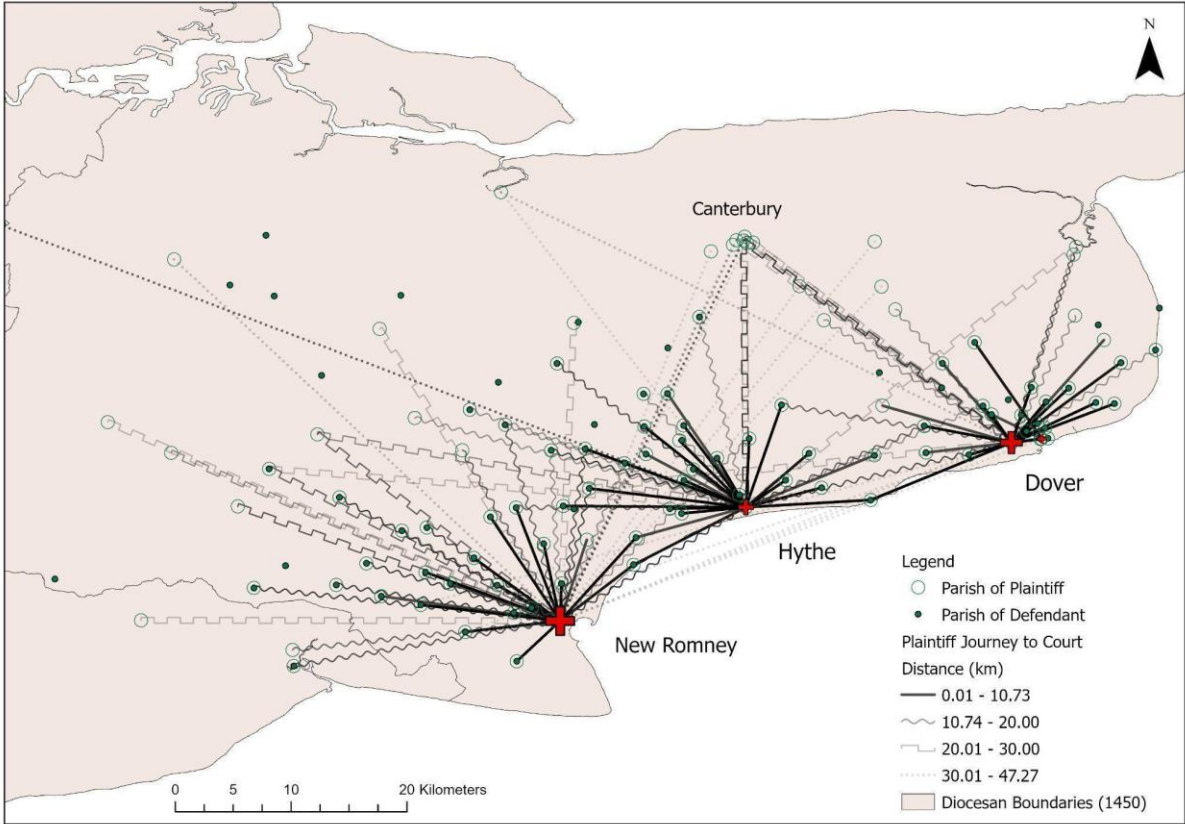
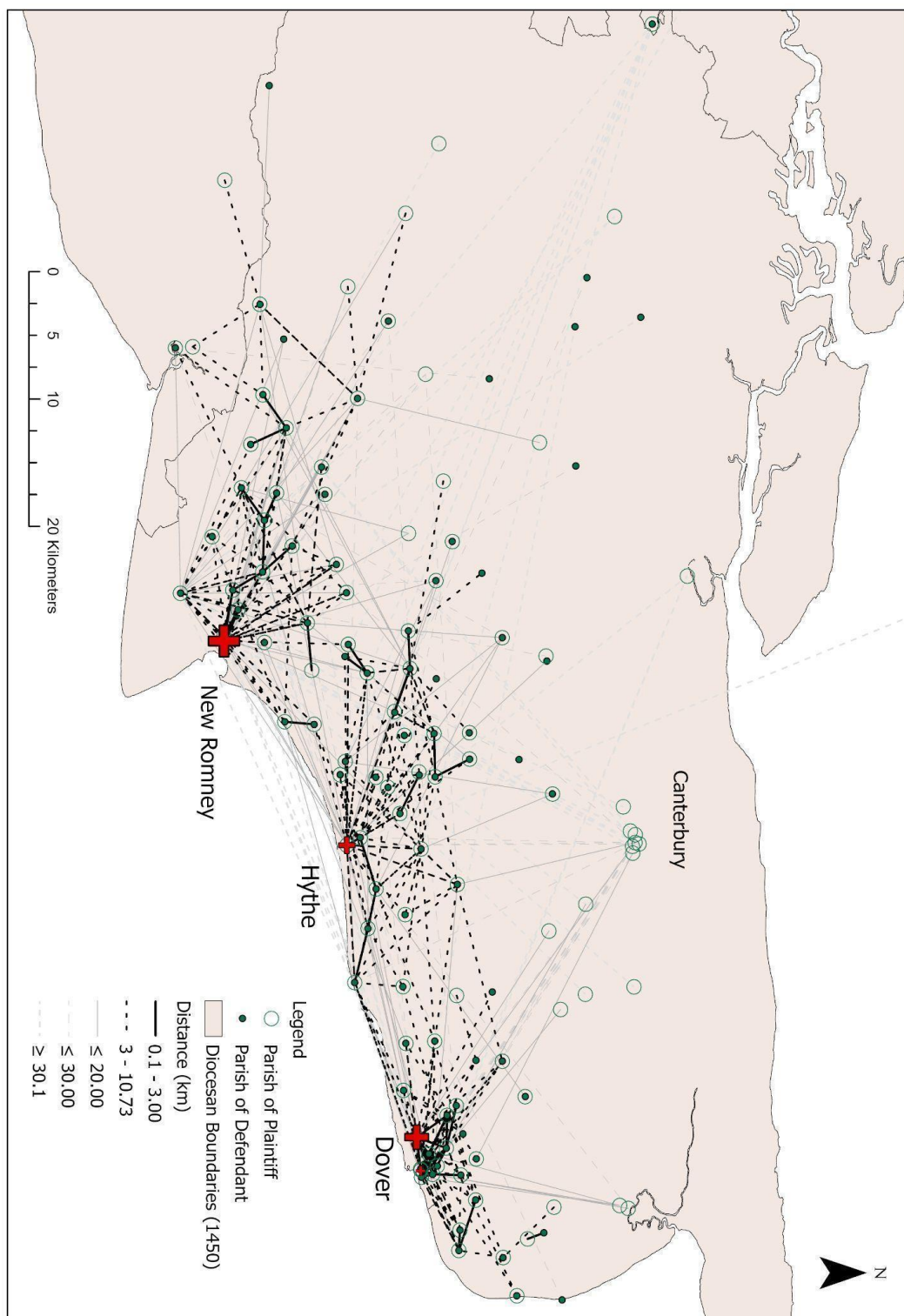


Figure 4.8: Plaintiffs' Journey to the consistory court, 1462-74.

Figure 4.9: Figure 4.9: The estimated distances lived between plaintiff and defendant.⁵⁶⁷



⁵⁶⁷ Mapping software arcGIS allows distances to be calculated using straight lines. For this reason, these distances are estimates, calculated from measuring the distance between the parish churches of the recorded litigant and defendant.

Table 4.4: Count of causes that appear before Kentish Courts by distance between litigants.

	Same Parish	Within 10.73km	Greater than 10.73km	Total
No. of Causes	210 (21.5%)	573 (58.7%)	192 (19.7%)	975 (100%)

However, how "local" was conceived seems relative to individual communities. To a certain degree, this has been visualised by Figure 4.9. If we compare the dense web of connections in Dover to the slightly looser network west of New Romney, it is apparent that the location of Romney on the edge of the Kentish marshes played a role in the way that the courts absorbed business from further afield, particularly its Cinque Port neighbour, Lydd. When writing on small towns, Dyer classifies these hinterlands as a town's "marketing zone", calculated by the study of debt recovery in court rolls. In his study, between 41–67% of litigants came from within a 10km radius, statistics which are echoed in Table 4.4 above.⁵⁶⁸ However, when we look at their respective 'spheres of influence' within the region, it is apparent that the practice of holding court sessions at Hythe and New Romney may have been to attract litigants from more rural locations. This can be quantified by using the data provided by the records. For example, surrounding New Romney, this included 152 litigants from Lydd, 42 litigants from Woodchurch, and 40 litigants from both Newchurch and Ivychurch. While causes concerning residents of New Romney are rare, with only 32 causes appearing before the courts, this number rises to 211 when communities such as those mentioned above are included. As such, A. F. Butcher's assessment of the dispersal of New Romney's freemen between town, surrounding villages, and the countryside may signal the equally dispersed nature of New Romney's credit economy.⁵⁶⁹

When the individual parishes of Dover are consolidated, the opposite appears to be true in the town, indicated by the tightly packed network of connections on the map. Despite being the second busiest court after New Romney, Dover's residents appear more prevalently in the records, with 485 litigants being recorded by the authorities; of these, 163 causes concerned disputes with 326 litigants from the town of Dover. When we incorporate litigation from Dover's

⁵⁶⁸ Christopher Dyer, "Small Towns, 1270-1540", *Cambridge Urban History of Britain*, ed. D. M. Palliser (Cambridge University Press, 2000), 517.

⁵⁶⁹ A. F. Butcher, "The Origins of Romney Freemen, 1433—1523," *Economic History Review* 27.1 (1974), 20.

hinterlands of Buckland, Margaret-At-Cliffe, and Folkestone, the number of causes rises only slightly to 202. Taken together, we might conclude that the networks of debt and obligation in Dover were somewhat more concentrated within the limits of the town than in New Romney and, to a lesser extent, Hythe. This was not due to a lack of trade connections between Dover and other Kentish communities, strengthened by Dover's economic position as centre of the Cinque Ports. As noted by Butcher, men from New Romney often found themselves doing business in Dover.⁵⁷⁰ Yet, it seems that these were not the same men extending credit to each other based on faith. When we consider the geography of litigants in tandem with the value of debt litigated in individual courts, we may begin to speculate the nature of litigants to appear in both New Romney and Dover. The more consistent modal, median and mean values in Dover, paired with a geographical density of litigants, points to a culture of debt and obligation that was far narrower and more exclusionary than that in New Romney.

Finally, if we consider how proximity impacted the 262 perjury causes that involved monetary debt, it becomes apparent that distance played a role in the decision to record what debts were owed. A cumulative study of the amount of money litigated in the courts between 1462 and 1474 is presented in Figure 4.11. Immediately, the local nature of litigation can be seen in the overwhelming number of causes that concerned individuals who lived within 10.73 kilometres of each other. Despite contests from the same parish consisting of 15% of all cases, the value of these debts made up only 9% of the total. As neighbours litigating perjury, it appears that plaintiffs did not feel the need to (or felt they could not) set out in detail debts that were owed, driven perhaps by a social consciousness of the public nature of these accusations. When sums of money were mentioned, these debts were more likely to be smaller, more pedestrian figures, such as the 6d at issue between John Harde and John Butcher from the town of Lydd in 1468.⁵⁷¹ By contrast, the value of debts disputed by litigants who lived beyond 10.73 kilometres is striking, with 25% of causes valued at 34% of the overall value of debt. Based on these statistics, the further litigants lived from each other, the more likely they were to include larger sums of money in their depositions.

⁵⁷⁰ Butcher, "Origins," 17.

⁵⁷¹ KHLC DCb/J/Y/1.10 2r.

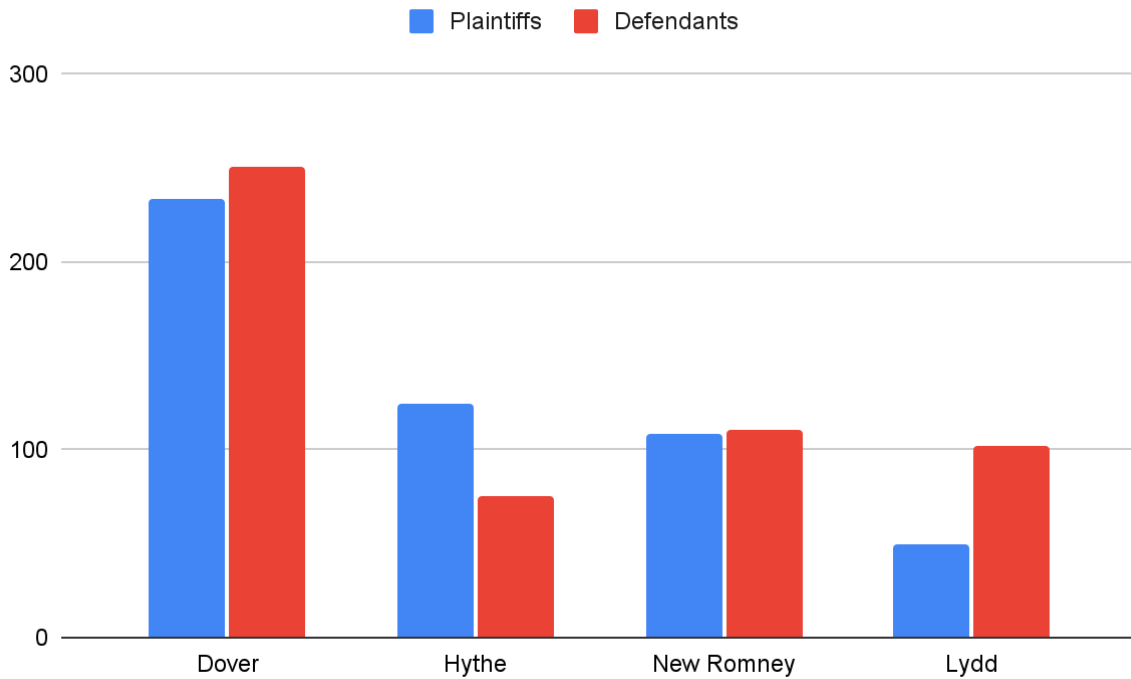


Figure 4.10: Number of litigants from the towns of Dover, Hythe, New Romney and Lydd.

Table 4.5: Distance between litigants versus sum of money (M) litigated in pence (d).

Distance	Count of causes (% of total)	Sum of M (d)	Share of total M (d) (in %)
N/A (Insufficient Data)	40 (15)	5190	18.62
Beyond 10.78km	65 (25)	9570.5	34.34
Same Parish	39 (15)	2475	8.88
Within 10.78km	118 (45)	10632.5	38.15
Grand Total	262	27868	100.00

Interrogated holistically, it seems that the perjury causes litigated before the consistory court were heavily influenced by geography— not simply the geography of the communities themselves, but the geographic relationship between plaintiff and defendant. If we envision the dense web of networks that appear on Figure 4.9 as reflections of credit relations, the increased emphasis on money over longer distances may suggest either a correlation between the weakening of credit relationships and the weakening of interpersonal ties, or a general disregard of consequences by those living further afield. After all, as astutely observed by Chris Wickham

in his assessment on the role of *fama* in late medieval society, *fama* was not consistent between communities, or even within communities; while it was not gossip, "one can contest it, directly, by another version of the past, or strategically, with another framing", suggesting that such *fama* was perhaps most effectively felt locally.⁵⁷² With this in mind, it is unsurprising that the primary concern for most litigants was not distant debtors or creditors, but the maintenance of relationships with their neighbours. As will be discussed in greater detail below, the explosion of perjury causes in Dover's court at the beginning of the 1470s may be indicative of a social movement among office-holding and trustworthy men that prioritised the recording of obligations within the church courts, not simply as means of debt recovery, but as the furnishing of one's own reputation.

4.3.2: Women and the Consistory Court

As discussed in the chapter on Wisbech, the access of women to law courts was far from standardised in late-medieval England, dependent both on income and social proximity to court agents.⁵⁷³ In Kent, there is some evidence to suggest that women in coastal communities had relatively strong inheritance rights, wherein partible inheritance (gavelkind) of property is visible in surviving wills as women received portions of their parents' estate on death.⁵⁷⁴ Maritime activities were highly dangerous, and it was common for several men of a kinship group to work on the same ship.⁵⁷⁵ This led to the possibility of high male mortality in fishing communities, resulting in low sex ratios; the allocation of capital goods to the women left behind ensured that goods may have remained within broader family units.⁵⁷⁶ Work by Sweetinburgh on Folkestone and Lydd, and Kowaleski on Hythe demonstrate that maritime bequests left to women were extremely high in the fifteenth century; in Hythe, of the 205 wills that survive from before 1520, 58 concern maritime bequests, such as high-value ships, fishing cabins and specialised equipment. Of these, 24 (41%) were bequests left to women.⁵⁷⁷ These practices, so Kowaleski concludes, point "to the collective nature of risk management in these fishing communities".⁵⁷⁸ Furthermore, the absence of men from communities for long periods of time meant that women were likely offered more authority and agency in their everyday economic activities than women elsewhere.

⁵⁷² Wickham, *Fama*, 22–5.

⁵⁷³ For further discussion on this see Section 3.3.1, above.

⁵⁷⁴ Sheila Sweetinburgh, "Strategies of Inheritance among Kentish Fishing Communities," *The History of the Family* 11.2 (2006), 93–105; Maryanne Kowaleski, "The Demography of Maritime Communities," 87–118.

⁵⁷⁵ Kowaleski, "Peasants and the Sea in Medieval England," 363.

⁵⁷⁶ For detailed breakdown of these see Sweetinburgh, "Strategies," 98.

⁵⁷⁷ Kowaleski, "The Demography of Maritime Communities," 102–3.

⁵⁷⁸ Kowaleski, "The Demography of Maritime Communities," 103.

Thus, on paper, it is in these maritime communities that a historian may expect to find women involved in the litigation of credit relationships.

However, despite these rights and customs, the surviving documents under consideration demonstrate a scarcity of women litigating perjury cases in these courts. Between 1462 and 1474, men litigated against men in 939 of the 1132 cases (83%). Of these 939 documented causes, approximately one-fifth of them mention specific sums of money, thus making up 85.1% of all instances where money is mentioned (223 of 262). As was the case in London, women were more than twice as likely to act as defendants than plaintiffs (10.67% and 4.8%, respectively) in debt relationships, with these figures bearing marked similarity with the percentage of female litigants at Wisbech; there, women were involved in just 8.9% of causes as borrowers and 7.3% as lenders.⁵⁷⁹ At first glance, these statistics uphold the conclusions reached by Goldberg in his work on York's cause papers, suggesting that rural societies were more conservative than their urban counterparts.⁵⁸⁰ However, the near total exclusion of women from these courts despite the relatively strong economic position requires further interrogation.

Given the geographical diversity represented in these courts, it is perhaps unsurprising to note that there is a huge disparity in where and when women were summoned to appear before the Canterbury courts. Firstly, as both plaintiffs and defendants, women were most likely to appear in causes that concerned individuals living within 10.73km of each other, and marginally more likely to appear in contests that concerned fellow parishioners. Immediately, this suggests that women were operating within slightly more concentrated social and economic networks than men. Furthermore, of the 119 cases where women appear as defendants, 56% of them concern women living in either New Romney, Dover or Hythe. When broken down by court, it is noteworthy that women represented 31% of all defendants that were recorded as living in Hythe, perhaps offering a glimpse of the financially improved status of those women recorded in Hythe's wills.⁵⁸¹ As such, the women participating in perjury litigation— either in person or by proxy of a proctor working on her behalf— were more likely to be women living in proximity to both the court itself and their court opponents. This is particularly apparent on 13 May 1474, when Alice Stone of St Peter Dover was presented to the court for perjury by three separate men: her neighbour Roger Sadeler, Richard Pleasington of the parish of Blessed Mary Dover and William Cole of Guston, just two kilometres from her home parish. In turn, Stone appeared on the same day to report that Sadeler was also guilty of perjury. Whether this incident was in response to a previous allegation levied by Stone

⁵⁷⁹ See Sections 3.3.1 and 5.2.2.

⁵⁸⁰ Goldberg, "I Know What You Did Last Summer," 196.

⁵⁸¹ Similarly, women made up one in four defendants that came from the parish of St Peter, New Romney.

against Richard Wynde of Blessed Mary Dover in the previous court session is unclear. However, in court on 29 July, Stone appears once more reporting two more allegations of perjury against a woman named Agnes Frewyn and John Fuller, both from Dover.

While Stone may have been uncharacteristically busy at court, her presence before the judge may also be used to consider the role that the economic horizons of men played for the prospects of their female relatives. While speculative, it is noteworthy that Stone's appearances only begin in 1474. However, throughout the 1460s two men, Nicholas and John Stone, appear in the court records at Dover. John is recorded as a butcher, and Nicholas' engagement with another butcher in 1471 suggests that this may have been a family activity. How Alice Stone is related to these men is unclear. Nonetheless, her allegations against Fuller and Frewyn may have derived from a longstanding economic relationship between these families. Nine years previously, in 1465, it was recorded that Nicholas Stone presented a man named John Frewyn to the court for perjury. Whether this was Agnes' relative is unclear, but both Agnes and John Frewyn were living in the parish of St James by the early 1470s. Likewise, Alice Stone's engagement with John Fuller may also have reflected an economic relationship, this time between John Stone and Fuller, when in 1466 Fuller reported Stone to the court for perjury. This cause eventually found its way to Canterbury where, in October, Stone was eventually excommunicated. Why Alice was so active in court in 1474 cannot be known for certain, though it may have concerned the debts of a male relative such as John or Nicholas who do not appear after 1471. Was Alice's appearance the result of her widowhood? What we may argue with conviction is that the presence of this woman in court was the result of her male relatives, suggesting both a familiarity with the court system and a broad, if largely local, economic network.

Alice Stone's economic independence may not have been unusual, however, given that there are several cases in which women were presented to the court without their male relatives.⁵⁸² In one case from the court at St Martin, Dover, in July 1470, the aforementioned John Fuller appeared before the court to report that one of their neighbours, Alice Lewys, from the parish of Blessed Mary had committed perjury, owing him the sum of 6s 8d for an unspecified reason.⁵⁸³ In the record, a supralinear addition has been made to include a man named Nicholas Lewys into the indictment which has subsequently been erased. Whether this was the echo of coverture from common law is hard to say, though Sara Butler has noted "how deeply entrenched" the practice was in late-medieval society.⁵⁸⁴ Regardless of his motivation, this action would prove

⁵⁸² This functions in contrast to Wisbech. See 3.3.1, above.

⁵⁸³ KHLC DCb/J/Y/1.10 62r.

⁵⁸⁴ Sara Butler, *Divorce in Medieval England: From One to Two Persons in Law* (Routledge, 2014), 13.

significant because the defendant, whether Nicholas or Alice, appeared in person to confess to the debt owed before eventually being excommunicated almost five months later. If Alice was to blame for the accumulation of this debt, Nicholas' subsequent removal from the records may have been to preserve his reputation.⁵⁸⁵ Notably, almost a year later, John Fuller appears once more in a dispute with a woman named Alice Lowes of the same parish, who was likely the same woman.⁵⁸⁶ While the cause was eventually dismissed, it is noteworthy that Nicholas is nowhere to be found in this particular instance.

In a similar example, we see evidence of a husband being removed from the record when John Honywade of Hythe brought a perjury case before the consistory court. Here, instead of indicating both Thomas Jankyn "and Isabella his wife", Thomas' name is struck through.⁵⁸⁷ Following her citation, it seems that Isabella did not make the 15km trip from her parish of Willesborough to Hythe to appear before the court where she was subsequently suspended. The absence of a proctor working on her behalf may suggest a situation wherein the Jankyn family were faced with a costly court expense that the couple were reluctant to pay. Sparing Thomas from the economic and social evaluation of the consistory courts may have been an economically savvy decision: between the two, Thomas' ability to do business— connected as it was to his reputation— may have been more valuable to preserve than his wife's.

What should we make of low levels of female representation in the courts? On one hand, it is well-established that litigation in late-medieval England was gendered.⁵⁸⁸ This is echoed in Teresa Phipps' work on trespass in English borough courts, as she suggests that women were much more likely to be involved in trespass causes than men. Rather than suggesting that women were more prone to trespass, this revelation causes Phipps to argue that such findings emphasise the "idiosyncratic nature of interpersonal relationships and their translation into the legal arena."⁵⁸⁹ If women were participating in credit relationships— which, in places such as Hythe, seems unavoidable— then these relationships were not the remit of the consistory court. In this way, like Wisbech, the network of credit visible within these courts likely depicts a constructed image of obligation that was overtly masculine in nature.

⁵⁸⁵ Theresa Phipps, *Medieval Women*, 105.

⁵⁸⁶ KHLC DCb/J/Y/1.10 86v.

⁵⁸⁷ KHLC DCb/J/X/8.3 48r. "*et Isabella eius uxor*".

⁵⁸⁸ Bardsley, *Venomous Tongues*, esp. 141–51; Kane, *Popular Memory*; Forrest, *Trustworthy Men*, 229–234; Jones, *Gender and Petty Crime*; P. J. P. Goldberg, *Women, Work, and Life Cycle in a Medieval Economy: Women in York and Yorkshire c. 1300–1520* (Oxford University Press, 1992), 217–79.

⁵⁸⁹ Teresa Phipps, "Misbehaving Women: Trespass and Honor in Late Medieval English Towns," *Historical Reflections* 43.1 (2017), 66.

4.3.2(b): Office Holding and the Consistory Court

This prompts the question: what type of men were litigating perjury in the consistory courts of Dover, Hythe and New Romney? In her work on the Kentish courts between 1460 and 1550, Jones makes a compelling argument on the nature of masculinity used by local Kentish elites, "one which entailed dominating others by economic power or civic office".⁵⁹⁰ In Wisbech, the hierarchy of the community was well-defined in the records; both the prevalence of fraternities, and the extensive use of titles such as "gentleman" or "knight" in the records of Wisbech act to reinforce the economic and political power of local men in the Cambridgeshire community. As we will explore in the next chapter on London, the parish of creditors and the level of debt litigated often signified different levels of economic power between litigants. In the overwhelming absence of values of debt, this was simply not the case in Kent's consistory courts. For this reason, the number of litigants who can possibly be identified in these courts is limited to those who left documentary traces in the multitude of secular records that exist for these maritime communities in the fifteenth century.⁵⁹¹ For this reason, it may be easy to exaggerate the number of office-holding men who appeared before the courts: they were almost certainly in the minority. However, the trace evidence of mayors, barons, and other "goodmen" of Kentish society suggest that this court was used for more than simple debt recovery. This section will consider the way in which trustworthy men used perjury in the consistory court to reaffirm the importance of bourgeois, masculine trust in economic relationships.

As we have already established, the dense network of obligation that centred around Dover suggests that the culture of lending money was narrower and more concentrated than in the marsh society near New Romney. Here, we can identify several of Dover's mayors appearing before the courts, both as plaintiffs and defendants. Richard Palmer, mayor five times between 1460 and 1479, appeared twice when he was mayor in the summer of 1467 to enrol two cases of perjury.⁵⁹² Both causes are sparse in their detail, making no allusion to Palmer's office in the records, nor to any monetary exchange. In 1473, he appeared again when Stephen Willis, vicar of Alkham, reported to the commissary that the executors of the former mayor of Dover, Thomas Gore, had committed perjury.⁵⁹³ Listed as Gore's executors were his wife Elizabeth, a man named Henry At Wode, and Richard Palmer, suggesting that Palmer was not only close to Gore, but that

⁵⁹⁰ Jones, *Gender and Petty Crime*, 67.

⁵⁹¹ Most notable are Arthur Hussey and M. M. Hardy (trans), *Records of Lydd*, ed. Arthur Finn (Ashford, 1911); J. B. Jones, *Annals of Dover* (Dover Express Works, 1916); This research has been supplemented by Dimmock, "Class and the social transformation."

⁵⁹² KHLC DCb/J/X/8.3 132v, 140r.

⁵⁹³ KHLC DCb/J/Y/1.10 167r.

he was trusted enough to administer his goods.⁵⁹⁴ While he was alive, Gore was both an officer of Dover castle, and mayor seven times between 1449 and 1465, suggesting a long career in government.⁵⁹⁵ Gore also appeared before the court in the capacity of arbitration for a perjury dispute between two Dover men, John Scalys and John Puchyll of St Peter's parish.⁵⁹⁶ Notably, Henry At Wode also appears in this entry as arbitrator suggesting that Gore and Palmer were not only linked in their capacity as mayors, but part of a broader community of legally active men. When we consider the other men who acted as arbiters between Puchyll and Scalys, most of these men can be found either as prominent users of the church courts, as was the case with John Hunt of the parish of St John's, or occupying an office within their communities: *domino* Robert Hougham was likely a priest, and William Joly was a churchwarden in St Nicholas Dover. In another instance, the churchwarden of Blessed Mary in Dover, Simon Lovell, reported a man named Thomas Foche to the court for perjury. Seven years later, in 1480, Foche would go on to become mayor.⁵⁹⁷

Elsewhere in Kent, further evidence suggests that men of a similar local standing could be found litigating perjury in their own communities. The title of "baron" was used within some Kentish communities as a marker of political inclusion, and the addition of this word to a document in 1465 suggests that it may have been significant in the context of the courts. In this case, a dyer named Thomas German had travelled from Wye to Hythe to indict a man named Peter Shipperd from the parish of Saltwood to which an interlinear addition of "baron" was inserted above Shipperd's name.⁵⁹⁸ A similar occurrence is seen with the inclusion of the descriptor of "goodman" that was attached to a man named Kempe of Old Romney.⁵⁹⁹ While Dimmock argues that this was likely reflective of their good works, such classifications also hint at the social category of 'trustworthy men' described by Forrest, possessing greater economic means and more cultural capital than the majority of their neighbours.⁶⁰⁰

It would be wrong to suggest that this was the only type of man that litigated in these courts. Yet it was these men who were integral to creating the culture of credit that was being contested in these courts. For example, it was reported that a man named Lays Shoemaker of

⁵⁹⁴ On the social significance of the administration of wills as indicative of male reputation, see Charlotte Berry, "'To Avoide All Envy, Malys, Grudge and Displeasure': Sociability and Social Networking at the London Wardmote Inquest, c.1470–1540," *The London Journal* 42:3 (2017), 201-217.

⁵⁹⁵ Jones, *Annals of Dover*, 290–2.

⁵⁹⁶ KHLC DCb/J/X/8.3 4r.

⁵⁹⁷ Jones, *Annals of Dover*, 292.

⁵⁹⁸ KHLC DCb/J/X/8.3 77v.

⁵⁹⁹ KHLC DCb/J/X/8.3 114v.

⁶⁰⁰ Dimmock, "Class and the social transformation," 126–7; Forrest, *Trustworthy Men*.

the parish of St Mary's in Dover reported Godfrey "servant of Nicholas Shoemaker" for perjury.⁶⁰¹ Godfrey responded to the allegation by appearing before the court in person where he was subsequently dismissed by the plaintiff. While not a common outcome, occurring in just 3% of causes, it gestures to the way that church court litigation could compel people to act, forcing the defendant to engage with both the plaintiff, and the ecclesiastical court system, legitimising its role in the settlement of such disputes. While Godfrey was not yet part of the tightly knit community of men in Dover who might have served as religious or secular officers, he was forced to act at the behest of the system that legitimised their authority.

Considered holistically, what might this data suggest to us about the culture of obligation in late medieval Kent as it manifested in these church courts? Overwhelmingly male in make-up, analysis of the trends in the data demonstrates two distinct, but somewhat connected patterns of credit emerging in these records. The urban nature of Dover, and the court's use by prominent burgesses, builds a picture of a culture of obligation that was somewhat exclusionary in nature. Here, when women do appear before the courts, their ability to litigate may have hinged on the profile of their husband's creditworthiness and economic activities within the community. While we might assume that many of these perjury cases concerned the extension of credit, the relatively low percentage of cases that include specific sums of money suggests that debt recovery may have been of only secondary importance. By contrast, the larger range of debts litigated in the court of New Romney reflected a much looser economic network in Kent's marshlands, encompassing both the urban culture found in Dover and the petty debt litigation that characterised the court at Wisbech. Despite their central role in the local economy, this market also excluded women's participation in pursuing settlements in the ecclesiastical courts. This may have to do with the greater distances between litigants of the courts, pointing perhaps to negative cultural attitudes towards women travelling too far from their home communities.⁶⁰²

Furthermore, an investigation of the 274 causes that concerned sums of money has demonstrated that distance between litigants certainly did play a role in how much money individuals were willing to go to court for; neighbours were reluctant to litigate bigger debts before the consistory court. Despite being a smaller proportion of the overall number of cases, causes that concerned litigants from disparate parishes were often for larger sums of money, an assessment that will be further explored below. To conclude, while this data can only ever indicate

⁶⁰¹ KHLC DCb/J/Y/1.10 86r; for further discussion on the precarity of servants litigating in the commissary court, see Section 5.3, below.

⁶⁰² Leigh Ann Craig, *Wandering Women and Holy Matrons: Women as Pilgrims in the Later Middle Ages* (Brill, 2009), 21–78, especially 28–30.

trends, it is apparent that the encompassing jurisdiction of the courts, its relative swiftness, and support by the trustworthy men of this coastal society, all functioned to make the church courts a useful, responsive venue in which to litigate perjury. With these key trends identified, the next section turns to consider the ways in which these courts could be utilised by the men of Kent to enforce patterns of lending, articulate masculinity and reinforce normative behaviours that were underpinned by a culture of mutual obligation.

4.4: Mechanisms of the Court

As discussed in the previous chapter, transactions of the court were shaped by the litigants who used them. In Wisbech, the prevalence of suspension in the courts, coupled with low numbers of excommunication, offers historians insight into the expectations of local Wisbech residents when it came to the repayment of debts on time. However, as discussed in the previous section, the culture of obligation in these coastal communities emphasised trust in economic relations that was both overtly masculine and highly dependent on geographic proximity. The regular sessions of the church courts were consistent across the 1460s and 1470s and would have been an integral aspect of communicating the court's authority among local residents.⁶⁰³ However, without a permanent court that could be spatially defined, the church court's jurisdiction likely required consistent articulation and support from within the communities themselves. In the following section, I argue that the unusually prevalent role of summoners in these courts should be understood as a means of reinforcing both the culture of bourgeois masculine trust that defined perjury in these courts, and the authority of the archbishop's court in the period between the monthly sessions. Secondly, I will consider the role that excommunication played in the economic recovery of debts, arguing that plaintiffs in these courts found a means of using excommunication as a negotiation tactic with serious spiritual ramifications. This section aims to demonstrate the extent to which ecclesiastical courts in England could adapt to the legal needs of litigants.

4.4.1: Summoners

In London, where the court sat several times per week, Richard Wunderli struggled to find a pattern of scheduled meetings, and it is likely that the sheer volume of causes necessitated a

⁶⁰³ Robert Palmer's work on county courts denotes a similar rigidity in scheduling. While they were compelled to meet monthly, by royal decree, it is evident that the courts catered to local needs, and consistency (such as meeting every five or six weeks instead of four) was considered of paramount importance. Robert C. Palmer, *The County Courts of Medieval England 1150–1350* (Princeton University Press, 1982), 4–6.

schedule that ensured the holding of court sessions several times per week.⁶⁰⁴ In Dover, Hythe and Romney, however, the only permanent feature of the court's authority in the community manifested in the figure of the summoner. Due to his role in *The Canterbury Tales* as a morally depleted and cunning malefactor, the late-medieval English summoner has received more attention from Chaucerian scholars than historians of the courts.⁶⁰⁵ In the latter, early explorations of summoners strove to test the veracity of Chaucer's claims. Louis A Haselmayer's 1937 article, 'The Apparitor and Chaucer's Summoner,' first laid out the diverse responsibilities of the role.⁶⁰⁶ Not only did summoners issue citations and aid in the business of wills, but Haselmayer's evidence from thirteenth and fourteenth-century court records demonstrates that summoners also carried out the business of the bishop by collecting debts or acting as the bishop's proxy in the exchange of benefices. Yet, Haselmayer's work also underlines the suspicion generated by these men, suggesting that by the end of the fourteenth century "apparitors had become a large and troublesome group of men who took advantage of the peculiar situation of their office to prey upon the people, collecting money and other gifts".⁶⁰⁷ In his work on the personnel of church courts, Helmholz speculates the summoners and clerks were "routinely corrupt".⁶⁰⁸ Richard Wunderli's assessment is equally damning, stating that the "the evil reputation of summoners is unmistakable".⁶⁰⁹ However, Wunderli goes on to state how, in absence of any hard evidence of corruption from the London courts, "in some respects it is irrelevant whether summoners were corrupt or not. It is enough that they were popularly thought to be so".⁶¹⁰ While emphasising the marginality of these men, Haselmayer's observation that the summoner was "but a cog in a closely regulated organisation," aptly summarises the overall treatment of these men in the historiography.⁶¹¹ They were men of little reputation, reflective of both their low social station and their minor role in the operations of the court.

⁶⁰⁴ Wunderli, *Church Courts*, 13.

⁶⁰⁵ David Coley offers a sampling of the broad scope of questions posed by Chaucer scholars when considering *The Summoner's Tale* in David K. Coley, "The Friar's Tale and *The Summoner's Tale* in Word and Deed", *The Cambridge Companion to the Canterbury Tales*, ed. Frank Grady (Cambridge University Press, 2020), 122, fn. 4.

⁶⁰⁶ Louis A. Haselmayer, "The Apparitor and Chaucer's Summoner," *Speculum*, 12 (1937), pp. 43–57, 47.

⁶⁰⁷ Haselmayer, "Appirator," 54.

⁶⁰⁸ Helmholz, *Marriage Litigation in Medieval England* (Cambridge University Press, 1975), 147.

⁶⁰⁹ Wunderli, *Church Courts*, 210. Wunderli's contempt for the men and women of the commissary court—both agents and litigants—colours much of his assessment of these records.

⁶¹⁰ Wunderli, *Church Courts*, 211; Michael Haren's assessment of court personnel echoes this conclusion, arguing that "little documentary evidence can be adduced to support the charges levelled against [summoners]." Michael Haren, *Sin and Society in Fourteenth-Century England* (Clarendon Press, 2000), 109.

⁶¹¹ Haselmayer, "Appirator," 48.

Ian Forrest's work on the role of the summoner and his representation in the *Canterbury Tales* complicates this portrayal by largely sidestepping the question of whether this was a real or truthful representation of the figure. Instead, he makes a case for the politicisation of the summoner in *The Canterbury Tales*.⁶¹² Here, Forrest argues that the salaciousness of the summoner, alongside his weakness to bribery, was evocative cultural imagery, critical of the English church, that would have deeply resonated with Chaucer's audiences; in this way, his caricature was informed by "the same gossip, proverbs, news and sermons" as the language of insults directed at summoners found in court depositions.

I would like to utilise the visibility of the summoners in the records of Canterbury to nuance our understanding of these figures, and the role that they might have played in causes of breach of faith and perjury. By considering the reliance of a 'centralised' court on the diffused local knowledge of summoners, we can see that summoners in Kentish communities operated in a way that furthered the role of the church courts as a space for legal and social negotiation.

Brian Woodcock proposes that there was a shift in the nature of summoning in the diocese of Canterbury in the fifteenth century.⁶¹³ Instead of rural deans and incumbents receiving orders to issue citations from the consistory's registrar and employing their own summoners, Woodcock argues that evidence of a process of centralisation can be inferred from the appearance of named summoners in the records from c.1450.⁶¹⁴ From 1455, Woodcock reports that summoners in the Consistory court were recorded taking oaths "that they had diligently searched for the parties considered".⁶¹⁵ If we accept this idea, then it inevitably created a tension "between the bishop's desire for control and his equally strong desire for local knowledge" as observed by Ian Forrest.⁶¹⁶

For the diocese of Canterbury, the commissary-general made use of men with at least some connection to local Kentish communities. Data from the courts allows us to elucidate this. An initial survey of the records as a whole demonstrates that a majority of the causes were cited by three primary summoners; Nicholas Morley, John Rumfeld and William Lotyn. It is clear from the sources that these men operated geographically. Morley, working throughout the 1462-74 period, was based in the community of New Romney. Lotyn worked in Dover from 1472 while Rumfeld worked in Hythe between 1462 and 1467.⁶¹⁷ While the rest of the summoners share only

⁶¹² Ian Forrest, "The Summoner," 421–42.

⁶¹³ Woodcock, *Medieval ecclesiastical courts*, 45-48.

⁶¹⁴ Woodcock, *Medieval ecclesiastical courts*, 46.

⁶¹⁵ Woodcock, *Medieval ecclesiastical courts*, 46.

⁶¹⁶ Forrest, "Summoner," 434.

⁶¹⁷ The fact that Lotyn appears as a summoner in 177 causes between 1472 and 1474 demonstrates the extent to which breach of faith causes in Dover exploded in the early 1470s, jumping up from 16 causes in 1470 to 61 causes in 1471.

a small proportion of the overall number of causes, it is clear that they too had been assigned as summoners to particular courts. Of course, this alone does not suggest that the summoners lived in these communities, but their presence in the records, often stretching across years, certainly reflects a consistency that allows us to reason that, between 1462 and 1467, for example, John Rumfeld was recognised as Hythe's summoner.

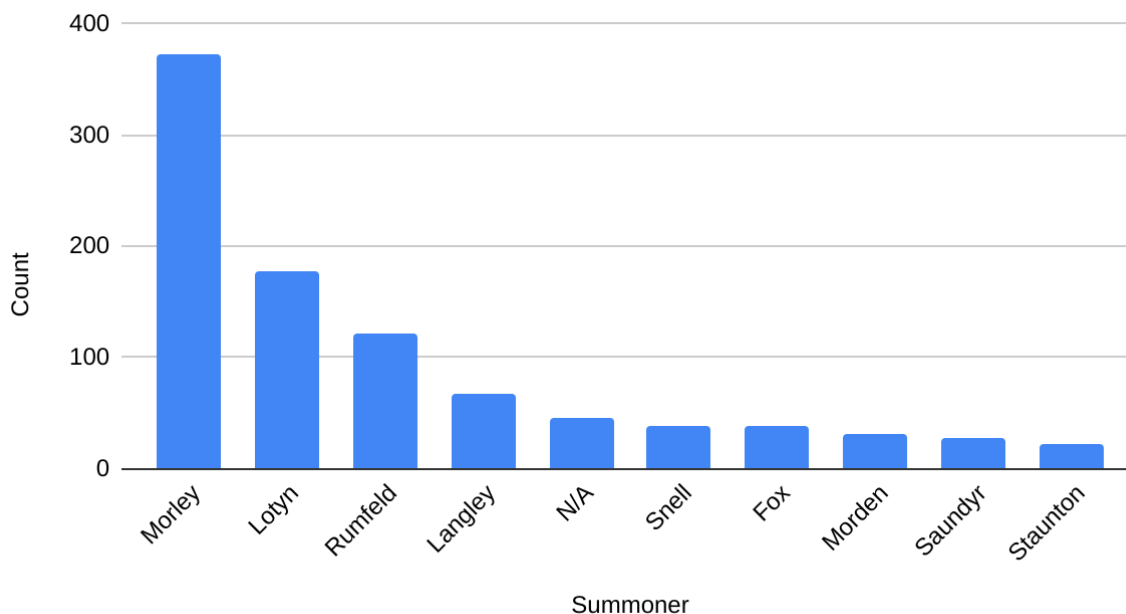


Figure 4.11: Number of causes involving individual summoners.

While no evidence survives that can firmly identify the origins of these summoners, tangential evidence from the records allows us to argue that, in some cases, summoners were embedded into the communities they were charged to investigate. In a handful of instances, we have evidence that summoners were capable of dismissing causes. In 1472 a perjury case between William Richard and Richard Bate was dismissed "*ad petitionem de Morley*".⁶¹⁸ The following year, a case between two parishioners from St Nicholas Romney was dismissed by Morley without any explicit mention of such a request to the commissary.⁶¹⁹ While there are examples of plaintiffs or clergymen dismissing causes, as was their right, the idea that a summoner was capable of such actions indicates a surprising formal capacity to alter the outcome of causes in a legally significant way.

⁶¹⁸ KHLC DCb/J/Y/1.10 139v.

⁶¹⁹ KHLC DCb/J/Y/1.10 199r.

Therefore, the anxiety expressed towards summoners in both doctrine and literature did have its origins in reality; it is indisputable that the authority of the summoner could be exploited, significantly impacting the lives of individual litigants and parishioners.⁶²⁰ However, this did not necessarily undermine or contradict the spiritual authority of the church court; in recording these actions in the court books, such as Morley's dismissal of these cases, we might argue that the courts were offering some judicial oversight to men who were well integrated into the social and political fabric of these communities.⁶²¹

There is room to suggest that in his service to the court, Nicholas Morley was unique: as is visible in Figure 4.11, Morley's connection to the court at New Romney over fourteen years ensured that he issued more summonses than any other single *apparitor*. Furthermore, there is little evidence to suggest that his right to influence the outcome of causes was shared with his fellow summoners. Notably, he was the only *apparitor* in the records that used his private residence to conduct three arbitration procedures, in 1468, 1470 and 1474.⁶²² While this process will be discussed below, it is noteworthy that in the cause from June 1474, the parties brought in to witness this arbitration were Thomas Caxton, the town clerk of Lydd, and a man named John Pulton.⁶²³ A testament from the late John Pulton, dated to March 1474, records that these men also acted as his executors.⁶²⁴ As we have seen with the 'goodmen' at Dover, it is likely these men were common acquaintances, drawn from the same socio-economic group that utilised breach of faith and perjury litigation in the consistory court. The placement of the arbitration inside the home of Morley situates him, and the arbitration process itself, into a broader ecosystem of normative cultures of lending that these men carefully cultivated. Far from private space, homes were places of immense social significance, and Draper and Meddens have noted that until the early sixteenth century, in communities like Lydd, New Romney, and Rye "jurats entertained

⁶²⁰ For examples, see Forrest, "Summoner," 427–32.

⁶²¹ In a case from London's commissary court, the records allude to an interaction between a summoner and one of London's many sexworkers that certainly suggests that summoners worked in tandem with these women in order to uncover adultery causes. The extent to which this was "official" is probably contestable, but the reference suggests that there was significant blurring of lines between official work and the unofficial dealings that ensured the functioning of the court: LMA DL/C/B/043/MS9064/2 74v.

⁶²² There are nine instances in total where arbitration is pursued in private homes. The other six make reference to "my home" (*in domo mee*), which likely implies the home of the registrar.

⁶²³ Dimmock, "English Small Towns " 16. On the growing significance of town clerks in the cinque ports, see Draper, "Urban Privilege," 284.

⁶²⁴ Kent Archaeology Society website.

<https://www.kentarchaeology.org.uk/Research/Libr/Wills/Bk58/133a.htm>

important visitors or drank together and discussed important matters in the home of the town's elite".⁶²⁵ In this way, the use of Morley's home was a conscious choice, carefully made.⁶²⁶

While there is much evidence to suggest the foul play of summoners in this period, there is equally evidence to suggest that parishioners had the ability to challenge the authority of these men in acts of popular, sometimes violent, protest.⁶²⁷ A study of a summoner from Middlesex named Robert Bukeland demonstrates how collective action of a community against a misbehaving summoner culminated in a petition to the Bishop of London in 1496.⁶²⁸ However, the length of Morley's tenure and his participation in processes that went beyond the remit of his role both suggest his general acceptance in New Romney and its hinterlands. Nonetheless, it is apparent that the summoners in Canterbury's court system possessed a large degree of power in the initial steps of summoning individuals on behalf of plaintiffs.

This is best exemplified by an incident from 26 September 1470, when William Robert—deputy of the archbishop's commissary—and his clerk gathered in the church of St Leonard in Hythe to do the Lord Archbishops' justice. They were, however, met with a singular insurmountable challenge that prevented the court from sitting: the summoner was missing. Scrawled beneath the carefully rendered heading in the court records two lines of text state that "on the aforementioned day, the said judge appeared. All causes to be [to be heard] in the next session as the summoner did not appear on the same day".⁶²⁹ Haselmayer correctly inferred that, at court, the summoner often acted as beadle and a record from the turn of the fifteenth century refers to summoners as *officium bedelli sive apparitoris*.⁶³⁰ While it was very likely litigants had appeared before the commissary to undergo the various stages of litigation that characterised church court procedure, the summoner's knowledge of both the events, and the contextual evidence surrounding the incident was essential in verifying what was true. As we have seen from the number of depositions accusing summoners of acting dishonestly, this was of course a somewhat idealised notion of truthfulness, but one that the commissary valued and which had potentially significant legal implications. In fact, the trustworthiness of summoners was also bound

⁶²⁵ Gillian Draper and Frank Meddens, *The Sea and the Marsh*, 43; on the public nature of the private home in fifteenth-century England, see Shannon McSheffrey, *Marriage, Sex, and Civic Culture*, 122–8.

⁶²⁶ There is no indication where Morley's home was located. As locals of the town of New Romney and the nearby town of Lydd, it is possible that the house was chosen for the sake of convenience. However, the election of prominent men to travel large distances to act as arbiters equally lends merit to the idea that Morley was a prominent figure within the courts, and perhaps the New Romney community more generally.

⁶²⁷ Forrest, "Summoner," 436-7.

⁶²⁸ Johnson, *Law in Common*, 259-60.

⁶²⁹ KHLC DCb/J/Y1.10 63r.

⁶³⁰ Haselmayer, "Appirator," 49.

up in oaths that were undertaken by summoners at the outset of their tenure.⁶³¹ In this way, the good fame of a summoner was borne from the same requirements as that of the alleged perjurer in breach of faith litigation.

What should we make of this? In the case of Morley, it is evident that he was a particularly trustworthy figure— perhaps exceptionally so. Given its span, Morley's career brought him in contact with countless individuals of New Romney and its hinterlands.⁶³² The length of his tenure of office, and the capacity for Kentish summoners to dismiss causes suggests a proximity to the authority of the church court that would have been significant for both Morley himself and ecclesiastical court litigants. However, it is equally apparent that the itinerant nature of the courts impacted the role of the summoner in these interpersonal disputes. A lack of permanent court presence in these communities necessitated the appointment of the summoner that might stand in as the representative of the masculine trustworthiness that fuelled business in the church courts. While Morley was perhaps exceptionally well-regarded in his community, he should not necessarily be taken as an exception. Rather, we might imagine that these men were embedded into their local communities, acting as a representative of both the legal needs of local men and the authority of the church courts.

4.4.2: Excommunication

When discussing excommunication in the late medieval period, many historians have characterised the sentence as overused and, as a consequence, somewhat ineffective.⁶³³ While this study has no capacity to investigate the broad application of excommunication in the church courts, the question of its efficacy as a deterrent in breach of faith litigation is a compelling one that has been largely overlooked.⁶³⁴ Brian Woodcock suggests caution in attempting to reconstruct numbers of suspended and excommunicated people from the records; while the

⁶³¹ Forrest, "Summoner," 428.

⁶³² Of the three court summoners, it is apparent that New Romney's jurisdiction necessitated more travel for summoners than others: of the 372 causes cited by Morley, 39% of them were for cases where the plaintiff lived over 5 miles from the defendant; for Morden, New Romney's summoner at the beginning of the sixteenth century, this figure had risen to 43% of causes.

⁶³³ Rosalind Hill, "The Theory and Practice of Excommunication in Medieval England", *History* 42 (1957), 10-11; Michael Prestwich, *English Politics in the Thirteenth Century* (Macmillan, 1990), 75-6; For Helmholz, the laicization of excommunication made the misuse of the sanction even worse, "tying up one's opponents in the labyrinthine complexities of litigation, subjecting them to the disadvantages excommunication entailed when their only fault had been failure to master those complexities." See Helmholz, "Excommunication," 250-1.

⁶³⁴ Elizabeth Vodola recognises in her seminal work on excommunication that debt causes were "among the commonest suits in which excommunication was used, since here... there was no disputed article to be put in the possession of the defendant in the event of the plaintiff's contumacy." Vodola, *Excommunication in the Middle Ages* (University of California Press, 1986), 38.

documents noted the letters of suspension and excommunication being issued, he argues that without certificates of signification there was no means of knowing with any measure of certainty the status of the individual at the 'end' of the cause.⁶³⁵ However, the threat of excommunication and its social and economic ramifications bear further consideration. As I will argue, excommunication needs to be understood in a context of negotiation that was far broader than individual actions in court. In this way, it functioned as just one tool in a repertoire that included actions like arbitration, reckoning, and swearing oaths.

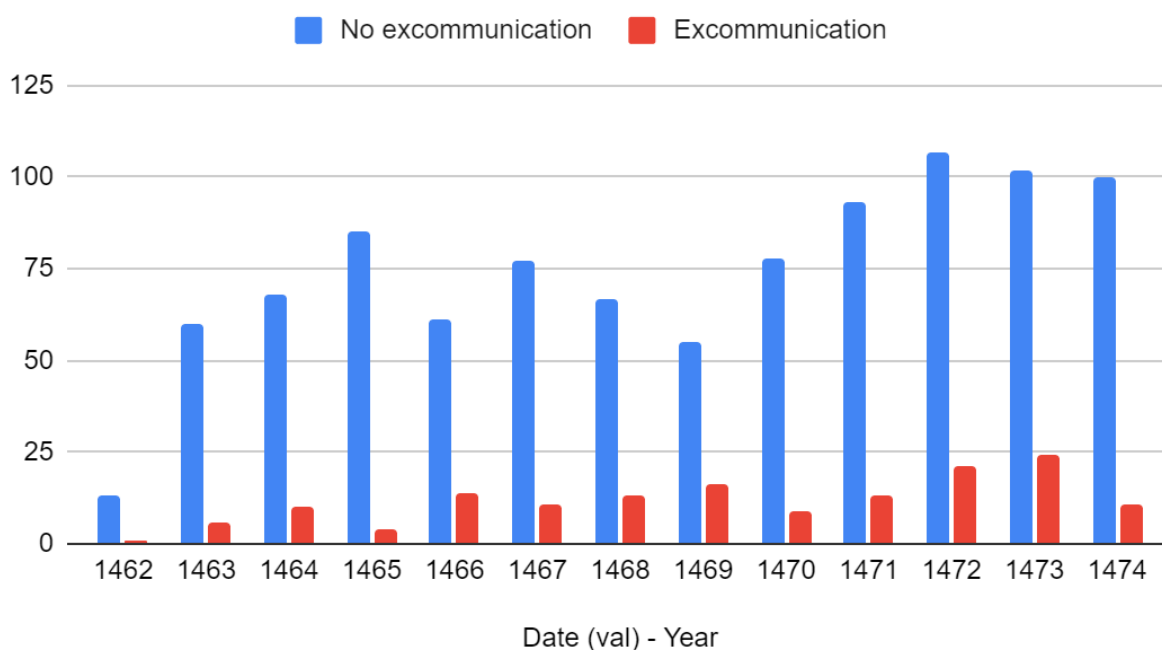


Figure 4.12: Number of excommunications in Kent's commissary courts, 1462-74.

With rates of excommunication hovering at almost 3 times that of fifteenth-century London, it is apparent that excommunication for the breaking of a promise played a far more significant role in Kentish courts than in the capital. Fundamentally, Woodcock's comparative study between instance and *ex officio* cases reveals that office causes (including breach of faith litigation) pursued by the court authorities were far less likely to conclude in excommunication than instance causes pursued by plaintiffs. For example, in 1474 in Canterbury, only 3 out of 154 office cases ended in excommunication.⁶³⁶ At less than 2% of cases, this figure aligns closely with the *ex officio* statistics from Wisbech and London, more so than it does with the instance cases presented

⁶³⁵ Woodcock, *Medieval Ecclesiastical Courts*, 99.

⁶³⁶ Woodcock, *Medieval Ecclesiastical Courts*, 100.

above. Woodcock's reasoning for this lies in the intent of the pursuer: in instance causes, a plaintiff "was responsible for petitioning for the decree of these censures, and he paid for the expenses of their execution".⁶³⁷ By contrast, the role of the judge in pursuing *ex officio* causes was more "consistent in the enforcement of discipline than plaintiffs in petitioning for the application of sanctions."⁶³⁸ This assessment rings true, although how such a petitioning occurred requires qualification.

It is undeniable that the ability to pay for litigation was a large factor in deciding where one litigated.⁶³⁹ The risk of losing a costly action in the consistory court may have prompted plaintiffs to rely on more than compurgation when initiating court proceedings. The use of experienced proctors may have offered some expertise in these court processes. In a handful of instances, references made to written actions (*actes*) demonstrate that documentary evidence was also presented to the courts.⁶⁴⁰ This is significant as breach of faith and perjury litigation has often been characterised as occurring in the absence of written evidence through the swearing of verbal oaths before witnesses; written proof of debts and obligations suggest that these causes might have been more fruitfully pursued in the courts of the king. In this way, the evidence of written documents suggests two things: not only does the inclusion of evidence denote a desire for the recovery of debt, but it may also have proven effective in invoking a sentence of excommunication.

The use of evidence to pursue more severe outcomes perhaps best exemplified in the 273 cases that made mention of specific sums of money. The range of sums at issue was broad; in Kent, monetary values stretched from as little as 11d owed by Richard Ive of Woodchurch to John Andrewe of Romney to the £6 that, after four months of excommunication, Robert Newhouse of New Romney agreed to pay back to his creditor in 20s intervals.⁶⁴¹ However, while 12.7% of cases in these courts typically involved excommunication, this proportion ballooned to 52% when

⁶³⁷ Woodcock, *Medieval Ecclesiastical Courts*, 99-100.

⁶³⁸ Woodcock, *Medieval Ecclesiastical Courts*, 99-100. Historians of excommunication have argued that there was a distinct hesitancy in pastoral teachings to use excommunication as a punishment. The *Liber Extra* describes excommunication as "medicine, not death" (so translated by Felicity G. Hill), *Liber Extra* VI 5. 11. 2; See Felicity G. Hill, "Damnatio Eternae Mortis or Medicinalis Non Mortalis: The Ambiguities of Excommunication in Thirteenth-Century England", *Thirteenth Century England XVI: Proceedings of the Cambridge Conference, 2015*, eds. Andrew M. Spencer and Carl Watkins (The Boydell Press, 2017), 37-54.

⁶³⁹ The dismissal of cases *in forma pauperis* was low in every case study. Only two cases in the Kentish records are dismissed due to declared poverty, KHLC DCb/J/X/8.3 39v, 112r. For the cost of initiating suits in ecclesiastical courts, Shannon McSheffrey has written on the cost of marriage litigation, McSheffrey, *Marriage, Sex and Civic Culture*, 110—1.

⁶⁴⁰ Of the five where written evidence is mentioned, three ended in excommunication (KHLC DCb/J/Y/1.10 8v, 9r, 123v), one ended in the death of the defendant (KHLC DCb/J/Y/1.10 121r), and one concluded ambiguously (KHLC DCb/J/Y/1.10 203v).

⁶⁴¹ KHLC DCb/J/Y.1.10; 206r; KHLC DCb/J/X 8.3; 121v.

the case made explicit mention of debts that had been promised to the plaintiff. In the records, this was presented with a standardised phrase: "*actor petit ex fide facta* [sum of money]". The results were stark: when this phrase was recorded by the court, the defendant was statistically more likely to get excommunicated than not. Furthermore, unlike excommunication in London, the data shows that excommunication was at least partially influenced by the value of the debts under consideration. The second column in Table 4.6 considers the distribution of money in causes as it relates to excommunication, where causes that concerned excommunication made up 61% of the total value of the debt litigated, despite only occurring 52% of the time. This suggests that despite almost equal case distribution between those that were excommunicated and those that were not, excommunicated cases exhibited higher monetary involvement overall.

Excommunicated? Y/N	Percentage of cases involving Money (M)	Distribution of (M) between cases
No	47.9%	38.4%
Yes	52.0%	61.6%

Table 4.6: Number of causes that involved known values of debt, and the distribution of this debt between causes that resulted in excommunication versus those that did not.

These results reflect Woodcock's assessment of the differences between instance and office litigation in clear terms. Plaintiffs may have had the ability to push for more severe consequences. However, it also begs the question: if the inclusion of a material loss altered the outcomes of litigation in the favour of the plaintiff, why would plaintiffs choose to exclude any mention of monetary loss when presenting the cause to the court authorities? Given the nature of the sources, the intent that lay behind each litigation can be hard to access. However, the rate of excommunication in these causes should not be considered a coincidence. We might offer two possibilities. First, it is quite possible that litigants prioritised the repayment of neighbours over strangers and acquaintances in order to avoid encounters such as these in the courts with people they lived and worked with. *Fama* could be a powerful motivator, and the maintenance of trustworthiness within one's own social network likely trumped relationships that had little influence on an individual's communal reputation. Second, it is likely that the inclusion of the material debt— occasionally supported by written evidence and followed more often than not by excommunication— was a calculated strategy of debt recovery. Excommunication was a real means of enforcement, and the threat of excommunication made the church courts a useful venue for the collection of unpaid debts, when debt collection was the desired outcome.

Nonetheless, excommunication also carried serious socio-symbolic power. Breach of faith litigation often necessitated the involvement of third parties.⁶⁴² This was not exclusive to Kent, nor was it limited to litigation in the church courts. In both secular and ecclesiastical debt cases, arbitration functioned as a means of rendering an individual grievance into a communal one; parties made use of proctors or lawyers to speak on their behalf, and men from their communities might act in the capacity of guarantors who would take on the burden of the debt if the defendant defaulted. Excommunication, in as much as it symbolically alienated individuals from their communities, functioned in much the same way.

The rituals of excommunication, on one hand, could be elaborate affairs, as the excommunicate was separated from the rest of their congregation verbally (through solemn declarations), audibly (as bells were rung) and symbolically (the extinguishing of candles).⁶⁴³ However, for many in England, "the experience may have been relatively simple and bureaucratic".⁶⁴⁴ Regardless of how these events transpired in Kent, the function of such a ritual was to make a community aware of the excommunicate's status as beyond the confraternity of the church.⁶⁴⁵ And thus, in pursuing more than debt recovery, but also a guilty verdict, we might conclude that plaintiffs were inviting the community itself to bear witness and participate in the conflict.

The disruptiveness of excommunication when it was being used to pursue repayment is perhaps best exemplified by a cause that emerged from the court in Dover in 1469 where the accused was excommunicated three times.⁶⁴⁶ On 10 July, it was initially reported that Father Alexander Robertson of Aylesham had accused Robert Borne of St Nicholas Dover of perjury. On 29 September, Ramsey, a proctor of the court, conveyed the allegations "in the presence of the principal parties", suggesting that Robertson and Borne had been compelled to meet face-to-face. While the language is standardised, the documents themselves are highly precise in these matters, and the inclusion of this clause is uncommon. This triggered a second meeting on 9 October, and when Borne did not appear he was suspended. Following his absolution on 30 October, Borne confessed to owing the priest 10s, which he agreed to pay in two portions "under pain of excommunication"; when he failed to do so, the man was excommunicated. On 8 January, when Borne failed to appear once more, it was recorded that a letter of excommunication was issued. On 27 March, the judge stepped in to declare that 4s and 2d were still owed by Borne,

⁶⁴² Please see Section 3.4.1, above.

⁶⁴³ Hill, "Damnatio Eternae," 52.

⁶⁴⁴ Hill, "Damnatio Eternae," 52.

⁶⁴⁵ Helmholz, "Excommunication," 251.

⁶⁴⁶ KHLC DCb/J/Y/1.10 24v.

that was once again payable in two portions, under the pain of excommunication. Finally, on the 13 April 1470, when Borne failed to appear, he was excommunicated once more.

It may be argued that the need to utilise excommunication three times denotes the weakness of the action itself. It was, in the eyes of historians such as Richard Helmholz and Elizabeth Vodola, simply a matter of procedure, with excommunication acting as the conclusion of a judicial process.⁶⁴⁷ Yet it is apparent that Borne was affected by his change in status. His initial suspension- understood as minor excommunication- would not have prevented him from participating in key social and economic aspects of community life; instead, it prohibited him from full access to religious rites.⁶⁴⁸ Nonetheless, the three weeks between 9 October and 30 October was a sufficiently long period for Borne to conclude that being in a state of legal and spiritual exile was not to his liking. Exchanging absolution for a confession of guilt, Borne was willing to burden himself with a 5s debt that was to be repaid over eight weeks, due in full by 25 December. Whether through dearth or insubordination, this goal proved untenable for Borne.

The two further sentences of major excommunication should theoretically have cast Borne out of communal life in Dover, including an exclusion from "eating or drinking, in buying or selling, in prayer or greeting".⁶⁴⁹ Felicity G. Hill's recent study on excommunication in England is sceptical to the extent to which such ostracism was adhered to. Nonetheless, both Forrest and Hill have emphasised the extent to which the tangible harm of excommunication relied on the ostracism that the community imposed, leading Hill to argue that "the danger was that the sanction could be used as a pretext to justify mistreatment".⁶⁵⁰ For our purposes, excommunication for perjury threatened to reduce the value of Borne's promises to zero, and may have prevented him from alleviating any financial burdens he might have been experiencing through monetary networks of friends or colleagues. Given the precious nature of one's oath, particularly in the context of economic transactions, being under ecclesiastical censure could have real legal ramifications that would have potentially put Borne at the mercy of the King's sheriff. This could occur if a bishop issued a 'letter of signification' to the King's chancery, requesting assistance in forcing an excommunicant to appear before a church court judge. This letter gave secular authorities the right to imprison the named excommunicated figure until they submitted to the bishop.⁶⁵¹

This outcome was not inevitable. In a case from the same court in February 1470, involving an even greater sum of money, the defendant was once more excommunicated for failure to pay

⁶⁴⁷ Helmholz, "Excommunication in Twelfth Century England", 236; Vodola, *Excommunication*, 35.

⁶⁴⁸ Felicity G. Hill, *Excommunication*, 109.

⁶⁴⁹ Hill, "Theory and Practice," 1.

⁶⁵⁰ Forrest, *Trustworthy Men*, 31; Hill, *Excommunication*, 104.

⁶⁵¹ Helmholz, *OHLE*, 111.

the outstanding debts owed. However, the record noted that, following excommunication, the cause (and presumably its punishment) was dropped at the behest of the plaintiff.⁶⁵² The clemency exhibited by the latter serves to further underline the duress experienced by Borne, a cruelty that was enabled by the mechanisms of the court.

We cannot conclude that excommunication signified the end of relationships, as excommunication was always intended to be an impermanent state.⁶⁵³ Indeed, the ability to pursue litigation in church courts with little expectation of a definitive solution was a fundamental aspect of doing law in ecclesiastical courts, one that was reinforced by provincial constitution. In the statutes of Worcester (1240), under the heading 'on avarice', it was noted that church court litigants had the right to withdraw their suits by agreement "as long as the suit is such that a settlement of transaction is permitted, and they [archdeacons] will not excommunicate their subjects unless they have been given three warnings and a canonical admonition".⁶⁵⁴ In this way, the courts were an excellent way for litigants to find support for their cause through the threat of institutional violence without submitting themselves or their opponent to the rigours of a secular trial.

The decision to pursue excommunication as a plaintiff likely placed their relationship with the accused under significant stress. Of the 190 cases where litigants came from the same parish, only 4% of them involved excommunication. This figure increased to 10.2% when we consider cases of litigants living within 5 miles of each other and 18.6% to those living more than 5 miles from one another. While distance from the courts might have played a role in this, it may well be that plaintiffs were more reluctant to pursue excommunication as an outcome if they were living in proximity to the defendant. When considered with the fact that excommunication typically concerned more money, we might begin to build a picture of the circumstances that prompted an individual to pursue excommunication.

The fact that such cases made up only 12% of the causes overall suggests that this was just one way of using the church court to engage with reluctant litigants. Indeed, as I have been arguing, many of these causes were not primarily concerned with the collection of outstanding debts. Instead, the courts offered a framework that allowed a plaintiff to open lines of communication, and bring third parties into that conversation, such as proctors, local summoners

⁶⁵² KHLC DCbJ/Y/1.10; 45r.

⁶⁵³ Hill, *Excommunication*, 12.

⁶⁵⁴ Powicke and Cheney, *Councils & Synods II*, 2, 308; I have not investigated whether this particular rule was reiterated in later councils or synods. However in the early fifteenth century, the Council of Constance "offered for debate a suggestion that ecclesiastical court judges not impose excommunication lightly, especially in debt case," according to Vodola, *Excommunication*, 40.

and perhaps entire communities. Furthermore, it forced many of the defendants to balance their books and take stock of what might be owed to individual parties.

This is best demonstrated by the 32 causes that involve the inducement to "reckon together what was owed before the meeting of the next court".⁶⁵⁵ While few and far between, these ephemeral mentions of meetings between court dates hint at the extrajudicial power that church courts had in bringing individuals together. One particular litigant, a man named Thomas Reynold, used reckoning multiple times to engage with defendants, represented by Ramsey as his proctor.⁶⁵⁶ In the first, against Richard Ewell, the defendant was suspended, presumably for not meeting with Reynold or his representative. In the second, following a reckoning, the defendant— Bartholemew Gore— confessed to owing a debt of 3s 11d on 28 January. Evidently, Reynold wanted recuperation, but it was unclear as to how much was at issue. On 28 January, the cause ended ambiguously, the clerk noting that the cause was "to continue in the next". This suggests that whatever agreement that Gore and Reynold reached was satisfactory to continue informally, or at the very least beyond the remit of the court's purview. Indeed, the reference made to reckoning certainly imbued the relationship with a longevity that was likely based on trust.

In a third cause, defendant Richard Osey— a man who had already appeared that year before the court to recuperate debts of his own— confessed to owing Reynold 20d. At the following court, 17 December, we see the judge make a rare appearance as he assessed that which was owed as 18d (whether this is in addition to the 20d is unclear.) On 28 January, Osey was excommunicated for "not obeying" the judge's ruling. While it is difficult to ascertain why the judge intervened in just one cause, or why Osey was excommunicated while Richard Ewell was merely suspended, it is possible to infer that the difference may have lay in the whether an attempt at reconciliation was made. For example, if the judge's assessment of 18d was what Osey owed to Reynold as a fraction of the 20d, we might conclude that Osey made no real attempt to repay his creditor. This defiance occurred after Osey had confessed to the debt and promised to pay off the sum in the next session. "*...fatetur ad solvendum in proxima sub pena excommunicationis*". Whether Osey— or the proctor Nottingham working on his behalf— was compelled by the judge to agree to repay the debt, he had once more committed the sin of perjury and was duly punished for it. The submission by Gore to agree to meet offered both Gore and Reynold a chance to reconcile in an extra-curial space; while his failure to act was still subject to the oversight of church court, he was free to meet with Reynold and agree terms that lay beyond the coercive powers of the court.

⁶⁵⁵ "*...ad computandum citra proxima curiam*."

⁶⁵⁶ All three causes appear on the same page: KHLC DCb/J/Y/1.10 172r.

Overall, it is evident that the users of the consistory court found excommunication a useful and effective means of reopening channels of communication between themselves and often distant economic partners. With the tacit recognition that excommunication was impermanent, it became a means of extending their own reputation beyond its natural geographic limits, often at the cost of the defendant's own. Considered alongside the presence of men, such as Nicholas Morley, acting as the physical manifestation of the authority of the ecclesiastical courts, it is apparent that the men of New Romney, Dover, and Hythe were well-served by the courts of Canterbury's archbishop, especially when it came to issues of reputation. However, as this section on excommunication has proven, the instrument of the church courts, in the recovery of debts or the enforcement of obligation, was finely tuned, and could be masterfully wielded by the men and women who made use of these courts.

4.5: Conclusion

At first glance, perjury litigation looks very different to the *ex officio* causes discussed in the previous chapter. On closer inspection, the huge amount of litigation brought before the consistory court of Canterbury in these maritime communities expresses very similar concerns: the performance of social status, fear of a ruined reputation from excommunication, and the maintenance of the firm bonds of obligation which sat firmly at the heart of parish community in late medieval England. However, considered comparatively, this chapter has argued that the litigation of these three separate courts nuances our understanding of the ways in which communities could use perjury causes to their own advantage, often appealing to local ideas of proximity, reputation and hierarchy. Across all three locations, it is evident that the courts were used by relatively well-established men of repute, reflective perhaps of the common corporate identity that tied the leading men of these towns together. While the ideals of burgesses in towns were not necessarily those shared by the population of these communities, the consistent use of the courts by a range of litigants speaks to the common acceptance of the church courts as a venue in which reputation might be measured.⁶⁵⁷ Furthermore, as the section on summoners and excommunication sought to recognise, the very public nature of these disputes was central to the church court's appeal, inviting communities to participate in bearing witness to the disputes of obligations and their outcomes.⁶⁵⁸

⁶⁵⁷ Liddy and Lambert, "Civic Franchise," 142.

⁶⁵⁸ On the importance of ceremony and the "popular control" that witnessing civic ceremonies might have offered to communities, see Esther Liberman Cuenca, "Oath-taking and the Politics of Secrecy in Medieval and Early Modern British Towns," *Continuity and Change* 38.1 (2023): 9—29; Eliza Hartrich, "The Boundaries of Popular Control in Late Medieval English Town," *Journal of Social History* (2024), 27—51.

Nonetheless, networks of credit and obligation was often tied to the physical geography of the communities themselves. The sparser population density of New Romney and its hinterlands reflects a broader geographic spread of credit, and a less coherent body of users than the larger, more contained town of Dover. Despite its common corporate identity, the litigants of Hythe likely had much more in common with the users of the court of Wisbech than Dover. Similarly, as we shall see, the litigants at Dover had much in common with the wealthy litigants of the commissary court in London, to which we now turn.

Chapter 5 : The Commissary Court of London

5.1: Introduction

On the 19 January 1471, Margaret, servant of Walter Mercer of St Peter's Cheap was presented to the commissary court of London for breaking faith with a woman named Alice Bawder. It was reported that Margaret, having received an amount of silk from Bawder, promised to return the material by a certain time or pay the value of the garment. However, it was reported to the court that Margaret was now unwilling to return the goods or pay Bawder in kind.⁶⁵⁹ Such an entry into the court records is by now familiar, resembling thousands of other breach of faith cases that appeared before ecclesiastical judges across fifteenth-century England. However, this encounter also helps to characterise trade in London in the fifteenth century: debts were larger, goods more varied. How these women knew each other can only be guessed at.⁶⁶⁰ Perhaps most notably, neither Margaret nor Bawder appear before the court again for breach of faith litigation, a common occurrence in London's commissary court that reflects the transactional character of credit in England's largest urban community.

By the late fifteenth century, London had come to dominate England's economy as an increasing number of people flocked to the city as a base from which to conduct business.⁶⁶¹ It was, in Richard Goddard's assessment, a "city of superlatives": large enough to weather the worst effects of the bullion famine, boasting a varied economy, and acutely aware of the Crown's presence at its doorstep.⁶⁶² The brief, elusive credit agreements between neighbours were part of this elaborate network of trade; a shift in circumstance on a national scale such as a bullion famine or an international war would have severe ramifications on access to the credit market, a

⁶⁵⁹ LMA, DL/C/B/043/MS9064/1, 63r. "*Margareta famula Walterus Merceri fregit fidem Alicie Bawden pro certos cerico quod recepit ad dictam Alicia et promisit per fidem reportare dictum cericum infra certam horam aut pecunias in valorem. Et non vult reportare ad dictam Aliciam cericum predictam neque valorem eius.*"

⁶⁶⁰ Mercers were responsible for regulating the silk trade in London. See Anne Sutton, *The Mercy of London: Trade Goods and People, 1130–1578* (Ashgate, 2005), 203, 205.

⁶⁶¹ Barron, *London in the Later Middle Ages*, 304–5.

⁶⁶² Goddard, *Credit And Trade*, 10–16; D. Keene, "Changes in London's economic hinterland as indicated by debt cases in the Court of Common Pleas," *Trade and Urban Hinterlands and Market Integration, c. 1300–1600*, ed. J. A. Galloway (Centre for Metropolitan History, Institute of Historical Research, 2000), 59–81.

point that Matthew Stevens has demonstrated clearly for those litigating debt in the court of Common Pleas.⁶⁶³

However, the allegedly inconsequential sums of money recorded in the commissary court, representative of the daily rhythms of London's credit economy, remain understudied. The oversight of such small sums means that our understanding of urban credit, particularly in London, has been limited to the various formal channels of credit used by merchants and artisans, to the exclusion of London's poorest residents. As we have discussed in the previous chapters, the study of exclusively written debt agreements such as those in the Mayor's Court obscures the disputes over *fama* that underpinned this litigation. Furthermore, this *fama* was growing increasingly valuable: London in the late medieval period was equally characterised by a steady influx of new arrivals seeking economic advancement.⁶⁶⁴ While a dense network of credit might have threaded itself across the city, how this mapped onto the circulation of trust within the city remains less well-defined, particularly among those pursuing resolutions in the commissary court.

As demonstrated in Chapters Three and Four, oligarchic groups of men have shown to have played a key role in monopolising trust to benefit their own interests, particularly in the extension of credit in the semi-rural economies of both Kent and Wisbech. These men were essential in defining how trust should function in credit relationships, using breach of faith and perjury to litigate broken promises. However, the extent to which London's oligarchy— "accessible to all those who were commercially successful"— might have influenced petty credit transactions requires more research.⁶⁶⁵ The purpose of this chapter is to study the relationship between debt and trust that characterised breach of faith litigation, as it manifested in the records of London's commissary court. It argues that while London shared a common mercantile culture with urban centres such as Dover, litigation in London's commissary was not as dominated by any single demographic.

As with the previous case studies, this chapter will begin by laying out clearly who it was that litigated in these courts as they were pursued for debt, and the amount of debt outstanding. From this quantification, two main trends will be investigated. Firstly, breach of faith litigation occurred in very particular parts of the city. Despite London consisting of over 100 parishes, ten of these contributed to more than 30% of all breach of faith cases. Analysis of this data allows insight into the different ways that litigants engaged with the church courts; in particular, this

⁶⁶³ Stevens, "London Creditors and the Fifteenth-Century Depression," 1083–1107.

⁶⁶⁴ Barbara Hanawalt, *Ceremony and Civility: Civic Culture in Late Medieval London* (Oxford University Press, 2017), 14; on the immigration of non-English arrivals in London, see W. M. Ormrod, Bart Lambert, Jonathan Mackman, *Immigrant England, 1300–1550* (Manchester University Press, 2019), 31–6.

⁶⁶⁵ Barron, *London in the Later Middle Ages*, 16. This is discussed in greater detail, below.

section will question the value placed in *fama* by poorer residents when choices between social and economic credit had to be made. Secondly, this chapter will seek to understand how class and gender may have intersected to inform both litigation choices and the church courts' response to such. Over 30% of debt cases in the commissary court between 1470 and 1491 involved women, a disproportionately high number in the context of most late-fifteenth-century court returns. This section will explore the gendered aspects of breach of faith litigation, investigating how these women were forced to engage with the institutions of the church court. While there is evidence from surviving documents that suggest men might have appeared on behalf of their wives, this chapter will argue that before the commissary, women overwhelmingly represented themselves and their own interests. Finally, I will discuss how hierarchies within urban society may have been weaponized in the pursuit of debt repayments by considering the space in the commissary courts occupied by servants. Overall, this chapter will argue that the commissary's authority— both economic and moral— was not evenly distributed across the city but served sections of the city's population. Significantly, it appears that local hierarchies, so clearly defined in the previous chapters, were partly influenced to use these courts as a result of highly localised legal culture.

5.1.1: Debt in London, 1470-1490.

Late-medieval London had a robust legal system in which to pursue debt. Those seeking surveys of the complex technologies of debt in London's court system are well served by historians.⁶⁶⁶ Penny Tucker's work, in particular, discusses the role of the sheriff's courts on debt litigation, tying together disparate studies of the legal system in medieval London.⁶⁶⁷ Estimates on the volume of litigation fielded by the sheriff's courts vary, figures hovering between 3000-4000 cases per year.⁶⁶⁸ In her careful reconstruction of sheriff court litigation from Michaelmas 1461 to Michaelmas 1462, Susanne Jenks estimates that about half of these causes concerned debt, suggesting, unsurprisingly, that an immense amount of credit was being extended in the capital by 1470.⁶⁶⁹ As the proportion of debt litigation in the sheriff's court grew, this expansion was reflected in the increasing amount of debt litigation being heard by the mayor's court.⁶⁷⁰

⁶⁶⁶ Stevens, "London Creditors"; Richard Goddard, "Female Merchants? Women, Debt, and Trade in Later Medieval England, 1266–1532." *The Journal of British studies* 58, no. 3 (2019): 494-518; P. Tucker, *Law Courts and Lawyers in the City of London, 1300–1550* (Cambridge, 2007).

⁶⁶⁷ Tucker, *Law Courts*, 63-83.

⁶⁶⁸ Stevens, "London Women, the Courts and the 'Golden Age'," 72.

⁶⁶⁹ Susanne Jenks, "Picking up the Pieces: Cases Presented to the London Sheriffs' Courts between Michaelmas 1461 and Michaelmas 1462," *Journal of Legal History* 29.1 (2008), 107.

⁶⁷⁰ Tucker, *Law Courts*, 111-121.

The density of litigation was in no small part due to the amount of wealth that was being accumulated by residents of London; an increasing movement of imports and exports through the city, enrolled in the Westminster Staple, ensured that the wealth of the mercantile class came to be concentrated within the hands of Londoners.⁶⁷¹ As a result, London was quicker to recover from the mid-century slump than other English centres, attracting even more business as people sought out loans from these businessmen.⁶⁷² With business gravitating towards London, the use of the King's courts became a necessity, as disputes between Londoners and non-Londoners found their way before the Common Pleas. Yet even Londoners with recourse to the city's religious and secular courts found their way before the Common Pleas in relatively large numbers, with 12-14% of all causes heard before the court concerning litigants who both resided in the city.⁶⁷³

The ways in which this debt litigation impacted poorer Londoners cannot be explicitly inferred from surviving documents. However, by 1470, Londoners at the lower end of the socio-economic hierarchy likely faced a highly precarious system of monetary credit that increasingly came to favour creditors. Mathew Stevens' work on London-based creditors in the Common Pleas during the bullion famine paints a grim picture.⁶⁷⁴ Between the beginning of the liquidity crisis in the 1390s and the 1430s, when the recession had reached its nadir, there was a shift in how loan terms were agreed upon. Credit agreements that were once payable on an agreed timetable became 'payable on request'. For creditors, this meant that any lender locked into this agreement could "demand immediate repayment of a debt should the creditor find him or her own self in need of cash".⁶⁷⁵ In the 1390s, just 13% of cash loans were payable on request. From 1450, this number rose to over 90%.⁶⁷⁶ While, as Stevens argues, there was almost certainly space for the parties to negotiate an unofficial payment timetable, this form of agreement offered the creditor a violent, actionable threat to wield against the debtor. As in Lucca and Marseille, as explored in Smail's work on debt collection, it is important to recognise London's economy as "based on relations threaded with coercion and violence".⁶⁷⁷ And so, while the actions of the Common Pleas seem several steps removed from the minor exchanges of credit being litigated in the church courts, it

⁶⁷¹ See Goddard, *Credit*, 201; J. I. Kermode, *Medieval Merchants: York, Beverley and Hull in the Later Middle Ages* (Cambridge University Press, 1998), 308–10.

⁶⁷² Goddard, *Credit*, 205. For the general prosperity of the mercers in the fifteenth century, see Sutton, *The Mercery of London*, 161–200.

⁶⁷³ Matthew Stevens, "London Creditors," 1087.

⁶⁷⁴ Stevens, "London Creditors."

⁶⁷⁵ Stevens, "London Creditors," 1101.

⁶⁷⁶ Stevens, "London Creditors," 1092.

⁶⁷⁷ Daniel Lord Smail, *Legal Plunder: Households and Debt Collection in Late Medieval Europe* (Harvard University Press, 2016), 13.

is reasonable to guess that such aggressive credit actions in the Common Pleas were replicated further down the economic ladder; a debtor in Common Pleas likely had debtors of their own, recalling debts in order to "hedge against the possibility that their own debts might be called in".⁶⁷⁸

The debt litigated in the commissary court seems relatively self-contained. Almost no breach of faith causes appeared in higher ecclesiastical courts in London, such as the consistory court, or the archbishop of Canterbury's tribunal, the Court of Arches.⁶⁷⁹ While the poor survival of documents likely played a role in this, the general lack of breach of faith causes in the consistory suggests that Londoners were well served by litigation in the cheaper, more accessible commissary court. Nonetheless, the existence of depositions from the consistory offers a useful means of interrogating how Londoners conceived of breach of faith litigation as a legal action, which will be discussed in greater detail below. The causes that do appear in the consistory court seem to have concerned either the recovery of larger sums of money than was typically found in the commissary court, or were initiated by litigants who did not live in close proximity to the commissary court's daily meeting in St Paul's Chain.⁶⁸⁰ Given the multiplicity of jurisdictions on offer for Londoners, how people litigated debt in London often concerned a multitude of factors, including the value of the debt and the distance litigants lived both from London and from each other. As in previous chapters, why creditors sought to pursue defendants in the lower ecclesiastical court will be discussed in greater detail below.

5.1.2: Cultures of Credit in the late medieval city.

The size of London and a steady trickle of new arrivals to the city ensured that Londoners likely did not know their neighbours as well as residents of Wisbech and Kent: trust did not come from simple residence in a community but was mediated through a variety of channels. How many individuals in London developed and maintained these relationships varied considerably, changing over the course of the fifteenth century. However, trust was fundamental to economic success in London. In his study of fraternities in late-medieval England, Gervase Rosser concludes that without trust "it would be impossible to obtain credit".⁶⁸¹ Historians have employed a variety of methodologies and sources to outline these networks, not only through the study of

⁶⁷⁸ Stevens, "London Creditors," 1105.

⁶⁷⁹ Helmholz, *OHLE*, 213.

⁶⁸⁰ Breach of faith litigation in London's consistory courts can be found in Shannon McSheffrey, "About the Consistory," *Consistory: Testimony in a Late Medieval London Church Court*, 2022, <https://consistory.org/category/breach-of-faith-debt/>.

⁶⁸¹ Rosser, *The Art of Solidarity*, 159.

guild members, but through the grouping of residents of particular neighbourhoods by occupation, and the visualisation of networks of men who participated in local government.⁶⁸²

Guilds were hugely influential in the politics of late-medieval London. While heterogeneous in nature, many had the capacity to function as financial institutions for their members, an obvious incentive for many to join.⁶⁸³ However, in stark contrast to Wisbech's court, where senior positions in local fraternities often overlapped with involvement in the deanery court, the role that guilds might have played as local creditors in London is almost imperceptible in the records of the commissary court.⁶⁸⁴ This does not mean that guildsmen were not involved in breach of faith litigation, but that neither litigants nor the commissary saw much need to elucidate such relations outside the courts of the fraternities.⁶⁸⁵ Returning to this chapter's opening dispute the location of Bawder and Margaret's dispute over silk in West Cheap places this interaction at the heart of where mercers did their business in fifteenth-century London.⁶⁸⁶ As the case progressed, and arbitration was sought, the appearance of both Margaret and Bawder's masters (*magistrum*) suggests that Bawder was on a similar social level to Margaret, either working as a servant or perhaps as a shop assistant. Such a cause elucidates the way that credit relations were influenced not just by the relationship between two individuals, but by a broader social and institutional network of trust. As masters, these men were expected to oversee the reputation of their female employees, engaging with the law on their behalf, while also ensuring that trading practices remained legitimate. Furthermore, the use of arbitration may have acted as a particularly potent means of collective policing. Nonetheless, the appearance of Bawder and Margaret in the court records in the first place suggests that the credit was Alice's to extend.

Justin Colson's work on testamentary records in London argues that, as the fifteenth century progressed, the economic clustering that characterised many companies in the city

⁶⁸² Justin Colson, "Commerce, Clusters and Community: A re-evaluation of the occupational geography of London, c. 1400–c. 1500," *Economic History Review* 69. 1 (2016), 104–30; Justin Colson, "Negotiating merchant identities: the Stockfishmongers and London's companies merging and dividing, c.1450-1550," in *Medieval Merchants and Money: Essays in Honour of James L. Bolton*, eds. Martin Allen and Matthew Davies (University of London Press, 2016), 3–20; Berry, "To Avoide All Envye," 201–17.

⁶⁸³ Rosser, *The Art of Solidarity*, 157; see also Barbara Hanawalt, *Ceremony and Civility*, 106–33.

⁶⁸⁴ See above, 3.3.3.

⁶⁸⁵ Tucker, *Law Courts*, 121; on conflict disputes within guild communities see Barbara Hanawalt, *'Of Good and Ill Repute: Gender and Social Control in Medieval England* (Oxford University Press, 1998), 40–9; one exception to this is a breach of faith cause from 1490, when Simon Sharman, a paver from St Andrew Undershaft, is accused of violating faith "with all the brothers of his trade" [*violavit fidem omnibus fratribus artis sive*]. The absence of a fixed sum of money suggests that it was Simon's behaviour that was being undermined, rather than his credit. LMA 9064 fo. 175v; For further discussion on reputation, see below, Section 5.4.

⁶⁸⁶ Sutton, *The Mercery*, 191.

became less pronounced with the onset of economic specialism.⁶⁸⁷ Not only did such a change impact how Londoners conducted business, but it also affected where many decided to settle. Co-location of members in a company offered a means of fostering both social and economic ties between members. This was particularly visible for members of the Fishmongers' guild, who were clearly delineated between those who lived and worked on Bridge Street in the east of the city, and Old Fish Street in the west.⁶⁸⁸ Each street had its own hall for meetings, and elected their own wardens; while guild membership may have fostered economic ties among all members, the proximity of members living on the same street created a fellowship that Colson argues was occupational rather than tied to the guild organization itself. However, this was not consistent between guilds. By the turn of the sixteenth century, companies that tended to tightly cluster, such as the Mercers, were living in a much more dispersed community across the city. Not only would such a change necessitate the creation of new bonds of friendship among neighbours, it may also have impacted how trust manifested in different communities.

As in both Kent and Cambridgeshire, office holding played a key role in policing trust in the late medieval city. In her study of the London wardmote court returns, Charlotte Berry found that acting as wardmote juror could be an early rung on a ladder of local office holding, a role that brought younger men into close contact with communal leaders.⁶⁸⁹ As she meticulously maps out using Social Network Analysis, many of these men went on to take further responsibility within their communities, either in lay roles such as wardmote jurors or as wardens of the parish. Office-holding became a means of bolstering a householder's communal reputation, essential for his economic prospects. However, as observed by Burgess, the significance of holding parochial offices, such as churchwarden, very much depended on the parish. In his study on the administration of the parish of St Mary at Hill in London, Burgess notes that while this parochial administration was extensive by the late-fifteenth century, the administration at the neighbouring parish of St Andrew Hubbard was "decidedly amateurish". This leads him to argue that the social network of St Mary at Hill may have been bound closely together, "fostering communal self-regard, producing a parish which, in its own estimation, mattered".⁶⁹⁰ As we shall see in the following sections, breach of faith litigation among Londoners was deeply patterned by

⁶⁸⁷ Colson, "Commerce, Clusters and Community," 123.

⁶⁸⁸ Colson, "Negotiating merchant identities," 8.

⁶⁸⁹ Berry, "'To Avoide All Envye,'" 203—8.

⁶⁹⁰ Clive Burgess, "Shaping the Parish: St Mary at Hill, London, in the Fifteenth Century," *The Cloister and the World: Essays in Honour of Barbara Harvey*, eds. J. Blair and B. Golding (Oxford University Press, 1996), 252.

geographical trends, underlying the great tangle of law, trust and social networks that kept credit circulating in the city.

Alongside this change in how groups lived together and extended credit, the fifteenth century saw a growing political and economic distance between an emerging class below the merchants and their poorer neighbours. While this came with an increase in living standards for many of England's low-income families, Samuel Cohn argues that this improvement was at the expense of political marginalisation of many poorer Londoners.⁶⁹¹ This is explored extensively in Barron's study of London's governance but is particularly visible in the shrinking pools of men in London who could access political power via citizenship and leadership positions.⁶⁹² And so, as access to consistent lines of credit became precarious, and fewer people were given the opportunity to participate in the city's political life, we might argue that access to legitimate social power also became limited.⁶⁹³ This would have disproportionately affected non-citizens, newcomers and the poor, their status as outsiders intertwined with their separation from positions of power and larger lines of credit.

In his study of the regulation of illicit sex in London, Martin Ingram argues that legal institutions, the wardmote and church courts particularly, were integral in creating a somewhat stable identity for those who consistently acted against the common interest of their neighbourhood: in opposition to the common good, individuals became othered by being categorised as 'common' strumpets, bawds or defamers.⁶⁹⁴ This manifested in expulsion of these individuals from the jurisdiction, be it the ward or the city. Exclusion could be a generative act for delineating membership. What was not 'out', was in. This line of argument is taken further in the work of Rexroth, who paints a vivid picture of a largely imaginary "underworld" of London, inhabited by the city's most marginal figures, but dictated, fundamentally, by London's civic leaders.⁶⁹⁵ Recent work by historians such as McSheffrey, Liddy, and Johnson has served to complicate this image, looking at the relationship between Londoners and regulating bodies from

⁶⁹¹ Samuel Cohn, "Rich and Poor in Western Europe, c. 1375-1475: The Political Paradox of Material Well-Being," *Approaches to Poverty in Medieval Europe: Complexities, Contradictions, Transformations, c. 1100- 1500*, ed. Sharon Ann Farmer (Brepols, 2015); 161; For a change in the standards of living for the poor, see Dyer, *Standards of Living*, 188–210.

⁶⁹² Caroline M. Barron, "The Government of London: The Formative Phase, 1300-1500." *London Journal* 26.1 (2001), 16.

⁶⁹³ Forrest, *Trustworthy Men*, 129-58.

⁶⁹⁴ Martin Ingram, *Carnal Knowledge: Regulating Sex in England, 1470–1600* (Cambridge University Press, 2017), 217–220.

⁶⁹⁵ Frank Rexroth, *Deviance and Power in Late Medieval London*, trans. Pamela E. Selwyn (Cambridge University Press, 2007), 305.

a "bottom-up" perspective.⁶⁹⁶ In doing so, they successfully underline the diverse social networks, informal and quite separate from the central courts, available to many Londoners who sought to ameliorate conditions caused by bad fame. How London's commissary court fits into this larger framework, a step apart from the secular legal apparatus, is one of the key questions of this chapter.

5.2: The Quantification of Debt

The data for this chapter is drawn from the first four books of a series of documents titled "acts concerning the correction of sins".⁶⁹⁷ These records contain office cases from the Bishop of London's lower ecclesiastical court, stretching from 1470–1641. In the first four volumes, there are 581 breach of faith cases in total, spanning approximately 21 years, 1470- 1491. As is visible from Figure 5.1, the number of causes presented to the commissary from year to year varied quite significantly, and so too did breach of faith litigation. In his study of London's church courts, Richard Wunderli offers a total number of cases seen by the commissary judge for the years 1471, 1472, 1484 and 1485 (980, 1305, 794, and 351 cases, respectively). If we take these figures as reflective of a typical range, breach of faith litigation consisted of between 1- 9% of the total number of cases that occurred each year. In 1472, for example, there were 34 breach of faith cases in a year that saw the commissary process 1305 cases in total. Comparatively, there were 30 cases of breach litigation in 1485, 8.5% of the 351 cases. Across this period, the average number of breach of faith cases heard annually stood at about 31 per year. Within this period, there were some notable absences, with no records surviving between March 1473 and November 1475, and a prolonged silence between April 1477 and May 1480. This helps to explain the noticeable drop in numbers for 1473 and 1475 in Figure 5.1.⁶⁹⁸

⁶⁹⁶ Christian Liddy, "Cultures of Surveillance in Late Medieval English Towns: The monitoring of speech and the fear of revolt," in *Handbook of Medieval Revolt*, ed. Firnhaber-Baker (Routledge, 2017), 311–29; Johnson, *Law in Common*, 184-212; Shannon McSheffrey, "Liberties of London: Social Networks, Sexual Disorder, and Independent Jurisdiction in the Late Medieval English Metropolis," in *Crossing Borders: Boundaries and Margins in Medieval and Early Modern Britain: Essays in Honour of Cynthia J. Neville*, ed. K. J. Kesselring and Sara Butler (Leiden, 2018), 216–36.

⁶⁹⁷ *Acta quod correctionem delinquentium*

⁶⁹⁸ Beyond entire years missing from the records, Wunderli also estimates the number of causes heard per year based on the records when years are only partially extant, such as 1470, 1475, 1480, 1482, and 1491. See Wunderli, *Church Courts*, 23.

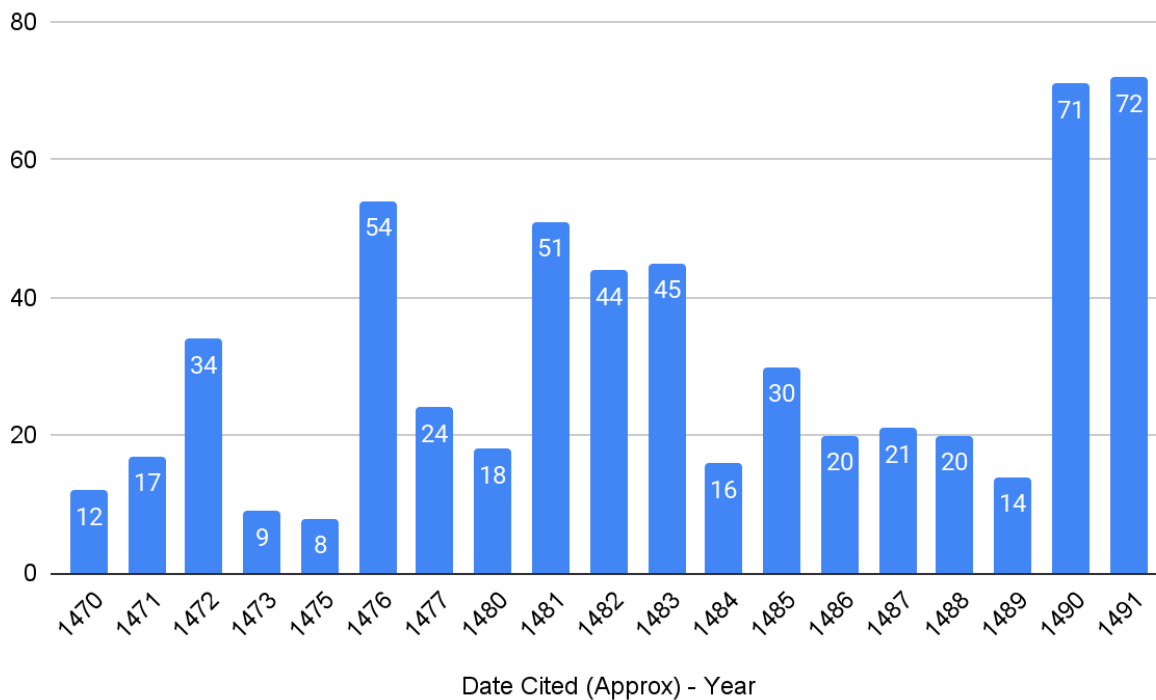


Figure 5.1: Number of Breach of Faith causes per year in London's commissary, 1470–1491.

Despite the frequency with which the commissary court sat, and the scale of business that was conducted in these courts, London's commissary saw fewer breach of faith causes per year than we might expect. For example, in 1472, London's commissary heard 34 breach of faith actions. Wisbech, by contrast, heard approximately 16 cases in 1472 despite the population of Wisbech and its hinterlands being one-tenth of the population of London at the time.⁶⁹⁹ As discussed in the previous chapter, the consistory court of Canterbury attracted litigants from across the region, with courts in Dover hearing 53 perjury causes in 1472. While the data in Figure 5.1 suggests that the commissary court was growing increasingly popular in the 1490s, there is likely no singular explanation for such an increase in the number of breach of faith causes litigated. However, as discussed, a shift in occupational clustering may well have influenced how individuals were conducting business, as many members of London's trade guilds came to live in increasingly diffuse groupings in London in the late-fifteenth century.⁷⁰⁰ This looser network may well have encouraged Londoners to be more open to lending beyond their social circles; very few

⁶⁹⁹ Furthermore, this does not take into consideration the patchiness of the records in Wisbech. See above, Section 3.2. London's population in the fifteenth century is highly contested, with Barron estimating it to be at 40000– 50000, roughly half the size that it had been in 1300. Barron, "London 1300– 1540," *The Cambridge Urban History of Britain* (Cambridge University Press, 2000), 397.

⁷⁰⁰ See the introduction to this chapter, above.

litigants appear more than once. This is in contrast to the dense agglomeration of names in Wisbech's record, where a man such as John Fooke could appear multiple times as an unofficial local wholesaler.⁷⁰¹ It is possible that an increase in the number of breach of faith cases towards the close of the fifteenth century demonstrates a willingness to bring opponents to court despite the impact it might have on the reputation of the debtor.⁷⁰² This could reflect the larger credit market in the capital, such that creditors had less need to maintain enduring, long-term relationships. While this surge in numbers in the early 1490s suggests an increase in popularity of the court's legal apparatus, it is highly unlikely that such an upward trend in breach of faith litigation persisted, as Wunderli observes that by 1500 the number of causes heard by the commissary had reached a thirty-year low.⁷⁰³

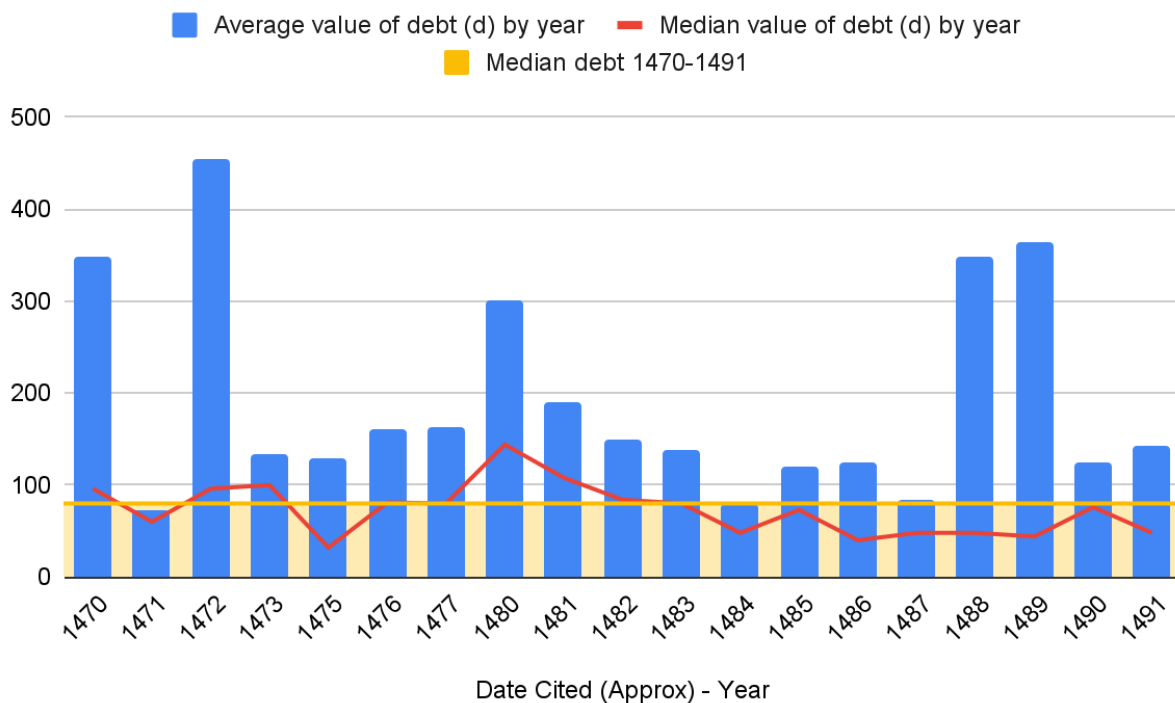


Figure 5.2: Mean and median value of debt litigated by year in London's commissary, 1470–1491.

⁷⁰¹ See above, Section 3.3.3.

⁷⁰² See Section 5.4 below.

⁷⁰³ Wunderli, *London Church Courts*, 22.

5.2.1: Value of Debt

A breakdown of the mean and median values of debt litigated in these courts by year, visible in Figure 5.2 suggests that the ways in which debt was litigated in the commissary court remained fairly consistent across the period. Overall, the mean sum of money litigated stood at 189d, with the median value equalling 80d, often presented in the court litigation as 6s 8d (half a mark, or a noble). As will be discussed in greater detail below, the amounts of debt litigated varied considerably by parish. The large spike in the mean debt litigated in years such as 1472, 1488 and 1489 serves to demonstrate the huge variety of debts litigated in these courts; unlike London's secular courts, where debt litigation was carefully separated between sums under 40s, and those over, there was no upper limit in what Londoners were willing to present to the commissary judge. Records from 1489 seem to be only partially complete, contributing to the low count of causes. In the 14 cases that were heard in this year, the average debt was 364d, more than twice the mean from 1490 (125d) and 1491 (143d).⁷⁰⁴ Furthermore, the low median debt from the records in 1489 (44d) suggests that far from the norm, large sums of contested debt in the commissary court were highly unusual. Taken in conjunction with Figure 5.1, we might suggest that rather than years such as 1489 seeing an increased value in debt litigation, a lower number of low-value causes skewed the mean debt litigated. This can be seen when we consider 1490 in comparison. With an average and median debt below the court's average and median across the period, and a significantly larger sample size, the figures of 1490 and 1491 may reflect a far fuller picture of "typical" breach of faith litigation in London.

Of these 581 cases, there are 494 cases where the gender of both lender and borrower are known, and debt owed is a quantifiable sum of money, rather than a claim for the return of physical goods or an obligation. Of these, 92% occurred between individuals, and 8% involved multiple borrowers, lenders, or a mixture of both. The range of the sums of money presented to the court, stretching from 4d to £30, means that little can be inferred from the standard deviation of the overall figures without organising the information into more manageable groups. Before such a breakdown, the mean sum of money litigated over comes to 189d. This is more than three times the mean value of debt in Wisbech (54d) and higher than any individual community studied

⁷⁰⁴ This in part concerned three very large debts that were litigated at the very beginning of 1489. In one cause, Peter Hunslow was accused of violating his faith with Robert Boleys for 40s. In the same court session, the ambiguously named John Lambe of St Michael Bassishaw broke faith with a man named John Baker to the sum of £16. While only speculative, John Baker may have been the cooper John Baker of Bassishaw whose will is dated to August 1489. If so, the financial success of Baker was unquestionable. See TNA PROB 11/8/388; Finally in February, a man named John Warde broke faith with grocer Edmund Teversham for 27s 8d.

in the previous chapter by at least 48%.⁷⁰⁵ On one hand, such a disparity underlines the sheer volume of wealth in London which quadrupled its share of England's overall lay wealth between 1334 and 1515.⁷⁰⁶ However, to take the mean debt at face value would grossly misrepresent the reality for a majority of these causes. Both the mode and the median debt in these records are equal to the sum of 80d. What this indicates is that while the distribution of the figures is broad, 77% of the 494 cases concern sums of money under 1 mark, i.e 13s 4d (160d).

Figure 5.3 offers a visual presentation of the distribution of cases that summed to 14s or less, represented in 1s intervals and valued in pence. As visible in the chart, a large percentage of causes were for sums between 2s and 4s, with noticeable spikes at 7s, 10s and 14s. Albeit difficult to see from this graph, these spikes can be attributed to the use by Londoners of simple, quick-to-process sums of money that feel between the value of shillings, such as 3s 4d, 6s 8d, and other multiples of 40d. This has been quantified in Table 5.1.

Table 5.1: Number of breach of faith causes valued in multiples of 40d.

Value of causes (d)	Number of causes
40	20
80	28
120	21
160	19

The frequency of these sums in breach of faith litigation suggests that many of these exchanges may have occurred on credit, reflecting Bolton's understanding of bullion as "simply moneys of account to make reckoning easier".⁷⁰⁷ This distribution also indicates that late-medieval Londoners had a common idea of the value of goods and services. Katherine French's study of the consumer culture in London after the Black Death showcases an increasingly standardised set of domestic habits and behaviours among both the artisan and merchant classes of London, as these groups came to acquire growing material wealth; as accumulation of material wealth

⁷⁰⁵ See Table 4.1, above.

⁷⁰⁶ R. S. Schofield, "The Geographical Distribution of Wealth in England, 1334–1649," *Economic History Review* 18.3 (1965), 508.

⁷⁰⁷ Bolton, *Money*, 52.

became more common, owners became increasingly concerned with the monetary value of goods as they could often represent a significant proportion of an individual's total wealth.⁷⁰⁸

As we have seen in the chapter on Wisbech, goods and commodities were often used in rural communities in place of specie to represent the value of debts. In London, with only 15 (2.6%) cases explicitly referencing goods, we might assume that there was an expectation that debts were repaid in coin. However, studies of wealth in late medieval England suggest that at any given moment, "Londoners routinely lived without cash", with much of their money tied up in the credit market.⁷⁰⁹ When items do appear, they seem to be one of two things: specific goods, such as particular books, dresses or, in one breach of faith mentioning probate, a contested house, or wholesale items. Regarding the former, Martha Howell's study of commerce argues that these items, "not only signalled but actually constituted political power, social bonds, and hierarchy itself".⁷¹⁰ As material display became increasingly tied to social ordering, the litigation of such items became more than mere debt recovery, but a contest for the right to possess and display these items.

⁷⁰⁸ Katherine L. French, *Household Goods and Good Households in Late Medieval London: Consumption and Domesticity after the Plague* (University of Pennsylvania Press, 2021), 47–8.

⁷⁰⁹ French, *Household Goods*, 47; Goddard, *Credit*, 79–80.

⁷¹⁰ Howell, *Commerce Before Capitalism*, 5.

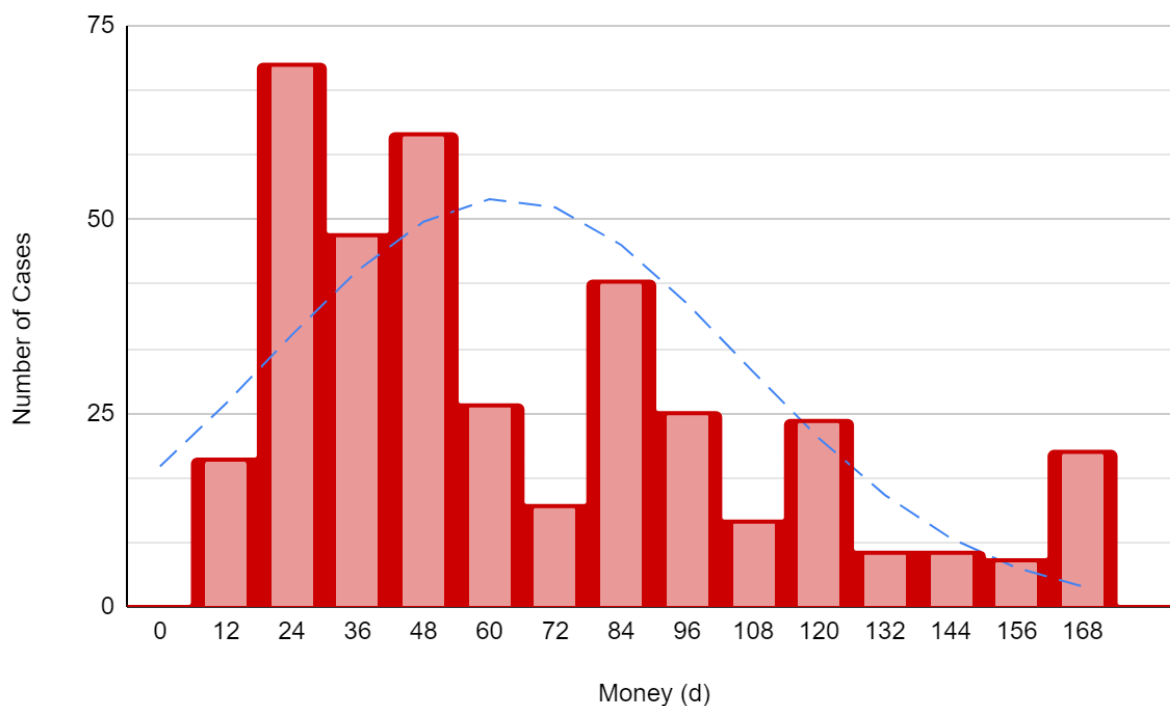


Figure 5.3: Distribution of debts in London under 13s 4d.

Regarding the trade of wholesale goods, evidence of long-term credit relations becomes more perceptible. In a cause concerning two carts of "wolen cloth", it is perhaps unsurprising to find a fuller, Richard Bray, being brought to task. Notably, however, the value of the cloth is omitted. As discussed in the previous chapter, omission of the value of the debt itself may gesture towards a relationship that was more complex than one transaction. Fullers could not work independently of other cloth workers and merchants.⁷¹¹ If Bray and his creditor Barton were enmeshed in mutual indebtedness, it stands to reason that Barton was far more concerned about the cloth itself than the value of the goods. Nonetheless, 19 days after the initial citation on 14 July 1485, Bray was excommunicated for refusing to appear.

In comparison to Wisbech, the litigation of credit in the commissary court was just one part of a broader credit market in London, which functioned to service the increasing amounts of business being conducted in the city. Such infrastructure means that, unlike Wisbech, where the dean's court had taken on a great deal of the legal load, Londoners had a variety of avenues of debt recovery. While it is likely that men and women of great wealth did use London's courts to litigate breach of faith litigation, it is hard to discern anyone from the upper echelons of London's

⁷¹¹ John Oldland, "Making and Marketing Woollen Cloth in Late-Medieval London," *The London Journal* 36.2 (2013), 89–108.

office-holders, as was the case in Dover.⁷¹² Furthermore, despite sharing a common median debt of 80d, a comparative study between the distribution of the value of debts in Dover and London suggests that litigants used London's commissary court to pursue a much greater range of debts than in Dover. Whether these causes largely constitute individual one-off transactions between acquaintances, or carefully premeditated transactions between neighbours and friends is harder to answer. Nonetheless, we might contest that, with a greater spread of values, London's court was utilised by a more heterogeneous group of users than in Dover. Who these people were, and their motivations to go to court will be explored in greater detail in the following section.

5.3: The Litigants of the Commissary Court

As demonstrated in previous chapters, details from the commissary court records often allow for a nuanced understanding of this litigation beyond their primary function as a legal record. While not as thorough as the records of Canterbury's consistory, London's commissary court returns offer a much greater range of debts than in either Canterbury or Wisbech. How these debts map onto the physical landscape offers a new perspective on the ways in which breach of faith litigation might be perceived within particular parishes and neighbourhoods in London, building on the excellent research undertaken by Charlotte Berry in the study of extramural communities in late-medieval London.⁷¹³ While subject to the same administrative process- presented to the judge by a summoner and recorded by clerks- the commissary did not cater to wealthy and poor Londoners in the same way, nor for the same ends. This section will consider the difference in culture between the litigation of large and small debts in the church court, contextualising these findings with recent scholarship on poverty that suggests an emerging gap between the centre and margins of society. Secondly, and perhaps unique to London, this section will consider the disproportionate representation of women in the commissary records, as almost one in three causes concerned a female debtor. Overall, this section will argue that amidst the great plurality of London's population, there was no "typical" litigant of the commissary court. Instead, there were particular areas of the city where the court had a greater presence among litigants, both wealthy and poor.

⁷¹² There are three possible figures from the records that may gesture towards men who held the office of alderman: William Edward, John Browne, and William Martyn. However, with names as generic as these, it is impossible to categorically confirm such identities: LMA DL/C/B/043/MS9064/1 fo. 166v, 163r, MS9064/4 5r. What is perhaps noteworthy is that this does not seem to be the case in the records of the sheriff's court, wherein offices held by litigants were noted by the clerks. See Jenks, "Picking Up the Pieces," 120–45.

⁷¹³ Berry, *Margins*, esp. 47—92.

5.3.1: The Geography of the Commissary

The visualisation of breach of faith litigation offers a new way of looking at the financial influence of London's commissary court on the city. Given the *ex officio* nature of the indictments, this visualisation cannot demonstrate the geographic relationship between borrowers and lenders in the city, as was possible in the previous chapter. Instead, it can only represent the parishes of borrowers brought before the commissary judge. As with other forms of litigation in the commissary court, this distribution was not evenly spread.⁷¹⁴ The map of London's parishes (Figure 5.4) below depicts two different variables. The heat map indicates the median debt litigated in parishes; the green circles are scaled to the amount of breach of faith cases presented to the court by any parish as a proportion of the total number of cases.⁷¹⁵ The dotted lines formed into concentric circles indicate distance from St Paul's Cathedral, which is annotated as a red cross. The purpose of placing all the information on a single map is to demonstrate the clear functional differences that the commissary provided for different demographics in London.

While not a perfect match, high levels of median debt tended to map onto relatively wealthy parts of the city. The areas of highest median debt visible on the map consisted of two distinct groupings of parishes. The first lay in the intramural section of Cripplegate ward, a relatively prosperous part of the city located near the Guildhall. These parishes, St Michael Bassishaw (60) and St Olav's Silver Street (78), carried the two highest median sums of money for debt litigation in London at just over £8 (1960d) and ten marks respectively. The second area of high debt was to be found at the eastern fringes of St Paul's Churchyard, near where the commissary sat at St Paul's Chain. These parishes, St Augustine at the Gates (13) (also called St Augustine Watling Street), Matthew Friday Street (68), and St Peter Cheap (80), all fell approximately within the ward of Farringdon Within, their median debts standing between 36s (440d) and 60s (720d). In her analysis of the ward assessments between 1441 and 1462, Berry has argued that there was a relatively high level of wealth in both Cripplegate ward and Farringdon Within.⁷¹⁶

The circles are scaled to represent the number of breach of faith causes that emerged from each individual parish, centred on the parish church. Surveying the map as a whole, it is evident that breach of faith cases were far more likely to emerge in the eastern part of the city,

⁷¹⁴ Ingram, *Carnal Knowledge*, 180.

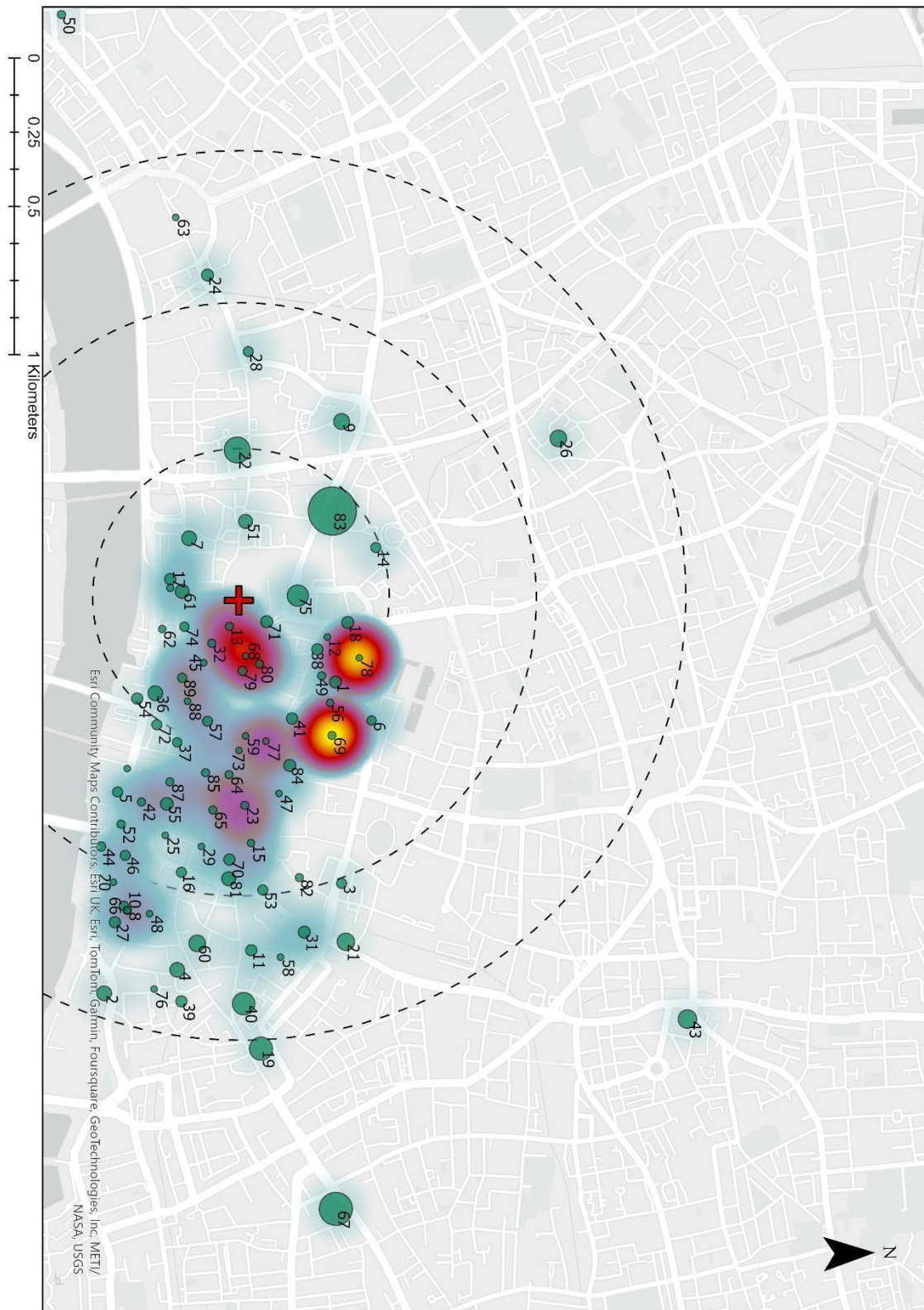
⁷¹⁵ For the sake of accuracy, I have excluded any records where ambiguity could arise. For example, if a parish was simply titled "Andrew" or "Laurence", it has been excluded. The exception to this has been the parish of St Dunstan's in the East, titled 'Dunstan's' in the table below as St Dunstan's in the West was consistently identified as such.

⁷¹⁶ Berry, *Margins*, 8-9.

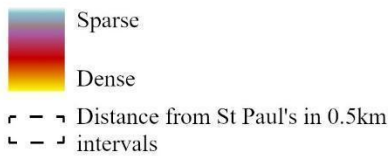
generally, with concentrations in suburban parishes, such as the villages of Clerkenwell (26), Shoreditch (43), Islington (34), and St Mary Matfelon (67), in Whitechapel. Notably, London's eastern parishes were identified by Berry as relatively poorer than the city's western parishes, with rents in areas such as Bishopsgate and Aldgate wards costing significantly less than within the city walls. For example, renting accommodation in St Katherine's Cree (4) was, on average, more than twice as much as in Botolph (21) beyond the city walls.⁷¹⁷

⁷¹⁷ Berry, *Margins*, 2.

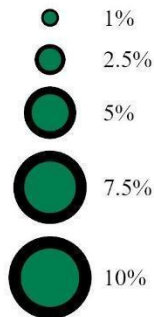
Figure 5.4: Breach of Faith in London's parishes.



Median Debt by Parish



Parish Count as percentage of total



ID PARISH

1 Alban Wood Street
2 All Saint's Barking
3 All Saint's in the Walls
4 All Saint's Staining
5 All Saint's the Less
6 Alphege
7 Andrew Baynard Castle
8 Andrew Eastcheap
9 Andrew Holborn
10 Andrew Hubbard
11 Andrew Undershaft
12 Anne
13 Augustine at the Gate
14 Bartholemew the Less
15 Benedict Fink
16 Benedict Gracechurch Street
17 Benet Paul's wharf
18 Botolph Aldersgate
19 Botolph Aldgate
20 Botolph Billingsgate
21 Botolph Bishopsgate
22 Bride's
23 Christopher
24 Clement beyond the walls
25 Clement East Cheap
26 Clerkenwell
27 Dunstan
28 Dunstan in the West
29 Edmund Lombard Street
30 Enfield
31 Ethelburg
32 Fides

ID PARISH

33 Harlington
34 Islington
35 Istylworth
36 Jacob Garlickhithe
37 John Walbrook
38 John Zachery
39 Katherine Coleman
40 Katherine Cree
41 Laurence Jewry
42 Laurence Poultney
43 Leonard Shoreditch
44 Magnus
45 Margaret Bread Street
46 Margaret Bridge Street
47 Margaret Lothbury
48 Margaret Pattens
49 Margaret Wood Street
50 Martin in the Fields
51 Martin Ludgate
52 Martin Orgar
53 Martin Outwich
54 Martin Vintry
55 Mary Abchurch
56 Mary Aldermanbury
57 Mary Aldermay
58 Mary Axe
59 Mary Colechurch
60 Mary Fenchurch
61 Mary Magdalene Fish Street
62 Mary Somerset
63 Mary Strand
64 Mary Woolchurch

ID PARISH

65 Mary Woolnoth
66 Mary-At-Hill
67 Matfelon
68 Matthew Friday Street
69 Michael Bassishaw
70 Michael Cornhill
71 Michael le Querne
72 Michael Queenhithe
73 Mildred Poultry
74 Nicholas Coldabbey
75 Nicholas Shambles
76 Olav Hart Street
77 Olav Jewry
78 Olav Silver Street
79 Peter Bread Street
80 Peter Cheap
81 Peter Cornhill
82 Peter the Poor
83 Sepulchre
84 Stephen Coleman
85 Stephen Walbrook
86 Stepney
87 Swithins
88 Thomas Apostle
89 Trinity

Table 5.2: Breakdown of intra- and extramural parishes in breach of faith causes in London's Commissary

	No. of parishes	No. of Citations	% of Total
Intramural Parishes	86	355	61.1
Extramural Parishes	23	212	36.5

Table 5.3: Most cited parishes & median amount of breach of faith cases in London's Commissary

Name	Case Count	Median (d)
St Sepulchre	45	87
Matfelon	30	86
St Bride	22	76
St Botolph Aldgate	19	48
Katherine Cree	18	60
Nicholas Shambles	17	120
Leonard Shoreditch	14	57
Botolph Bishopsgate	13	40
Mary Fenchurch	12	68
Clerkenwell	12	58
	202/581 (34.77%)	
	Extramural	Intramural

When surveyed together, it becomes apparent that despite high median debts, very few breach of faith causes were presented to the commissary from parishes such as Michael's Bassishaw. Indeed, of the 86 intramural parishes that appear in the commissary records for debt litigation, just over a quarter appear only once. Conversely, it seems clear that despite a large percentage of cases emerging from a relatively small number of parishes, the median of the debt litigated remained relatively low. Tables 5.2 and 5.3 denote this breakdown. With twenty-three extramural parishes making up 36.5% of the litigation that occurred, extramural parishes are disproportionately represented in the commissary courts. Table 5.3 offers a breakdown of the ten most cited parishes for breach of faith litigation. Of these, seven are extramural. A survey of the median sums of money litigated by these parishes clearly reflects the low levels of debt presented to the commissary; with the median sum litigated in our period standing at 6s 8d (80d), seven of the parishes in Table 5.3 fell beneath this threshold.

Yet, a simple division between intra- and extramural London fails to reflect the complicated patterns of economic wealth that occurred, as "no single parish was homogeneously poor or

wealthy.⁷¹⁸ What informed these differences in relative wealth were not just London's walls, but its roads, rivers and legal jurisdictions that carved invisible lines into the urban space. For example, the three intramural parishes recorded in Table 5.2, while within the walls, were well connected to the geographic peripheries. Only a short walk through Newgate separated St Nicholas Shambles (75) from St Sepulchre (83), and St Mary Fenchurch (60) existed on one of the key east-west routes through the city. This complicates the characterisation that extramural parishes have received by both Wunderli and Ingram in their studies of the commissary court in Pre-Reformation London. Both studies note that certain extramural parishes were disproportionately represented in the commissary court. The implication of this has been perceived previously as London's hinterlands being occupied by marginal, "crime-prone" figures, with Wunderli specifically identifying Sepulchre and St Bride (22) in the west of the city.⁷¹⁹ Regarding cases of sexual immorality, Ingram develops this list to encompass "St Botolph Aldgate, St Botolph Bishopsgate, St Mary Matfelon (Whitechapel), St Stephen Coleman Street – and, even more, in the western suburbs – St Botolph Aldersgate, St Bride and, above all, St Sepulchre".⁷²⁰

I would like to contend that it is unproductive to view these parishes as places of disrepute, particularly when it comes to debt. Evidence from the consistory court demonstrates that, as early as the mid-century, merchants were living and socialising in the suburb of St Sepulchre.⁷²¹ Berry's study of the reputation of residents in this neighbourhood paints a picture of a community that was as concerned with the policing of good behaviour as intramural parishes.⁷²² While access to debt recovery certainly played a role for creditors in the use of the commissary court, the concentration of breach of faith cases within a small number of parishes speaks to a collective relationship with the commissary court that was extremely local in nature.⁷²³

The geographic distribution of cases in London suggests evidence of a highly localised legal culture, echoing the administrative cultures presented in Burgess's case study of the parish of St Mary at Hill. This can be seen on a purely numerical level, when comparing poorer extramural parishes such as St Sepulchre with wealthier intramural parishes such as St Mary

⁷¹⁸ Berry, *Margins*, 16.

⁷¹⁹ Wunderli, *Church Courts*, 28.

⁷²⁰ Ingram, *Carnal Knowledge*, 180.

⁷²¹ In particular, see William Hawkyns c. Margaret Heed, a marriage dispute that demonstrates the desire merchant Henry Heed had for his daughter to marry to another merchant. McSheffrey, "William Hawkyns c. Margaret Heed," Consistory, June 4, 2024, <https://consistory.org/2022/02/10/hawkyns-c-heed/>.

⁷²² The most telling example in Berry's study comes from a defamation case in the Consistory court, in which a woman named Elizabeth Philpott was sued for defamation as she chided her neighbour for not challenging the antisocial behaviour of local residents. See Berry, *Margins*, 104.

⁷²³ For the smallness of Londoner's ideas of urban space, see Berry, *Margins*, 104.

Woolnoth. With 45 causes concerning litigants from St Sepulchre, the sum of debts litigated in the commissary court was the second highest in the records at 7511d, visible in Table 5.3. By contrast, only three causes in the church courts concerned defendants from the intramural parish of St Mary Woolnoth, worth £30, 20s, and 10s 6d. Located in the heart of London, there can be no doubt that debt— even petty debt— was as much of a part of life in St Mary Woolnoth as in St Sepulchre. However, it was simply not being litigated in the church courts.

Table 5.4: Most debt (in d) litigated by London parish.

Parish	SUM of Debt Litigated (d)	No. of Cases
Mary Woolnoth	7566	3
Sepulchre	7511	45
Matfelon	4502	30
Michael Bassishaw	3920	3
Stephen Coleman	3272	7
Nicholas Shambles	3040	17
Botolph Aldgate	2776	19
Katherine Coleman	2739	6
Clement Beyond the Walls	2676	7
Ethelburga	2448	7

By contrast, residents of St Sepulchre may have favoured breach of faith litigation as it functioned on two very distinct levels: on one hand it was a cost-effective means of pursuing debt. For servants, such as those discussed below, and those who were seeking to recover relatively small amounts of money, the commissary courts were cheap, and conveniently located. More significantly, the litigation of breach of faith may have been of greater significance to those who lacked wealth and strong social connections. These courts were only effective as a means of policing behaviour if one lacked access to the capital required to either pay for penance, or successfully undergo compurgation. Thus, the threat of litigation before the consistory court was perhaps not as pressing for wealthy, established residents of parishes like St Michael Bassishaw, St Olav Silver Street, or St Augustine Watling Street. This certainly would explain why, when litigation does emerge from these parishes, it is for significantly larger debts than elsewhere.

5.3.2: Large Debts and Small: a Disparity of Use.

This brings us to the question of who was using the commissary court to pursue debt and who was being pursued. As discussed above, the scale of the debt pursued rarely mapped onto the frequency of debt litigation appearances in London's parishes. This disparity between prolific use and non-use of the commissary was not simply geographic, but economic, as the breakdown of the money contested in the commissary court demonstrates. Regarding small sums of money, 58% of cases that were presented to the commissary were for under 8s.⁷²⁴ While this proportion was smaller than in both Wisbech and Canterbury, it was still a significant proportion of the overall number of causes. At the other end of the scale, very large sums of money seem to be disproportionately represented in litigation in London, particularly in comparison to Wisbech and Canterbury. Over 23% of causes in London's commissary concerned debts of more than 160d. In many cases, the sums were far greater, such as the £30 claim made by Richard West against John Walch in 1472 or a claim of £10 pounds at issue between two women, Elizabeth Camys and Johanna Hardyng.⁷²⁵ When this distribution is visualised, both ranges of debts- the relatively small and relatively large- were particularly well catered to in the commissary court. (See Figure 5.5).

Table 5.5: Percentage of causes contested over the value of 13s 4d.

	Commissary court of London	Consistory court of Canterbury	Court of the deanery of Wisbech
Percentage of causes concerning debt over 13s 4d (%)	23.3	15.4	6.8

⁷²⁴ In her study of fourteenth century Exeter, Maryanne Kowaleski had similar findings, where 58% of debts litigated in the borough court were for 5 shillings and under; Kowaleski, *Local Markets*, 203.

⁷²⁵ LMA, DL/C/B/043/MS9064/1 154v, 164v.

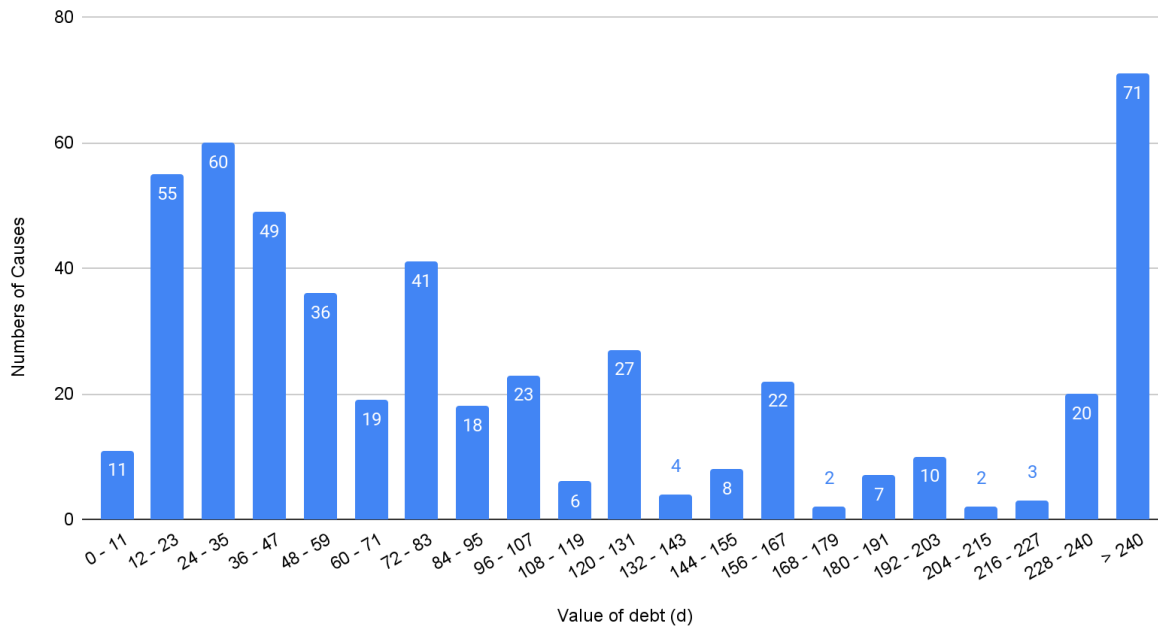


Figure 5.5: Debt in London's commissary court in pence to £1.

This disparity allows us to distinguish the practical and ideological functions of the commissary court wherein debt carried both an economic and social value. As in both Wisbech and Canterbury, the duality of breach of faith offered London's parishioners diverse ways to use the commissary to best serve their needs; in some cases, this was as simple as trying to recover a debt owed without inciting the violence of secular debt recovery.⁷²⁶ However, in other cases, the purpose of presenting debts to the commissary seems to have represented a means of causing profound social damage to the defendant. As we will see below, the commissary was seen by many as an appropriate site to pursue female debtors. This gendered aspect of debt recovery reflects a broader understanding by Londoners of the societal hierarchies that informed how and where they pursued litigation.

Concerning cases involving lower sums of money, the commissary court proved useful for those looking to recover even small amounts of debt. For example, in October 1484, it was reported that John Reynold broke faith with a brewer, Robert Danyell, for the minor sum of 22d.⁷²⁷ Despite living in the parish of Katherine Cree, the document specifies that this dispute took place in Paternoster Row, in the shadow of St Paul's Churchyard. Despite its proximity to the

⁷²⁶ Smail, *Legal Plunder*, 13–4.

⁷²⁷ LMA, DL/C/B/043/MS9064/2 f. 89r.

commissary court, it took 55 days for the parties to finally meet before the commissary judge, on 9 December, where the case seems to have been adjourned indefinitely. In contrast to many cases, perfunctory in content, the detail offered in this case is telling, filled out by those reporting these offences to the clerk. We are offered locations, occupations, and key moments of change in relations as consensus is reached.

The question of why certain details were offered in some cases and not others is hard to pinpoint, although how cases reached the ears of the court's clerks may have played a significant role; gossip was a very useful tool for many summoners, albeit confined to local areas.⁷²⁸ However, the practice of surveillance was not limited to church agents but came from every social level.⁷²⁹ It was often community leaders such as churchwardens who stood to benefit from the reinforcement of social hierarchies. In this case, the fact that Danyell and Reynold's argument occurred outside of the men's home parish may imply that an altercation may have attracted the attention of church agents in Paternoster Row. Alternatively, as seen in the Kentish church courts, details may have been a way of adding credibility to the allegations: addition of Paternoster Row as the location of the oath-making may have been included to offer the deposition credibility.

In the surviving depositions from the consistory court, late-medieval tradesmen utilised spaces and witnesses to add levels of formality to promises, as if future-proofing these oaths in anticipation that they might get broken. In one instance from 1487, wherein Christopher Manser owed John Palmer an unspecified sum of money, it was agreed that Christopher could begin to pay him back in "oats and a quarter of wheat" providing Christopher agreed to give John his promise.⁷³⁰ The bargain was initially struck over a meal with the men's peers before being restated in the public space before the Hermitage Chapel of St. Anne in Tottenham later that same day. After John told Christopher that he would not forget their bargain; "Christopher, taking him by the right hand, swore by his faith that he would faithfully fulfil that promise". Gestures played an integral role in oath-making, capable of turning "a moral duty into an enforceable obligation".⁷³¹ The omission of such details in the commissary belies the seriousness of the oaths made when extending credit, even those made in the street between vendors.

The seriousness of the oath, and the fear of retribution in the commissary can be seen in another consistory court deposition from 1492, between a priest John Manyngam and Edmund

⁷²⁸ Johnson, *Law in Common*, 188-9.

⁷²⁹ Liddy, "Surveillance", 315-7; Charlotte Berry, "'Go to hyr neyboris wher she dwelte before': reputation and mobility at the London Consistory Court in the early sixteenth century", *Medieval Londoners: Essays to mark the eightieth birthday of Caroline M. Barron*, eds. Elizabeth A. New and Christian Steer (University of London Press, 2019): 95-116.

⁷³⁰ LMA, MS DL/C/A/001/MS09065, fols. 13v-14r.

⁷³¹ Forrest, *Trustworthy Men*, 28

Caryngton. Here, it was reported by several witnesses that in a churchyard near St Katherine Cree, Edmund had promised "in the hands of Sir John" to pay Manyngam the 20s owed to him before the following Easter. Far from spontaneous, testimony from the witnesses demonstrates that this encounter was a coordinated action that overtly carried both spiritual and legal ramifications. One witness, John Palmer reported being present "at the request of" the plaintiff, while Richard Woodlake noted that the transaction took place "where the procession usually takes place", placing the ritual of oath-making into a broader parochial context. It is evident from Caryngton's own deposition that these encounters carried economic and social ramifications. He reported how, in winter 1490, he had been summoned at the instance of Manyngam to the commissary court to answer for a debt of 20s he denied owing. Rather than litigate the cause, Caryngton then went on to offer the plaintiff 10s if he dropped the suit "even though he owed him nothing". While such an admission by Caryngton may have been tacit acknowledgement that he was indebted to Manyngam, it also demonstrates how much money Caryngton was willing to spend to prevent the court appearance altogether.

Returning to Reynold's presentation in the commissary court rolls, the information that we can gather on the man suggests that Reynold may have occupied a peripheral position in his community. In 1490, he was accused of committing adultery with a woman named 'Black Antonia'.⁷³² Simultaneously, Reynold's wife, named Johanna Reynold, was presented as being a common defamer of her neighbours by a man named Jacob Paternson after she accused him of stealing her knives. Reynold, his wife, and Paternson all appeared before the judge and underwent compurgation. Following this, Robert Danyell, among other men of the parish, were brought into the litigation to act as arbitration between the parties. Despite his family's questionable *fama*, the economic ties that Reynold had with his neighbours ensured that there were people in his community willing to try and reintegrate him into their coterie. Therefore, in an exchange between neighbours for small sums of money in London, it is possible that poor behaviour that might have impacted one's *fama*, such as Reynolds adultery, could be supplemented by positive, long-standing economic relationships. Once again, it is possible to see the extent to which credit in late medieval society was inherently multifaceted, and the extension of monetary credit to someone cannot be fully severed from the faith in their good word.

This can be seen in the credit extended to other peripheral figures, such as the debt owed by the sexworker Agnes of York to a man named Thomas Water in 1490.⁷³³ York had appeared numerous times before the courts for counts of sexual misconduct, yet even for one whose social

⁷³² LMA, DL/C/B/043/MS9064/4 13v.

⁷³³ LMA, DL/C/B/043/MS9064/4 61r.

reputation may have been wholly negative, she could acquire credit from a man of potentially 'good' standing.⁷³⁴ However, it is essential to recognise that the presentation of York to the courts may also have acted as a way for Water to distance himself from York, socially. While he may have extended credit to the woman at one point, his presentment of her to the authorities might be seen as a means of rescinding such a gesture of trust from her.

High value debt inspired different sentiments, as the economic stakes were naturally higher. For sums of money that were very large— in the top 23% of cases, for example— it may be that litigation in the commissary was secondary to that already being pursued elsewhere. Given the poor survival of many of London's court records, this is difficult to confirm. However, in a case before the consistory court of the Diocese of York in 1430, Robert Lascelles presented Margaret Harman for a case of debt that had already been litigated in the sheriff's court of the city.⁷³⁵ In this instance, the sum at issue was 23s 10d, a substantial amount. Unlike in London's commissary, York's consistory court would have been an expensive alternative to the local sheriff's court, reflecting the social benefit in having the cause heard in the ecclesiastical courts.⁷³⁶ A similar reason may have motivated many creditors who reported to London's commissary. Unlike the large debts pursued in Kent's church courts, which made use of the full extent of the consistory's powers, many of the causes concerning high-value debts in London's commissary remain bereft of detail.⁷³⁷ Why such causes were enrolled in the first place bears consideration. On one hand, it may be possible that the purpose of recording larger debts in the church courts was for the sake of legal memory, a subtle threat that a more serious punishment was in store for persistent misbehaviour.⁷³⁸ Yet, there seems to be little recourse taken by the commissary against repeat offenders. If we consider the high value debts that appeared from the low-median parishes, it is possible to gain more clarity.

⁷³⁴ A citizen and fletcher who goes by the name of Thomas Water appears in the conveyance of deeds from 1499, nine years after Agnes' indictment: the geographic proximity between Agnes' parish, St Botolph's Bishopsgate and the Fletcher's Hall is noteworthy, perhaps indicative that Agnes worked relatively close to home and came into contact with a variety of people in her business. This is, of course, speculation.

⁷³⁵ P. J. P. Goldberg, *Women in England c. 1275–1525* (Manchester University Press, 1996), 239.

⁷³⁶ Hannah Robb's work on credit in York's consistory court is foundational. See Robb, "Reputation in the Fifteenth Century Credit Market," 11–9.

⁷³⁷ This was by no means unusual: 73% of cases trailed off before a perceptible conclusion could be reached. In terms of measuring the time that cases last, the data is extremely patchy. 350 of 581 cases offer little to no evidence of time that elapsed until the thread is lost (presumably settled out of court) or the case dismissed. Just shy of 28% of cases, however, track the progress of cases. Of these 162 cases, the mean amount of time taken from the accused's initial appearance (as opposed to initial citation) to some sort of end, works out at 15.5 days, or a little over two weeks. In reality, 64% of all cases took under seven days to complete from appearance, jumping to 77.7% after 14 days and 82.1% after 21 days.

⁷³⁸ Martin Ingram, "Regulating sex in pre-Reformation London," in *Authority and Consent in Tudor England: Essays Presented to C. S. L. Davies*, eds. G. W. Bernard and S. J. Gunn (Ashgate, 2002), 89.

It may be possible to see the subtle and indirect power that consensus among parishioners had in the decision to use these church courts to record larger debts. For example, parishioners of St Botolph were some of the most frequent litigants to appear before the commissary court for allegations of breach of faith litigation. In St Botolph Bishopsgate, where the median debt was a mere 40d, a presentment against Richard Wilkinson for £3 3s 4d was extremely unusual.⁷³⁹ However, rare for the commissary, Wilkinson appeared, confessed his guilt, and promised to pay the same debt to John Hewet before Easter. A comparative study of St Botolph Bishopsgate's breach of faith litigation with the nine other parishes that appear in Table 5.2 may allow us a firmer grasp in understanding why.

The box and whisker diagram in Fig. 5.6 visualises the spread of the values of debt that appeared in breach of faith litigation emerging from these parishes. These diagrams are useful for comparing distributions of data simultaneously. The whiskers are representative of the lowest and highest sums of money, while the box itself denotes the second and third quartiles. The line in the box represents the median, and the cross indicates the mean. As previously discussed, the elevated cross in many parishes, coupled with the low median, represent the disparity of the range of debts presented to the commissary, particularly noticeable in the parish of Clerkenwell. Home of many of London's butchers, the intramural parish of St Nicholas Shambles is the only parish in this category whose distribution deviates hugely from the others with a significantly larger box. This suggests a more consistent distribution of debt than the other parishes, further indicated by a much higher median.

For the matter at hand, the dots, representative of outliers and heavily influential to the positioning of the crosses on the chart, are our primary concern. As is visible in the five parishes that used the commissary court the most (St Sepulchre, St Mary Matfelon, St Bride, St Botolph Aldgate, and St Katherine Cree), there are several high-value outliers in these communities, like Hewet and Wilkinson's case in St Botolph Bishopsgate, but most notably in St Sepulchre and St Mary Matfelon. The trend may indicate that for Hewet (whose debt was more than nine times larger than the median debt of 6s 8d), there was a value in pursuing his debt in a court that was considered by his neighbours as a legitimate legal venue. Charlotte Berry's work on London's consistory court suggests that there were several parishes that under-utilised the consistory in the late-medieval period. In the parishes of St Botolph Aldgate, St Botolph Bishopsgate and St Botolph Aldersgate, Berry has found that only seventeen consistory suits were launched by inhabitants of these parishes in the sixty-year period between 1467 and 1533.⁷⁴⁰ While Berry has

⁷³⁹ DL/C/B/043/MS9064/4, 237v.

⁷⁴⁰ Berry, *Margins*, 186.

suggested that this may have to do with the general poverty of residents, pairing her findings with the activity of these parishes in the commissary suggests that there was, in certain parishes, a broad preference for the commissary court over the consistory.

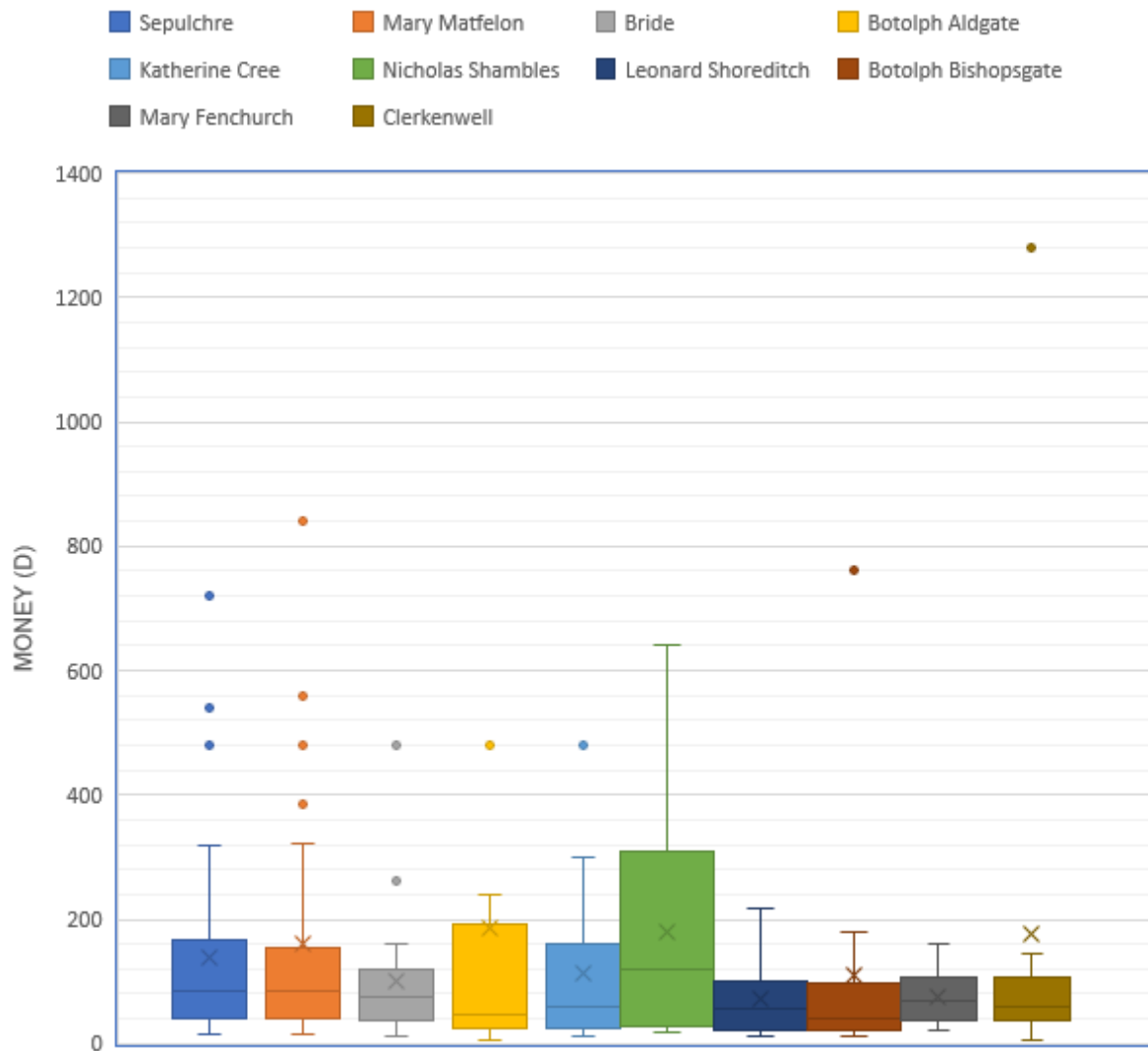


Figure 5.6: Box and Whisker Plot of the 10 most cited parishes.

There may have been many reasons for this, but we cannot assume that the commissary and consistory sought to fulfil the same role in society, particularly when it came to litigating the exchange of goods and services through breach of faith. The consistory court was costly, a factor that must have impacted how people used the court; in many cases, the cost of litigation may have been more than the debt incurred. This was both a calculated risk as only the loser paid the court costs, and a testament to the usefulness of the consistory in reinstating lost *fama*. This is

clear in a defamation case presented to London's consistory in 1494 by Cecily Clerk, in which Clerk's neighbour William Huntingfeld was accused of defaming Clerk to her community. Allegedly calling her a "strong hor of her tong", he went onto say that he would prove this "and it cost me C. li.". ⁷⁴¹ To "prove" someone as a maligned figure was a stock phrase used in defamation cases, but it was rare to see enumerated in real terms the social value of reputation. ⁷⁴² Money could have a tangible outcome on litigation, a fact observed by Margery Kempe as she opined that "rich and powerful men... had plenty of money, which in every necessity will lead to success." ⁷⁴³ Huntingfeld's threat to use money to impugn Clerk may not have been an empty one, financially draining her and her husband, William's, coffers in the process.

In contrast, the cost of litigation before the commissary judge was markedly cheaper and significantly quicker than the higher church court. With this in mind, the absence of consistory courts cases emerging from certain London parishes is suggestive. In parishes that used the commissary courts prolifically, such as the parishes of St Mary Matfelon and St Sepulchre, the legitimation of the commissary's power wasn't necessarily dictated by wealthy residents of a parish but by the mass consensus of its poorer inhabitants, drawn from its consistent use. This offers a complicating image of power as presented by the trustworthiness of London's oligarchy, suggested by Forrest. ⁷⁴⁴ By bringing a very large debt to the commissary court, Hewet was helping to co-produce the judicial power that the commissary carried in the parishes that most utilised the legal venue. Consensus, like custom, may have been central to the efficacy of breach of faith litigation in London's parishes.

5.3.3: Women as Debtors

A significant minority of the debt that appears before the commissary court involved female litigants. Women in the law courts have been studied through various lenses, with particular focus given to the moral crimes prosecuted in the church courts. In almost all cases, the socioeconomic status of female debt litigants is extremely difficult to parse from the court records alone. Yet judging by the variety of debt amounts the commissary court catered to a variety of socio-economic groups, all of which contained a number of female creditors and debtors. As discussed in previous chapters, women's appearance in court was often hampered by the conservative nature of rural communities, as in Wisbech, and the geographic inaccessibility of the courts to

⁷⁴¹ LMA MS DL/C/A/001/MS09065 182rv.

⁷⁴² McSheffrey, *Marriage*, 119.

⁷⁴³ McSheffrey, *Marriage*, 119.

⁷⁴⁴ Forrest, *Trustworthy Men*, 163- 200.

many, such as in Canterbury archdiocese. As we shall see, this was not the case in London. Coupled with a comparative analysis of London's sheriff court returns, a clearer image of non-elite female debtors in London can be obtained.

Subdivided by gender, and between lenders and borrowers, Tables 5.5 and 5.6 offer immediate visual information on the average amount of money litigated over by any group. While women were a minority of both borrowers (26.7%) and lenders (9.2%), women appeared in approximately 30% of all cases litigated between individuals, this percentage rising to 34% of overall cases. Notably, female borrowers appear across the entire range of debts, albeit in much lower numbers than men. Furthermore, while women were a small minority of lenders, they did sometimes act as creditors for large sums of money. This section will seek to establish reasons as to why women were disproportionately represented in the commissary, relative both to other London courts and other provincial church courts. Through an exploration of how gender intersects with status and geography, this section will assert that many of the commissary court's debt litigants inhabited peripheral communities or were of a low social status. In waging law in the commissary court, creditors were seeking a speedy, sanctioned resolution. Nonetheless, beyond the pragmatic aspects of this court, the institution of the church court also facilitated an exercise of social authority, hardening the vertical and horizontal hierarchies that existed within parishes.⁷⁴⁵

⁷⁴⁵ Barbara Hanawalt, "Introduction," *Living Dangerously: On the Margins in Medieval and Early Modern Europe*, eds. B. A. Hanawalt and A. A. Grotans (Notre Dame, 2005), 1–7.

Table 5.6: Count of Borrowers by Gender (expressed in 1s increments).

Money (d)	F	F + F	M	M + F	M + M	Grand Total
0 - 11	4		7			11
12 - 23	18		33	2		53
24 - 35	13		44	1	1	59
36 - 47	11		36	1		48
48 - 59	9		24	3		36
60 - 71	7		12			19
72 - 83	7		33	1		41
84 - 95	2		15	1		18
96 - 107	5	1	15	2		23
108 - 119	1		4	1		6
120 - 131	10		15	2		27
132 - 143	1		2	1		4
144 - 155	1		7			8
156 - 167	4		18			22
168 - 179			2			2
180 - 191	1		5	1		7
192 - 203	2		8			10
204 - 215			2			2
216 - 227			3			3
228 - 240	3		15	1		19
> 240	9	1	55	4		69
Grand Total	108	2	355	21	1	487

Table 5.7: Count of Lenders by Gender (expressed in 1s increments).

Money (d)	F	M	M + F	M + M	Grand Total
0 - 11	2	9			11
12 - 23	8	42		3	53
24 - 35	10	48			58
36 - 47	6	39	1	2	48
48 - 59	3	31	1		35
60 - 71	2	17			19
72 - 83	1	40			41
84 - 95	2	14		2	18
96 - 107	1	19		2	22
108 - 119		6			6
120 - 131	3	21	2	1	27
132 - 143	1	2		1	4
144 - 155	1	7			8
156 - 167	2	20			22
168 - 179		2			2
180 - 191	1	6			7
192 - 203		10			10
204 - 215		2			2
216 - 227	1	2			3
228 - 240		20			20
> 240	5	58	1		64
Grand Total	49	415	5	11	480

As explored by many historians, there was a noticeable downward trend of women appearing in court for debt litigation in the fifteenth century.⁷⁴⁶ A comparative analysis of debt litigation in other English courts, while far from perfect, suggests that 34% female participation was higher than average for London, and significantly greater than other urban settlements. For example, for debt concerning large sums of money used in international trade, Richard Goddard's study of women in the English staple courts posits that approximately 3% of cases included women as active participants throughout the time period.⁷⁴⁷ Below these large-scale debts, for sums over 40s Matthew Stevens observes that women made up 15% of debt litigants in the court of Common Pleas between 1420 and 1429.⁷⁴⁸ The diminishing of female visibility in the courts through the fifteenth century is similarly reflected in the sheriff's court as women became

⁷⁴⁶ See Introduction, Section 1.2.2.

⁷⁴⁷ Goddard, "Female Merchants", 38.

⁷⁴⁸ Stevens, "London Women," 84.

increasingly reliant on their husbands to present their disputes to court. Between Michaelmas 1461 and Michaelmas 1462, 18% of cases involved women, down from 29% in 1320. Beyond London and its hinterlands, where women were less integrated into the economic life of their communities, Teresa Phipps' work on three separate town courts suggest that by the last decade of the fifteenth century, the proportion of female debtors hovered between 6% and 12% of litigants.⁷⁴⁹

Table 5.8: Table 5.7: Percentage (%) of women involved in debt litigation in 15th century English courts.

English Staple Courts 1350- 1520.	Court of Common Pleas c. 1420-9.	London's Court, 1461-2.	Sheriff's English Courts, c. 1492.	Town
3	16	18	6-12	

One reason for women's better representation in the commissary court may have to do with a relatively higher degree of autonomy in London than both Wisbech and Canterbury. As discussed previously, it seems that for rural communities, a certain adherence to the practice of coverture limited women's access to breach of faith litigation, regardless of the reality that breach of faith litigation was not subject to common law. However, for many women in London, such as the two female servants from the opening case in this chapter, their work was not necessarily informal support of a household, but well integrated into the broader economic landscape.

Furthermore, the high visibility of women in these courts was almost certainly aided by the frequency with which women appeared in these court records for other sins. Sandy Bardsley's study of scolding suggests that 'sins of the tongue' were often perceived as feminine in late medieval society.⁷⁵⁰ Women also appeared as one half of all sexual crimes. In the process of recording women, the commissary clerks were likely well-acquainted with representing them as independent litigants. This results in a very different form of identifying women: unlike the common law courts, where women were often identified by their marital status- indeed, their marital status as widow or singlewoman might be the sole reason for their appearance in the records- most women in London's commissary records have no identifying factors at all. Fewer than 10 causes

⁷⁴⁹ Teresa Phipps, *Medieval women and urban justice: commerce, crime and community in England, 1300-1500* (2020).

⁷⁵⁰ Sandy Bardsley, "Sin, Speech, and Scolding in Late Medieval England", in *Fama: The Politics of Talk and Reputation in Medieval Europe*, eds. Thelma Fenster and Daniel Lord Smail (Cornell University Press, 2003), 145–64.

identify women simply as "the wife of" a male litigant, in contrast to Wisbech where women were almost entirely identified by their relationships with male parishioners.⁷⁵¹

When these indicators do appear in London's records, such as when the wife of Nicholas Radyssh was cited in 1487, it is possible that their inclusion may have been as simple as not knowing the woman's name.⁷⁵² Indeed, in many such cases, names were added after the case was initially reported, inserted into the text as superscript. Furthermore, in the exceptional instances where wives and husbands appeared on behalf of their spouses, it was explicitly documented, suggesting that, as in early modern Scotland, "the annotation of women as wives was unnecessary."⁷⁵³ Therefore, what we might conclude is that for the 34% of debt cases that involved women as litigants, it would be wrong to conclude that these women were unattached to men, whether as sole traders, or heads of their own households. Yet while this makes it difficult to compare this data to other courts, it is highly revealing of the commissary's function in facilitating female litigation. Despite a lack of personal details, to some degree, the commissary may be read as more transparent than other court systems in demonstrating the extent to which women were involved in the economy in an informal way.

However, it is apparent that the commissary courts tended to appeal to women litigating particularly small debts. This might be clarified by a comparative analysis of women in London's sheriff courts. Perhaps the most comparable to the commissary court when it came to small debt claims, London's sheriff courts were by far the most active courts in London in the fifteenth century, fielding an estimated 4000 cases per year.⁷⁵⁴ While documents from these courts do not survive for our period, Susanne Jenks has carefully reconstructed a selection of the returns from 1461-62 using an assemblage of records from the Chancery and the King's Bench *corpus cum causa* writs.⁷⁵⁵ Like the commissary, these courts did not strictly follow legal terms, but operated as needed throughout the year.⁷⁵⁶ Jenks' assemblage consists of 353 cases, approximately 8-10% of cases overall. Of the 64 cases involving women in the sheriff's court, 40 concerned debt.⁷⁵⁷ These sums ranged from as little as 3s 4d to a staggering £1000 pounds lent to gentlewoman Joan Fawley by a yeoman named Robert.⁷⁵⁸ Given the enrolment of such huge debts, the median

⁷⁵¹ See 3.3.1, above.

⁷⁵² LMA, DL/C/B/043/MS9064/2 175v.

⁷⁵³ Catheryn Spence, *Women, Credit, and Debt in Early Modern Scotland* (Manchester University Press, 2016), 42.

⁷⁵⁴ Stevens, "Golden Age," 72.

⁷⁵⁵ Jenks, "Picking up the Pieces," 99–145.

⁷⁵⁶ Tucker, *Law Courts*, 138.

⁷⁵⁷ Stevens, "Golden Age," 72.

⁷⁵⁸ Jenks, "Picking Up the Pieces," 128.

sum gives a far more accurate representation of the debts normally at issue than the average, which was an eye-watering £64; yet even the median amount of 434d (just over 36s) remains higher than 90% of cases brought before the commissary court. While the sample provided by Jenks might be skewed towards somewhat anomalous survivals, the disparity between the sums in the sheriff's court and the commissary is large enough to suggest a noticeable difference in the nature of the debt that was being enrolled. Majorie McIntosh's study of debt recovery in the what she describes as the English 'courts of equity' between 1470 and 1499 echoes similar findings to Jenks. Here, McIntosh found that the average sum from 89 cases stood at over 140s, with a median of 80s, leading her to argue that women's credit dealings in the King's equity courts were at a "low or intermediate level".⁷⁵⁹ While the sheriff's court returns may indeed "provide as representative a picture of the late medieval London sheriffs' courts as we are ever likely to get", the most noticeable aspect of these documents is the diverse socio-economic range represented.⁷⁶⁰ Alongside citizens and mercers, were carters, cooks and labourers, reflective of a similar diversity in the litigants of the commissary court.

Nonetheless, analysis of the sums under consideration, particularly involving women, suggests that debt litigation in the sheriff's court and the commissary attracted different plaintiffs. This was not necessarily because of the rule of law, as both courts offered relatively cheap justice. Rather, it suggests that the commissary, because of its culture or accessibility, carried more immediate influence in some areas of London than others. This is immediately apparent by the status of the women involved in common law debts, as many of them were identified as widows, gentlewomen, or singlewomen. While nomenclature can be deceptive, especially concerning widows who could face intense precarity following the death of their husbands, the impression offered by the selection of women in these common law cases suggests access to large lines of credit and independent wealth. By contrast, there was only one reference to a widow in the commissary court records.⁷⁶¹ In several instances, the same women were presented for multiple cases of debt. Between 1461 and 1462, a singlewoman named Joan Power was presented to the

⁷⁵⁹ For a discussion on her definition of the courts of Chancery, Requests and Exchequer as 'courts of equity', see M K. McIntosh, *Working Women in English Society, 1300-1620* (Cambridge University Press, 2005), 20. For the direct quotation see McIntosh, *Working Women*, 113. While she is not explicit in defining which court she is referring to, the date range of 1470—1499 would suggest that most of the causes came from Chancery. England's Court of Requests was not founded until 1483 and the Exchequer's function as an equity court began in the mid-sixteenth century. See Laura Flannigan, *Royal Justice and the Making of the Tudor Commonwealth, 1485-1547* (Cambridge University Press, 2023), 1—20; W. H. Bryson, *The Equity Side of the Exchequer: Its Jurisdiction Administration, Procedures and Records* (Cambridge University Press, 1975), 7—8.

⁷⁶⁰ Jenks, "Picking Up the Pieces", 104.

⁷⁶¹ LMA, DL/C/B/043/MS9064/3 249r.

sheriff of London by four different men, to whom she owed almost eight pounds in outstanding debt.

By contrast, the median value of breach of faith litigation involving female debtors was 5s, one eighth of the median debt in the sheriff's court. Of the 93 cases that involved an individual woman borrowing from a man, one in five were for sums of money under 2s. This was even lower for debt litigation conducted between women. For a woman like Power, these were relatively small sums, yet for a person living in the geographic peripheries of the city, this could have been more than her annual rent. To return to a previous example, in the extramural parish of St Botolph's Bishopsgate in 1490, Agnes of York broke faith with a man named Tom Water for 4s 6d. The accommodation provided to poor individuals in this parish, leased by the hospital of St Mary's, could cost as little as 4s annually.⁷⁶² With an additional twelve pence in court fees added to York's bill for appearance in the commissary, this was no small debt. Indeed, by August 1491, she had relocated to the parish of St Sepulchre and, according to the commissary clerk, was too poor to pay her court fees during a defamation case levied against her.⁷⁶³

For the 57 cases involving multiple borrowers and lenders, women appear in a far higher concentration (58%) than as sole litigants, summarised in the table below. Of the twenty-five cases that involved multiple borrowers, twenty-four involved women. All but one involved a creditor lending to a male/female partnership. Though these cases consist of a small minority of overall cases, general trends allow insight for the effect that gender might have had on debt litigation. Firstly, apart from sums between 4s and 6s, women in partnerships with men had access to a greater mean amount of credit than individual women. Of the fourteen cases that involved a male lender and a female/male partnership, five of these cases concerned sums of money over £1, suggesting that women may have relied on their husbands or masters to secure larger lines of credit.

⁷⁶² Berry, *Margins*, 26.

⁷⁶³ LMA, DL/C/B/043/MS9064/4 fo. 205r.

Table 5.9: Number of causes in the commissary court involving women as percentage (%) of the total.

	Causes concerning a single lender and borrower.	Multiple Borrowers	Multiple Lenders	Multi Borrowers + Lenders
Total	492	25	30	2
% Involving women	30.7	96.0	23.3	100.0

Husbands were also useful in negotiations. For example, in 1476, John and Margaret Fygge broke faith with Margaret Alstoll.⁷⁶⁴ Despite being joint litigants on paper, it seems likely that this was a failed debt of 10s 8d between the two women as Fygge was initially the only party cited to appear before the commissary. St Mary Matfelon was an extramural parish in the east of the city. With a total of 30 breach of faith cases, it was the second most active parish for debt litigation in the commissary court between 1470 and 1490. This would have been a semi-rural community, where cheaper rents offered room for larger properties. The 10s that was being contested was almost certainly connected to the household industry the Fygges pursued, and until they failed to uphold their oath, it seems that the two Margarets were perceived as more than capable to handle such business on their own. When she failed to appear on 30 October, the case was adjourned until the 7 November. In the following weeks it took for the case to conclude, the women receded from view as the actors of the case become exclusively men; it was recorded that John met Alstoll's husband, William, where a compromise was reached with the rector of their parish, St Mary Matfelon. Evidently, this was a significant case for those involved as an official conclusion was recorded in the commissary book. This was almost certainly done as an act of registration, Fygge being dismissed as Alstoll chose not to continue with the prosecution. A similar occurrence occurred in St Leonard in Shoreditch in 1490 when a man named William Wright, on behalf of himself and his wife, swore a new oath "on the hand" of the court official John Bellaw following a breach of faith with a fisherman for 7s.⁷⁶⁵

In the broader context of women in the lower church courts, the high proportion of female litigants in London's court suggests the commercialised nature of London by the late fifteenth century. While women were likely a key part of credit networks of both rural and urban societies in the period, the volume of credit and the scale of the city may have necessitated court clerks to

⁷⁶⁴ LMA, DL/C/B/043/MS9064/3 244r.

⁷⁶⁵ DL/C/B/043/MS9064/4 152r.

forgo the customs of coverture than influenced reporting in other church courts. Furthermore, the decision to identify women by their names, largely independently of their husbands, may also gesture covertly towards the much broader credit networks that people engaged with in the capital.

Considered holistically, the litigants of breach of faith litigation in London's commissary courts represent a complex cross-section of London's society, dominated by the everyday credit relationships that reflected the commercialised nature of London at the end of the fifteenth century. As discussed, London's commissary court was popular within particular geographic pockets of the city, especially extramural parishes such as St Sepuchre, St Mary Matfelon and St Bride. However, unlike previous characterisations of such parishes as home to liars and miscreants, this section has argued that the commissary court was seen by residents of these communities as an advantageous venue in which to litigate matters of credit.⁷⁶⁶ Practically speaking, the court was cheap and sat regularly, offering even the poorest members of society access to the courts. This universal access was significant; in the parishes that used these courts most frequently, a culture of use emerged among wealthy residents that legitimated the court's authority as a place where both credit and creditworthiness might be contested. Because of this, it is possible to see a much larger socioeconomic range of litigants in London's commissary court than in the previous case studies. This is perhaps most clearly demonstrated in the large proportion of litigants in the court that were female. However, as the following section will discuss, access to the courts did not equate to access to authority.

5.4: The Function of the Commissary Court in Reinforcing Hierarchy

In the examples explored above, a common thread runs throughout many of London's commissary cases: the imbalance of power. The question of agency is one that often occurs when discussing women in the courts of law.⁷⁶⁷ On one hand, the very appearance of women in the court might be considered a sign of agency. The publicness of the lives of poor women meant that their existence was, to some degree, political: early modern historians have long recognised this without conflating political activities with access to institutional power.⁷⁶⁸ However, for the 108

⁷⁶⁶ See p. 180, above.

⁷⁶⁷ For an overview of female agency and premodern law, see Bronach Kane and Fiona Williamson, "Introduction," *Women, Agency and the Law, 1300–1700*, eds. Bronach Kane and Fiona Williamson (Routledge, 2013), 1–16; for a critique of the use of agency as a term, see Martha Howell, "The Problem of Women's Agency in Late Medieval and Early Modern Europe," *Women and Gender in the Early Modern Low Countries, 1500–1750*, eds. Sarah Joan Moran and Amanda C. Pipkin (Brill, 2019), 21–31.

⁷⁶⁸ Laura Gowing, "The Freedom of the Streets': Women and Social Space, 1560-1640," *Londinopolis: A Social and Cultural History of Early Modern London, 1500-1750* (Manchester University Press, 2000), 133.

women presented to the commissary for debt as individuals, the choice of venue was not theirs; this privilege lay in the hands of the creditor. The commissary court valued male voices, seen in the masculine experience of arbitration.⁷⁶⁹ It might therefore be argued that courts, particularly church courts, were *for* men. This did not include all men, arguably not even *most* men, as Forrest suggests when discussing the commodification of trustworthiness in the late-medieval parish.⁷⁷⁰ Rather, the words and actions of a select hierarchy of men carried more weight than their social inferiors. The remark of feminist philosopher Sara Ahmed is instructive here: “you learn how a structure is built when you do not fit that structure... Fitting becomes work for those who do not fit”.⁷⁷¹ The further the litigant from the profile of the wealthy, trustworthy man described by Ian Forrest, the less they ‘fitted’. This came to be of paramount importance in late-medieval London.

These imbalanced relationships were a useful aspect of the court process, particularly in the utilisation of the commissary as a venue to damage the reputation of litigants: as the lines between economic and moral relationships blurred, so too did the allegations brought against many of the court's defendants. This comes to the fore in a particular debt case between Fr John Harpham and a woman named Johanna Grene from the parish of St Christopher. The debt concerned stood at a substantial 40s. On the same page of the records, the same Johanna Grene of St Christopher's parish appears once more, accused of committing adultery with two men, William Marchall and John Hanson. Of course, this could be coincidental, a by-product of an investigation process that started with breach of faith and unearthed Grene's sordid affairs. But there are reasons to doubt this. Tom Johnson's article on the preconstruction of witness testimony puts forth the argument that testimonies (or in this case, allegations) were carefully crafted narratives, made specifically for their legal contexts, and are therefore consciously “legalistic”.⁷⁷² The commissary court was a perfect venue in which to utilise these compounded allegations, wherein the payment of debt, usually for purely secular goods or services, becomes moralised. The role of *fama* in the presentation of an individual is much clearer in the consistory court, where witness testimonies survive, such as the 23 depositions concerning the marriage case of *Elizabeth Brown and Marion Lauson c. Laurence Gilis*, where witnesses' sordid histories were dragged into the open for the perusal of the consistory judge.⁷⁷³ The trustworthiness of individual

Charmian Mansell, “Beyond the Home: Space and Agency in the Experiences of Female Service in Early Modern England,” *Gender and History* (2020), 24–49.

⁷⁶⁹ With a few crucial exceptions, male arbitration in late medieval church courts was ubiquitous, making male voices the standard. See 3.4.1, above.

⁷⁷⁰ Forrest, *Trustworthy Men*, 242.

⁷⁷¹ Sara Ahmed, *Complaint!* (Duke University Press, 2021), 140.

⁷⁷² Johnson, “Preconstruction,” 127–147.

⁷⁷³ For a survey of the cases, please see McSheffrey, “Liberties of London,” 216-236.

testimony hinged on the witness's behaviour outside of the court. And so, how better to undermine your opposition's word on the terms of an oath made than by accentuating their immorality?

The consequences of such an allegation may have been keenly felt. If Grene was able to receive a line of credit for 40s under her own name, it seems probable that she was well established as a borrower, possibly a widow. To encourage her appearance, Harpham elected to challenge Grene's sexual reputation, a ramification that would have been felt not only by Grene herself, but by members of her household over whom she was responsible. Such an allegation may well have altered how she was viewed in the community. Whether this was a deliberate act of sexual defamation or not, similar actions can be seen occurring at other social levels. In 1470, a woman named Katherine White of St Katherine Cree, was simultaneously accused of breaking faith with the rector of her parish and of being a *meretrix*. The tying together of these allegations demonstrates the closeness and ease with which a woman's fiscal credit could be tied to her social and sexual reputation, particularly as means of exerting economic pressure. As clergymen, these men possessed the social authority required to exploit their status as trustworthy men to undermine Grene's own reputation. Therefore, while we might argue that women had, in theory, as much of an equal access to low levels of credit as their male neighbours, their gender could be weaponized by men for economic gain, an action that the venue of the commissary court supported in its very structure.

Hierarchies that were dictated by social and economic power- such as the inequality experienced by women- could be challenged and reinforced in the commissary court system. For Johanna Grene, her socially weak standing as a woman (and, perhaps her marital status) could be counteracted by a strong social network fostered by positive economic relations. Indeed, it was recorded that Harpham voiced a complaint against Grene using compurgation to clear herself of the allegations of adultery, as it seems that she had little trouble finding people who would stand on her behalf. But as a well-established debtor, she was in the minority.

The small number of servants who are visible in the court returns, both male and female, represent the reality that some debtors presented to the commissary court were both economically and socially limited in their power. Many, though not all, were young, "life-cycle" servants typically remaining in their positions until their mid-twenties.⁷⁷⁴ At the bottom of their household's hierarchy, and carrying relatively little means of bolstering their *fama*, servants in the church courts have typically been scrutinized for sexual sin, especially female servants who became victims of their master's sexual advances.⁷⁷⁵ Nonetheless most, if not all, servants would

⁷⁷⁴ Goldberg, *Women, Work and Life Cycle*, 170.

⁷⁷⁵ Ingram, *Carnal Knowledge*, 95.

have been well-acquainted with late-medieval credit relationships, as both male and female servants might be sent out shopping for the household. Female servants of traders learnt the practices of retailing, and the intricate commercial rituals that such endeavours entailed.⁷⁷⁶ Yet as wages were typically allocated only once per year, servants would have occupied a very precarious financial position.⁷⁷⁷ For example, in 1471 in Clerkenwell, Alice Schelton was presented to the commissary for breaking faith with her servant, a “kercher lavender”, for the sum of 14d.⁷⁷⁸ This debt of 14d may have been an inconsequential sum for someone more established. However, for Schelton’s servant, this may have been representative of her wages, or personal items. As a servant in a household, there would have been an immense amount of pressure placed on this woman to comply with her mistress’s wishes. More broadly, this speaks to the coerciveness that existed in debt relationships.

A woman bringing her employer to task in the commissary was not necessarily unusual. There are several examples of employers and employees finding themselves in disputes; a week before Schelton was first summoned, Peter Lynton and his servant, John Clerke, appeared before the commissary over a contested debt of 13s for a piece of cloth. The record reports that Peter’s wife appeared to plead for her husband before the case becomes illegible due to water damage. It feels compelling to view the commissary court as a location in which anyone, down to the lowliest laundress, might air their grievances and recoup lost finances. Yet the reality, inevitably, is more complex than this. How this plight, with its low stakes, got reported to a commissary court clerk is impossible to know absolutely. It is possible that as a laundress, Schelton’s servant may have been vocally expressing her displeasure as she washed headdresses in Clerkenwell’s Fleet River, overheard by a summoner or concerned neighbour. In this space, among fellow laundresses, this woman occupied a marginal position, both legally and culturally, as suggested by Carole Rawcliffe’s and Sharon Farmer’s studies of washerwomen.⁷⁷⁹ Evidence from a 1487 marriage suit in London’s consistory suggests that, in the eyes of some men, laundering was beneath certain women, particularly married women.⁷⁸⁰ Yet the peripheral location of Schelton’s household in Clerkenwell and the namelessness of her servant may imply the laundress never appeared before the commissary or appealed for justice at all.

⁷⁷⁶ McIntosh, *Working Women*, 51-2.

⁷⁷⁷ McIntosh, *Working Women*, 50.

⁷⁷⁸ LMA, DL/C/B/043/MS9064/1 68v: In this instance, I have taken ‘kercher lavender’ to mean a ‘kerchief laundress’, i.e. a person who washes headscarves.

⁷⁷⁹ Carole Rawcliffe, “A Marginal Occupation? The Medieval Laundress and Her Work.” *Gender & History* 21.1 (2009): 147–69; Sharon Farmer, *Surviving Poverty in Medieval Paris: Gender, Ideology, and the Daily Lives of the Poor* (Cornell University Press, 2002), 136–9; Kane, *Popular Memory*, 93.

⁷⁸⁰ McSheffrey, *Marriage*, 119.

The purpose of presenting Schelton to the commissary, then, may tell us more about Alice than it does about her servant. In fact, Alice herself, may too have been a victim of hierarchical structures. Following her non-appearance before the court, on 1 March 1471, she was excommunicated for eight days. As discussed in a previous chapter, minor excommunication was understood to prohibit excommunicants from entering the church. The extent to which this was an effective means of punishment has been questioned, Richard Helmholz determining that its effectiveness “has often been exaggerated” but reinforced that it was “meant to operate that way.”⁷⁸¹ In late medieval England, re-entering the parish community through penance often came in the form of public displays of atonement, though these were increasingly being commuted to fines payable to the parish church.⁷⁸² Shame, therefore, may have been a key reason in presenting a person such as Schelton to the church authorities. If she could not afford to pay her fines, suggested by her inability to pay off the debt owed to her servant, she would be forced to engage in a public ritual of penance.

The appearance of Alice Schelton in the records may reflect a tense, distrustful relationship between the woman and her neighbours. While discussing the emotions that motivated litigation in fourteenth-century Marseille, Daniel Lord Smail posits for many people, litigation for debt was a thoroughly appropriate and satisfactory way to get back at, sanction, or humiliate an enemy.⁷⁸³ By 1471, Schelton and her household were already known to the commissary court. In 1470, she was accused of acting as a bawd for priests, commanding a woman living in her neighbour's house to do so.⁷⁸⁴ This detail is suggestive. The implication that Schelton's influence stretched beyond the limits of her own home and into that of her neighbour's paints a vivid picture of a woman overstepping her position as a householder, making private affairs exceedingly public. In 1472, she appeared once more in passing, as a woman named Katherine, staying in Schelton's home, was accused of being a *meretrix*.⁷⁸⁵ Even the laundress in Schelton's keeping, identified simply as a laundress, had ties to prostitution and disease.⁷⁸⁶ By the early 1430s, the civic authorities had banned laundry women from entering public bathhouses.⁷⁸⁷ In Southwark, only one washerwoman was permitted to be employed in each 'bathhouse', which acted as loose disguises for brothels.⁷⁸⁸ It is not hard to imagine Schelton's

⁷⁸¹ Helmholz, *OHLE*, 288.

⁷⁸² Wunderli, *Church Courts*, 51-2.

⁷⁸³ Smail, *The Consumption of Justice*, 136.

⁷⁸⁴ LMA, DL/C/B/043/MS9064/1 46r.

⁷⁸⁵ LMA, DL/C/B/043MS9064/1, 129v.

⁷⁸⁶ Rawcliffe, “A Marginal Occupation,” 147–69.

⁷⁸⁷ Rawcliffe, “A Marginal Occupation,” 158.

⁷⁸⁸ Rawcliffe, “A Marginal Occupation,” 158.

poor reputation, yet the fact that the woman only faced punishment for her breach of faith indictment requires pause. It seems that Schelton's business had become an issue of communal accord and control. Whether she was married or not, across the three years that she appears, it was Schelton alone who was burdened with the governance of a house full of women. Through presentation to the commissary court, Clerkenwell's local leaders emphasised the woman's precarious social positioning to further undermine her social, and presumably economic role in the community. Those with negative reputations may have been required to relocate within London to escape poor treatment. Such was the case of Agnes Cockerell who appeared before the consistory court to battle the defamation set out against her by her community, despite the expense.⁷⁸⁹ Therefore, in presenting the plight of Schelton's debt litigation as an altruistic concern of the neighbourhood, it is very possible that people of significantly more social credit were utilising the laundress' grievances to stigmatize and alienate her employer.

These motivations, of course, are not mutually exclusive. Charlotte Berry has noted how, for a woman named Alice Pounfreyt living in the liberty of Norton Folgate between 1449 and 1464, her status as prostitute was never enough to force her from her community. She was a longstanding resident, occupying a house left to her by her husband. Instead, she was simply "tolerated and fined, admittedly at quite a high level".⁷⁹⁰ This contrast is evocative, demonstrating how willing many Londoners were to overlook morally reprehensible actions enacted for profit, such as the housing of prostitutes for the sake of communal accord. In Schelton's case, the commissary acted as a space in which her marginality could be scrutinised and enforced by the local elite, limiting her social and economic ties with her neighbours.

The coerciveness of the church court, and its role in enforcing social hierarchies, is further demonstrable in a case that explicitly pitted master against servant. In May 1476, Robert Syam presented his servant, Robert Thoroughgoode, to the commissary for walking out of his position.⁷⁹¹ Due to his alleged breach of contract, not only could Syam have withheld wages from his servant, but he might also have refused the man access to bed and board, typical terms of employment for servants in late medieval London. By presenting him to the commissary, he was further burdening Thoroughgoode with financial debt by forcing him to pay the court's fee. Yet this is only half the story. On 21 May, four days after Thoroughgoode's initial citation, Robert Syam and his wife Margaret were presented to the court in a countersuit by Thoroughgoode for character defamation. As it transpired, Margaret had allegedly accused Thoroughgoode of stealing a

⁷⁸⁹ Charlotte Berry, "Go to hyr neybors'," 106–8.

⁷⁹⁰ Berry, *Margins*, 191.

⁷⁹¹ LMA, DL/C/B/043/MS9064/3 215v.

candlestick. Not only does this explain Thoroughgoode's departure from his workplace, but this countersuit may also describe a necessary action for Thoroughgoode; a poor reputation may have hindered the man's attempts to find work elsewhere, particularly if he wished to remain in the same community. Through arbitration, the servant was able to mitigate, at least on paper, any communal doubts of his reputation, something he may have found difficult if he were a woman. Nonetheless, by July, Syam's breach of faith case was still outstanding, and, despite his best efforts, Syam's attempts to force Thoroughgoode back into his service were unsuccessful.

As these examples show, the commissary court played an integral role in the creation and maintenance of social hierarchies within the city. Highly sensitive to their own standing, men such as Thomas Water, or Robert Thoroughgoode demonstrate the ways in which lower ecclesiastical courts offered litigants a means of shaping their own reputation in relation to others. For women, misogyny could play a key role in the preconstruction of female identities in the court records. While sexual honour might have little to do with one's economic ability to repay a debt, it was an accusation that might have affected women's credit, as suggested by Alice Schelton's relationship with her community.⁷⁹² Fundamentally, breach of faith litigation offered Londoners a way to contest not only outstanding debts, but the status and comportment of their neighbours, their masters and their colleagues.

5.3: Conclusion

When compared with the previous chapters, breach of faith in London's commissary courts appears to have few similarities with Wisbech or the rural communities of Kent. Contested debts were larger and the community of litigants more diverse. However, beyond the statistics, we might argue that, as elsewhere, men of good standing saw the commissary as a means of exerting both fiscal and social pressure on their poorer neighbours, unruly women, and servants.

In section 5.2, I argued that the high level of mean and median debt in the commissary court was reflective of the commercialised nature of London in this period. While the number of breach of faith causes in London's commissary court were quite low relative to both Wisbech and Kent, this can be explained by the jurisdictional density of the city, particularly for the recovery of debts. Nonetheless, the commissary seemed particularly sympathetic to particular groups within London, most notably women who were treated in the courts as autonomous economic agents. As section 5.3 elucidates, for the parishes where church court justice was frequently sought, the good-men of the parish may also have been expected to participate in this form of justice, despite

⁷⁹² See Forrest, *Trustworthy Men*, 195, 233.

having the money required to pursue debt litigation elsewhere. This suggests two key points. First, regardless of the economic motivations, breach of faith was still used to contest and undermine the reputation of Londoners, even as it was used for the recovery of debts. Second, it demonstrates the extent to which local legal culture could not simply be dictated by a community's oligarchy but necessitated the participation of entire communities. This idea of common justice can be perceived in the defiance expressed by servants such as Robert Thoroghgoode and the successful compurgation of Johana Grene. Nonetheless, for women who relied on active lines of credit to do business, their gender, occupation, and poverty could be used as a means of marking them off from their neighbours. Even in the dense urban centre of London we find the spiritual nature of the oath deeply embedded into the commercial transactions of everyday Londoners.

Conclusion: "non est crimen mere Ecclesiasticum, sed mixtum"

In order to understand breach of faith litigation in late medieval England this study has heeded canonist William Lyndwood's view of perjury, not as a merely ecclesiastical crime, but one that was 'mixed', combining the spiritual and secular, the economic and social. While historians have previously interpreted breach of faith as a guise for debt litigation, this study has argued that it also had a significant social function, used by late medieval litigants to interrogate and legitimise social status and identity. Breach of faith suits could force parties to appear before the court and their legal community in order to provide a firm basis for long-term economic relationships; they could reinforce hierarchical relationships or be used maliciously to undermine an individual's economic reputation. Fundamentally, breach of faith did this by incorporating communal knowledge of *fama* into what was ostensibly a matter between two parties. It worked because one's reputation in late medieval England was often far more valuable than the petty debt being contested in the lower ecclesiastical courts. By taking this two-pronged approach to research of breach of faith and perjury, this thesis demonstrates the extent to which monetary credit in late medieval society could not be fully separated from the reputation of individuals within their community. Breach of faith became a means of litigating the tension that existed between these two measures of credit and creditworthiness, as English men and women navigated economic dearth and prosperity in an increasingly commercialised society, one that still relied heavily on oaths to function.

Using both quantitative and qualitative analysis, this study has explored how credit was mediated through England's lower ecclesiastical courts. However, what this credit looked like, and its legal application varied considerably between jurisdictions. By studying multiple courts, with distinct geographies, this study nuances our understanding of credit relations in fifteenth-century communities, focusing particularly on the ways that gender, wealth and institutional authority intersected to create both horizontal and vertical credit networks that bound people to their communities in a multitude of ways. While this study has considered the jurisdictions of Canterbury, Wisbech, and London both independently and in conversation with each other, in this conclusion I consider the findings of the case studies thematically.

Regarding the value of debt litigated, there is little to be added to the quantitative analysis that has not been explored in the chapters; London's position as the kingdom's economic engine suggests that the greater quantities of debt contested in the commissary court there speaks to a larger credit market than in other localities, one that likely catered both to London's poorer

residents and wealthier denizens alike. Despite a disparity in the value of debts between London and the provincial courts, this large disparity in the values of debt contested was a trend that can be seen across the courts. For the consistory court in Kent, larger debts contested at court typically involved litigants who lived larger distances apart: this suggests two things. Firstly, for those living outside of larger urban communities, larger lines of credit were more difficult to secure locally, demonstrated both by the low value of debts litigated in Wisbech and rural Kent. Secondly, for the men and women who were indebted for large sums of money, there was less communal pressure to repay these debts in a timely fashion than if the pressure was being exerted by a neighbour living in close proximity. The intensity of this pressure can be seen in the courts of Wisbech, where the larger sums of money were often contested with a willingness to enforce the extent of the dean's judicial powers. As discussed in Chapter Two, these court records often underpinned arbitration procedures with a financial forfeit of 40s should the parties go back on the actions that had been agreed upon, a fee that was often several times larger than the original debt. For the most part, the findings of Chapter Two bolster the idea in the historiography that suggests that the deanery court in Wisbech was acting as a key local court in the community for most local issues. For Londoners, the decision to litigate large debts in the commissary, rather than any number of alternate (and arguably more suitable) venues for debt recovery reflects the dual function of breach of faith litigation; within particular parishes, wealthier creditors saw breach of faith as a means of challenging a debtor's communal reputation and creditworthiness. A similar occurrence may have taken place in Dover, where the credit network was much tighter. With a legal infrastructure designed to support the operations of the Cinque Ports, Dover would have been well served for debt litigation. Therefore, the decision to pursue perjury litigation in the consistory court suggests that Dover's wealthy plaintiffs were primarily concerned with challenges of their neighbour's creditworthiness, rather than debt recovery.

However, it would be a mistake to neglect the reality that many people who were involved in breach of faith litigation were not wealthy. In all three courts, causes were dismissed by the courts' judges as defendants were found to be living *in forma pauperis*. While the dismissal of causes on account of poverty might be perceived as an act of charity, the condition of being unable to participate fully in the credit economy, not simply for lack of money, but for lack of reputation, may have been a punishing sentence. There was a genuine fear among many householders of social decline, and it is difficult to know from the court records whether the people involved in litigation for a handful of pence were in financial difficulties or whether the accusation was an ideological one. In the lower ecclesiastical courts, it was the defendant's responsibility to pay the court fees of between 12d and 18d; a particularly mean tax if the debt owed was under

one shilling. For the consistory court of Canterbury, one can only imagine the cost of litigation was higher still, suggesting that the 6d litigated by two Lydd residents was likely rooted in an animosity that is difficult to track in the absence of court depositions.⁷⁹³ With the overwhelming majority of causes concerning relatively small values of money, the social function of the court may well have played a central role in explaining why litigants— both wealthy and poor— appeared in the church courts in the first place.

A study of the geography of the courts and their litigants offers insight into two functional aspects of breach of faith litigation: it allows us to see how proximity between litigants influenced litigation. In Canterbury, the dispersed settlement pattern of the Kentish marshes was reflected by looser credit networks, and a greater range of litigated debts than in the town and hinterlands of Dover. A close study of breach of faith in London suggests that using the church courts for breach of faith litigation was far more common in extramural parishes than in intramural parishes. To some extent this reflected the distribution of wealth within the city's neighbourhoods, reaffirming that the debts that were being litigated in the commissary court were paltry relative to the large-scale debt of the mayor's court, the Westminster Staple or the Common Pleas. However, Chapter Five also demonstrates how parish communities took different approaches to litigation in the commissary court that was partly informed by their own sense of communal geography. While extramural parishes were more represented in the records, the evidence suggests that there was a culture of use among certain parishes of men and women that included all levels of parishioner. Across all three courts, the records suggest that the majority of causes concerned indebtedness that was highly local in nature. As previously mentioned, Chapter Four demonstrates how community may have informed how the courts were used; in this way, the geography of breach of faith litigation reflects the strength of an individual's *fama* in late-medieval England, growing weaker as the distance between litigants became greater.

Breach of faith litigation also shows how gender impacted ideas of debt and indebtedness in late medieval English society. Despite women being free from the limitations of coverture in the church courts, the absence of women from the records of both Wisbech and rural parts of Canterbury suggest that women's business was largely being dealt with by male relatives. As the chapter on Canterbury showcases, these figures were influenced to some degree by ease of access to the courts; women residing in proximity to the courts in Hythe were far more likely to be represented in the courts under their own names than rural litigants. In this way, the results from Canterbury and Wisbech are very much aligned with the other studies of debt in the secular courts

⁷⁹³ KHLC DCb/J/Y 1.10 2r.

of small towns, with women, both as individuals and in partnerships, consisting of 9-11% of borrowers and just 6-8% of creditors in these courts. Nonetheless, evidence points towards an involvement in informal credit practices by women in all three case studies.

An interrogation of who these women were suggests that, despite minor differences in the size of debts, women in both Canterbury's consistory courts and the deanery court of Wisbech experienced similar limitations in their participation in the credit market. Firstly, as both creditors and debtors, women in Wisbech were involved in a greater proportion of the overall debt litigation, at approximately 9.4%. This contrasts with only 5.6% of the overall value of debt in Canterbury. In Wisbech, sole female debtors tended to be involved in borrowing sums worth more than both the overall median debt (29d) and the median debt of male borrowers (28d). In fact, the only group who borrowed, on average, more than individual women, were women in partnerships with men, where the median sum was 52d. This suggests that women in Wisbech needed to be perceived as more financially trustworthy in order to participate in the credit market. Furthermore, the number of women identified as wives of local men, rather than as independent debtors, further emphasises the conservatism that is apparent in the records of Wisbech.

Comparatively, women in the diocese of Canterbury tended to borrow higher values overall, reflecting the larger amounts that tended to be litigated in the consistory courts. This also speaks perhaps to the much narrower demographic that used the consistory courts. As seen in Chapter Four, women in Dover were often connected to the broader economic market through their husbands. However, with the median debt of female borrowers (41d) being just two-thirds the median debt of male borrowers (61d), women in these Kentish communities were also limited by the gendered ideas of economic trust. For both women in Wisbech and women in Kent, their ability to participate in their local credit markets depended largely on their economic security, and their relationship with male relatives.

Masculinity seemed to play a fundamental role in the operations of breach of faith in both Wisbech and Canterbury's towns and villages. This often manifested itself in the use of titles within these records, carefully demarcating the social hierarchies that underpinned both economic and social relations. It is only in Wisbech that mentions of status such as "gentleman" (*generosus*) are made. Wisbech was also the only court that carefully recorded the attendance of churchwardens within the records themselves, suggesting that clerks of the church court and members of the broader community both placed a great amount of significance on status as a marker of identity. This is characteristic of Wisbech: the prominence of guilds in the records suggests that these institutions were central to accessing credit in late medieval Wisbech. For local men, guild membership, and eventual leadership for some, offered them a set of associative relations that

guaranteed a preexisting social and economic network that was founded on fraternity and mutual trust. In the archdiocese of Canterbury, a similar phenomenon can be perceived, though not quite as directly. Some men were identified by titles that categorised them as morally trustworthy and economically reliable, such as "goodman" and "baron". Others were bound together in networks of trust where, for example, Dover's officeholding men acted as arbitration for the settlements of disputes. Such an emphasis on masculine trustworthiness carried over into the culture of the church courts themselves. This is most apparent in the finding that summoners, such as Nicholas Morley, were not the marginal figures of Chaucer's *Canterbury Tales*, but integrated into a similar network of masculine authority. Overall, this preoccupation with masculinity was tightly woven into the institutional authority of guilds, of courts, and of office holding. Unsupported by male relatives, women and poorer men found themselves at a disadvantage before the church courts that valued both masculinity and social seniority.

While an initial survey of the evidence from London may suggest that London's proportion of female litigants was an anomaly— and it certainly was to some degree by sheer volume of business— we might contend that the very high proportion of female litigants in London's commissary likely offers a far more realistic image of women's participation in the circulation of credit within their community than is presented elsewhere. The frequency of the courts' sittings, the general lack of interest in identifying women by their husbands' names all point towards a court that was perhaps less invested in maintaining the ideological smokescreen that women were not embedded in the culture of credit in London.⁷⁹⁴ Women in London, be it independently or in partnerships with men and women, borrowed approximately 20.7% of all debt litigated as breach of faith litigation in London between 1470 and 1490. Despite this, it would be wrong to assume that women were treated impartially or equal to men; with increased involvement in public life, we also see how they became vulnerable to verbal attacks on their reputation as was the case for Katherine White of the parish of St Katherine Cree who was accused of being a *meretrix*. Just as litigants used titles and offices to convey male trustworthiness, so too could women's economic credit be tied to their status through such characterizations. Nonetheless, the volume

⁷⁹⁴ This does not suggest that women were attending court without male relatives in tow: a particular case from London's consistory court in 1493 concerned the mistaken identity of two women named Joan Hancok, related to each other by marriage. Here, Joan sued the judge of the local ecclesiastical court for trying to make her pay court fees despite the indictment being meant for her sister-in-law. The depositions from this case demonstrate how male relatives would go to lower ecclesiastical court on behalf of their wives and sisters, particularly when they felt a mistake had been made by the court. See LMA, MS DL/C/A/001/MS09065, fols. 126v-129r, 141v-142r. A translation of this case can be found at the following website: Collin Bonnell and Shannon McSheffrey, "Joan Hancok c. Master Henry Aprece," Consistory: Testimony in a Late Medieval London Church Court, December 2021, accessed February 2025, <https://consistory.org/2021/12/27/joan-hancok-c-master-henry-aprece/>

of female litigants in London's court gestures towards a tacit acceptance by late medieval Londoners that the commissary was an acceptable forum for women to litigate their debts.

As each chapter sought to underline, the courts themselves were highly responsive legal venues, their operations often reflecting local practices. This is perhaps best demonstrated in the inconsistent enforcement of the sentences of suspension and excommunication. Considered across all three courts, excommunication was a sentence that litigants were highly reluctant to use on their neighbours. This can be seen both in Wisbech, where the community lived in close geographic proximity to one another, and in Canterbury's archdiocese, where those who were subjected to this form of punishment often lived relatively far from the plaintiff that had accused them of perjury. As a sentence, excommunication may have been extremely disruptive for one's reputation. While this pressure was obviously spiritual in nature, it was also deeply social, given the fact that the excommunicant was subject to social and spiritual sanctions by their parish. Such an atmosphere would have created an immense amount of communal pressure to appear before the court to make amends. In Canterbury, this pressure was successful enough to act as a useful tool in the recovery of material debts. In this way, the court's sentencing became highly punitive, shaping the way that litigants pursued sentences.

Overall, this thesis hopes to challenge our current understanding of the lower ecclesiastical courts as a 'weak' form of legal recourse due to the high number of unfinished court cases. Such a sentiment fails to fully consider the utility of the courts in acting as a venue that could strengthen faltering relationships, redefine repayment plans, and articulate the complex hierarchies of parochial life in late medieval England. At its core, breach of faith litigation allows historians to investigate the ways in which people in these communities were able to use the law to rearticulate and maintain the carefully guarded social hierarchies that became increasingly significant in the fifteenth century. Breach of faith litigation promoted the use of the church courts as a mechanism of communal policing, binding communities together in a network of debt and obligation.

The difference between courts implies that much more work might be done to unveil the local nature of litigation in lower ecclesiastical courts. While canon law might often appear to the modern reader as universal, local variations in practice point to a need to interrogate litigation in church courts, not simply as an expression of an inherited church law, but in context, the consequence of what historians such as Watson and Forrest might call a 'social church'.⁷⁹⁵ As law became increasingly accessible to peasants and the urban poor, attention must be paid to

⁷⁹⁵ See fn. 13, above.

where people chose to litigate: regarding crimes such as breach of faith, perjury, or even defamation, it is essential to recognise that the outcomes of these causes were hugely influenced by local ideas of justice, reconciliation and hierarchy. The mapping of such variation requires a study of local church courts in medieval England that rely less on the qualitative research of the rich surviving depositions of consistory courts. Instead, this thesis has argued that the granular details of lower ecclesiastical litigation— such as summoners' marks, or the geographical grouping of litigation— offer a degree of insight into communal ideas and practices of trust. Fundamentally, it is only through the study of these lower ecclesiastical courts that access to England's most marginal figures might be granted.

Methodologically, this thesis contends that there is a huge benefit in taking a combined quantitative and qualitative approach to breach of faith litigation. Firstly, by placing the study of breach of faith litigation into a broader context of law as a social process, we can see the ways in which common men and women were capable of using the church courts to negotiate their socioeconomic position within their communities. In some cases, this might have been acquiring a few extra weeks to repay the debts they had incurred. More significantly, it integrated the *fama* of individuals or groups into the very fabric of ecclesiastical court procedures, giving litigants an opportunity to measure their own reputation against that of their neighbours and parish community. In this way, the role of the church courts as a forum for mediation gave it a crucial socioeconomic function as brokers of *fama* in late-medieval England. The quantification of breach of faith litigation offers some key new findings which can specifically track geographic and temporal changes in practice. Not only does this quantification challenge the treatment of this type of litigation as homogenous across church courts, but it also opens up new ways of investigating legal culture in late medieval England that showcases how trustworthiness might be valued by different groups and individuals.

Moving forward, there is significantly more work that might be done to further our understanding of how breach of faith and perjury litigation functioned in late-medieval England. Due to time constraints, this study chose to focus on three jurisdictions, covering as broad a range of geographies as possible. However, it may be useful to consider how breach of faith litigation worked within a single diocese by comparing courts at different jurisdictional levels. For example, beyond the communities studied in this thesis, the records of the archdiocese of Canterbury contain office litigation from both the city of Canterbury and records from the rural deaneries of north-western Kent. A comparative study of these records would help to clarify whether breach of faith and perjury litigation was conceived of as working in tandem on a diocesan level, or whether local ecclesiastical practice was prioritised by deaneries and parishes. Furthermore, comparative

analysis would also elucidate the economic and social motivations of litigants who decided to elevate cases to a higher court, a phenomenon that can only be glimpsed in records from the deanery of Wisbech when court users pursued resolutions in the court of the bishop of Ely.

Secondly, a close study of breach of faith litigation from 1490–1520, possible with the records of Canterbury and London, may enable historians to build a lucid image of a period that has been characterised as one of decline for both breach of faith litigation and the church courts more broadly. While Cavill has argued that this decline might be attributed to the rise of *assumpsit* litigation in the common law courts, a quantitative analysis of breach of faith litigation in this transitional period would help to investigate the extent of this decline.⁷⁹⁶ Significantly, further study of this moment might offer historians a clearer image of the continuities between the medieval and early modern periods, similar to Tyler Lange’s study of the debt in France between 1380 and 1530.⁷⁹⁷ Given the local nature of church court practices, supplementary case studies, both geographical and temporal, can only offer further nuance to our understanding of the various tactics that late medieval litigants employed in order to contest their reputations in these courts.

For historians of debt, this thesis offers analysis on new datasets, both rural and urban, offering key findings on the credit of groups such as women. More broadly, this thesis has demonstrated how breach of faith litigation might be used to explore the proximity of debt and faith in late medieval credit agreements. While some breach of faith litigation can be treated as a calculated pursuit of a monetary debt, the vast majority of breach of faith litigation constituted a complex mixing of the secular and sacred: a means of articulating the economic and social value of a sacralised debt and a commodified oath. Debt was social, and to divorce the debts litigated in *fidei laesio* causes from their underlying promises eclipses the social and spiritual value of the ecclesiastical courts in late medieval England.

⁷⁹⁶ Cavill, “Perjury,” 201—3.

⁷⁹⁷ Lange, *Excommunication for Debt*.

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