A SHORT INTRODUCTION TO FEET OF FINES

***by Chris Phillips*[1]**

ABSTRACT

This article is based on a talk by the author at the FMG Annual Meeting in October 2011. He explains the origin of the term, "foot of a fine", and how the information within them is of value to the medieval genealogist.

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The records known as feet of fines have been a mainstay of research into medieval English genealogy for several centuries, and much has been written about them.[2] What follows is an attempt to give a short practical guide to the records and the procedure that lay behind them, which may be helpful to those using them for genealogical purposes. The emphasis is on the late-medieval feet of fines, which I have been abstracting with generous support from Rosie Bevan and the FMG.[3]

1. What is a fine?

In essence, a fine (short for final concord) was simply an agreement between the parties to a legal action, by which the dispute was resolved.[4] During the reign of Henry II a standard form of words was fixed for recording the agreement, and the practice was adopted of producing an indenture of two parts (known as a chirograph), so that the parties would have written evidence of what had been agreed. Some of these agreements survive from as early as the 1170s (and perhaps the 1160s). But it was not until 1195 that the crucial step was taken of substituting an indenture of three parts, so that the third part could be retained in the Treasury as an authoritative record. The third part was written at the foot of the document, with the other two parts to the left and right above, which is why the records are known as feet of fines.[5] As a result of this innovation, there is a more or less continuous series of final concords made in the king's court extending from 1195 to 1833, when the practice was abolished. Other courts imitated the procedure in the royal court, but the survival of final concords made elsewhere is the exception rather than the norm.

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1 The author is the owner of the website "Some notes on medieval English genealogy" at http://medievalgenealogy.org.uk/ *Email contact:* cgp@medievalgenealogy.org.uk

2 See the list of references for a selection. The discussion by C W Foster, *Final Concords of the county of Lincoln* (1920) includes a detailed account of the legal procedure involved - available on the British History Online website at http://www.british-history.ac.uk/source.aspx?pubid=409

3 Abstracts of feet of fines for the period 1360-1509, not previously published or in preparation for publication elsewhere, can be found at http://www.medievalgenealogy.org.uk/fines/ There is also a full listing of feet of fines that have already been published.

4 Fines in this sense are not to be confused with the payments to the crown known by the same name and recorded on the fine rolls.

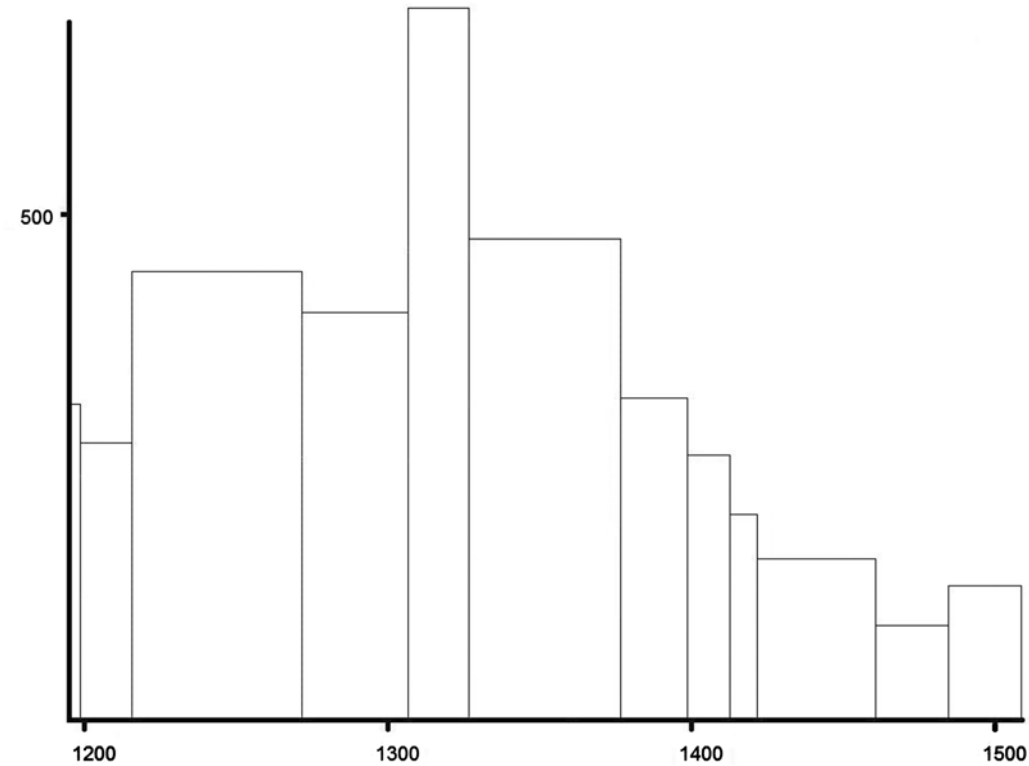
5 Sir Frederick Pollock & Frederic William Maitland, *The History of English Law*, vol 2 (1898), 97. The authors mention an alternative suggestion made by A J Horwood, that the name may have been the result of confusion between the French word *'pes'*, meaning peace or concord, and the Latin word *'pes'*, meaning foot.

2. The purpose and popularity of fines

Originally the final concords would have represented the resolution of genuine legal disputes. But it was realised that there were important advantages in having the conveyance of land and other property recorded in this way, even when there was no disagreement between the parties. It became common for the parties to collude in bringing fictitious actions, purely so that their agreeements could be recorded as final concords. By the late-medieval period, almost all fines represented the conveyance or settlement of property rather than the termination of a real dispute.

The popularity of fines is illustrated in Figure 1, which shows the average number of fines made per year in each reign between 1195 and 1509.[6] During most of the 13th and 14th centuries there were at least 400 per year, though in the 15th century there was a steep decline in numbers, with the nadir being reached in the reign of Richard III.

Fig 1. Feet of Fines per year in National Archives series CP 25



[6] The numbers are taken from the entries for series CP 25/1 in the National Archives catalogue, which is available at http://www.nationalarchives.gov.uk/catalogue/

Fines were popular for several reasons:

(1) There was an authoritative record of the agreement, which was kept in a secure place.

(2) The terms of the agreement acquired the force of law: if the parties did not adhere to it they ran the risk of imprisonment.

(3) Others wishing to challenge the agreement would face legal obstacles. There was a time-limit beyond which no claims could be made, unless there was some special excuse: usually 15 days in the mid-13th century,[7] later extended to a year and a day. This limit was removed in 1360-1, but in 1488-9 it was reintroduced at 5 years for fines proclaimed in court 16 times.

(4) They enabled married women to participate in the conveyance of land without the danger of later challenge on the ground that they had been coerced by their husbands. They would be separately examined so that, in theory, the justices could be sure that their consent was genuine. The participation of married women was desirable both so that they could consent to transactions involving their own inheritances, and also so that they could disclaim any potential dower rights in their husbands' lands.

3. The procedure

In the earliest times, fines could be made either in the central courts - the Bench (later the Court of Common Pleas) and *Coram Rege* (later the King's Bench) - or before the itinerant justices in eyre.

The procedure for making a fine was as follows. First, one of the parties would initiate the legal action by obtaining a writ. For this a fee was payable (known as the primer fine). In medieval times this was generally half a mark, though it was waived if the annual value of the property was 2 pounds or less.[8] By the Tudor period it was approximately one tenth of the annual value if that value was more than 2 pounds, the fee still being waived otherwise.[9]

The writ would name a date for the appearance of the parties in court - one of 20 fixed dates in the year known as 'return days'. When they appeared, if the action was a collusive one, they would immediately ask for the court's licence to agree, for which a further fee was payable (known as the post fine, or 'king's silver'). In the earliest times this was also typically half a mark, though it could vary a great deal.[10] By the Tudor period it had been fixed at approximately three twentieths of the annual value of the property if that value was more than 2 pounds, or half a mark otherwise.[11]

After 1307, the parties could avoid the inconvenience of appearing in court by obtaining an additional writ of *dedimus potestatem*, which would allow the agreement to be acknowledged before justices in the country. A further fee was

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7 Sir Frederick Pollock & Frederic William Maitland, *The History of English Law*, vol 2 (1898), 102.

8 C W Foster, *Final Concords of the county of Lincoln* (1920), xviii, xix.

9 C A F Meekings, *Abstracts of Surrey Feet of Fines 1509-1558* (1946), xiv.

10 C W Foster, *Final Concords of the county of Lincoln* (1920), xix, xx.

11 C A F Meekings, *Abstracts of Surrey Feet of Fines 1509-1558* (1946), xviii.

payable for this writ, apparently on to the same scale of charges that governed the original writ.[12]

The agreement between the parties was then read out in court, and a note of it was made by the official responsible for drawing up the indenture, who was known as the chirographer (in early times the terms of the agreement were also occasionally recorded at length on the court roll). The parties were then given a date on which they were to receive their copies of the agreement. In the mid-14th century the procedure was streamlined, and the date for the receipt of the copies would be the same as the date of the first appearance in court. Quite often the receipt was delayed for some reason, in which case the chirograph would bear two dates - the date originally given, and the date when the copies were actually received.[13]

4. The records

The medieval feet of fines have been rearranged a number of times over the centuries,[14] and are now to be found in the National Archives series CP 25/1 (post-1509 feet of fines are in CP 25/2). They are generally arranged in roughly chronological order within county series, with a final section covering 'Divers, Various and Unknown Counties.' This mainly consists of fines concerning property in more than one county, but includes some for which the county is not specified (usually because they are not really feet of fines, but right-hand or left-hand parts), a few miscellaneous documents, and some that for unknown reasons have not been filed in their counties. There are also separate series of feet of fines for the counties palatine of Chester (CHES 31), Lancaster (PL 17) and Durham (DURH 12; post-medieval), and some post-medieval Welsh feet of fines are held by the National Library of Wales.[15] (Welsh property can also be found listed under border counties in the medieval English feet of fines).

As far as I know, no attempt has been made to estimate what percentage of feet of fines have survived, though it is evident that there are some gaps in the chronological county sequences.[16] On the whole the surviving documents are in good condition, except that the holes caused when they were filed can often obliterate a surname or place-name, and the larger specimens can be badly worn and faded.

Of the associated records, entries relating to the procedure described above may be found in the plea rolls. More detail was recorded in the writs, but at present

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12 C A F Meekings, *Abstracts of Surrey Feet of Fines 1509-1558* (1946), xix.

13 C W Foster, *Final Concords of the county of Lincoln* (1920), xxx.

14 According to the National Archives website (http://discovery.nationalarchives.gov.uk/SearchUI/Details.mvc/Collection/?iAID=5391), the first rearrangement of chronologically organised files into county sections took place in the 14th century, with Bench and eyre records being amalgamated around 1689, and the modern chronological arrangement within counties following in the late 19th century. However, a file containing fines for various counties from 1502-3 (CP 25/1/294/83) appears to have survived previous reorganisations, having only recently been rebound, with its original thong preserved for posterity. If the fines were organised into county series as early as the 14th century, it seems that subsequent records must have accumulated chronologically, without regard for county.

15 See http://www.archiveswales.org.uk/anw/get_collection.php?coll_id=78212

16 For example, no Nottinghamshire fines have survived from between 1445 and 1461. One file (CP 25/1/144/153) includes a sad little package of fragments labelled "*Remains of fines of Lincoln. Hen. 4. eaten by rats.*"

most medieval writs are in 'deep storage' (in a salt mine in Cheshire), unsorted and inaccessible. Many of the notes of fines - made by the chirographer before drawing up the final agreement - have survived, in the series CP 26. Again, I have seen no estimates of the rate of survival of the notes of fines, but the earliest are from the reign of Henry III and there appear to be relatively few from the period 1377-1509. Other records, including the concords of fines, survive from the Tudor period and later.

Because of their arrangement, accessibility and genealogical interest, the feet of fines have been a popular source of material for societies publishing records relating to particular counties. Rather more than half the medieval feet of fines have been published in one form or another, with coverage extending into the early-modern period for some counties.

5. A guided tour of a fine

What kind of information does the foot of a fine contain?

(i) Place

The text begins by announcing that it is the final concord made - almost invariably by the late-medieval period - in the king's court at Westminster (the only exception is the period in 1392-3 following Richard II's short-lived removal of the court to York).

(ii) Dates

The date or dates are given as 'return days' - the 20 dates in the year specified for the returns of writs into court. In fact, each return day signified the beginning of a period of about a week for the transaction of legal business. According to Foster, the date given on the foot of the fine was the date given for the parties to receive their copies of the agreement (which, from the mid-14th century, would be the date of the first court hearing).[17] This might be delayed for some reason, and if so an additional date - the date on which they actually received the copies - would be added. It has been suggested that this was commonly due to the need for a tenant to attend the court and do fealty to his new lord,[18] though in the late medieval period feet of fines with double dates often do not mention tenants, and only rarely record that they attended court and did fealty. It has also been suggested that such delays were due to the pressure of work in the court.[19]

Where there are two dates, they are not usually more than a few months apart, but occasionally there may be a gap of several years. In that case, there may be an additional note that one or more of the parties has died in the meantime.

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17 C W Foster, *Final Concords of the county of Lincoln* (1920), xxvii, xxx. G J Turner, *A Calendar of the Feet of Fines relating to the county of Huntingdon* (1913), cxl, says that the date of the foot was normally the date of the first hearing, but this is based on examples from the 1360s and later, by which time (according to Foster) this was identical with the date for receipt of the copies.

18 G J Turner, *A Calendar of the Feet of Fines relating to the county of Huntingdon* (1913), cxli. Turner (p. cxlii) adds that in some cases where a writ was issued to force a tenant to do fealty, there is only one date on the foot of the fine - sometimes the date of the first court hearing, and sometimes the date when the tenant appeared.

19 C A F Meekings, *Abstracts of Surrey Feet of Fines 1509-1558* (1946), xxiv.

(iii) Parties

Then come the parties. Depending on the form of the legal action, the person(s) who had initiated it might be described as the demandant(s) or the querent(s), and the person(s) who were responding as the defendant(s), the tenant(s) or the deforciant(s). In the late-medieval period the terms querent and deforciant were almost always used.

Apart from the bare names, places of residence are sometime given (presumably for the purpose of distinguishing between people with the same names), and knights, esquires, chaplains, clerks, vicars and parsons are described as such. Priors, abbots, bishops, lords, earls and dukes also make appearances, as occasionally does the king himself - though never in person. Otherwise, occupations are sometimes given, particularly for citizens of London.

Married couples are common (at least one per fine is typical) and other genealogical relationships may be stated, particularly if the fine represents a marriage settlement (when the couple's parents may be identified), or if several coheirs are disposing of their inheritance. People may be represented by attorneys in court rather than appearing in person - though the appointment of the attorney normally required a personal appearance in court[20] - and infants may be represented by guardians.

(iv) Property

The property is then described. At its most concrete it may simply be specified numbers of buildings (messuages, cottages, tofts - the sites of dwelling-houses - mills, dove-cots and even the occasional castle) and quantities of land (arable land, meadow, pasture, wood, marsh, heath and so on), with the locations described in general terms (by naming the parish or township where the property lay) and the acreages often given in suspiciously round figures. Then there may be manors, hundreds and the advowsons of churches, chapels, chantries or religious houses, rents, both in cash and kind,[21] and other miscellaneous rights and services.[22] And even as late as the 15th century some of the property could consist of people, in the form of villein tenants being conveyed from one lord to another.

(v) Action

In principle a final concord could terminate many different kinds of legal action, and in early times a number of different writs were used to initiate the process. But by the 14th century the most common choice was the plea of covenant, with the plea of warranty of charter also occurring occasionally.

(vi) Agreement

Next comes the text of the actual agreement between the parties. This could take various forms, especially in early fines, but by the late medieval period a

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20 Sir Frederick Pollock & Frederic William Maitland, *The History of English Law*, vol 2 (1898), 213.

21 Sometimes the rents in kind may have been awkward to handle. A rent of '*a moiety of 1 hen*' occurs in a Kent fine of 1434 (CP 25/1/115/309, number 378).

22 One of the more unusual being '*the portage of the left part of the shrine of St John of Beverley*' in a fine of 1442 (CP 25/1/280/159, number 3).

small number of standard patterns had developed, which were followed by nearly all the agreements, at least in outline.

In a small proportion of cases, it is recited that one of the parties (normally the deforciant) has granted the property to the other. In the late period, this is most commonly followed by a statement that the grantor has 'remised and quitclaimed' (or else 'rendered') a life interest in the property to the grantee. This often represents the grant of a widow's dower rights, perhaps to the heir of the property.

But in nearly all fines of this period the agreement begins with a formula stating that one of the parties (known as the conusor, and nearly always the deforciant) has acknowledged that the property is the right of the other (the conusee). Sometimes this is strengthened by the assertion that the conusee's right arises from a gift by the conusor. In simple cases, this is followed by a statement that the conusor has remised and quitclaimed the property to the conusee (or that the property is to be held by the conusee and specified heirs, or that the conusor has rendered it to the conusee), and then perhaps a warranty clause and a statement that a sum of cash has been given in return (as discussed below). In the 15th century, straightforward agreements of this kind accounted for well over half the fines.

In one variation, instead of recording a gift of cash, the agreement may provide for an annual payment by the conusee to the conusor. For example, in return for a grant of dower rights, there may be a regular sum to be paid for the remainder of the widow's life. Usually the agreement specifies the religious feasts at which the instalments are to be paid, and there is an accompanying grant of the right to distrain - to seize goods on the property in question - if the payments are in arrears.

In more complicated cases, instead of responding to the acknowledgment with a gift of cash or an annual payment, the conusee grants some or all of the property back to the conusor. This method is often used to settle property so that it will be inherited in a specified way (in fee tail). In these circumstances the conusee is often effectively a trustee whose role is to receive the property and regrant it subject to the desired conditions. For example, in a marriage settlement the property may be granted to the couple for their lives, and then to the heirs of their bodies. Obviously the agreement also has to provide for the possibility of the failure of such heirs, and the more elaborate examples can involve strings of a dozen or more successive 'remainders', in which sequences of brothers, sisters and other relations may be named.

In some cases the property granted back to the conusor is to be held by him (or them) as a tenant of the conusee, in return for a nominal rent (usually one red rose per year). In the later period such grants are either for a life term or in fee tail,[23] with a provision that the property will revert to the conusee and specified heirs when the term expires, or if the heirs of the body become extinct.

Another complicating factor was that at the time of the agreement some of the property might be held by others, either for a life term or for a term of years. For example, part might be held by a widow in dower. In these cases the details of the tenure are given, and all that can be granted is the remainder, after the

[23] The statute of *Quia Emptores* (1290) made it illegal for a grantee to hold property as a tenant of the grantor, except for a life term or in fee tail.

expiry of the life term or the term of years. If the property includes a rent, then the agreement may contain an additional grant of the homages and services of the tenants, whose names will be listed. In some cases, several dozen tenants may be named in this way.

(vii) Warranty

If property was being conveyed, it was common for the grantor to warrant it to the grantee, which in effect meant that if a legal action was brought against the grantee concerning the property, the grantor would be obliged to defend it, and to compensate the grantee if he was unsuccessful. So fines often include a clause of warranty, by which one party promises that they and (typically) the heirs of one of them will warrant the property.

Normally the warranty is 'against all men,' that is, it will apply regardless of who brings the legal action. But warranties could be limited by specifying that they would be effective only against specified people. For a period in the mid-15th century it became common to grant a warranty against the head of a religious house (often Westminster Abbey) and his successors. Usually this would be equivalent to no warranty at all, and the suggestion is that this was a safer procedure than simply omitting the warranty clause, in which case it might be argued that a warranty was implied without being stated.[24]

(viii) Consideration

The form of the agreement normally involves one party doing something and the other doing something else in return. As discussed above, in some cases the thing done in return is a regrant of some or all of the property, or a grant of an annual payment, but usually it is a gift of money. In early times this would presumably represent a real purchase price, but it has been demonstrated that by the Tudor period it was only a notional figure equal to twenty times the annual value of the property as specified on the writ.[25] It has been suggested that this may already have been the case by the early 14th century.[26]

Sometimes the fine indicates that only a nominal consideration changed hands, usually in the form of a sore sparrow-hawk. Occasionally, where a religious house is involved, its head may grant that the other party is to be included in all the prayers said in his church for ever.

(ix) Consent of tenants

It is occasionally noted that tenants of the property were present when the agreement was made, consented to it and did fealty to the party to whom the property had been granted. This reflects a further advantage of the fine as a

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[24] G J Turner, *A Calendar of the Feet of Fines relating to the county of Huntingdon* (1913), cxliv. A more fanciful commentator - Emanuel Green, *Pedes Finium commonly called Feet of Fines for the county of Somerset* (1906), xvii - tried to explain these warranties by reference to the wicked abbot in the story of Robin Hood!

[25] C A F Meekings, *Abstracts of Surrey Feet of Fines 1509-1558* (1946), xxii.

[26] F W Jessup, *Introduction to Calendar of Kent Feet of Fines to the end of Henry III's reign*, eds. I J Churchill, R Griffin & F W Hardman (1956), lxxxvii.

method of conveying land - that an intransigent tenant could be compelled by the court to appear and acknowledge his new lord.[27]

(x) Property held in chief

Where all or part of the property is held directly of the king rather than of an intermediate lord, it will be noted that the agreement was made 'by the command' of the king. This reflects the fact that in such cases a licence had to be obtained from the crown, for which a further fee was payable - a third of the annual value of the property in the Tudor period.[28]

(xi) County

At the bottom of the foot the county or counties - or sometimes the name of a town or city - are indicated in large letters. The county is not named in the agreement itself (unless the property lies in more than one county), or on the right-hand and left-hand copies of the agreement that were given to the parties. For this reason, where right-hand or left-hand copies are in the keeping of the National Archives (for example, for fines to which the king himself was a party), they are often to be found filed in the "Unknown Counties" sections.

(xii) Endorsements

As mentioned above, before 1360-1 claims by third parties had to be made within a year and a day of the date of the fine, except in special circumstances. If such a claim was made, the name of the claimant was noted on the back of the foot of the fine.

In 1488-9 another statute provided that the agreement could be read out in court on 16 occasions in the four terms following the making of the fine. In cases where this occurred, the dates of these proclamations were recorded on the back on the foot.

6. Interpretation

At their most straightforward, fines provide a lot of precisely dated genealogical information for which no interpretation at all is needed. In nearly every document at least one married couple appears. As a result, fines name wives who might otherwise remain anonymous and, in a period in which it was common for men to marry several times, they provide evidence of when these wives were living.

Conversely, when they concern dower holdings fines can shed light on the remarriages of widows. In fines that represent marriage settlements, the parents of the parties are likely to be identified, and in other more elaborate family settlements the children of a marriage may be listed, sometimes together with their own husbands and wives.

Some fines represent the conveyance of inherited property by an heir or by several coheirs. In some cases this will be stated explicitly and the relationships will be explained (though the irritatingly vague terms 'kinsman' and 'kinswoman'

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27 Sir Frederick Pollock & Frederic William Maitland, *The History of English Law,* vol 2 (1898), 103.

28 C A F Meekings, *Abstracts of Surrey Feet of Fines 1509-1558* (1946), xxv.

are often used). In other cases it may be inferred - for example, when property is conveyed by several married couples and a warranty is granted for them and the heirs of the wives, then those wives are likely to be coheirs (though it may not be clear whether they are sisters, aunts, nieces, cousins or some combination of these).

Beyond this, caution is needed in interpreting the documents. Fines very rarely explain the motivations behind the transactions they record, and the full story is often not clear without evidence from other sources. In particular, it is not always obvious whether parties have a real interest in the property or whether they are simply acting as trustees.

When property is being conveyed by a married couple, in theory one should be able to tell whether it is the husband's property or the wife's inheritance by checking whose heirs are mentioned in the warranty clause - or in a clause of remise and quitclaim, if there is one. But unfortunately it quite often happens that different heirs are specified in these two clauses, so the inference is not really a safe one. Worse still are cases in which - for example - the wife's heirs are named in both clauses, but external evidence tells us that the property is really the husband's. For example, in a Hertfordshire fine of 1375, John Berry and his wife Elizabeth conveyed the manor of Horwell (Horwellbury in Kelshall) to William de Kymberlee. The agreement includes a remise and quitclaim from John and Elizabeth and the heirs of Elizabeth, and also a warranty clause specifying the heirs of Elizabeth[29]. Yet the account of the manor in the Victoria County History (where the family is called Barry) shows that it was already held by one Hugh Barry as early as 1303, and had been granted to John and Elizabeth by Edmund Barry, probably John's father[30]. Evidently appearances can be deceptive.

The bewildering variety of settlements to be found in fines also sounds a more general note of caution concerning the genealogical inferences that can be drawn from the descent of landed property. Almost by definition, these settlements provide for deviations from the usual course of inheritance, and some of the provisions can be quite unexpected. For example, property may be settled on the heirs of the body of John Smith and Mary - and if that issue fails, on the heirs of the body of Mary - and if Mary's issue fails, on the right heirs of John[31]. Such cases are surprisingly common. If there were no documentary evidence of this settlement, the descent of the property might suggest a completely false genealogical conclusion. And no doubt many such settlements were made without recourse to final concords, so that no documentary evidence of them has survived. By showing us how inventive the medieval mind could be when it came to settling property, fines warn us not to presume too much when interpreting indirect evidence.

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29 CP 25/1/90/95, number 666.

30 *The Victoria History of the County of Hertford*, volume 3 (1912), 240-244. According to this account, the manor later passed to Edmund, the son of John and Elizabeth, and through his daughter Agnes to the Paston family.

31 For one example, see CP 25/1/83/51, number 17.

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