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Collusive Litigation in the Early Years of the English Common Law: The Use of *Mort D'Ancestor* for Conveyancing Purposes c. 1198–1230

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ABSTRACT
The extent to which real actions such as *mort d'ancestor* were used collusively for conveyancing purposes in the early years of the English common law is subject to debate. This article first discusses why parties to a transfer of land might engage in collusive litigation, before surveying the existing literature on the question of how collusive suits can be identified, and the suggestions which have been made as to the prevalence of collusive litigation in the late-twelfth and early-thirteenth centuries. It then discusses a method which may be used to provide a more precise answer to this question, and employs this method to uncover the extent to which *mort d'ancestor* could have been used collusively in the period c.1198–1230. It concludes with a suggestion that this method could be used in relation to other early common law actions to further our understanding of litigation and conveyancing in the period.

KEYWORDS Mort d'ancestor; conveyancing; collusive litigation; fines; final concords; common law

I. Introduction

A number of important legal developments took place in England during the late twelfth century. One of the most significant was the creation of standardized forms of action, initiated by a writ obtained from the chancery, which were designed to resolve disputes concerning land. Many of these actions brought the case immediately before the king's justices, and a network of royal courts emerged during the same period to accommodate the resulting litigation. A system of 'general eyres' was developed in the 1170s, which saw royal justices travelling around the country every few years on pre-determined circuits to hear a range of pleas. Likewise, a permanent court, known as 'the bench', emerged from the exchequer in the 1180s or early

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1190s and usually sat at Westminster. When the king was in the country, the court which travelled with him, known as the court *coram rege*, could also hear pleas. This increased centralization of justice around the crown diminished the importance of lords' courts and laid many of the foundations of the English common law.[1]

Although the legal actions introduced by the Angevin reformers were designed to adjudicate contentious disputes, parties could reach an agreement during the course of litigation. According to the legal treatise known as *Glanvill*, written c.1188; 'it often happens that cases begun in the lord king's court are ended by amicable composition'.[2] Such settlements were a formal end to the litigation, 'subject to the consent and licence of the lord king or his justices'.[3] In practice, the parties generally had to pay half a mark, sometimes a mark, for this privilege.[4] Once permission had been granted, the terms of the settlement would be recorded as a final concord, either in the plea roll or, most commonly, in the form of a chirograph.[5] The properties of chirographs are discussed more fully below. In short, they were documents produced when the terms of the agreement were written multiple times on a single piece of parchment, separated by the word *CIROGRAPHUM*. The parchment was then cut to produce separate copies of the agreement.

Despite their origin in contentious litigation, final concords, also known as 'fines', soon became popular for conveyancing purposes. Parties to a sale of land would bring a fictitious suit to court simply to obtain a final concord in which the terms of the transaction were recorded. It is widely accepted that by the fourteenth century the actions of covenant or warranty of charter were commonly used as the basis for such fictitious suits.[6] It has also been suggested that in the late twelfth and early thirteenth centuries the assize of *mort d'ancestor* was favoured for the same purpose.[7]

[1]For a general overview, see e.g. J.G.H. Hudson, *The Formation of the English Common Law: Law and Society in England From King Alfred to Magna Carta*, 2nd ed., Abingdon, 2018, or P.A. Brand, '"Multis Vigiliis Excogitatam et Inventam": Henry II and the Creation of the English Common Law' in P.A. Brand, *The Making of the Common Law*, London, 1992, 77–102.

[2]*Tractatus de Legibus et Consuetudinibus Regni Angliae*, ed. and trans. G.D.G. Hall, with a guide to further reading by M.T. Clanchy, Oxford, 1993, VIII, 1, (Hall ed., 94).

[3]Ibid.

[4]C.W. Foster, ed., *Final Concords of the County of Lincoln from the Feet of Fines Preserved in the Public Record Office A.D. 1244–1272 with Additions from Various Sources A.D. 1176–1250*, (Lincoln Record Society 17), Horncastle, 1920, xviii–xix.

[5]Very occasionally the terms of the settlement might be recorded in the plea roll and also engrossed in a chirograph. See, e.g. *Curia Regis Rolls* HMSO, 1922–present, (hereafter, CRR), vol. 6, 63 and J. Hunter, ed., *Fines, Sive Pedes Finium, sive Finales Concordiae in Curia Domini regis: ab Anno Septimo Regni Regis Ricardi I ad Annum Decimum Sextum Regis Johannis, A.D. 1195–A.D. 1214*, 2 vols., Record Commission, 1835–44, (hereafter, *Hunter*), vol. 1, 334. A good overview of the process of levying a fine is found in C.A.F. Meekings, *The 1235 Surrey Eyre. Part I: Introduction* (Surrey Record Society 31), Guildford, 1979, 41–48.

[6]See, e.g. Frederick Pollock and F.W. Maitland, *The History of English Law before the Time of Edward I*, 2 vols., 2nd ed., Cambridge, 1898, repr. 1968, vol. 2, 98 and R.C. Palmer, *English Law in the Age of the Black Death, 1348–1381: A Transformation of Governance and Law*, Chapel Hill, 1993, 65–69.

[7]Pollock and Maitland, *History of English Law*, vol. 2, 98 n. 3; Meekings, *Surrey Eyre*, 46.

Mort d'ancestor, probably introduced in 1176 at the council of Northampton, allowed the son, daughter, brother, sister, nephew or niece of a deceased ancestor to claim seisin of the latter's free tenement. The individual currently possessed of the disputed tenement (the 'tenant') would be summoned to court, and twelve freemen would be empanelled to answer on oath whether the claimant's ancestor had died seised of the tenement 'in demesne and as of fee', whether the ancestor had died within the limitation period of the assize, and whether the claimant was their next heir. If the answer to all these questions was 'yes', the claimant would be awarded seisin.

The assize would certainly have been a suitable vehicle for a collusive suit. Writs initiating actions of *mort d'ancestor* at the eyre were available '*de cursu*'. This meant that they were readily available for a small fee, probably about 6d, providing litigants with an inexpensive route to the king's court.[8] The assize also brought the dispute immediately before the king's justices without requiring the matter to be heard, at least initially, in a lord's court.

Despite, however, the suggestion that *mort d'ancestor* was often selected as a means through which a collusive action might be brought to court, and, indeed, the suitability of the assize for such purposes, the precise extent to which the action was used for collusive litigation has yet to be fully investigated. This means that important questions about the use of the assize in the earliest years of the common law remain unanswered. Was *mort d'ancestor* used in its early years primarily as a tool for conveyancing, or was it predominantly used as intended, to resolve contentious disputes?

The purpose of this article is to provide an answer to these questions. First, the reason why parties to a transaction might seek a final concord is discussed in further detail. The difficulties encountered when one attempts to identify collusive litigation and the methods which have been suggested for this purpose are then considered, and the approach taken by the present study outlined. An extensive selection of actions of *mort d'ancestor* which were brought and settled before the royal courts in the late-twelfth and early-thirteenth centuries is then examined. The records of these cases are used to investigate whether the parties were involved in a genuine dispute, or whether their action is likely to have been brought collusively. Although some actions were quite possibly brought to court for conveyancing purposes, this study shows that these comprise the minority of recorded cases. Most actions of *mort d'ancestor* in this period did indeed concern a genuine dispute between the parties.

[8]On the cost of a writ *de cursu*, see D.A. Carpenter, *Magna Carta*, London, 2015, 183.

II. The Motive for Collusive Litigation

An individual from our period who wished to alienate land could do so by expressing their desire to transfer the tenement and ensuring that the livery of seisin was carried out. No written proof of the grant was required, and a written document itself could not effect the transaction.[9] Nevertheless, documentary evidence recording the terms of the transfer was desirable. A charter was one means of providing such evidence. However, final concords provided several advantages over charters. The terms of the final concord were often recorded in the form of a chirograph. This means that the terms of the agreement would be recorded in duplicate or triplicate on a single sheet of parchment and the word *CIROGRAPHUM* written lengthways between each copy. The parchment was then cut in a zig-zagged pattern to separate the copies of the agreement and bisect the word *CIROGRAPHUM*, so that only genuine copies of the agreement could be fitted together correctly. Each party retained one of the copies. From July 1195 it became common practice for agreements made in the king's courts to be recorded in triplicate, with the third copy, the 'foot', being stored at the treasury.[10] While a charter could be forged, the foot of the fine could be called upon to prove the validity of an individual's copy of the fine and provide proof of the settlement if a copy belonging to one of the parties had been lost.

On some occasions the parties declined to have a chirograph drawn up, instead having the terms of their agreement entered onto the plea roll. The reason for such a choice may have been to avoid paying an additional sum to the clerk who produced the chirograph.[11] However, enrolled concords were also made for other reasons. We find, for example, instances of enrolled concords being made because one of the litigants was a minor,[12] or because the land was the king's demesne,[13] or because one of the tenants had subsequently travelled overseas and it was not known whether they were alive or dead.[14] It is nevertheless likely that such concords were less desirable than a chirograph, either for the purposes of conveyancing or simply to conclude a genuine dispute. Many rolls were originally treated as the property of the justices, and kept for their personal use.[15] A significant number of early rolls were probably never handed over to the treasury, which would have

[9]See, e.g., J.M. Kaye, *Medieval English Conveyances*, Cambridge, 2009, 62–64 and S.E. Thorne, 'Livery of Seisin', 52 *Law Quarterly Review* (1936), 345.
[10]M.T. Clanchy, *From Memory to Written Record,* 3rd ed. Chichester, 2013, 70.
[11]Meekings, *Surrey Eyre*, 42.
[12]G.H. Fowler, ed., 'Roll of the Justices in Eyre at Bedford, 1227', *The Publications of the Bedfordshire Historical Record Society, Volume 3* (Bedfordshire Historical Record Society 3), Aspley Guise, 1916, (hereafter, *Beds 1227*), no. 586.
[13]D.M. Stenton, ed., *Rolls of the Justices of Eyre, being the Rolls of Pleas and Assizes for Lincolnshire 1218–19 and Worcestershire 1221*, (Selden Society 53), London, 1934, (hereafter: *Lincs 1218–19*), no. 983.
[14]The National Archives, Public Record Office (PRO) JUST 1/229 m. 5d.
[15]G.O. Sayles, ed., *Select Cases in the Court of King's Bench under Edward I, Volume I*, (Selden Society 55), London, 1936, cxvii.

made it difficult for parties to gain access to the roll in which the settlement was recorded.[16] Even if the roll could be accessed, it would have to be searched for the relevant entry. This process might take time. In contrast, a chirograph provided each party with their own, readily available, copy of the agreement. It is probably for these reasons that final concords recorded in chirograph form far outnumber enrolled settlements.

A gift or a sale of land recorded in a final concord was granted additional security because the document had all the force of a judgment of the king's court. As *Glanvill* explains, 'a concord of this kind is called final because it puts an end to the matter, so that neither litigant may in future depart from it'.[17] If a party did break their terms of the agreement, a writ *de fine facto* could be obtained to bring an action before the king's justices to enforce the fine. The parties might also have their case heard by plaint, that is, following an oral complaint about the matter.[18] We find payments for actions to uphold the terms of a fine in the pipe rolls from 1173–74 onwards.[19]

A final concord also acted as a general bar to future litigation, a bar which extended beyond the original parties to the dispute. In order to prevent themselves being bound by this restraint, a third party who wished to challenge the fine had a short period of time within which they could state their own claim to the tenement in question. They could do so by initiating a new action or by having their claim written on the foot of the fine.[20] The precise period of time within which such an interest had to be registered is unclear. The treatise known as *Bracton*, written predominantly in the 1220s and 1230s, states that, once the plea had begun, a third party had until the day on which the concord was delivered to the litigants to put in their claim. According to the author of the treatise, this would be at least a month, because a minimum of fifteen days was required between the summons and the initial hearing, and another fifteen days between the settlement in court and the delivery of the final concord.[21] This part of *Bracton* should, however, be treated with caution. The author's reasoning seems only to apply to concords in chirograph form, rather than enrolled concords, which could not be delivered to the parties in the manner described. Likewise, Maitland has suggested that the author was attempting to advocate a

[16]See D. Crook, *Records of the General Eyre*, HMSO, 1982, 12–24.
[17]*Glanvill*, VIII, 3, (Hall ed. p. 96).
[18]H.G. Richardson and G.O. Sayles, eds., *Select Cases of Procedure Without Writ under Henry III*, (Selden Society 60), London, 1941, cxxxvi–cxli.
[19]Foster, *Final Concords*, xxxv–xxxvi.
[20]Pollock and Maitland, *History of English Law*, vol. 2, 101–102.
[21]G.E. Woodbine, ed., *De Legibus et Consuetudinibus Angliae*, trans., with revisions and notes, S.E. Thorne, 4 vols., Cambridge, MA., 1968–77; vol. 4, 355–356 (f. 436). In practice, the period between the settlement of the case in court and the receipt of the concord was sometimes shorter than fifteen days. See Foster, *Final Concords*, xxv.

shorter term than was, in fact, current practice. He points out that, later in the thirteenth century, a year and a day was allowed from the day the fine was made, and that this was the period 'allowed from of old in Germany'.[22] Plea roll evidence provides little guidance on this matter, although it is worth noting that a concord made in 1206 was successfully annulled by a third party's claim which had been put in two months after the fine had been made.[23] This case was nevertheless unusual, as the fine was made concerning land actually held by the individual who challenged the fine. It is possible that the justices exercised a certain amount of discretion based on the facts of each case.

Whatever the precise length of the period within which a third party could put in their claim, the eventual creation of a bar to future litigation would have been a boon to those attempting to give or acquire, or buy or sell, a tenement. As Maitland explained:

> When we remember how easily seisin begets proprietary rights, how at one and the same moment half-a-dozen possessory titles to the same piece of land — titles which are more or less valid — may be in existence, we shall not be surprised at the reverential tones in which the fine is spoken of. It is a piece of firm ground in the midst of shifting quicksands.[24]

In addition to the general advantages provided by a final concord, in one particular set of circumstances a fine was necessary to make a lasting grant. Any grant made during a marriage by a husband of his wife's land was presumed to have been made without the wife's consent, even if the wife agreed to the grant. The grant was therefore valid only while the marriage lasted, or for the lifetime of the husband if he retained a tenancy 'by curtesy' on the death of his wife. In order to extinguish the wife's interest in the property and make a grant which was sure to last longer than the above duration, the husband and wife had to transfer the property by means of a final concord made in the king's courts. As part of this process, the wife had to be separately examined by the justices to establish that she freely consented to the transaction.[25]

III. Identifying Collusive Actions

It is generally accepted that the practice of collusive litigation had become common by the end of the thirteenth century, but at what point in the preceding years did it begin to flourish? We find some examples of cases which may have been brought collusively in the reign of Henry II. For instance,

[22]Pollock and Maitland, *History of English Law*, vol. 2, 102. See G.O. Sayles, ed. and trans., *Fleta*, *Volume IV, Books 5 and 6*, (Selden Society 99), London, 1984, Bk 6, ch. 53, 192.
[23]M.S. Walker, ed., *Feet of Fines for the County of Lincoln for the reign of King John 1199–1216,* (Pipe Roll Society, New Series, 29), London, 1954, (hereafter, *Lincoln Fines 1199–1216*), no. 209, and see also p. xiv.
[24]Pollock and Maitland, *History of English Law*, vol. 2, 102.
[25]Kaye, *Conveyances*, 185–186.

C. W. Foster has drawn attention to a case from 1176 in which Thomas Bardulf and Rohesia his wife quitclaimed land to the monks of Bardney in the king's court. A charter of Thomas' shows that the parties had agreed to this transaction some months before the action came to court.[26] This may indicate that the action was collusive, although it is possible that a dispute had existed before Thomas' charter was made, so we cannot be sure that this was a straightforward conveyance. Even if this does provide an example of collusive litigation, the unsystematic nature of the surviving records from the period makes it impossible to determine whether such cases were common, and we know little about the circumstances in which the few surviving fines were made during this period.

By the middle of the reign of King Richard, the records of the royal courts begin to survive in greater number. Furthermore, the form of these records, that is, the plea rolls and feet of fines, allows for a more systematic examination of the evidence. Nevertheless, even with access to this material, the question of how frequently collusive litigation occurred in the late-twelfth and early-thirteenth centuries has yet to produce an agreed upon answer. Meekings, while pointing out that some fictitious suits were brought in this period, does not venture a suggestion as to how many.[27] Dodwell, in her introduction to an edition of the feet of fines for Norfolk from 1198–1202 (published in 1952), suggested that collusive actions were minimal and 'probably the great majority of Norfolk fines resulted from real litigation'.[28] In her introduction to a later edited collection (published in 1958) she argued that there is a 'general impression of a background of a dispute' to the Norfolk and Suffolk feet of fines dating from John's reign.[29] In 1953, Aston, reviewing the former of these publications, disagreed with her assessment and argued that there was sufficient evidence to suggest that 'very many [fines] were fictitious … the instruments of a flourishing land market'.[30] Likewise, in 1954, Walker, editing a collection of Lincolnshire fines from 1199–1216, thought that many of the settlements made at the 1202 Lincolnshire eyre could have been created for the purpose of conveyancing. Walker's remarks are nevertheless cautious. She writes that 'there seems a slight impression, hardly more than an impression, that fines made during the eyres may represent rather a desire for a secure

[26]Foster, *Final Concords*, 9–11, and 311.
[27]Meekings, *Surrey Eyre*, 43.
[28]B. Dodwell, ed., *Feet of Fines for the county of Norfolk for the tenth year of the reign of King Richard the First 1198–1199 and for the first four years of the reign of King John 1199–1202*, (Pipe Roll Society, New Series, 27), London, 1952, (hereafter, *Feet of Fines for Norfolk, 1198–1199 and 1199–1202*) xxiii.
[29]B. Dodwell, ed., *Feet of Fines for the county of Norfolk for the reign of King John 1201–1215*, *Feet of Fines for the County of Suffolk for the Reign of King John 1199–1214*, (Pipe Roll Society, New Series, 32), London, 1958, (hereafter: *Feet of Fines for Norfolk 1201–1215*, *Suffolk 1199–1214*), xxi.
[30]T.H. Aston, 'Review [Dodwell]', 68 *The English Historical Review* (1953), 305.

agreement than an end to litigation'.[31] After surveying the literature, G. D. G. Hall concluded, in his review of Dodwell's 1958 edition of Norfolk and Suffolk fines, that the issue is likely to remain unproven one way or the other.[32]

Part of this uncertainly has been caused by the manner in which historians have approached the sources. Attention has sometimes been given to the content of the final concord itself to determine whether a case was brought collusively. Unfortunately, this typically contains little information about the background of the plea. The wording of the agreement of course never states that it was built upon a fictitious suit and provides few, if any, clues as to the nature of the preceding action. The most that is stated is that a plea of, for example, *mort d'ancestor* existed between the parties. Sometimes even this information is omitted and the concord will simply read '*unde placitum fuit inter eos*' ('whence a plea existed between them'). Dodwell seems to suggest that these fines are more likely to be the product of collusive litigation than those which name a specific action.[33] This is, however, unlikely. As Hall points out, later final concords based on fictitious disputes always named a specific action and there is nothing to suggest that the situation at the end of the twelfth century was any different.[34] Likewise, some final concords made '*unde placitum fuit inter eos*' can be linked to pleas recorded in the plea rolls which were certainly contentious.[35]

Alternatively, it has also been suggested that the type of agreement recorded in the fine may provide some clues as to the nature of the action. Dodwell argues that in later years, when conveyancing was obvious, the land would pass from the claimant to the tenant. In other words, the vendor would bring the action and then settle in order to recognize the right of the new tenant. In her edition of the Norfolk final concords from 1198–1202, however, she notes that it was often the claimant who took the land. She concludes that such fines were likely to indicate a genuine dispute and that collusive litigation was infrequent.[36] The idea that in collusive suits the claimant would often act as the releasor, or 'conusor', is also advanced by F. W. Jessup. In contrast to Dodwell's findings from the Norfolk feet of fines, Jessup noted that the great majority of Kent fines from the same period actually took this form.[37]

[31]Walker, *Lincoln Fines 1199–1216*, xvi.
[32]G.D.G Hall, 'Review [Dodwell]', 75 *The English Historical Review* (1960), 514.
[33]Dodwell, *Feet of Fines for Norfolk 1201–1215*, *Suffolk 1199–1214*, xx.
[34]Hall, 'Review [Dodwell]', 515.
[35]See, for example, the action of *mort d'ancestor* between Robert the clerk and the abbot of Hide in Frances Palgrave ed., *Rotuli Curiae Regis: Rolls and Records of the Court Held Before the King's Justiciars or Justices*, 2 vols., Record Commission, 1835, (hereafter, RCR), vol. 1, 56, and the corresponding fine '*unde placitum inter eos*' in *Feet of Fines of the Reign of Henry II and of The First Seven Years of the Reign of Richard I: 1182–1196*, (Pipe Roll Society 17), London, 1894, (hereafter, *Fines 1182–1196)*, no. 97.
[36]Dodwell, *Feet of Fines for Norfolk, 1198–1199 and 1199–1202*, xxiii.
[37]F.W. Jessup, 'Introduction', in *Calendar of Kent Feet of Fines to the End of Henry III's Reign*, prepared by I.J. Churchill, R. Griffin, and F.W. Hardman, (Kent Archaeological Society Records Branch, Kent Records, 15), Ashford, 1956, xxii–xxiii.

The relationship between the form of the fine and its purpose, for conveyancing or otherwise, is nevertheless complicated. Aston, in response to Dodwell's argument, points out that fines in which the tenant acted as conusor do not necessarily indicate the presence of a genuine dispute. He argues that in later years, when conveyancing was common, the tenant often recognized the right of the claimant, and some fines from this earlier period which appear to be based on a fictitious suit also take this form.[38] Conversely, the release of rights by the claimant cannot always mean that the action was collusive. It is not difficult to find settlements of this type relating to cases recorded in the plea rolls which clearly involved genuine disputes.[39] Jessup nevertheless argues that the frequency of this form of release in the fines from Kent suggests that they were made collusively. However, he can provide no other evidence to support this assertion, and it should be noted that his argument applies only to the evidence from a single county. Furthermore, the sample of Kent fines is taken from 1195–1226. Jessup admits that after 1230 the predominance of this form of settlement diminishes. Indeed, the uniformity noticed by Jessup is only particularly striking in the early years of Henry III's reign.[40]

The above illustrates that there is little in the content of the final concord itself which can provide evidence of whether an action was brought collusively. It has instead been suggested that the amount of money which was given by the parties for licence to settle can reveal whether a case was brought collusively. Foster ventures that 'probably … when, in the early part of the thirteenth century, more than half a mark is charged for a licence to agree we may conclude that the litigation is collusive'.[41] However, this is not a sure sign of collusive litigation. Walker examined five Lincolnshire fines from the reign of John which cost more than the normal amount to levy. She concluded that there was usually another reason as to why a larger amount was paid and that, in each case, evidence from the plea rolls shows that the litigation in question was based around a genuine dispute.[42]

Rather than the above, the most reliable method of determining the nature of a settlement, and the one that will be used in this study, is to search the records of the royal courts for evidence of a genuine dispute which preceded the making of the final concord. This may be found in plea roll entries which record pleading. It may also be illustrated by the tenant vouching a warrantor who was not present in court and had to be summoned. Likewise, delays caused by absent recognitors suggest that the

[38]Aston 'Review [Dodwell]', 305.
[39]See, for example, Walker, *Lincoln Fines 1199–1216*, no. 174, and D.M. Stenton, ed., *The Earliest Lincolnshire Assize Rolls A.D. 1202–1209*, (Lincoln Record Society 22), Lincoln, 1926, (hereafter, *Lincs 1202–1209*), nos. 1121 and 1142.
[40]Jessup, 'Introduction', xxii.
[41]Foster, *Final Concords*, xx.
[42]Walker, *Lincoln Fines 1199–1216*, xvi–xvii.

dispute had not been resolved by the parties before their appearance in court. Delays caused by the default of the tenant, or by an *essoin* (a formal excuse for absence from court) sent by one of the parties, are more difficult to interpret.[43] They may suggest the existence of a genuine dispute, with the tenant hoping to delay judgment for as long as possible.[44] It was, however, also possible that an individual involved in a collusive suit had been delayed in reaching court. In contrast, if the only activity recorded in the roll prior to the settlement was a payment for licence to concord, the action may well have been brought collusively.[45] Likewise, some fines exist for which no entry concerning the case can be found in the plea rolls. These actions could quite possibly have been brought for the purpose of conveyancing.

Eyre rolls are naturally the first records which should be examined in relation to the settlements which were made at the eyre. Likewise, bench plea rolls should be our first point of investigation in relation to settlements made at the bench. There was, however, a certain interchange of litigation between the bench and the eyre, especially in the years before Magna Carta stipulated that assizes such as *mort d'ancestor* should, where possible, be dealt with in their county of origin.[46] The court which followed the king, known as the court *coram rege*, might also hear disputes. Cases could move between the courts following postponements, or if particular circumstances made one court more suitable for hearing the case than another. This means that the surviving rolls of all the royal courts should be examined for evidence of a contentious dispute, regardless of whether the action was settled at the eyre or at the bench. Indeed, postponements leading to a subsequent hearing at a different location, or at a later sitting of the bench or court *coram rege*, can also shed light on the nature of the case. Collusive suits were unlikely to suffer lengthy delays. The parties would not raise any contentious points and, although some delays may have been encountered if parties experienced difficulties reaching court, it is likely that parties would avoid as much as possible the need to attend a subsequent hearing. A case brought at the eyre, but settled outside its county of origin, was probably therefore the product of a genuine dispute, as was a case which frequently experienced delays at the bench or before the court *coram rege*.

There are naturally some difficulties associated with the method for identifying collusive litigation outlined above. For example, we sometimes encounter a payment offered for licence to concord but cannot find the fine which relates to this payment. This suggests that the foot of the fine has been lost. This raises the possibility that some final concords relating

[43]Note that the default of the claimant would cause the action to fail.
[44]See also, Hall, 'Review [Dodwell]', 515.
[45]Meekings, *Surrey Eyre*, 43–44.
[46]*Magna Carta* (1215), c. 18; *Magna Carta* (1225), c. 12.

to cases which left no record in the plea rolls have also been lost. We may, therefore, lack evidence of a small amount of additional collusive litigation. Nevertheless, we find only very few examples of payments for licence to concord for which no corresponding fine survives. Furthermore, there is no guarantee that a final concord was ever produced, despite the intentions of the parties. Indeed, there is no reason to believe that a significant number of fines have gone missing. In general, Crook explains, the feet of fines have an 'excellent survival rate'.[47]

More significantly, entries providing evidence of a contentious dispute may have existed only in a roll, or part of a roll, which has now been lost, and the consequent lack of surviving evidence may give the misleading impression that the action in question was collusive. We also have evidence that some litigants who brought a contentious suit before the itinerant justices waited until the next eyre to receive a final concord if their case could not be concluded during the original visitation.[48] If the roll made at the earlier eyre does not survive and all records of a contentious dispute are therefore lost, we are again left with a final concord which appears, incorrectly, to be the product of a collusive suit. It is also quite possible that a litigant might obtain a writ to initiate a contentious action but reach an agreement with their adversary before the arrival of the justices. All of the above might cause us to mischaracterize some final concords made following genuine disputes as the product of collusive litigation. Nevertheless, this potential for a slight overstatement of collusive cases in fact works to the advantage of the argument of this article, which is that the maximum number of potentially collusive actions of *mort d'ancestor* in the period still comprises the minority of recorded cases.

The great majority of actions of *mort d'ancestor* were brought at the eyre.[49] As such, it is reasonable to assume that most collusive litigation, if it took place at all, took place during these visitations. In order to determine the extent to which the assize was used for this purpose, the visitations which took place in Bedfordshire (1202 and 1227–28), Essex (1198 and 1227), Lincolnshire (1202 and 1218–19), Cornwall (1201), Devon (1219) and Staffordshire (1199 and 1227) have been selected as case studies. This is because the records of these visitations have been well-preserved. Considered as a whole, these visitations also provide a broad geographical sample of litigation from our period. Within the confines of the period being studied, it is impossible to extend this survey to a county further north than Lincolnshire. The feet of fines made at the 1218–19 Yorkshire visitation do survive, but it appears that a large section of the

[47]Crook, *Records*, 8–9.
[48]See e.g. *Lincs 1202–1209*, no. 346 and Walker, *Lincoln Fines 1199–1216*, no. 252. See also the comments in Walker, ibid., at xxiii.
[49]Meekings, *Surrey Eyre*, 43.

plea roll containing the civil pleas is missing.[50] This makes the task of tracing settlements found in the feet of fines to corresponding cases in the roll impossible to conduct with accuracy.

In contrast to the popularity of the eyre, fewer actions of *mort d'ancestor* were brought before the bench or the court *coram rege*. Litigants were often faced with a longer journey to reach these courts, and the cost of a writ of *mort d'ancestor* which directed the case to the bench or court *coram rege* was often higher than a writ directing the case to the eyre.[51] Furthermore, following Magna Carta, actions of *mort d'ancestor* could not usually be brought directly before the bench. The volume of litigation coming before the court *coram rege* was also limited by the fact that the court sat only when the king was in England, and ceased to function during the minority of Henry III. Nevertheless, although fewer actions of *mort d'ancestor* were brought before the bench and the court *coram rege*, the use of the assize at these courts for conveyancing purposes will also be considered.

The eyre, the bench, and, to a lesser extent, the court *coram rege* were the principal royal courts of our period. From the 1220s onwards, 'special commissions' also came to be used with increased frequency. The issuing of a special commission would see a justice, or justices, instructed to travel to a county to hear a particular case. The plea rolls of these justices, if they were made during our period, do not survive. This means that we cannot investigate the extent to which special commissions were used for collusive litigation. However, it is unlikely that such commissions were used extensively for this purpose. For one, special commissions were issued on an *ad hoc* basis and so dealt with a very limited amount of litigation.[52] Furthermore, the cost of obtaining a commission, often ranging from 20s to ten marks, if such a commission was not granted as a special favour, must have reduced the suitability of these courts for conveyancing.[53]

Let us now turn to the sources. For the sake of clarity, in the following analysis final concords made in the form of a chirograph (those found in the feet of fines) are henceforth referred to as 'engrossed concords'. This allows for them to be easily distinguished from enrolled concords.[54] The evidence is presented here at length, because a systematic exposition is necessary to illustrate the working of the method which has been employed.

[50]See D.M. Stenton, ed., *Rolls of the Justices in Eyre for Yorkshire 1218–19*, (Selden Society 56), London, 1937, xii–xvii.

[51]The pipe rolls and oblate rolls of the period often show that a sum of either half a mark, or a mark, was offered.

[52]For a statistical analysis, see J. Kanter, 'The Four Knights' System and the Evidence for it in the Fine Rolls', Henry III Fine Rolls Project, https://finerollshenry3.org.uk/content/month/fm-03-2007.html [accessed 26/10/2019].

[53]See Kanter, ibid.

[54]This distinction is also used by Meekings. See *Surrey Eyre*, 41–48.

For ease of reference, a table (Table 1) is included below in order to summarise the findings.

IV. Final Concords made at the Eyre

1. Bedfordshire

The Bedfordshire eyre visitations of 1202 and 1227–28 provide us with records from the central region of the country. We have records of fifty-four actions of *mort d'ancestor* from Bedfordshire which came before the justices when they held their session at Bedford in 1202.[55] Of these, eighteen were settled. Eight cases were settled at Bedford. The remaining cases were settled after the justices had left the county town. Four were concluded at Dunstable. Three were settled at a special concluding session for the Midlands circuit, held at Westminster in November 1202. The final three were settled at the bench when it sat either at Westminster or St Brides.

Let us first examine the eight cases which were settled at Bedford. One case produced an enrolled, rather than an engrossed, concord.[56] This case cannot be traced to any earlier pleading in the plea rolls, which suggests that the action was brought collusively. The remaining seven cases produced engrossed concords. For these seven actions, there is likewise no mention of the case in the plea roll made at the session, or indeed the records of the bench or even the court *coram rege*. This suggests that the actions were collusive.[57]

The four cases which were settled at Dunstable all produced engrossed concords. Plea roll evidence shows that three of the actions concerned a genuine dispute.[58] The fourth case is more difficult to interpret. The parties agreed to halve the land, and that a day was given for them to receive their chirograph at Dunstable. The delay appears to have been caused by the need for the sister of the tenant to come to court and acknowledge that she had no right in the land that was being divided between the litigants.[59] It is perhaps to be expected that, if the action was collusive, this would have taken place at the initial hearing, although this is by no means certain.

[55]Crook, *Records*, 65.
[56]G.H. Fowler, ed., *A Calendar of the Feet of Fines for Bedfordshire, preserved in the Public Record Office, of the Reigns of Richard I, John, and Henry III*, (Bedfordshire Historical Record Society 6, Parts 1 and 2) Apsley Guise, 1919, (hereafter, *Beds Fines*), no. 136.
[57]*Beds Fines*, nos. 78 (*Hunter* vol. 1, p. 33); 81 (*Hunter* vol. 1, p. 34); 89 (*Hunter* vol. 1, pp. 37–38); 90 (*Hunter* vol. 1, p. 38)]; 94 (*Hunter* vol. 1, p. 40); 95 (*Hunter* vol. 1, p. 40); and 98 (*Hunter* vol. 1, p. 41).
[58]G.H. Fowler, ed., 'The Bedford Eyre, 1202', *Publications of the Bedfordshire Historical Record Society Volume 1* (Bedfordshire Historical Record Society 1), Aspley Guise, 1913, (hereafter, *Beds 1202*), nos. 103 (*Hunter* vol. 1, p. 44, case in plea rolls, *Beds 1202*, no. 130); 108 (*Hunter* vol. 1, p. 46, case in plea rolls, *Beds 1202*, no. 84); and 112 (*Hunter* vol. 1, p. 48, case in plea rolls, *Beds 1202*, no. 73).
[59]*Beds Fines*, no. 109 (*Hunter* vol. 1, pp. 46–47, case in plea rolls, *Beds 1202*, no. 139).

Table 1. Summary of final concords made at the eyre.

Eyre visitation	No. of recorded actions of *m d'a*.	No. of settlements	Settlements concluding contentious disputes	Probable collusive settlements	Settlements which are difficult to interpret	Percentage of potentially collusive actions (*excluding* settlements which are difficult to interpret)	Percentage of potentially collusive actions (*including* settlements which are difficult to interpret)
Beds. 1202	54	18	9	8	1	15	17
Beds. 1227–28	82	25	13	9	3	11	15
Essex 1198	23	6	2	3	1	13	17
Essex 1227	130	46	6	27	13	21	31
Lincs 1202	233	86	13	66	7	28	31
Lincs 1218–19	168	69	15	47	7	28	32
Cornwall 1201	75	16	2	4	10	5	19
Devon 1219	106	32	5	19	8	18	25
Staffs 1199	45	15	4	11	-	24	24
Staffs 1227	52	15	5	10	-	19	19

The three cases settled at Westminster during the concluding session of the eyre, and the three cases later settled at the bench while it sat at either Westminster or St Brides, all resulted in engrossed concords. Plea roll evidence shows that each of these cases was postponed at the Bedford visitation because the tenant sent an *essoin*.[60] As collusive suits were unlikely to have dragged on beyond this local session, these actions probably concerned genuine disputes.

In summary, we have records of fifty-four Bedfordshire cases which were first brought before the justices at the 1202 Bedfordshire visitation, of which eighteen resulted in a settlement, and eight of these were quite possibly collusive actions. If so, this means that no more than fifteen per cent of the fifty-four actions of *mort d'ancestor* heard by the justices at Bedford were brought for the purpose of conveyancing. If we treat the settlement made at Dunstable which is more difficult to interpret as one made collusively, this figure increases to seventeen per cent.

Let us now turn to the later Bedfordshire visitation of our period.[61] We have records of eighty-two Bedfordshire actions brought before the justices, of which twenty-five resulted in a settlement. Of these, twenty-two cases were settled at while the justices remained in Bedfordshire. The remaining three cases were settled later in the justices' circuit; two at Huntingdon, and one at Cambridge.

Again, let us first examine the twenty-two cases which were settled at Bedford. Of these, fourteen resulted in the production of an engrossed concord. Of these fourteen cases, eight were quite possibly collusive.[62] In contrast, four of the settlements appear to have concluded genuine disputes.[63] The two remaining cases are less certain. One is mentioned in an entry which sets out the outline of the case in its full form, as is generally used when a case proceeded to judgment ('*assisa venit recognitura si Johanes de Sevewell pater Roberti saisitus fuit…*' etc.). It then explains that the parties were brought into agreement ('*concordati*

[60] *Beds Fines* nos. 118 (*Hunter* vol. 1, pp. 50–51, case in plea rolls, *Beds 1202*, no. 30); 119a (*Hunter* vol. 1, p. 51, case in plea rolls, *Beds 1202*, no. 36); 120 (*Hunter* vol. 1 p. 52, case in plea rolls, *Beds 1202*, no. 42); 121 (*Hunter* vol. 1, p. 53, case in plea rolls, *Beds 1202*, nos. 5 and 157, CRR vol. 2, p. 158); 122 (*Hunter* vol. 1, p. 53, case in plea rolls, *Beds 1202*, nos. 22 and 23); and 140 (*Hunter* vol. 1, p. 63, case in plea rolls, *Beds 1202*, nos. 10 and 11, CRR vol. 2, p. 225).

[61] Crook, *Records*, 84.

[62] Three of these cases leave no record in the plea rolls: *Beds Fines*, nos. 304 (details of the case not provided by the published edition have been obtained from the original document, PRO CP 25(1)/1/14/28); 293 (further details from CP 25(1)/1/13/19); and 309 (further details from CP 25(1)/1/14/33). For the other five of these cases we simply find a record of a payment for licence to concord: *Beds Fines*, nos. 284 (further details from CP 25(1)/1/13/10, case in plea rolls, *Beds 1227*, no. 530); 288 (case in plea rolls, *Beds 1227*, no. 207); 302 (further details from CP25(1)/1/14/26, case in plea rolls, *Beds 1227*, no. 170); 310 (case in plea rolls, *Beds 1227*, no. 271); and 321 (further details from CP25(1)/1/14/46, case in plea rolls, *Beds 1227*, no. 307).

[63] *Beds Fines*, nos. 279 (case in plea rolls, *Beds 1227*, no. 142); 285 (case in plea rolls, *Beds 1227*, nos. 20, 90, 487); 303 (case in plea rolls, *Beds 1227*, nos. 158, 319); and 311 (case in plea rolls, *Beds 1227*, nos 149 and n.b. no. 291).

sunt').[64] The form of this entry may suggest that a genuine dispute existed, especially if it is contrasted to those entries in the roll which simply record a payment to make a fine, although we cannot be sure. The other case was settled after the tenant sent an *essoin* at the first hearing, the note of which is recorded in the plea roll.[65] We cannot be sure whether the tenant was employing dilatory tactics, or whether the action was collusive and they had actually been waylaid on their journey to court.

Three of the cases which were settled at Bedford produced an enrolled concord. Two of these cases were obviously contentious.[66] The remaining case is more difficult to interpret. The tenant sent an *essoin* on the initial day of the plea. At the later hearing both parties gave half a mark for licence to settle the case.[67] Again, we cannot be sure whether or not this indicates a collusive action.

Five cases were settled at Bedford for which no engrossed or enrolled concord can be found. Instead, we find a note in the plea roll that the parties had been brought into agreement, and it is possible that the feet of the fines have been lost. Four of the five cases appear to have been genuine disputes.[68] The fifth case appears only as an enrolment recording a payment for licence to concord. It is possible that this last case represents a collusive suit.[69]

The first case which was settled at Huntingdon produced an engrossed concord, and seems to have concerned a genuine dispute.[70] The second final concord is in fact enrolled in the plea roll of the Huntingdon visitation, and concerns a dispute which was obviously contentious.[71] Likewise, the engrossed concord produced at Cambridge concluded what was certainly a contentious suit.[72]

The records of the 1227–28 visitation therefore produce results very similar to those of the 1202 eyre. Of the eighty-two Bedfordshire actions which were brought before the justices, twenty-five were settled, and nine of these were quite possibly collusive suits. This would mean that about eleven per cent of the actions of *mort d'ancestor* heard by the justices at Bedford were brought for conveyancing purposes. If we include in our reckoning of collusive suits the fines made at Bedford which defy easy categorization, (one of the enrolled concords and two of the engrossed concords), this figure increases to fifteen per cent.

[64] *Beds Fines*, no. 290, (case in plea rolls, *Beds 1227* no. 493).
[65] *Beds Fines*, no 319 (further details from CP25(1)/1/14/44, case in plea rolls, *Beds 1227*, nos. 63, 173).
[66] *Beds 1227*, no. 107; and nos. 91 and 580 (the latter two entries concern the same case).
[67] *Beds 1227*, nos. 69 and 524.
[68] *Beds 1227*, nos. 18 and 221; nos. 21, 90 and 487; nos. 55, 565 and 484 (in this case the parties also appear to have been embroiled in an action of *novel disseisin*); and no. 539.
[69] *Beds 1227*, no. 171.
[70] *Beds Fines*, no. 299 (case in plea rolls, *Beds 1227*, nos. 557 and 559).
[71] *Beds 1227*, nos. 106 and 586.
[72] *Beds Fines*, no. 296 (case in plea rolls, *Beds 1227*, nos. 53 and 134).

2. Essex

Essex represents the south-eastern region of our study. The justices sat at Stratford during the 1198 visitation.[73] We have records of twenty-three actions of *mort d'ancestor* from Essex which were brought before the justices. Six of these resulted in a settlement. Four were settled at Stratford. The remaining two cases were settled at a later date, one at Bermondsey, the other at Westminster.

All four cases which were settled at Stratford produced engrossed concords. Two of these cases cannot be found in the plea rolls. These fines were quite possibly obtained collusively.[74] The remaining cases were mentioned in the plea roll made at the eyre. The first case stood over because the claimant quitclaimed to the tenant 'all right and claim that he had in the aforesaid land'.[75] The apparent lack of pleading, and the smoothness with which the case proceeded to a settlement, perhaps indicates that the action was brought collusively. The second case is more difficult to interpret, as it was initially postponed because the tenant sent an *essoin*. The parties then settled.[76]

The two cases which were later settled at Bermondsey and Westminster respectively also produced engrossed concords and, because of the delays which affected both actions, were likely to have been genuine disputes.[77]

To sum up, we have records of twenty-three actions of *mort d'ancestor* from the county which were brought before the justices, six of which were settled. Three of these were quite possibly collusive suits. If these fines were indeed made collusively, this would mean that thirteen per cent of the fifty-three actions of *mort d'ancestor* heard by the justices at Stratford were brought for the purpose of conveyancing. If we include the one settlement which is more difficult to interpret in our calculations, this figure increases to seventeen per cent.

The justices sat at Chelmsford for the main stage of their 1227 Essex visitation.[78] Of the 130 Essex actions of *mort d'ancestor* brought before the justices, forty-six resulted in a settlement. There were forty-two actions settled at Chelmsford, and four actions settled at a later date at Westminster.

Let us first examine the cases which were settled at Chelmsford. Of these forty-two actions, thirty-seven produced an engrossed concord. Twenty-five

[73] Crook, *Records*, 61–62.
[74] *Feet of Fines of the Tenth Year of King Richard I: 1198–1199* (Pipe Roll Society 24), London, 1900, (hereafter, *Fines 10 Ric.*), nos. 4 and 8.
[75] *Fines 10 Ric.*, no. 5 (case in plea rolls, RCR vol. 1, p. 192).
[76] *Fines 10 Ric.*, no. 39 (case in plea rolls, RCR vol. 1, p. 185).
[77] *Fines 10 Ric.*, nos. 105 (case in plea rolls, RCR vol. 1, p. 178); and 283 (case in plea rolls, RCR vol. 1 pp. 178 and 193).
[78] Crook, *Records*, p. 82.

of these cases were quite possibly collusive.[79] In contrast, two of the actions which produced an engrossed concord appear to have been contentious.[80] The remaining settlements which produced engrossed concords are more difficult to interpret. In eight cases we are told that the tenant had sent an *essoin*.[81] In one action the tenant defaulted at the first hearing.[82] Another action is recorded in a plea roll entry which sets out the case in its full form, as if it was about to proceed to a recognition, then notes that the parties were brought into agreement ('*concordati sunt*').[83]

Three settlements which were made at Chelmsford produced enrolled concords rather than chirographs. Two of these actions were settled with no sign of prior pleading. This may suggest a collusive suit, although one of the cases is set out in full as if it were about to proceed to a recognition, which may suggest the existence of a genuine dispute, although we cannot be sure.[84] The third case was settled after the tenant had appointed an attorney. There is no sign of pleading in the roll, although the case is, again, set out in full before the settlement is recorded.[85] This also makes the action more difficult to categorize.

Two actions were settled at Chelmsford but no final concord survives. The first of these cases was quite possibly collusive.[86] The second appears to have been contentious.[87]

The four cases which were later settled at Westminster all produced engrossed concords. Three of the four actions were certainly contentious.[88]

[79]The following ten cases leave no record in the plea rolls: R.E.G. Kirk, ed., *Feet of Fines for Essex, Volume I (A.D. 1182–A.D. 1272)*, (Essex Archaeological Society), published in nine parts, Colchester, 1899–1910, (hereafter, *Essex Fines*), nos. 182, 183, 187, 189, 191, 193, 228, 235, 239 and 247. In twelve other actions the only activity recorded in the plea rolls is that a payment was made for licence to settle the case: *Essex Fines*, nos. 180 (case in plea rolls, PRO JUST 1/229 m. 12); 195 (case in plea rolls, JUST 1/229 m. 9); 196 (case in plea rolls, JUST 1/229 m. 3d); 202 (case in plea rolls, JUST 1/229 m. 5d); 205 (case in plea rolls, JUST 1/229 m. 10); 211 (case in plea rolls, JUST 1/229 m. 4); 214 (case in plea rolls, JUST 1/229 m. 5d); 221 (case in plea rolls, JUST 1/229 m. 6d); 223 (case in plea rolls, JUST 1/229 m. 4 (*bis*)); 233 (case in plea rolls, JUST 1/229 m. 6); 242 (case in plea rolls, JUST 1/229 m. 6); and 243 (case in plea rolls, JUST 1/229 m. 9). A further three actions can be traced to entries which record an attornment, two of which are then followed by a payment for licence to concord: *Essex Fines*, nos. 207 (case in plea rolls, JUST 1/229 m. 4); 210 (case in plea rolls, JUST 1/229 mm. 1d, 5d); and 240 (case in plea roll, JUST 1/229 mm. 2, 2d).

[80]*Essex Fines*, nos. 198 (case in plea rolls, JUST 1/229 m. 4); and 236 (case in plea rolls, JUST 1/229 m. 11).

[81]*Essex Fines*, nos. 172 (case in plea rolls, JUST 1/229 mm. 1 (*bis*), 4, 8d); 174 (case in plea rolls, JUST 1/229 m. 1d); 175 (case in plea rolls, JUST 1/229 m. 1); 206 (case in plea rolls, JUST 1/229 mm.1, 6d); 217 (case in plea rolls, JUST 1/229 mm. 1, 6d); 224 (case in plea rolls, JUST 1/229 m. 1); 227 (case in plea rolls, JUST 1/229 m. 1); and 229 (case in plea rolls, JUST 1/229 m. 1d (*ter*) – both the claimant and the tenant *essoined* themselves).

[82]*Essex Fines*, no. 173 (case in plea rolls, JUST 1/229 m. 3d).

[83]*Essex Fines*, no. 232 (case in plea rolls, JUST 1/229 m. 6d).

[84]*Ralph son of Margaret* v *Richard son of Margaret and Beatrice his wife*, JUST 1/229 m. 5d; *John son of Robert of Panfield* v *William son of Henry of Panfield*, JUST 1/229 m. 5.

[85]*Robert son of Geoffrey de Haye* v *the prior of Dunmow*, JUST 1/229 mm. 1d, 4.

[86]*William Maillet* (?claimant) v *Thomas of Graveley*, JUST 1/229 m. 2.

[87]*Alex son of Wulward* v *Alex/?Andrew of Ramsey*, JUST 1/229 mm. 1, 6d, 12.

[88]*Essex Fines*, nos. 162 (this final concord combines two claims made by the claimant, the second of which is referenced below. Case in plea rolls, JUST 1/229 m. 4, CRR vol. 13, nos. 392, 440); 162 (this

It is less certain, however, whether the remaining action was collusive or contentious. The parties agreed to settle at Chelmsford, and there is no evidence of prior pleading. The production of the chirograph was delayed because the agreement concerned the exchange of lands in Essex and Norfolk, and required the sheriff of Norfolk to measure the relevant land in his county.[89]

The figures obtained from the 1227 Essex visitation are therefore quite similar to those from the 1198 visitation, although they suggest a slight increase in the proportion of actions brought collusively. Of the forty-six Essex cases which resulted in a settlement, twenty-seven fit our criteria for identifying potentially collusive suits, meaning that twenty-one per cent of the 130 actions of *mort d'ancestor* heard by the justices at Chelmsford were quite possibly brought to court for the purpose of conveyancing. If we also regard the actions which present more uncertainty as to their purpose as collusive, this figure increases to thirty-one per cent. It is nevertheless unlikely that all of the latter were collusive suits.

3. Lincolnshire

The 1202 Lincolnshire visitation was held at Lincoln.[90] Of the 233 actions of *mort d'ancestor* concerning land in the county which were brought before the justices, eighty-six were settled. Of these, eighty-one were settled while the justices sat at Lincoln. The remaining actions were settled at a later date; one at Leicester, one at Coventry, one at Westminster, one at Nottingham, and one at Northampton.

All of the eighty-one actions settled at Lincoln produced engrossed concords.[91] Sixty-six of these actions may well have been brought collusively.[92]

final concord combines two claims made by the claimant, the first of which is referenced above. Case in plea rolls, JUST 1/229 m. 4 (*bis*), CRR vol. 13, nos. 392, 440); and 292 (case in plea rolls, JUST 1/229 m. 4, CRR vol. 13, nos. 1840, 2539).

[89] *Essex Fines*, no. 159 (case in plea rolls, JUST 1/229 m. 11d). (A day was initially given to receive the chirograph at Hertford).

[90] Crook, *Records*, 64.

[91] One action resulted in the production of two engrossed concords; *Lincoln Fines 1199–1216*, nos. 128 and 146 (case in plea rolls, *Lincs 1202–1209*, no. 337). Another action resulted in the production of three engrossed concords; *Lincoln Fines 1199–1216*, nos. 153, 140 and 165 – the latter made at Dunstable (case in plea rolls, *Lincs 1202–1209*, no. 392).

[92] For fifty-three of these actions, no information can be found in any plea roll: *Lincoln Fines 1199–1216*, nos. 28, 29, 30, 31, 35, 38, 39, 40, 41, 44, 45, 47, 49, 51, 52, 54, 56, 58, 59, 60, 62, 66, 67, 69, 71, 81, 83, 84, 85, 89, 90, 91, 93, 95, 96, 97, 99, 103, 104, 108, 109, 110, 113, 116, 117, 118, 120, 121, 123, 124, 127, 134 and 151. Evidence from the eyre roll shows that another ten actions were settled after the tenant appointed an attorney, but the record provides no evidence of pleading: *Lincoln Fines 1199–1216*, nos. 34 (case in plea rolls, *Lincs 1202–1209*, no. 20); 42 (case in plea rolls, *Lincs 1202–1209* no. 12); 48 (case in plea rolls, *Lincs 1202–1209*, no. 1); 65 (case in plea rolls, *Lincs 1202–1209*, nos. 10, 97); 73 (case in plea rolls, *Lincs 1202–1209*, no. 412); 87 (case in plea rolls, *Lincs 1202–1209*, no. 74); 111 (case in plea rolls, *Lincs 1202–1209*, no. 569); 114 (case in plea rolls, *Lincs 1202–1209*, no. 359); 125 (case in plea rolls, *Lincs 1202–1209*, no. 402); and 152 (case in plea rolls, *Lincs 1202–1209*, no. 1). In a further three cases, one of the parties made a payment for licence to settle the case. Again, there is no evidence of earlier pleading: *Lincoln Fines 1199–1216*, nos. 61 (case in plea rolls, *Lincs 1202–*

In contrast, eight cases which resulted in an engrossed concord were clearly genuine disputes (one of which began at the bench rather than the eyre).[93] The remaining cases are more difficult to interpret. Four cases were settled after the tenant had defaulted.[94] In two further actions the relevant plea roll entries set out the case in full and then note that the parties had been brought into agreement.[95] As argued above, this may suggest the presence of a genuine initial dispute, although this is by no means certain. Likewise, one case was settled after the claimant had retracted his plea, and the parties had made a payment for licence to concord.[96] The explicit reference to the fact that the claimant withdrew his plea may suggest that a genuine dispute had been underway, although it is impossible to be sure on this point.

The five cases settled after the justices had moved on from Lincolnshire also produced engrossed concords. All five can be traced to the plea rolls and all show signs of being contentious disputes, either because of the evidence found in the plea roll entries or because of the delays which were experienced during the hearing of the case.[97]

To sum up, of the 233 Lincolnshire actions brought before the justices, eighty-six were settled. Of these, sixty-six cases, accounting for twenty-eight per cent of the total number of actions, were quite possibly brought collusively. The seven actions settled in circumstances which may also have been collusive, but which present more doubt, would, if regarded as collusive, increase this figure to thirty-one per cent.

The next surviving plea roll from a session of the general eyre held in Lincolnshire is that of the 1218–19 visitation.[98] Of the 168 actions of *mort d'ancestor* from this county which were brought before the justices, sixty-nine

1209, no. 304); 80 (case in plea rolls, *Lincs 1202–1209*, no. 201); and 92 (case in plea rolls, *Lincs 1202–1209*, no. 163).

[93] *Lincoln Fines 1199–1216*, nos. 64 (case in plea rolls, *Lincs 1202–1209*, nos. 281 and 109); 82 (case in plea rolls, *Lincs 1202–1209*, nos. 75 and 122); 98 (case in plea rolls, *Lincs 1202–1209*, no. 414); 107 (case in plea rolls, *Lincs 1202–1209*, no. 323); 128 and 146 (these two engrossed concords concern a single action. Case in plea rolls, *Lincs 1202–1209*, no. 337); 137 (case in plea rolls, RCR vol. 2, p. 79, D.M. Stenton, ed., *Pleas Before the King or His Justices, 1198–1201*, 4 vols. (Selden Society 67, 68, 83, 84), London, 1952–67 (hereafter, PBKJ), vol. 1, no. 2365, CRR vol. 1, p. 132, RCR vol. 2, p. 221; *Lincs 1202–1209*, nos. 136 and 153); 142 (case in plea rolls, *Lincs 1202–1209*, no. 360); and 153, 140 and 165 (these three engrossed concords concern a single action, the latter was made at Dunstable. Case in the plea rolls, *Lincs 1202–1209*, no. 392).

[94] *Lincoln Fines 1199–1216*, nos. 86 (case in plea rolls, *Lincs 1202–1209*, no. 292); 105 (case in plea rolls, *Lincs 1202–1209*, no. 284); 115 (case in plea rolls, *Lincs 1202–1209*, no. 290); and 131 (case in plea rolls, *Lincs 1202–1209*, no. 388).

[95] *Lincoln Fines 1199–1216* nos. 53 (case in plea rolls, *Lincs 1202–1209*, no. 124); and 144 (case in plea rolls, *Lincs 1202–1209* no. 379).

[96] *Lincoln Fines 1199–1216*, no. 112 (case in plea rolls, *Lincs 1202–1209*, no. 181).

[97] *Lincoln Fines 1199–1216*, nos. 155 (case in plea rolls, *Lincs 1202–1209*, no. 185); 160 (case in plea rolls, *Lincs 1202–1209*, nos. 322 and 517); 175 (case in plea rolls, *Lincs 1202–1209*, no. 328); 185 (case in plea rolls, *Lincs 1202–1209*, no. 17); and 199 (case in plea rolls, PBKJ vol. 1, no. 2183; *Lincs 1202–1209*, no. 106).

[98] Crook, *Records*, 75.

were settled. Of these, sixty-eight were settled while the justices sat at Lincoln. The remaining action was concluded at a later date at Westminster.

Two of the sixty-eight cases which were settled at Lincoln resulted in an enrolled concord rather than a chirograph. One of these cases was settled with no evidence of prior pleading, indicating that the action was perhaps collusive.[99] The other case appears to have been contentious.[100] One further case was settled without licence and did not produce a final concord. This cannot have been brought for conveyancing purposes.[101] The remaining sixty-five cases had the terms of their settlements recorded in engrossed concords. Of these sixty-five cases, forty-six were quite possibly collusive.[102] In contrast, twelve final concords which can be traced to the roll appear to have settled genuine disputes.[103]

The background to the remaining cases which were settled during this visitation is more difficult to interpret. One action is recorded in the eyre roll in an entry which is set out as if to introduce a contentious suit. The enrolment then records that the parties were brought into agreement.[104] Another concorded action is recorded in a plea roll entry which is left unfinished.[105] Another case was settled after the claimant had initially lost the case by default as he had not appeared in court. He then gave the justices half a mark for licence to concord with the same tenant, and a settlement was recorded in an engrossed concord.[106] A further four cases were settled

[99] *Lincs 1218–19*, no. 477.
[100] *Lincs 1218–19*, nos. 95 and 144.
[101] *Lincs 1218–19*, no. 184.
[102] There is no mention of thirty-six of these forty-six actions in any surviving plea roll: *Abstracts of Final Concords temp. Richard I, John, and Henry III,* trans. W.K. Boyd, preface and index W.O. Massingberd, (Lincolnshire Records 1), London, 1896, (hereafter, *Lincolnshire Records*), pp. 116–152, nos. 12, 14, 20, 28, 30, 34, 36, 37, 39, 40, 43, 45, 46, 49, 54, 56, 58, 80, 82, 85, 86, 87, 88, 96, 102, 108, 114, 117, 118, 123, 124, 125, 127, 129, 131 and 132. Another five cases were settled after one of the parties had made an attornment, with no sign of any other pleading: *Lincolnshire Records*, pp. 116–152, nos. 41 (case in plea rolls, *Lincs 1218–19*, no. 337); 42 (case in plea rolls, *Lincs 1218–19*, no. 336); 64 (case in plea rolls, *Lincs 1218–19*, no. 717); 83 (case in plea rolls, *Lincs 1218–19*, no. 716); and 89 (case in plea rolls, *Lincs 1218–19*, nos. 326, 339). In two other cases a plea roll entry simply records that one of the parties made a payment for licence to concord: *Lincolnshire Records*, pp. 116–152, nos. 77 (case in plea rolls, *Lincs 1218–19*, no. 801); and 90 (case in plea rolls, *Lincs 1218–19*, no. 55). Another case is mentioned only in a plea roll entry which names the day on which the parties were to receive their chirograph: *Lincolnshire Records*, pp. 116–152, no. 120 (case in plea rolls, *Lincs 1218–19*, no. 617). The information provided by the eyre roll about a further two cases also suggests that they were brought collusively: *Lincolnshire Records*, pp. 116–152, nos. 65 (case in plea rolls, *Lincs 1218–19*, no. 251); and 112 (case in plea rolls, *Lincs 1218–19*, no. 321).
[103] *Lincolnshire Records*, pp. 116–152, nos. 13 (case in plea rolls, *Lincs 1218–19*, nos. 346, 398); 17 (case in plea rolls, *Lincs 1218–19*, nos. 446, 849); 19 (case in plea rolls, *Lincs 1218–19*, no. 323); 44 (case in plea rolls, *Lincs 1218–19*, no. 133); 53 (case in plea rolls, *Lincs 1218–19*, nos. 139, 226, 245); 59 (case in plea rolls, *Lincs 1218–19*, nos. 252, 504); 62 (case in plea rolls, *Lincs 1218–19*, nos. 646, 447); 63 (case in plea rolls, *Lincs 1218–19*, nos. 396, 709); 73 (case in plea rolls, *Lincs 1218–19*, nos. 400, 770, 808); 79 (case in plea rolls, *Lincs 1218–19*, nos. 212, 364); 104 (case in plea rolls, *Lincs 1218–19* nos. 120, 230, 570); and 121 (case in plea rolls, *Lincs 1218–19*, no. 160, 229).
[104] *Lincolnshire Records*, pp. 116–152, no. 126 (case in plea rolls, *Lincs 1218–19*, no. 289).
[105] *Lincolnshire Records*, pp. 116–152, no. 105 (case in plea rolls, *Lincs 1218–19*, no. 343).
[106] *Lincolnshire Records*, pp. 116–152, no. 94 (case in plea rolls, *Lincs 1218–19*, nos. 110, 192).

after the tenant did not come to the initial hearing at the eyre but either sent an *essoin* or defaulted.[107]

The action which was subsequently concluded at Westminster was certainly a contentious dispute.[108]

An analysis of the 1218–19 Lincolnshire visitation therefore provides very similar results to the earlier visitation. Of the 168 actions brought before the justices, sixty-nine were settled. Of these, forty-seven could well have been brought collusively. This accounts for twenty-eight per cent of the total number of actions heard by the justices. The seven actions which were settled in circumstances which are more difficult to interpret would, if also regarded as collusive, increase this figure to thirty-two per cent.

4. Cornwall and Devon

The 1201 Cornwall visitation took place at Launceston.[109] Of the seventy-five actions of *mort d'ancestor* from the county which were brought before the justices, sixteen resulted in a settlement. All but one of these cases were settled at Launceston. The remaining case was settled later at Taunton (Somerset).

Of the fifteen cases which were settled at Launceston, twelve were concluded by means of an engrossed concord. Four of these cases were quite possibly collusive suits.[110] It is less easy to categorize the remaining eight actions. In four cases the tenant had cast an *essoin* at the initial hearing.[111] A further three cases were recorded in plea roll entries which outline the case in full and then explain that the parties were brought into agreement.[112] As has been argued, this perhaps suggests that a genuine dispute existed, although we cannot be sure. The remaining case was settled when, we are told, the claimant 'afterwards' ('*postea*') came to court and withdrew their plea.[113]

One of the actions settled at Launceston was concluded by means of an enrolled concord, rather than with a chirograph. The settlement concluded

[107] *Lincolnshire Records*, pp. 116–152, nos. 35 (case in plea rolls, *Lincs 1218–19*, no. 260); 115 (case in plea rolls, *Lincs 1218–19*, no. 219); 116 (case in plea rolls, *Lincs 1218–19*, no. 331); and 119 (case in plea rolls, *Lincs 1218–19*, no. 348).

[108] *Lincolnshire Records*, pp. 153–176, no. 1 (case in plea rolls, *Lincs 1218–19*, nos. 431, 760, 850).

[109] Crook, *Records*, 63.

[110] These four cases left no mark in the plea rolls: J.H. Rowe, ed., *Cornwall Feet of Fines Volume I*, (Devon and Cornwall Record Society) Exeter, 1914, (hereafter, *Cornwall Fines*), nos. 15 (*Hunter* vol. 1, p. 352); 20 (*Hunter* vol. 1, p. 345); 23 (*Hunter* vol. 1, p. 343); 29 (*Hunter* vol. 1, p. 344).

[111] *Cornwall Fines*, nos. 12 (*Hunter* vol. 1, pp. 349–350, case in plea rolls, PBKJ vol. 2, nos. 121 and 150); 14 (*Hunter* vol. 1, p. 345, case in plea rolls, PBKJ vol. 2, no. 142); 19 (*Hunter* vol. 1, pp. 348–349, case in plea rolls, PBKJ vol. 2, no. 120); and 28 (*Hunter* vol. 1, p. 344, case in plea rolls, PBKJ vol. 2, no. 131).

[112] *Cornwall Fines*, nos. 13 (*Hunter* vol. 1, p. 346–347, case in plea rolls, PBKJ vol. 2, no. 517); 18 (*Hunter* vol. 1, p. 342, case in plea rolls, PBKJ vol. 2, no. 492); and 30 (*Hunter* vol. 1, p. 349, case in plea rolls, PBKJ vol. 2, no. 498).

[113] *Cornwall Fines*, no. 26 (*Hunter* vol. 1, p. 346, case in plea rolls, PBKJ vol. 2, nos. 497 and 569).

what appears to be a genuine dispute.[114] A further two cases were settled at Launceston but no concord survives. Both of these settlements are difficult to interpret. In one, the case was first delayed because the tenant sent an *essoin*.[115] The other action was recorded in the plea roll in an entry which set the case out in full, then explained that the parties had settled.[116]

The final case was settled at Taunton, where the justices held a session following their departure from Cornwall. The plea was first heard at Launceston and appears to be a genuine dispute.[117]

To summarize the findings from Cornwall; of the seventy-five actions brought before the justices, sixteen were settled. Of these sixteen cases, four were quite possibly brought collusively. These account for five per cent of the total actions of *mort d'ancestor* brought before the justices. If we also include in this calculation the cases which raise greater doubts about the nature of the action, this figure increases to nineteen per cent.

No plea roll for a Cornish eyre survives from later in our period. The records of the 1219 Devon visitation can, however, be used to study a south-western county early in the reign of Henry III.[118] At this session, held at Exeter, the justices heard 106 Devonshire actions of *mort d'ancestor*. Of these, thirty-two cases resulted in a settlement. All of these were concluded at Exeter, although one case was not settled during the main visitation of the justices. The tenant vouched to warranty a minor and the case was postponed until he came of age. The final concord was produced almost ten years later.[119]

Of the thirty-one actions settled during the main visitation of the justices, twenty-five had their terms recorded in an engrossed concord. Of these twenty-five cases, nineteen were quite possibly collusive.[120] Another action apparently settled a contentious dispute in which the case was postponed because the tenant vouched a warrantor who was not present in court. The action was later settled.[121] The five remaining cases are more difficult to interpret. Two are recorded in entries which set out the cases in their full form and then explain that the parties were brought into agreement.[122]

[114]PBKJ vol. 2, nos. 467 and 508.
[115]PBKJ vol. 2, no. 134.
[116]PBKJ vol. 2, no. 513.
[117]*Cornwall Fines*, no. 31 (*Hunter* vol. 1, p. 350, case in plea rolls, PBKJ vol. 2, nos. 493 and 566).
[118]Crook, *Records*, 73.
[119]See below, n. 129.
[120]Sixteen cases left no mark on the plea rolls: J. Reichel Oswald, ed., *Devon Feet of Fines, Volume I. Richard I–Henry III: 1196–1272*, (Devon and Cornwall Record Society), Exeter, 1912, (hereafter, *Devon Fines*), nos. 77, 78, 79, 81, 82, 85, 90, 93, 95, 96, 99, 101, 107, 113, 120, 124. In a further three cases the tenant vouched the chapter of Exeter cathedral to warranty. In each case the dean of the chapter appears to have been present in court, and the claimant immediately quitclaimed in each case with no evidence of further pleading: *Devon Fines*, nos. 111 (case in plea rolls, PRO JUST 1/180 m. 1d); 117 (case in plea rolls, JUST 1/180 m. 3d); and 122 (case in plea rolls, JUST 1/180 m. 3d).
[121]*Devon Fines*, no. 123, (case in plea rolls, JUST 1/180 m. 1d).
[122]*Devon Fines*, nos. 100 (case in plea rolls, JUST 1/180 m. 2); and 104 (case in plea rolls, JUST 1/180 m. 3d).

Two cases are mentioned in entries in the roll which record that the case had been postponed until later in the session. The roll then states that the parties were brought into agreement, with this information being added by the same hand and apparently at the same time as the preceding text was written.[123] The remaining case was settled after both tenants named in the writ had defaulted at the initial hearing. The entry goes on to state that the parties were brought into agreement and allowed to have a chirograph.[124]

Five of the actions at the Exeter session had their settlement recorded in an enrolled concord rather than a chirograph. The nature of three of these cases is difficult to ascertain. They are recorded in plea roll entries which set out the case in full before noting that the parties are brought into agreement.[125] The fourth case was an obviously contentious dispute concerning the heiresses of Humphrey Stures.[126] The remaining enrolled concord sets out the case in full before explaining that the tenant granted the land to the claimants. This action involved a number of the same claimants as the above case concerning the death of Humphrey Stures, and was brought on the death of the same Humphrey. This suggests that the dispute was real.[127]

One further case was settled during the Exeter session for which no record of the settlement survives. This appears to have been a genuine dispute.[128] The case which resulted in a settlement almost ten years after the justices held their session in Exeter also, perhaps unsurprisingly, left evidence of contentious pleading in the rolls.[129]

Our findings from the 1219 Exeter visitation may be summarized as follows: Of the 106 Devonshire actions brought before the justices at Exeter, thirty-two were settled. Of these, nineteen cases were quite likely to have been brought collusively. These account for eighteen per cent of the Devon actions of *mort d'ancestor* heard at this session. If we include in this calculation the fines which are more difficult to categorize, but which may also have been brought collusively, the figure increases to twenty-five per cent.

5. Staffordshire

The Staffordshire visitations illustrate the north-west region for our survey. The 1199 visitation took place at Lichfield, where forty-five Staffordshire actions of *mort d'ancestor* were brought before the justices.[130] Of these

[123] *Devon Fines*, nos. 105 (case in plea rolls, JUST 1/180 m. 2); and 116 (case in plea rolls, JUST 1/180 m. 3).
[124] *Devon Fines*, no. 98 (case in plea rolls, JUST 1/180 m. 2).
[125] *Jordan son of Gunnilda* v *William of Bremerigg and Walter Noren* (JUST 1/180 m. 1); *Walter of Baggeston* v *Jordan of Baggeston* (JUST 1/180 m. 2); *Laurence Corbin* v *William of Bonevill* (JUST 1/180 m. 5d).
[126] *Cecilia, Clara, Matilda, Sarah, and Basilia and her husband* v *Hawisa widow of Elias le Viel* (JUST 1/180 mm. 2, 2d, 3d).
[127] *Cecilia, Clara, Matilda, Sarah, and Basilia and her husband, and William son of Alice, Crawe son of Helen, and Alice daughter of Margery* v *William son of Hugh* (JUST 1/180 m. 2d).
[128] *William Dacus* v *Osbert of Brigedon* (JUST 1/180 m. 4).
[129] *Devon Fines*, no. 163 (case in plea rolls, JUST 1/180 mm. 3, 4, 5d).

cases, fifteen resulted in a settlement. All of these cases except two were settled while the justices sat at Lichfield. The two actions which were settled at a later date were both concluded at Westminster.

The thirteen cases which were settled at Lichfield produced engrossed concords. Of these, eleven cases were quite possibly collusive.[131] The remaining two actions both concerned genuine disputes.[132] The two actions which were settled at a later date at Westminster were also recorded in the plea rolls. These likewise exhibit clear evidence of contentious pleading.[133]

The 1199 Staffordshire visitation therefore included eleven actions which were perhaps brought collusively. This accounts for twenty-four per cent of the total number of Staffordshire cases brought before the justices.

The 1227 Staffordshire visitation was also held at Lichfield.[134] Here, fifty-two Staffordshire actions of *mort d'ancestor* were brought before the justices. Of these, fifteen resulted in a settlement. All were settled while the justices were holding their session in the county.

Out of the fifteen cases which were settled, twelve produced an engrossed concord. Nine of these cases may well have been collusive.[135] The remaining three cases which resulted in an engrossed concord were clearly contentious.[136]

[130]Crook, *Records*, 63.

[131]The cases left no mark in the plea rolls: G. Wrottesley, ed., 'Staffordshire Suits extracted from the Plea Rolls temp. Richard I and King John', *Collections for a History of Staffordshire* vol. 3 (William Salt Archaeological Society), London, 1882 (hereafter, CHS vol. 3), pp. 166–168, nos. 1, 2, 5, 9, 10, 13, 14, 19, 21, 24, 25 (the numbers correspond to the documents' reference numbers in the National Archives, London, series CP 25(1)208/2).

[132]CHS vol. 3, pp. 166–168, nos. 15 and 18 (two chirographs were made concerning this dispute, case in the plea rolls, CHS vol. 3 p. 56); and 22 (case in plea roll, CHS vol. 3 p. 59).

[133]CHS vol. 3, pp. 166–168, no. 3 (case in the plea roll, CHS vol. 3 p. 56); and 23 (case in plea roll, CHS vol. 3 p. 57).

[134]Crook, *Records*, 85.

[135]One case left no mark in the plea rolls: PRO CP 25(1)/208/3/60. Four cases were recorded in the plea roll made at the eyre, but the entries only record that a payment was made to settle the case, and there is no evidence of earlier pleading: CP 25(1)/208/3/49 (case in plea rolls, *Collections for a History of Staffordshire* vol. 4 (William Salt Archaeological Society), London, 1883 (hereafter, CHS vol. 4), p. 48– additional information omitted by this publication is supplied by the plea roll itself– i.e., here, JUST 1/801 m. 1); CP 25(1)/208/3/58 (case in plea rolls, CHS vol. 4 p. 55/ JUST 1/ 801 m. 4); CP 25(1)/208/3/64 (case in plea rolls, CHS vol. 4 pp. 62–63/JUST 1/801 m. 7); CP 25(1)/208/3/65 (case in plea rolls, CHS vol. 4 p. 64/JUST 1/801 m. 8). Two other cases appear in plea roll entries recording the appointment of an attorney, although there is no evidence of any pleading being heard by the justices: CP 25(1)/208/3/57 (case in plea roll, CHS vol. 4 pp. 48 and 52/ JUST 1/801 mm. 1 and 3); CP 25(1)/208/3/69 (case in plea roll, CHS vol. 4 pp. 51 and 54/JUST 1/801 mm. 2 and 3d). Two cases were settled after the tenant vouched a warrantor, who was apparently present in court and settled with the claimant: CP 25(1)/208/3/61 (case in plea rolls, CHS vol. 4 p. 65/JUST 1/ 801 m. 8); CP 25(1)/208/3/66 (case in plea roll, CHS vol. 4 p. 63/JUST 1/801 m. 7. The settlement in this case is also recorded in the plea roll entry).

[136]CP 25(1)/208/3/48 (case in plea rolls, CHS vol. 4 pp. 58 and 60/JUST 1/801 mm. 5d and 6); CP 25(1)/208/3/50 (case in plea rolls, CHS vol. 4 p. 49/JUST 1/801 m. 1d); and CP 25(1)/208/3/56 (the claimant in this case had previously brought the same action against the tenants-at-will of the other party to this dispute, and the case was dismissed. See CHS vol. 4 p. 49/JUST 1/801 m. 1d).

Two of the actions which were settled did not apparently produce an engrossed concord, but the terms of the agreement were nevertheless recorded in an enrolled concord. One case was perhaps brought collusively.[137] The other action resulting in an enrolled concord was clearly contentious.[138] One further case was settled but no final concord can be found, although evidence from the eyre rolls shows that the dispute was genuine.[139]

The records of this later session therefore paint a picture which is quite similar to that from the 1199 visitation. There were ten actions of *mort d'ancestor* which were quite possibly brought collusively. These account for nineteen per cent of the Staffordshire actions of *mort d'ancestor* brought before the justices during the visitation.

V. Final Concords made Outside the Eyre

Most actions of *mort d'ancestor* were heard during an eyre, and it is here that most collusive litigation is likely to have taken place. A brief examination of the cases brought before the bench in the period 1194–1215 confirms the suspicion that, even in the years preceding Magna Carta, few collusive suits were brought before this court.

We have records, for example, of just eleven Lincolnshire cases settled at the bench during the whole of this period.[140] This is a stark contrast to the eighty-six actions settled at the 1202 Lincolnshire visitation. All but one of the cases settled at the bench can be traced to the plea rolls, which provide evidence of a genuine dispute between the parties.[141] Indeed, one of the

[137] *Margery wife of Robert of Stanton* (?claimant) v *Hawisa of Waterfall and William of Wrottesley*, CHS vol. 4 pp. 55 and 58/JUST 1/801 mm. 4 and 5. The case was settled after one of the parties appointed an attorney, but the roll contains no evidence of any pleading.

[138] *Walter son of Richard* v *Robert Mansel*, CHS vol. 4 pp. 48–9/JUST 1/801 m. 1d.

[139] *Richard nephew of Liuf* v *Henry Koc and his wife and Osbert of Lockeleg'*, CHS vol. 4 pp. 51, 55 and 60–1/JUST 1/801 mm. 2, 4 and 6d.

[140] Hall, in his review of Dodwell, counts a significantly larger number, but appears to have counted all final concords made at Westminster, not just those concerning actions of *mort d'ancestor*. See Hall, 'Review (Dodwell)', 515.

[141] F.W. Maitland, ed., *Three Rolls of the King's Court in the Reign of King Richard the First, A.D. 1194–1195*, (Pipe Roll Society 14), London, 1891, p. 47 (further instances of case in plea rolls, *Three Rolls*, p. 28, RCR vol. 1 p. 33. This case is described as an action of *mort d'ancestor* in a plea roll entry, yet has the appearance of an action of right. It is possible, although not certain, that this entry describes the action incorrectly); *Lincoln Fines 1199–1216*, no. 176 (case in plea rolls, CRR vol. 1, pp. 81, 133, 138, 202, RCR vol. 1, pp. 347, 448, RCR vol. 2, pp. 80, 86, CRR vol. 2, pp. 123, 168, 173); *Lincoln Fines 1199–1216*, no. 199 (case in plea rolls, PBKJ vol. 1, no. 2183, *Lincs 1202–1209*, no. 106); *Lincoln Fines 1199–1216*, no. 137 (case in plea rolls, RCR vol. 2, p. 79, PBKJ vol. 1, no. 2365, CRR vol. 1, p. 132, RCR vol. 2, p. 221, *Lincs 1202–1209*, nos. 136 and 153); *Lincoln Fines 1199–1216*, no. 175 (case in plea rolls, *Lincs 1202–1209*, no. 328); *Lincoln Fines 1199–1216*, no. 174 (case in plea rolls, *Lincs 1202–1209*, nos. 1121, 1142); *Lincoln Fines 1199–1216*, no. 229 (case in plea rolls, CRR vol. 3, pp. 278, 287, PBKJ vol. 3, no. 2240, CRR vol. 4, pp. 227, 269, PBKJ vol. 4, nos. 2550, 2730); *Lincoln Fines 1199–1216*, no. 204 (case in plea rolls, CRR vol. 3, pp. 221, 319); *Lincoln Fines 1199–1216*, no. 232 (case in plea rolls, CRR vol. 4, p. 299, CRR vol. 5, pp. 84, 125, PBKJ vol. 4, no. 2806); and finally, a case for which no final concord survives: CRR vol. 2, pp. 223, 218, CRR vol. 3, p. 317, PBKJ vol. 4, no. 3200 (this case was apparently settled as the litigants are later found in the records contesting an action *de fine facto*).

cases first appeared at the 1202 Lincolnshire eyre and has already been mentioned.[142] There is just one Lincolnshire engrossed concord made at the bench which cannot be traced to a case recorded in the plea rolls.[143] This was, however, made in 1196 and few plea rolls of the court survive from the mid-1190s. It is possible that evidence of a genuine dispute would be found in one of the lost rolls from this period.

We may use Bedfordshire as an example of a county located closer to Westminster. Although it is not the closest county to the bench, no county closer to Westminster produces a better level of surviving documentation for both eyre and bench. There were twelve Bedfordshire actions settled at the bench during the period 1194–1215. Six of these cases can be traced to plea roll entries which show that a genuine dispute existed between the parties.[144] (Three of these six have already been encountered as they began at the 1202 Bedford visitation).[145] One further case was delayed once at the bench because the tenant sent an *essoin*, which might suggest a genuine dispute, although we cannot be sure.[146] Five engrossed concords cannot be traced to a case recorded in the plea rolls of the bench or the eyre.[147] Two of these concords were, however, made in the mid-1190s which, as noted, was a period from which few rolls have survived.[148] Indeed, the incomplete survival of bench plea rolls throughout the whole period might explain why the remaining fines cannot be traced to disputes recorded in the rolls.

Still fewer actions of *mort d'ancestor* were heard at the court *coram rege* during its brief period of operation in John's reign. It is unlikely that the court would have been used for routine conveyancing, particularly because it was fast-moving and often difficult to reach.[149] We may again use actions from Lincolnshire and Bedfordshire as case studies. We have records of seven Lincolnshire actions which were settled *coram rege*. Plea roll evidence shows that five of these cases involved a genuine dispute

[142] *Lincoln Fines 1199–1216*, no. 175 (case in plea roll, *Lincs 1202–1209*, no. 328).
[143] *Fines 1182–1196*, no. 129.
[144] *Beds Fines*, nos. 55 (*Hunter*, i, pp. 23–24, case in plea rolls, CRR vol. 1, p. 95, RCR vol. 2, p. 26); 58 (*Hunter* vol. 1, p. 24, case in plea rolls, RCR vol. 1, pp. 265, 319 and 228); 62 (*Hunter* vol. 1, pp. 26–27, case in plea rolls, RCR vol. 1, pp. 247 and 352, RCR vol. 2, p. 68); 121 (case in pleas rolls, *Beds 1202*, nos. 5 and 157, CRR vol. 2, p. 158); 122 (case in plea rolls, *Beds 1202*, nos. 22 and 23); 140 (case in plea rolls, *Beds 1202*, nos. 10 and 11, CRR vol. 2, p. 225).
[145] *Beds Fines*, nos. 121 (*Hunter* vol. 1, p. 53, case in plea roll, *Beds 1202*, nos. 5 and 157, CRR vol. 2, p. 158); 122 (*Hunter* vol. 1, p. 53, case in plea rolls, *Beds 1202*, nos. 22 and 23); 140 (*Hunter* vol. 1, p. 63, case in plea rolls, *Beds 1202*, nos. 10 and 11, CRR vol. 2, p. 225).
[146] RCR vol. 1, pp. 274 and 390.
[147] *Fines 1182–1196*, nos. 53 and 115; *Beds Fines*, nos. 74 (*Hunter* vol. 1, p. 30); 123 (*Hunter* vol. 1, pp. 53–54); and 151 (*Hunter* vol. 1, pp. 69–70).
[148] *Fines 1182–1196*, nos. 53 and 115.
[149] See, e.g. W. Eves, 'Justice Delayed: Absent Recognitors and the Angevin Legal Reforms, *c.*1200', in T.R. Baker, ed., *Law and Society in Later Medieval England and Ireland: Essays in Honour of Paul Brand*, Abingdon, 2018, 12–13.

between the parties.[150] The remaining two settlements are found only in engrossed concords which cannot be traced to an entry in any plea roll. It is again possible that the crucial rolls have not survived.[151] We find no record of any action of *mort d'ancestor* from Bedfordshire which was settled *coram rege*.

VI. Final Concords Concerning Unspecified Pleas

Brief consideration must also be given to the fines which simply state that they were made '*unde placitum fuit inter eos*' and do not name the action that brought the case to court. To what extent could these represent additional, potentially collusive, actions of *mort d'ancestor* which were brought before the justices?

It is in fact unlikely that many of these fines concern actions of *mort d'ancestor*, despite the occasional example that emerges to the contrary. Hall has suggested that the fines which use the phrase '*unde placitum fuit inter eos*' most often relate to actions of right which had yet to reach to the grand assize stage of proceedings. His study of the *Curia Regis Rolls* (those of the bench and the court *coram rege*) from May 1205 to July 1206 led him to conclude that 'only rarely does this allegation describe anything else'.[152]

This view is largely supported by a study of the fines made at the 1202 Lincolnshire eyre. Of the twenty-five fines made '*unde placitum fuit inter eos*', twelve can be traced to the plea rolls. Five appear to relate to actions of right,[153] and one concerns a writ 'namely *precipe*',[154] and one a plea *de fine facto*.[155] Two final concords can be traced to entries which simply record a payment for licence to concord an unspecified action.[156] Another concerns a writ of entry,[157] and one an action of *novel disseisin*.[158] Just one final concord concerns an action of *mort d'ancestor*.[159]

[150]*Lincoln Fines 1199–1216*, no. 301 (case in plea rolls, *Lincs 1202–1209*, no. 17, CRR vol. 5, p. 67. See also *Lincoln Fines 1199–1216*, no. 185 for an earlier fine made concerning the same case); *Lincoln Fines 1199–1216*, no. 302 (case in plea rolls, PBKJ vol. 4, nos. 3564, 3573, 3949, 3981, 4256); *Lincoln Fines 1199–1216*, no. 323 (case in plea rolls; PBKJ vol. 4, nos. 3519a, 3604, 3691, 3908, 4252, CRR vol. 6, p. 65); CRR vol. 1, p. 430 (*Peter of Bekering* v *Geoffrey de Neville*. No final concord survives. Other entries concerning the case in the plea rolls, CRR vol. 1, pp. 259, and 414, PBKJ vol. 1, no. 3289); PBKJ vol. 4, no. 3352 (*Gunnora de Valognes* v *Philip de Valognes*. No final concord survives. Other entries concerning the case in the plea rolls; CRR vol. 5, pp. 156–157, 179).
[151]*Lincoln Fines 1199–1216*, nos. 303 and 304.
[152]Hall, 'Review [Dodwell]', 515.
[153]*Lincoln Fines 1199–1216*, nos. 37 (case in plea rolls, CRR vol. 1, p. 309); 46 (case in plea rolls, CRR vol. 1, p. 311, *Lincs*, no. 74); 55 (case in plea rolls, CRR vol. 2, p. 80); and 63 (case in plea rolls, CRR vol. 2, 79); *Lincoln Fines 1199–1216*, no. 79 (case in plea rolls, CRR vol. 1, pp. 383, 391 and 392).
[154]*Lincoln Fines 1199–1216*, no. 122 (case in plea rolls, *Lincs 1202–1209* no. 432).
[155]*Lincoln Fines 1199–1216*, no. 129 (case in plea rolls, CRR vol. 2, pp. 26, 71).
[156]*Lincoln Fines 1199–1216*, nos. 32 (case in plea rolls, *Lincs 1202–1209*, no. 98); and 149 (case in plea rolls, *Lincs 1202–1209*, no. 470).
[157]*Lincoln Fines 1199–1216*, no. 135 (case in plea rolls, *Lincs 1202–1209*, no. 438).
[158]*Lincoln Fines 1199–1216*, no. 26 (case in plea rolls, *Lincs 1202–1209*, no. 37).
[159]*Lincoln Fines 1199–1216*, no. 128 (case in plea roll, *Lincs 1202–1209*, no. 337).

A study of the use of *mort d'ancestor* for collusive litigation in the early years of the common law need not, therefore, be overly concerned with these fines. Indeed, the chance that any significant number relate to actions of *mort d'ancestor* is further reduced by the fact that such concords were not produced in great number. There were twenty-five made at Lincoln in 1202, but the Lincolnshire eyre dealt with a great deal of business. Smaller or less populated counties produced even fewer fines made '*unde placitum fuit inter eos*'. There were, for example, five made at the Bedfordshire session of 1202,[160] four at the 1198 Essex session[161] and two at the 1201 Cornwall session.[162]

VII. Conclusion

This article has examined the reasons why *mort d'ancestor* may have been used collusively to obtain a final concord recording a gift or sale of land. It has also examined the methods which have in the past been employed to identify collusive litigation, and the deficiencies of each of these methods. In light of these deficiencies, the approach taken in the present study has been to search for evidence of a genuine dispute lying behind each of the settled actions in our sample of cases. By separating the settlements which obviously concluded contentious disputes from those which may have been obtained collusively, we can refine our understanding of the extent to which *mort d'ancestor* was used for the purpose of conveyancing in the early years of the common law.

Although the collusive use of *mort d'ancestor* seems to have been uncommon at the bench and court *coram rege*, a significant number of actions brought before the justices of eyre were quite possibly intended to facilitate conveyancing. There was some variation between regions, and Lincolnshire in particular produced a greater proportion of potentially collusive suits than many other counties. Nevertheless, the principal use of *mort d'ancestor* during this period was clearly still that of bringing contentious disputes to court. Further studies are now required to chart the development of the later use of the assize for conveyancing, and the way in which other common law actions also became used for this purpose. It is hoped that this article provides the necessary starting point for such endeavours.

[160] *Beds Fines*, nos. 82 (see *Hunter* vol. 1, pp. 34–35 for the full transcription of the fine which includes this information); 84 (*Hunter* vol. 1, p. 35); 85 (*Hunter* vol. 1, p. 36): 87 (*Hunter* vol. 1, pp. 36–37); and 97 (*Hunter* vol. 1, p. 41).
[161] *Fines 10 Ric.*, nos. 3, 6, 9, 24.
[162] *Cornwall Fines*, pp. 10–11 no. 21 (*Hunter* vol. 1, p. 343); *Cornwall Fines* p. 12 no. 24 (*Hunter* vol. 1, p. 348).

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