The origins and development of professional legal attorneys by reference to thirteenth-century eyre proceedings

by

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A thesis submitted for the degree of

Doctor of Philosophy in History (part-time)

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In exploring the origins and development of professional legal attorneys by reference to thirteenth-century eyre proceedings, it is firstly argued that attorneyship, as it existed *circa* 1200, originated in the coalescence of three separate traditions based, respectively, on putting in place, attornment and procuration. Evidence for this proposition lies in the remarkably diverse vocabulary employed by contemporary scribes, clerks and commentators in describing the activity of attorneyship.

Simple attorneyship, the basic core function of which was physical substitution, is then shown to have accommodated over the course of some 60 years legal attorneyship with its numerous duties and capacity for professionalisation. This process is charted by reference to the activities of attorneys at eight selected eyres held between 1218-19 and 1281. Themes and issues discussed include the circumstances surrounding the recorded presence of attorneys in court; outcomes achieved; the several motivations of litigants in appointing attorneys in increasing numbers; and the emergence of men displaying lawyerly qualities and characteristics including those of competence, articulacy, literacy, administrative skill and legal expertise.

The activities of professional legal attorneys at a series of eyres in the 1280s are next examined. Issues addressed include how many of them there were; their identities; where

they practised; for whom they acted; what they did; how they organised themselves; and the extent to which they associated.

Finally, it is argued that the reason for professionalisation and the means of its emergence lie in the concept of supply and demand. The respective contributions of secular men and women, husbands and wives litigating together, and of ecclesiasts in the creation, firstly, of a critical mass of attorneys able to accommodate a minority of legal professionals and, secondly, of a demand for expert services supplied by those professionals, are analysed, as are the sources of the expertise demanded.

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In exploring the origins and development of professional legal attorneys by reference to thirteenth-century eyre proceedings, the concepts of attorneyship and of professionalism are first introduced, and such topics as historiography, sources and methodology are covered. Context is provided by a summary of published material on the nature and chronology of early attorneyship and the legal system in which it evolved.

An analysis of the presence and role of attorneys at the earliest eyres for which records survive follows, with particular reference to proceedings at the eyres of Suffolk in 1198, Cornwall in 1201, Shropshire in 1203 and Norfolk in 1209. Although the possibility of lost membranes and of consequent incompleteness of surviving plea rolls is ever-present, the data suggests that whereas attorneys were active at each of the East Anglian eyres, they were less so in the two remoter counties detached from the centralising influences of Westminster.

At the earliest of those eyres, that of Suffolk in 1198, the apparent use of attorneys was largely confined to an ecclesiastical and secular elite. A prioress deputed her chaplain, and an abbot sent in his place both a named monk and his steward. One knight appointed another to represent him as, seemingly, did one royal justice appoint another who was also the bishop of Ely. Nothing remotely professional is evident.

At the eyre of Cornwall, attorneys were thin on the ground, only eleven litigants being recorded as being represented. Furthermore, most appointments were familial, three husbands, three sons and a brother acting. Also, appointments usually followed the adjournment of cases, just three being made in contemplation of proceedings at the eyre. Such limited attorneyship as existed was 'simple' in the sense that it was geared to the basic core function of providing physical substitution and was almost entirely devoid of lawyerliness. In only one instance, that of an attorney sent to the eyre by a bishop, is there even a hint of case management. Although Cornwall's remoteness may have caused its eyre to be atypical of the early thirteenth-century norm, its recorded proceedings may fortuitously provide a window onto a contemporary past, revealing twelfth-century practices redundant elsewhere and otherwise lost to us. Pledges or sureties were much more in evidence at the eyre than were attorneys, two men in particular acting in that capacity on a sufficiently grand scale and in such circumstances to suggest they may have been providing a rudimentary 'legal' service to Cornish litigants.

No comparable use of pledging is apparent at the Shropshire eyre of 1203, although a similar paucity of attorney use is evident, only fourteen appointees being mentioned. At the eyre of Norfolk in 1209, however, no fewer than 105 attorneys are recorded as being appointed or appearing. Marital connection and sanguinity featured prominently with nineteen husbands, eleven sons and five brothers mentioned. Curiously, only two ecclesiastical principals are noted, attorneys being predominantly secular. Although the relative proximity of Norfolk to Westminster no doubt provides part of the explanation for such a density of use of attorneys, chronology was also almost certainly a factor. Attorneyship had by 1209 become more widely established and less the preserve of the elite than is suggested by the recorded proceedings of the earlier eyres.

The language or vocabulary of attorneyship, in the original Latin of the plea rolls and other contemporary records, is extraordinarily diverse. It is argued that within this diversity is preserved a memory of three separate traditions of early representation which, on coalescence, gave birth to the simple attorneyship which in turn and in the fullness of time came to accommodate legal (and professional) attorneyship. One such tradition, that of 'putting in place' is preserved in the invariable use of the verb *ponere* in recording the formal appointment of attorneys in plea rolls and in the participial *positus loco*. It is suggested that this tradition, in place by 1185, may have originated in the appointment by wives of husbands to deal with their property, being subsequently adopted by the courts as a means of emphasising the irrevocable commitment of a litigant by the acts and omissions of his lawfully appointed attorney.

The reason, it is argued, for the need of such emphasis is that an earlier tradition of agency, that of 'attornment', as preserved in the participial *attornatus loco*, the noun *attornatus* and the verb *attornare*, had by the 1170s proved to be ambiguous and uncertain in the extent to which attorned men might commit their principals. Although the traditional arrangement, encountered most commonly in the attornment of a steward by his lord or of a son and heir by his father, continued in use in appropriate contexts, its inherent reservation of power to the attornor rendered it inadequate and unsuitable for the purpose of representation in court. In particular, final concords which emerged in or around 1175 depended for their integrity upon the formal agreements enshrined within requiring no ratification and remaining irrevocable in perpetuity despite having been made, where the case, by the representative of a participating litigant. Extension of the principle to all pleas in court followed.

Although infrequently encountered in the records of the common law courts, such terms as *responsalis* (sometimes *sufficiens* and other times, not) and *procurator* are much used in late twelfth-century tracts such as *Glanvill* and *Dialogus de Scaccario* as being descriptive of

types of representative in those courts. At first sight, they differ materially, the *responsalis*, as the name implies, being essentially a responder with limited authority, and the *procurator* managing legal causes and modelled upon the proctor of the canon law courts. But, it is argued, the established presence in the common law courts of *responsales* and their relationship with *procuratores* provides a third contributary ingredient - that of a legal edge - to the mix that was thirteenth-century attorneyship.

A summary of published material on the existence in the early thirteenth century of men who performed a variety of duties about the courts, including acting as attorney, essoining, pledging and witnessing documents, is complemented by an account of the court-related activities of seven members of a farming family resident in Sandon in north Hertfordshire. One of them was active at the Suffolk eyre of 1198, and another so fourteen years later, and attorneyship is seen to be just one of a range of 'legal' duties performed. It is thought probable that their activities were linked to the local manor having been assigned to the use of the deans of St Paul's in London, the ecclesiastical connection being significant.

By *circa* 1220, simple attorneyship was an established court-related activity. Although widely ranging levels of competence were no doubt displayed, it was entirely unprofessional. The small number of 'men-about-court' who are observable acting for litigants in several court-related capacities were not professional attorneys. Things however changed and, over the course of the ensuing 40 years, attorneyship expanded from its almost universally simple form into one that accommodated legal attorneys displaying lawyerly qualities and characteristics, some of whom were able to apply their expertise with a sufficiency that enabled them to professionalise. That process of change is charted by reference to the activities of attorneys at eight eyres commencing with that of Lincolnshire in 1218-19, and encompassing Buckinghamshire in 1227, Surrey in 1235, Berkshire in 1248, Wiltshire in

1249, Shropshire in 1256 and Surrey (again) in 1263, culminating with the eyre of Derbyshire in 1281. By that date, professional legal attorneys can be seen to be operating.

Although a broadly chronological approach is adopted, various themes are treated developmentally. An increasing number of litigants appointing attorneys over the decades is noted, as is the degree to which such litigants more frequently appointed two or more of them either jointly or severally. The issue of motivation is also examined. Why did litigants appoint and subsequently use attorneys, and did their reasons change over time? Light is thrown on this by analysis of the activities of appointed attorneys recorded as actually appearing in court on behalf of absent litigants. The use of such attorneys on the hearing, respectively, of local and foreign pleas is contrasted, as is the proportionality and intensity of their use by each of secular litigants and ecclesiasts. It is demonstrated that the great majority of appearances at the earlier eyres, particularly on behalf of secular men and women, were made on the hearing of foreign pleas rather than those originating in the host county, suggesting motivation based upon necessity or the convenience of the litigant and not upon any inherent attributes of his or her appointed representative. Furthermore, ecclesiasts are recorded consistently as being represented in court by attorneys with a much greater intensity than were secular litigants. A clear impression is gained that, in general terms, secular litigants appointed attorneys as a precautionary measure, appearing in person if events permitted. Any advantage to be gained by competent representation was seemingly not a factor.

A similar impression is gained from a study of outcomes of proceedings in which litigants appeared by attorney. Although recorded outcomes did not necessarily reflect the wishes of principals, the overwhelming frequency with which purely procedural steps preceded adjournments elsewhere, both in the prosecution and defence of actions, suggests that the usual purpose of attendance by attorney was to take such steps and little more. Noticeably,

however, attorneys sent by ecclesiastical litigants were more likely to be involved in substantive proceedings in which issues were tried, juries were convened and judgments handed down. Ecclesiastical attorneys accordingly come over as being entrusted more readily than were secular attorneys with the conduct of proceedings, and not simply with the oversight of procedural necessities.

Indeed, the evidence of the eyres under review suggests that from as early as the 1220s and 1230s, the majority of attorneys who displayed lawyerly qualities and characteristics worked in the ecclesiastical sector, appearing to be regular representatives of the likes of abbeys and priories and able to acquire expertise and experience denied to one-off or occasional attorneys. Significantly, however, such a bias becomes less evident by mid-century, an increasing number of apparently secular attorneys receiving multiple appointments, hence becoming distinguishable from the mass of simple attorneys who were appointed once only. Such men were insufficiently busy to be able to specialise (let alone to professionalise), but simply by acting as attorney with greater frequency and for more principals than hitherto, they acquired independence, experience and knowledge.

As mentioned, a sufficiency of willing litigants and competent attorneys had by the 1280s enabled the emergence of professional legal practitioners. What, however, was the nature of the legal practice carried on by such men? This is investigated by reference to the role of professional attorneys at a series of eleven eyres that took place, largely in the English midlands, between 1284 and 1288. Probable or certain professionals at each such eyre are identified and degrees of professionalism compared. It is immediately clear that professionals operated in greater numbers and with greater intensity in some counties than in others. Northamptonshire and Buckinghamshire, for instance, were relatively highly populated by professional attorneys, with Huntingdonshire and Bedfordshire rather less so. It is also clear that while some men confined themselves to the practice of law in their home counties, others

operated more widely, appearing at several eyres. Analysis of relevant data in this regard allows for the construction of probable practice areas for the busiest attorneys on the circuit, and furthermore reveals a network of adjoining hinterlands each accommodating a single individual dominating the local legal scene.

The practices of different attorneys may be distinguished in a variety of ways. Some men acted principally for secular clients, some mainly for churchmen, and others for all-comers. The practices of some appear geared to the prosecution of pleas, acting mainly for plaintiffs, others to the defence of interests. Appointments might be made for all-pleas or in respect of a specific plea. Some men were obvious sole practitioners, receiving all or most of their appointments in their sole names, while others received all or the majority of their appointments as one of two (or, occasionally, more) appointees. Of those, some were always first-named or second-named (perhaps reflecting either relative status or the required role of each) while a handful were appointed always or mainly jointly with the same co-attorney, suggesting association or collaboration. Such cases are divisible into those in which the relationship is of apparent equals, suggesting an embryo partnership, and those in which it is of apparent unequals, suggesting a relationship of master and servant. One or two possible family businesses are detectable. The issue of what professional attorneys actually did is addressed through the means of a series of case-studies.

Finally, by reference to the whole of the period under review and as a complement to earlier findings, the fundamental issues of why professional legal attorneys emerged when they did and how - by what means – they did so are addressed. Whilst acknowledging the influence of contemporary legal events and national developments outside the scope of the thesis, it is argued that emergence lay in the application of the economic force of supply and demand. The community of litigants is broken down into its four constituent parts of ecclesiasts,

secular men, secular women, and husbands and wives litigating together. It is then shown that members of each category contributed to the process in different ways.

Secular women did more than any other litigants to expand the use of attorneys generally, doing so from relatively early in the century. However, the extent to which they were wives appointing husbands, or widows and spinsters appointing sons, brothers, fathers and uncles, suggests their collective motivation was based more upon convention than upon discernment. Nonetheless, when combined with a lesser, but noticeable, expansion of use of attorneys by husbands and wives and a steady such use by ecclesiasts, the number of simple attorneys being appointed was enabled to reach a critical mass sufficient to accommodate within itself a body of specialist practitioners.

The majority of the demand for the services of members of such a body can, however, be seen to come from secular men who, between the 1260s and the 1280s, reversed decades of preference for personal appearance in court by increasing some fivefold their collective use of attorneys. That they did so with the intention of purchasing expertise and not for the purpose of simple substitution is evident from the much greater intensity with which they appointed professional attorneys at the eyres of the 1280s than they did attorneys at large. The expertise demanded was provided by court clerks and other officials, the stewards and bailiffs of great lords, the monks and canons who habitually represented their religious houses, the pleaders/serjeants who undertook most of the advocacy in open court, and the draftsmen of land-related documentation. They had collectively assembled a rich repository of relevant skills, either to be carried forward into independent professional practice or upon which other men might draw.

Preface and acknowledgement

This thesis builds upon the author's dissertation for the degree of Master of Arts in English Local History by Individually Supervised Study to which he was admitted with Distinction by the University of Leicester in 2012. Entitled *Merely 'mechanical', 'ministerial' and 'menial', or much, much more? What was the role of professional attorneys in late thirteenth-century litigation as revealed by evidence from the 1286 Buckinghamshire eyre?*, it explored the premise that the contribution to the litigation process of professional legal attorneys in the thirteenth century was both under-researched and under-valued by historical commentators.

Restricting itself almost entirely to primary evidence extracted from the recorded proceedings of the 1286 Buckinghamshire eyre, it argued that the contribution of such men to late thirteenth-century justice was both substantial and significant. Not only are the findings of that dissertation now tested against a much greater body of evidence than was previously considered, but also its chronological, geographical and thematic parameters are extended so as to allow an investigation into the origins and development of professional legal attorneys and to chart the emergence of men able and willing to act as such in thirteenth-century eyre proceedings.

Grateful thanks are due to Professor Paul Brand for his supervision, assistance and friendship over the course of the eight long years that this thesis has been in preparation.

List of Abbreviations

EL *English Lawsuits from William I to Richard I*, ed. R.C. Van Caenegem (2 vols, London, Selden Society, 106 (1990), 107 (1991)).

Glanvill *The Treatise on the Laws and Customs of the Realm of England commonly called Glanvill*, ed. G.D.G. Hall (1965; Oxford, 1993).

PKJ *Pleas Before the King or his Justices*, ed. D.M. Stenton (4 vols, London, Selden Society, 67 (1953), 68 (1952), 83 (1967), 84 (1967)).

RJE *Rolls of the Justices in Eyre for Lincolnshire 1218-9 and Worcestershire 1221*, ed. D.M. Stenton (London, Selden Society, 53, 1934).

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Introduction

By the Supreme Court of Judicature Act 1873, the ancient description of a professional lawyer as an 'attorney' formally disappeared in England and Wales. The term had long bordered on redundancy, having been largely absorbed into that of 'solicitor'. Attorneys and solicitors had been associated since around 1729 as members of the Society of Gentlemen Practisers in the Courts of Law and Equity, an organisation that had itself been absorbed into the Law Society by 1838.[1] From 1873, attorneys and solicitors were together described as 'solicitors of the Supreme Court'.[2]

The term 'solicitor' was, however, of relatively recent origin, having been coined only in the fifteenth century. It described a class of men of affairs who were not attorneys but who 'solicited causes', helping clients through 'the jurisdictional jungle' and giving legal advice.[3] Practising in the Court of Chancery they had, by the mid-seventeenth century, professionalised. Solicitors' clerical skills were those of general practice and their activities were widespread. They frequently acted in such capacities as bailiff, receiver, steward, clerk of kitchen or works, comptroller or paymaster.[4] Attorneys, on the other hand, were functioning in the early modern period as law agents, conducting legal proceedings in the Common Law courts. They were essentially administrators, officers of the court who handled the formalities of litigation on behalf of paying clients.[5] They arranged issue of process, authorised entries on the plea rolls and recorded the various stages of the litigation in which they were engaged.

[1] E.B.V. Christian, *Solicitors: An Outline of their History* (London, 1925), pp.136-8.
[2] See J.H. Baker, *An Introduction to English Legal History*, 3rd edn (London, 1990), pp.177-87.
[3] Baker, *Introduction*, p.186.
[4] J.H. Baker, *The Legal Profession and the Common Law* (London, 1986), p.92.
[5] Baker, *Introduction*, p.185.

Neither solicitors nor attorneys conducted open-court argument in the principal courts. This activity had by 1400 become the exclusive province of serjeants, particularly the elite who formed the order of the coif, from which members of the judiciary were invariably drawn. Also, senior apprentices or 'men of court' were coalescing into a further body of lawyers who became collectively known as 'barristers'.[6] Excepting serjeants, who by the fifteenth century were entirely apart, these separate classes of practitioner enjoyed considerable fluidity. A Common Pleas attorney might act as a solicitor in Chancery, as might also an apprentice, the same men acting in different capacities with noticeable frequency.

In modern usage, an attorney is 'a person, especially a lawyer, appointed to act for another in business or legal matters'.[7] In the United States, he or she may also be 'a qualified lawyer, especially one representing a client in a lawcourt'. The Attorney-General is the chief legal adviser to the Crown and government in England and Wales. The term 'attorney' has thus today two identifiable elements, those of representation and of lawyerliness. Representation is the essential core element, lawyerliness an optional extra. Attorneys who are representatives only, and not lawyerly also, may be said to be 'simple attorneys'. Those who combine the act of representation with the possession and display of lawyerly qualities and characteristics such as those of competence, articulacy, literacy, administrative skill and (especially) legal expertise may be termed 'legal attorneys'. In each case, commitment is absolute. The appointing principal authorises his agent attorney to undertake any act or to make any omission which he, himself, might do, and impliedly warrants to third parties that they may rely upon any such act or omission without ratification. The principal is bound by his attorney who is deemed to be his principal's *alter ego*, his other self.

[6] Ibid., p.186.
[7] *The Concise Oxford Dictionary*, 8th edn (Oxford, 1990).

The term 'professional' also bears two main usages in modern language. To be professional may mean to be 'engaged in a specified activity as one's main paid occupation'.[8] It may also mean to possess or exhibit degrees of skill, competence and worthiness compatible with professional status. A professional representative should be at liberty to think independently and to exercise judgment in how to act in the best interests of his client. He or she is not a mere delegate, rigidly restricted in permitted activity, but a free agent, able to be imaginative and creative in the application of expertise. Successful practitioners, those able to generate a living from the pursuit of a professional activity, are professional in outlook also; both forms of professionalism co-exist. In the context of thirteenth-century attorneys, a professional lawyer has been defined as 'someone recognised by others as having a special expertise in legal matters and who is willing to put that expertise at the disposal of others, who is paid for doing this and who spends a major part of his time in this professional activity'.[9]

Surprisingly little has been written about the activities of professional attorneys, and some of what has been written is negative in tone, describing them, for instance, as being 'humble' or 'mere'. Professor Baker writes that attorneyship involved essentially 'menial tasks', in contrast to the 'intellectual functions associated with the advocate or counsellor'.[10] The historical difference between serjeant and attorney, he tells us, was that between 'the intellectual or scientific function and the mechanical or ministerial function'.[11] Professor Plucknett is equally dismissive, claiming that attorneys needed 'no great powers of intellect or learning other than procedural', although he does acknowledge their great integrity and diligence.[12] He patronisingly contrasts the 'nimble fencing at the bar of the court' of the

[8] Ibid.
[9] P.A. Brand, *The Origins of the English Legal Profession* (Oxford, 1992), p.vii.
[10] Baker, *Legal Profession and Common Law*, p.76.
[11] Ibid., p.100.
[12] T.F.T. Plucknett, *A Concise History of the Common Law*, 5th edn (London, 1956), p.216.

serjeants and their 'embodiment of all those qualities which are appreciated by lovers of intellectual combat' with 'the quiet and patient labours of the attorneys'.[13]

A further surprise is the view held by some that the activities of attorneys are well-enough documented as to make further research and comment unnecessary. Professor Baker, writing in 1969, states that 'the history of attorneys and solicitors has been written' and that future study should concentrate upon the historical barrister.[14] A footnote cites three works in support of this contention, respectively by E.B.V. Christian in 1896, R. Robson in 1959 and M. Birks in 1960.

These works are entirely meritorious, but individually and collectively provide no definitive account of the origins, early development and subsequent history of the legal attorney. While Christian's work provided an early focus on the historical attorney, it was uncritical and antiquarian.[15] Robert Robson was the first to attempt a social history of attorneys and solicitors but, as his book's title indicates, he concentrates upon their condition after 1700.[16] Just six pages are devoted to the attorney's formative period, the content (as Robson acknowledges) culled from earlier published sources. Baker's third cited work, by Michael Birks, is the most useful, providing a detailed overview of professional attorneys (and, subsequently, solicitors) from the twelfth to the twentieth century.[17] Birks deals thoroughly with medieval attorneys in his first three chapters, having in his preface drawn attention to the paucity, at the time he wrote, of serious research into their history. That Birks was seemingly not an academic historian is, however, to be noted.

[13] Ibid., p.220.
[14] J.H. Baker, 'Counsellors and Barristers: an historical study', *Cambridge Law Journal*, 27 (1969), pp.205-29.
[15] E.B.V. Christian, *A Short History of Solicitors* (London, 1896).
[16] R. Robson, *The Attorney in Eighteenth-Century England* (Cambridge, 1959).
[17] M. Birks, *Gentlemen of the Law* (London, 1960).

A later work by Harry Kirk, stated to be 'A History of the Solicitor's Profession, 1100 to the Present Day', not only too readily conflates attorneys and solicitors but has very little to offer on the early period.[18] Otherwise, published literature on attorneys has been largely within the context of the development of the legal profession generally. The historiographical launch-pad for a study of that theme, as with most other aspects of early English legal history, is F. Pollock and F.W. Maitland's *The History of English Law Before the Time of Edward I*, which contains a short relevant section.[19] But, as Milsom observes in his introduction, 'Serious inquiry about our early courts or lawyers or their literature, though it cannot neglect Pollock and Maitland, does not begin there. These matters have all been the subject of more recent and intensive study'.[20] Milsom's bibliography, however, has little on attorneys, but the relevant chapters of W.S. Holdsworth's *A History of English Law* had already elaborated on Pollock and Maitland's original material.[21] Additionally, T.F.T. Plucknett's first edition of *A Concise History of the Common Law*, with a chapter on the legal profession, had been published in 1929, as also had Herman Cohen's study of English professional lawyers in *A History of the English Bar and Attornatus to 1450*.[22]

Post-Milsom, R.C. Palmer's 'The Origins of the Legal Profession in England' was published in 1976.[23] J.H. Baker's *An Introduction to English Legal History* contained a chapter on the legal profession,[24] and his 'Counsellors and Barristers: an historical study' referred to above was reprinted in 1986 within a series of essays penned by him, collectively entitled *The Legal*

[18] H. Kirk, *Portrait of a Profession* (London, 1976).
[19] F. Pollock and F.W. Maitland, *The History of English Law Before the Time of Edward I*, re-issue of 2nd edn, ed. S.F.C. Milsom (2 vols, Cambridge, 1968), i, pp.211-17.
[20] Pollock and Maitland, *History of English Law*, i, p.xxiv.
[21] W.S. Holdsworth, *A History of English Law*, 3rd edn, (London, 1903-66), ii, pp.311-18 and 484-512; vi, pp.431-99.
[22] Plucknett, *Concise History*; H. Cohen, *A History of the English Bar and Attornatus to 1450* (London, 1929).
[23] R.C. Palmer, 'The Origins of the Legal Profession in England', *The Irish Jurist*, 11, new series (1976), pp.126-146.
[24] Baker, *Introduction*, pp.177-99.

Profession and the Common Law, also referred to above. Within the same series is Baker's 'The English Legal Profession, 1450-1550', first published in 1981.[25]

The most significant recent contribution, however, to the study of early-medieval lawyers, including attorneys, has been made by Paul Brand, whose article on 'The Origins of the English Legal Profession' was first published in 1987,[26] and later reprinted in *The Making of the Common Law*.[27] Brand's second chapter in that publication, entitled 'The Early History of the Legal Profession in Ireland' contains further relevant material on thirteenth-century English attorneys. His subsequent *The Origins of the English Legal Profession*, published in 1992 and referred to above, now provides the most authoritative and comprehensive account of the development of medieval attorneys within the context of an emerging legal profession.

In his earlier article, Professor Brand discusses in turn the absence of a legal profession operating in the royal courts prior to the reign of Henry II, indicators of its emergence during the long reign of Henry III, and its certain existence by 1300. He presents an overview, confining his observations largely to the central courts and dealing with the presence and use of legal practitioners in necessarily general terms. In his longer work, he includes a section on early attorneys, during the course of which he summarises their presence in the common law courts by the 1180s, the standardisation of modes of appointment, and limitations on their activities. He then adduces evidence for the subsequent development of attorneyship and its professionalisation, again within the context of the legal profession generally and hence in conjunction with material on the emergence of practitioners who specialised in pleading and advocacy. As before, he confines himself almost exclusively to the activities of legal professionals within the central courts of Common Bench and King's Bench.

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[25] J.H. Baker, 'The English legal profession, 1450-1550' in W. Prest (ed.), *Lawyers in Early Modern Europe and America* (London, 1981), pp.16-41.
[26] P.A. Brand, 'The Origins of the English Legal Profession', *Law and History Review*, 5 (1987), pp.31-50.
[27] P.A. Brand, *The Making of the Common Law*, (London, 1992), pp.1-20.

In order to build upon the work of Professor Brand and the historians and commentators who preceded him there is, it is now suggested, a need for a comprehensive study which concentrates exclusively upon the origins and development of legal attorneys and their professionalisation during the course of the thirteenth century. Furthermore, there is a concurrent need for that study to focus upon the activities of professional attorneys beyond the confines of the central courts at Westminster, and to examine those activities out in the shires. This thesis seeks to provide a study that meets both criteria. It is largely limited to attorneyship within the itinerant eyre courts that were periodically held within English counties and other administrative areas.[28]

The *iter ad omnia placita* or eyre was the highest ranking of the several types of commission introduced during the twelfth century to hear civil and other cases in the counties. Although individual eyres were held in single counties, they were by 1176 organised into circuits, several of which took place at the same time, together comprising a visitation. The royal itinerant justices who conducted visitations had by the 1180s acquired the title of 'justices in eyre'. Thereafter, a 'general eyre' (a term coined in the 1920s) [29] brought royal justice to local litigants in every county in the kingdom. But eyres 'were not merely law courts, they were itinerant government'.[30] Besides dispensing justice, they called local officials to account and enforced the feudal and fiscal rights of the Crown. The frequency of eyre visitations increased over time, peaking during the reigns of Richard I and John before gradually declining under Henry III, in part due to the burgeoning use of lesser commissions or assizes which reduced the need for justice to be awaited at the next visiting eyre.[31] The general eyre

[28] See *Records of the General Eyre*, ed. David Crook, Public Record Office Handbooks 20 (London, 1982) for a systematic introduction, and see also *Crown Pleas of the Wiltshire Eyre, 1249*, ed. C.A.F. Meekings (Wiltshire Archaeological and Natural History Society Records Branch, 16, Devizes, 1960), pp.1-9.
[29] W.C. Bolland, *The General Eyre* (Cambridge, 1922).
[30] Baker, *Introduction*, p.15.
[31] Brand, *Origins*, p.20.

ceased altogether in 1294 under Edward I, after which date only a short-lived revival in 1329-30 and occasional individual eyres preceded the final such assembly in 1348.

Only from 1194 do records of eyre sessions survive, fragmentarily at first. Although the survival rate is increasingly full as the thirteenth century progresses, both the quantity and quality of the record varies from eyre to eyre. The principal component of any given record, where it survives, is the collection of plea rolls, compiled by clerks to the several presiding justices to record proceedings and for certain administrative and accounting purposes. Each such presiding justice had his own plea roll recording the legal business with which he was concerned, and it is accordingly often the case that two or more such rolls survive for particular eyres. The roll kept by the senior justice at a given eyre, where it survives, is usually more comprehensive than others, more frequently containing a complete record both of civil pleas disposed of and of the appointment of attorneys. Prior to the late 1240s, attorney appointments were recorded in amongst the substantive pleas, often as space-fillers at the bottom of membranes or elsewhere. From *circa* 1248, however, they were increasingly frequently listed together on dedicated membranes. As the eyre plea rolls are collectively the principal primary source for the activities in the courts to which they refer of thirteenth-century attorneys generally and of legal professionals in particular, much use has been made of them for the purposes of this thesis.

Perusal in sufficient depth of every surviving plea roll would, however, have been wholly impractical; well in excess of 400 eyres were held during the century or more of the general eyre. It would also have been unnecessary; the methodical analysis of the contents of a representative selection of plea rolls has perfectly well sufficed. The rationale for selection of the plea rolls consulted has been based upon three broad criteria. Firstly, only those plea rolls which are thought to be reasonably complete, both in terms of their inclusion of civil pleas and also of attorney appointments, have been used. As explained above, these were usually

those of the senior presiding justice. Secondly, given the extended nature of the enquiry and its interest in the activities of attorneys at a series of different periods during the course of the thirteenth century, plea rolls from at least one eyre of every decade between the 1190s and the 1260s have been selected. By this means, changes over time have been revealed. Thirdly, with the principal exception of a series of eyres in the 1280s for which in most cases no such aid exists, the proceedings of the selected eyres have been published in print, and are available in transcription and (usually) in translation. For the early period, much use has been made of two works published by the Selden Society and edited by Doris Stenton.[32] Full acknowledgement of the use of these works is made throughout the thesis and also, as appropriate, is the use of printed editions of the proceedings of later eyres, as listed in the Bibliography.

Also extant within the records of many eyres are fines or final concords, made before royal justices to record agreements reached by litigants. Written down on chirographs, and including the names of justices, the place where made, and the date, they were originally made only in duplicate, copies being for retention by the parties (almost all being now lost). From 1195, however, third copies known as feet of fines were made for retention among the records of the king's administration, and it is in this form that they appear within the individual eyre records. As with the plea rolls, use of feet of fines has been selective, consultation usually made to supplement plea roll evidence for particular eyres. Their principal usefulness for the purposes of this thesis is that they sometimes reveal the presence of an attorney (often named) as representing a party at the chirograph hearing, thereby providing either the only or confirmatory evidence for the involvement in earlier substantive

[32] *Pleas before the King or his Justices*, ed. D.M. Stenton (4 vols, London, Selden Society, 67 (1953), 68 (1952), 83 (1967), 84 (1967)) (hereafter *PKJ*); *Rolls of the Justices in Eyre for Lincolnshire 1218-9 and Worcestershire 1221*, ed. D.M. Stenton (London, Selden Society, 53, 1934) (hereafter *RJE*).

proceedings of an appointed attorney. As with the plea rolls, many such are now available in print, details of collections consulted appearing in the Bibliography.

The availability of the contents of so many plea rolls and final concords in print, transcribed and frequently translated into English from their original Latin, has obviated any need to handle the manuscript originals. This has eased the palaeographic and linguistic challenges inherent in the use of manuscript sources and enabled the research underlying this thesis to focus upon the relatively narrow theme of attorney participation in eyre proceedings. But, in addition, frequently advantageous access to photographic images of original documentation has been made possible through use of the on-line digital resource provided by the Anglo-American Legal Tradition which freely permits unrestricted access to clear digital photographic images of plea rolls, final concords and other documentation.[33] Indeed, such access has been invaluable in the analysis of the contents of the records of several eyres from the 1280s for which no printed transcription exists. A full list of the plea rolls and final concords consulted either or both in photographic form and in print appears in the Bibliography.

In addition to plea rolls and final concords recording the outcomes of court proceedings, printed copies of various contemporary tracts, treatises and collections of laws have been consulted, as have relevant quasi-primary narrative and antiquarian sources. The most important contemporary source is the treatise attributed to, and now referred to as, *Glanvill*. Of uncertain authorship and commencement date, it is thought to have been completed between 1187 and 1189, and provides the principal primary source for the state and condition of the English legal system in the late 1180s. It has been published in two separate editions in modern times. In 1932, George E. Woodbine transcribed the original Latin text, without

[33] *http://www.aalt.law.uh.edu*, last accessed on 4 June 2021.

translation, adding copious notes on its content.[34] The latest edition of the work of *Glanvill's* second editor, G.D.G. Hall, with a guide to Further Reading by M.T. Clanchy, was published in 1993 and contains an English translation in addition to detailed notes.[35] As is discussed *post*, however, *Glanvill* does contain ambiguities, and interpretation of much of its contents is not straightforward. Although it may be regarded as the 'first textbook of the common law', it was probably written by someone more familiar with Roman and Canon Law than with royal justice.[36] Nonetheless, much use has been made of Hall's edition of *Glanvill* in the early part of this thesis in investigating the origins of attorneyship,

As part of the same process, material has been drawn from another important treatise, the *Dialogus de Scacarrio*. This is available in print, transcribed and translated, in two editions.[37] Its author, Richard FitzNigel, started writing it in 1176-77, but may not have completed it until 1189. It has come down to us 'as a guide, in the form of an instruction dialogue, to the procedures of the twelfth-century exchequer'.[38] Additionally, considerable use has been made of numerous documents which relate to the origins of attorneyship and which appear within a collection of primary material from the twelfth century collated and edited by R.C. Van Caenegem.[39] Finally, for the later period, and in addition to the official court records described above, unofficial court reports on points of interest to students within the nascent legal profession from the end of the thirteenth century survive also, and have been transcribed and translated in print.[40]

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[34] *Glanvill: De Legibus et Consuetudinibus Regni Angliae*, ed. G.E. Woodbine (New Haven, 1932).
[35] *The Treatise on the Laws and Customs of the Realm of England commonly called Glanvill*, ed. G.D.G. Hall (1965; Oxford, 1993) (hereafter *Glanvill*).
[36] *Glanvill*, p.xi.
[37] *Dialogus de Scacarrio: The Course of the Exchequer*, ed. C. Johnson (Oxford, 1983); *Dialogus de Scaccario: The Dialogue of the Exchequer*, ed. E. Amt (Oxford, 2007).
[38] *Dialogus*, ed. Amt, pp.xiii, xix; ed. Johnson, p.xx.
[39] *English Lawsuits from William I to Richard I*, ed. R.C. Van Caenegem (2 vols, London, Selden Society, 106 (1990), 107 (1991)) (hereafter *EL*)
[40] *The Earliest English Law Reports*, ed. P.A. Brand (4 vols, London, Selden Society, 111 (1996), 112 (1996), 122 (2005), 123 (2007)).

A further source which bears upon the state and condition of attorneyship is the treatise known to us as *Bracton*.[41] Authorship is firmly attributed to one Henry of Bratton, but the date of compilation is uncertain. Originally thought to have been written between 1245 and 1257, 'Recent scholarship suggests that it was mostly written in the 1220s and 1230s, using current plea rolls, and then mangled by editors who tried to bring it up to date in the middle of the century'.[42] It contains inconsistencies that are difficult to resolve, and there is constant uncertainty as to the date to which many observations within it relate. It is of no real assistance on the issue of the origins of attorneyship and very little on its development and professionalisation. Accordingly, limited use has been made of it.

In addition to its introductory and concluding sections, the thesis is structured in four parts. In Part One, 'The Three Traditions', the origins of attorneyship are explored, a dual approach being adopted. Firstly, the recorded activities of attorneys during the last years of the twelfth century and the first decade of the thirteenth century are examined by reference to data extracted from the rolls of the earliest eyres for which evidence survives. Final concords and other early sources are consulted also. Secondly, the peculiarities of attorney-related vocabulary, as used by the clerks, scribes and commentators of the day, are analysed and interpreted. The pattern revealed allows the argument to be made that attorneyship, as it manifested itself in the early thirteenth century, originated in the coalescence of three separate traditions, those of putting in place, attornment and procuration.

The form of attorneyship so created was simple, its core function being that of substitution. Part Two of the thesis, 'Stepping-stones', charts the changing nature of attorneyship during the thirteenth century by reference to the proceedings of eight eyres held in various counties

[41] *Bracton: On the Laws and Customs of England*, ed. G.E. Woodbine; translated with revisions and notes by S.E. Thorne (4 vols, Cambridge, Massachusetts, 1968-77).
[42] Baker, *Introduction*, p.201.

between 1218 and 1281. During that time, attorneyship became more diverse, a minority of attorneys cultivating lawyerly qualities and characteristics and hence becoming legal attorneys. Of that minority, a limited number can be seen to be operating professionally within the eyre courts by the end of the period under review.

Part Three, 'The Professional Attorney', deals with the activities of such attorneys at a series of eleven eyres held between 1284 and 1288 on one of the circuits comprising the visitation of 1278-89, and addresses the issue of how professionalism then manifested itself. The leading professionals on the circuit are identified and a raft of aspects of professional practice are discussed, including the sorts of men they were and the localities in which they operated; the clients for whom they acted and the types of work undertaken; and the extent to which some of them combined and associated professionally while others pursued the lonely path of sole practice.

The theme of Part Four of the thesis, 'Supply and Demand', is an explanation of how and why the process of lawyering attached to the activity of attorneyship and, having done so, how and why that activity professionalised when it did. While acknowledging the influence of contemporary legal events and national developments outside the scope of the thesis, it is argued that the emergence of professional legal attorneys lay in the application of the economic force of supply and demand. The different ways and extents to which litigants, respectively ecclesiastical, secular male, secular female, and husbands and wives litigating together, contributed to the creation of a critical mass in the numbers of attorneys able to accommodate within itself a body of independent legal practitioners are discussed. Such a body emerged to meet a demand, particularly from secular male litigants, for the services of attorneys able to provide expert legal assistance. It drew upon a repository of relevant skills possessed collectively by court officials, the habitual representatives of religious houses and great secular estates, and the draftsmen who documented the alienations, acquisitions and

arrangements which recorded the transfers of interests in land. Legal practitioners able to supply the services demanded and to thereby garner a sufficiency of work were best placed to professionalise and practise successfully.

Part One:

The Three Traditions

Chapter 1: In the beginning

It was, according to Pollock and Maitland, an ancient principle of early-medieval litigation that litigants should appear in court in person, presenting their own cases and pleading in their own words.[1] The idea that one party might be assisted in court, particularly by an expert in court procedure and ritual, whilst the other might not be so advantaged was considered to be inherently unfair. If permitted, it was felt, the case would thereby become a contest between unequals. Similarly, the notion of agency whereby one person represented another as his *alter ego* was alien, again due to a perceived unfairness that a party so represented would be effectively replaced in the proceedings by his chosen representative.

The first exception to this ingrained principle of personal attendance and presentation is thought to have favoured busy kings who sent deputies to transact business on their behalves. Gradually, a similar ability was conceded to great subjects, men absent abroad on affairs of state, and the ill or aged.[2] It was clearly convenient for wealthy landholders, both secular and ecclesiastical, particularly those with large and scattered estates and involved in extensive litigation, to avoid the trouble of constant personal appearance by being represented in proceedings. According to Brand, any such representative would of necessity have been the litigant's steward or other servant, authorised to look after the litigant's affairs generally, and certainly not appointed to act in particular cases.[3] Slowly, and probably by the mid-twelfth century, this concession was extended to all free men.

It is thought probable that deputies were initially confined to simple appearances in place of principals in their law suits, without ability to commit. Courts were slow to countenance an

[1] Pollock and Maitland, *History of English Law*, i, p.211.
[2] Robson, *Attorney in Eighteenth-Century England* , p.1.
[3] Brand, *Making of the Common Law*, p.15.

absent party being bound by another to a significant degree, being reluctant for instance to accept binding disclaimers or admissions.[4] In Cohen's view, representatives were at this early stage of their development limited to 'duties almost trifling' such as getting a document, hearing a judgment or fixing a date.[5]

Continuing erosion of the principle of personal participation increasingly encouraged the use of men able and willing to deputise as a matter of course. Two separate and readily distinguishable forms of deputy had emerged by about 1200. One class of man stood beside a litigant in court and spoke for him. He was the litigant's *advocatus* or *prolocutor*, described variously over time as 'counter', 'narrator', 'pleader' and 'serjeant'. The other class of deputy represented the litigant both in court and at every stage of the proceedings. He was the litigant's *attornatus* or *procurator*, his *alter ego*.[6] The litigant appointing him as attorney was his principal; he was his principal's agent, conducting proceedings in his principal's name. He took his principal's place, truly representing him or her; 'for good and ill, for gain and loss (*ad lucrandum et perdendum*), he stands in his principal's stead'.[7] Although his authority was confined strictly to the litigation for which he was appointed, his actions within that confine bound his principal.[8] Other than the litigant personally, only he could take formal steps to progress an action and make decisions on appropriate procedure and tactics. The attorney came to enjoy almost unlimited control over his principal's destiny in the proceedings in which he had been appointed.[9]

Woodbine's commentary in his 1932 edition of *Glanvill* summarises the types of person who may be appointed an attorney.[10] Prohibited by law from being attorneys were infants, serfs,

[4] Holdsworth, *History of English Law*, ii, p.312.
[5] Cohen, *History of the English Bar*, p.133.
[6] Baker, *Introduction*, p.178.
[7] Pollock and Maitland, *History of English Law*, i, pp.212-13.
[8] Holdsworth, *History of English Law*, vi, p.450.
[9] Cohen, *History of the English Bar*, p.135.
[10] *Glanvill*, ed. Woodbine, p.265.

wards of court, criminals, excommunicants, those not of the king's faith, and any man 'who cannot be a pleader'.[11] Otherwise, any free person, male or female, was at liberty to act as an attorney, provided he or she was of full age and capacity. Attorneys were, however, prohibited from swearing an oath for the principal, including that of homage, and were banned in certain personal and feudal actions. Also, as is discussed *post*, they were from 1227 unable to act for tenants and defendants in assizes of *novel disseisin*.

Holdsworth stressed the privileged nature of the appointment of an attorney and its inherent solemnity, describing the act as 'an unusual and a solemn thing, only to be allowed on special grounds and with the proper formalities'.[12] Originally, such an appointment could be made only with the king's permission. A writ was necessary, for which a fee was payable, the writ reciting within it the plea to which it was limited. Over time the writ procedure was found to be cumbersome, and various alternatives were employed. By the time of John, appointments made in court were much more common than those authorised by writ.[13]

As early as 1182, the appointment of attorneys had become a matter of direct concern to the courts. It may have been then also that enrolment was first insisted upon, an oral act of appointment being thereafter recorded in the formal written records of the court.[14] It became an almost absolute requirement that a litigant wishing to appoint an attorney attend in person before the justices of the court in which he was due to appear, and in which the appointment was intended to operate. The appointment had to be in express terms (that the attorney appeared in place of the principal, to gain or lose on a specified plea) and unequivocal in its purport. The appointment of an attorney did not prevent a litigant attending in person to sue, but if he did intervene the appointed attorney's authority expired, as it did also on his

[11] Christian, *Short History of Solicitors*, p.12.
[12] Holdsworth, *History of English Law*, ii, p.311.
[13] Birks, *Gentlemen*, p.14.
[14] Brand, *Origins*, p.44.

principal's death or on the handing down of judgment. If several attorneys were appointed, any one of them could appear alone and represent his principal unless it was made clear that the appointees must act jointly.[15] An attorney appointed as one of two or more appointees, and who was authorised to appear alone, may be said to have been appointed in the alternative to his co-attorney(s).

In contrast to the attorney who, by the nature of his appointment, was empowered to appear in court in the absence of the litigant in person, the pleader was required when speaking on behalf of a litigant to have him present in court either in person or by his attorney. Furthermore, everything the pleader said and did on the litigant's behalf was regarded as provisional only, and he could be corrected should he mis-speak. Consequently, the litigant or (where appointed) his attorney had frequently to decide whether to avow (confirm) a statement made by the pleader or to disavow (and hence deny) it. If avowed, the act or statement of the pleader committed the litigant absolutely and could not be retracted. It became as binding as if it had been done or made by the litigant personally or by his attorney.

The origins of this curious rule lie in the ability, from at least the twelfth century, of a litigant 'to bring into court with him a party of friends and to take "counsel" with them before he pleads'.[16] Indeed, by extension, it was permitted that one such friend might speak for the litigant. This concession originated the fundamental and enduring distinction between serjeants and attorneys. By having a 'friend' (whether a real friend or one who came in later centuries to be referred to as 'my learned friend') to speak for him, a litigant was allowed two bites at the cherry. 'What the litigant himself has said in court he has said once and for all, but what a friend has said in his favour he may disavow'.[17] The friend was not therefore

[15] Christian, *Short History of Solicitors*, p.10.
[16] Pollock and Maitland, *History of English Law*, i, p.211.
[17] Ibid., p.212.

representing the litigant, but putting forward a case that remained open to the correction of errors or omissions until formally avowed. As the true friend evolved into the professional serjeant and as the art of court pleading became ever more complex, so was the escape-hatch of disavowal by litigant or attorney increasingly useful.

The timing of the attorney's emergence is uncertain. Cohen cited the view of Heinrich Brunner (with which he agreed) that the attorney was a purely Norman importation, developing in England after the Conquest, whilst acknowledging the assertion of others that the Normans acquired the concept from Saxon England.[18] Since there is no mention of attorneys in *Leges Henrici Primi*, an unofficial legal treatise of the second decade of the twelfth century, R.C. Palmer assumed that the use of attorneys developed during the course of that century.[19]

A typical attorney sent to stand in the place of another during the late-twelfth and early-thirteenth centuries would have been someone trusted or bound to act in the interests of the person sending him. He might have been attached by ties of blood or service, or perhaps by friendship or propinquity. A freeholder might, for instance, send his brother or a neighbour, a wife her husband or (if widowed) a son. Institutional appointments were frequently made. 'A bishop will appoint one of his clerks, an abbot one of his monks, a baron will be represented by his steward or by one of his knights'.[20] Bailiffs were frequently appointed by wealthy landholders. The attorney himself could send a deputy if he was unable to attend, and originally the whole arrangement was 'rather casual'.[21] There was nothing professional about those earliest attorneys.

[18] Cohen, *History of the English Bar*, p.129.
[19] Palmer, 'Origins', p.141; *Leges Henrici Primi*, ed. L.J. Downer (Oxford, 1972)
[20] Pollock and Maitland, *History of English Law*, i, p.213.
[21] Cohen, *History of the English Bar*, p.134.

All attorneys, professional or otherwise, worked within the English judicial system and its constituent courts and were therefore, in part, shaped thereby. During much of the Anglo-Saxon period justice had been piecemeal, decision-making largely following local custom, focusing upon the solution of immediate problems and not being intended to form part of a body of law.[22] With the unification of England under a single king in the tenth century, however, the administration of justice increasingly became a prerogative of the Crown. Successive kings sought to rectify failures of justice in the courts of lord, hundred and county, prompting a nascent royal jurisdiction over civil causes and, by imposing the king's peace, a parallel jurisdiction over criminal activity.[23] In the twelfth century, strong Norman government and administrative flair further sowed the seeds of change which was on germination during the reign of Henry II profound. Between 1154 and 1189, there was produced 'a coherent system of English law deriving ultimate authority from the king'.[24] The system's underlying characteristic and its strength was its adoption of the fixed customs of the king's courts as constituting the law and custom of the realm. The existing multiplicity of local customs became gradually subsumed into a body of law common to the entire kingdom, the common law of England.[25]

The royal courts that regularised and dictated national custom were based upon the central *curia regis*, the king's court, from which royal government emanated. The *curia regis* had at the heart of its judicial arm the Bench which from the 1190s took judicial work previously handled in the Exchequer. By extending and regularising sitting-times, it reduced delays in

[22] See Baker, *Introduction*, pp.1-13.
[23] Baker, *Introduction*, p.11.
[24] Ibid., p.16.
[25] For detailed accounts of the post-Norman court system and its medieval development, see A. Harding, *The Law Courts of Medieval England* (London, 1973), pp.32-85 and G.W. Keeton, *The Norman Conquest and the Common Law* (London, 1966) (various chapters). R.C. Palmer, *The County Courts of Medieval England 1150-1350* (Princeton, 1982) deals at length with those courts, and H.M Cam, *Law-Finders and Law-Makers in Medieval England* (London, 1962) pp.85-94, covers the law courts of medieval London. See also R.V. Turner, 'The Origins of Common Pleas and King's Bench', *The American Journal of Legal History*, 21 (1977), pp.238-54.

the initiation and conduct of proceedings. A combination of controls imposed upon the pre-existing customary courts, the expansion of the categories of cases required to be heard in the royal sector, the availability of a wider range of remedies and of the increasingly popular jury verdict, aided centralisation and deprived the local courts of much work. The writ system, whereby legal business was transacted by written royal command, was introduced as were procedures for the transfer of business into the royal courts, whether temporarily for resolution of legal difficulties or permanently for judgment. By about 1200 the Bench was keeping written records, and was controlled by specialist professional judges in place of the politicians, administrators and men of affairs who had hitherto run the royal courts.[26] The very process of centralisation, however, provided an obvious difficulty for litigants and other participants in the court process. To enjoy royal justice, in place of that decreasingly available locally, they had to travel great distances and incur much expense, a solution to which difficulty was provided by the introduction of commissions permitted to hear cases in the counties, the highest ranking of which was that for an *iter ad omnia placita* or eyre, as discussed *ante*.

[26] Brand, *Origins*, pp.18-19, 22, 30.

Chapter 2: Attorneys at the early eyres

Although visitations of the general eyre commenced during the reign of Henry II, the first such visitation for which eyre articles (albeit unofficial) are recorded, plea rolls have survived and feet of fines were created is that of 1194-5.[1] Seven groups of circuit justices moved between usually neighbouring counties to hear civil cases brought before them, together with criminal presentments and other business. Only two plea rolls survive from the 32 eyres known to have formed part of this visitation, relating respectively to Wiltshire (KB26/3) and to Bedfordshire-Buckinghamshire (KB26/4). The Wiltshire eyre took place at Wilton on dates including 9 October 1194, with that of Bedfordshire-Buckinghamshire including 27 September 1194 at Bedford, probably convening also in Dunstable and completing in the summer of 1195. The surviving record of proceedings of both eyres, including civil pleas, is available in print.[2]

Given the near certainty that membranes from both rolls have been lost, the number of attorneys appointed at each of the two eyres is impossible to calculate. It is, however, evident that the making and recording of appointments of attorneys were established procedures. In Wiltshire, for example, a wife is recorded as putting her clerical husband in her place in a plea of recognisance of a debt, a father doing the same with his son on a plea of land, and a prior appointing one of his monks on a recognisance.[3] Another litigant appointed a man who was perhaps a friend or neighbour, again on a recognisance.[4] Similarly, in the Bedfordshire/Buckinghamshire eyre, a wife appointed her husband to act in her place on a grand assize, and an abbot appointed his chamberlain on a plea of land and also his steward in

[1] *Records of the General Eyre*, pp.2, 56-9.
[2] *Placitorum in Domo Capitulari Westmonasteriensi Asservatorum Abbreviatio*, ed. G. Rose and W. Illingworth (Record Commission, 1811), pp.11-20; *Three Rolls of the King's Court in the reign of King Richard the First, AD 1194-1195*, ed. F.W. Maitland, (Pipe Roll Society, 14, 1891) pp.65-115, 119-48. See also 'Some Lost Pleas of 1195', ed. G.H. Fowler, *English Historical Review*, 37 (1922), pp.403-5.
[3] *Three Rolls of the King's Court*, respectively m.1 (p.70); m.2 (p.74); m.2 (p.75).
[4] Ibid, m.2 (p.70).

an action concerning the advowson of a church, his opponent being a married woman who appointed her husband to act in her place.[5] Another steward was appointed by a secular lord, and it is also recorded that four named men (of unspecified status) reported that a married woman (presumed sick) had put her brother-in-law in her place on a plea of assize.[6] In addition to such specific appointments, there are also passing references to named individuals appearing in place of litigants in ongoing proceedings.[7] Despite the paucity of surviving evidence, a pattern of appointment of monks and stewards and of husbands and family members is clearly discernible.

The following visitation was that of 1198-9, in which 25 eyre districts were visited, plea rolls recording civil pleas from five of which survive. One such is that of Suffolk at which two sessions were held at Thetford, respectively between 15-28 October and between 24 November and 1 December 1198.[8] The surviving plea roll evidence is scant, comprising a single membrane within the roll designated KB26/30 (formerly CRR30). This contains 39 enrolments recording civil business including several foreign pleas from neighbouring counties, amercements and attorney appointments. Its contents have been transcribed, translated and printed.[9]

Although the evidence base is thus small, it is immediately clear that, as in Wiltshire and Bedfordshire/Buckinghamshire a few years before, attorneys were present. The prioress of Thetford, for example, appointed Alfred the chaplain to be her attorney in the matter of a messuage in Norwich.[10] On the secular side, one Ralf of Whatfield attorned his son in a plea of warranty of charter.[11] Although the motives of the appointing principals in making those

[5] Ibid, respectively m.1 (p.119); m.2d (p.127); m.2d (p.128).
[6] Ibid, respectively m.2d (p.128); m.2 (p.125).
[7] Ibid, for example, m.1 (p.122), m.2d (p.129).
[8] *Records of the General Eyre*, p.60.
[9] *PKJ*, ii, enrolments numbered 77-115.
[10] *PKJ,* ii, no.97.
[11] *PKJ*, ii, no.104.

appointments can only be guessed at, a reasonable surmise is that Alfred was appointed by a busy prioress because he was both literate and capable, and that the key to Ralf appointing his son was their sanguinity. Neither attorney was independent or remotely professional in the sense of earning a living from the activity. Hervey, son of Eustace, who appointed master John to win or lose on his behalf in a case involving property in Cambridgeshire may have done so because, given John's implied academic credentials, he was a man of intellect or perhaps a canon lawyer.[12] The appointment may thus indicate thoughtfulness on Hervey's part and a capability on that of master John. No professionalism is implied.

Some insight on the work of an attorney at the eyre is provided by the attendance at court of both Reiner the monk and the seneschal (steward) of the abbot of Ramsey, put in the abbot's place to hear the adjourned date of an assize concerning a quantity of land.[13] Not only is a day given, but a licence is granted for the parties to agree. The inference of this is that the abbot's attorneys were not just appearing in his place but were authorised to negotiate terms of settlement on his behalf. Without over-stressing the point, they may thus be regarded as acting in a lawyerly manner, albeit within a relationship precluding independent professionalism.

A different but relevant point arises from the attornment of William Esturmi by Roger of Rattlesden, in pursuance of which William, on Roger's behalf, offered himself on the fourth day in a plea of advowson against named opponents who neither appeared nor essoined themselves.[14] Both William and Roger were Suffolk knights, and it may be surmised that Roger wanted, as his public representative in court, a man of equally high status to himself.[15] Indeed, the apparent importance of social status is observable elsewhere at the eyre. A grand

[12] *PKJ*, ii, no.114.
[13] *PKJ*, ii, no.99.
[14] *PKJ*, ii, no.109.
[15] See *PKJ,* ii, no.1197; *PKJ*, iv, no.4189.

assize between Reginald de Argentan, as tenant in the action, and Hubert of Chediston, was adjourned into the following term because Reginald's attorney had essoined himself.[16] Reginald held land in several counties, and although his attorney is identified only as Eustace, he may have been no less a man than Eustace, bishop of Ely. The two men were certainly acquainted. Both men were occasional royal justices and, indeed, on 11 November 1198, only thirteen days before commencement of the second Thetford session at which the adjournment occurred, the two men sat on the same bench at Westminster.[17] Furthermore, in Michaelmas 1199, Reginald was appointed by Eustace to be one of his three attorneys, in which role Reginald subsequently appeared for the bishop to seek his principal's court, and in 1201 received a further appointment from him.[18]

The significance of the relationship between Reginald and Eustace is its mutuality; each man would be confident in appointing the other to be his *alter ego* in legal proceedings, not simply because he was comfortable with the other's social credentials but because he knew that he could rely upon the other's legal skills in the performance of his duties. Although, as Stenton writes, Reginald de Argentan was 'in no sense' a professional man of law, he clearly possessed lawyerly qualities as a member of the judiciary, albeit only as an occasional justice for a relatively short period of time. Crucially, he was a safe pair of hands 'well trusted by his contemporaries'.[19] Such a contemporary was Earl David from whom Reginald accepted an attorney appointment in Hilary term 1199 in a Bedfordshire case.[20]

There are other recorded examples at this time of judges acting as attorneys. William Briewerre did so in 1200 on behalf of Reginald de Albamara in an action involving land in

[16] *PKJ*, ii, no.83.
[17] *PKJ*, iii, p.cxxxiv.
[18] *PKJ*, iii, p.ccxcvi.
[19] *PKJ*, iii, p.ccxcvii.
[20] *PKJ*, iii, p.ccxcvi.

Somerset.[21] Peter of Stokes, who may have been a royal seneschal and who was himself appointed in 1200 as attorney to Eva del Broc in her action against a royal dispenser, Almaric son of Thurstan,[22] appointed at different times two judges to act for him, master Ralf of Stokes (who was probably a relative) and Geoffrey of Buckland .[23] The use of such men as attorneys surely reflects their possession of qualities sought by discerning litigants anxious to obtain capable representation. It probably reflects also the prevailing culture of the age which tolerated the use of influence as the means to an end; who better to exert influence in court on a litigant's behalf than a royal justice?

The visitation of 1198-9 was followed in short order by that of 1201-3 in which 33 eyres were held, in addition to a number of concluding sessions at Westminster. In only six cases does a record of civil pleas survive. One such is that of Cornwall on the south-western circuit which was visited between 18 and 25 June 1201, the justices travelling no further into the county than Launceston.[24] Its recorded proceedings, including civil pleas and assizes, are preserved within a single surviving plea roll, JUST 1/1171, which also contains details of outstanding pleas and assizes from Cornwall and from the earlier eyres of Dorset and Somerset heard at Taunton where the Justices paused briefly in early July before dispersing. The contents of the roll are available in print in both transcription and translation, together with the editor's introduction and commentary.[25] Although it is probable that some original membranes are now lost, the record of proceedings is thought to be representative; 'The membranes…contain all the cases which might be expected to be entered on the roll made up in the county visited by itinerant Justices'.[26] As 38 entries on those membranes are

[21] *PKJ,* i, no.3226.
[22] *PKJ*, i, pp.74-5.
[23] *PKJ*, i, p.84; no.3184.
[24] *Records of the General Eyre*, p.63.
[25] *PKJ*, i, ii.
[26] *PKJ*, i, p.128.

duplicated, the roll probably records, at least in part, proceedings heard before two justices. Nonetheless, a total of 154 different enrolments relating to Cornish civil pleas and assizes appear within the roll.

Attorneys were seemingly thin on the ground. As ever, the possibility of lax recording of attorney appointments cannot be discounted with certainty, but established formalisation of the appointment process by 1201 and the presence of experienced justices make this unlikely. Only ten men are referred to as attorneys at Launceston, and one other on a Cornish matter at the subsequent session at Taunton, each receiving a single appointment only.[27] Furthermore, just three of those attorneys are recorded as being appointed in advance of an anticipated hearing at the eyre itself. In five cases, the appointment was made on a matter being adjourned from Launceston, either to Taunton or to Westminster, and on three further occasions a named attorney is referred to as appearing for a litigant. Seven of the eleven - three husbands, three sons and a brother - were related to their principals by blood or marriage. On this evidence, the overwhelming majority of Cornish litigants saw no need to appear by attorney unless they had to, their representatives being no more than simple substitutes.

One appointed attorney was, however, different. William of Taunton was appointed in the alternative to another by the bishop of Exeter against one John le Sor in an assize of darrein presentment .[28] On the case being heard, John's claim to the advowson of a particular church was resisted by William who, 'put in the bishop's place to win or lose, comes and says that the church is not vacant, because the prior of Plympton is parson of that church'.[29] The prior attests to this but the matter is disputed at length before being finally adjourned to

[27] *PKJ*, ii, nos.427, 446, 459, 474/516, 538 (two appointments), 557, 560, 561, 562/573, 673.
[28] *PKJ*, ii, nos.562/573.
[29] *PKJ*, ii, no.538.

Westminster. Although the unrecorded presence in court of a specialist advocate cannot be discounted, and William's precise role in the proceedings is unknowable, the impression left is that William both spoke for the bishop and had the conduct of his case. Furthermore, William was active elsewhere at the eyre. He made two appearances as a surety, on each occasion guaranteeing payment by William of Wrotham, sheriff of Cornwall, of sums for which he, as sheriff, was liable to account.[30] On the second of those occasions, the sum in question represented the value of chattels forfeited by villagers held responsible for the death of the reeve of the bishop of Exeter. William of Taunton was more than a mere substitute; he was the bishop's fixer.

It must be asked how typical are these findings of early thirteenth-century eyres generally? They do not altogether gel with the impression of established attorneyship, albeit in a limited number of contexts, gained from the scant surviving evidence from the eyres of Wiltshire and Bedfordshire-Buckinghamshire in 1194/5. Neither, with the exception of the appointment of William of Taunton by the bishop of Exeter, do they echo the apparent willingness of men of high status – knights, bishops and judges – both to appoint attorneys of their social class and to be appointed to act as such themselves, as was dimly observable at the Suffolk eyre of 1198. No doubt, the observable differences arise from Cornwall's geographical and cultural remoteness from Westminster. While it may be as true of Cornwall as elsewhere that 'The twenty years between 1194 and 1214 were a time of rapid development in English law', its isolation from centralising influences may have stunted any such developments and slowed them down.[31] Accordingly, although the king's writ ran and was imposed by the itinerant justices in Cornwall, prevailing local practices may have been antiquated, hanging over from a previous age and redundant elsewhere. Data from the Cornish eyre might, therefore,

[30] *PKJ*, ii, nos.578, 579, and see nos.264, 267.
[31] *PKJ*, i, p.133.

fortuitously provide twenty-first century historians with a window into a contemporary past otherwise unrecorded and lost.

If the apparent paucity of attorneys in Cornwall may thus be more typical of the twelfth century than the thirteenth, so also may be the use made at the eyre of pledges or sureties. Unremarkably, scores of men are recorded as acting as *plegius* on one or two occasions, and a few did so up to four or five times. Two men, however, were particularly engaged in this activity, and the issue arises as to whether the act of pledging at the Cornwall eyre may have been capable of being an organised form of support for litigants in court. Were the two men in question, Luke, son of Bernard, and Odo, son of Frawin, in the loosest terms embryo 'lawyers'?

One recorded case involved both men. Two named individuals and 'their companions of Helston' offered to the king twenty shillings for a successful inquest into a false charge of robbery of a goat.[32] Luke stood as surety for ten shillings of the proffer, the other ten shillings being guaranteed by Odo. In another case, four appellants of a breach of the king's peace and the four miscreants together sought licence to agree on condition that those appealed would make good the damage caused to the appellants.[33] Luke was surety for those appealed. Might he have been involved in negotiating or implementing the agreed settlement? He then stood as surety for half a mark on the amercement of an appellant who withdrew a charge of burglary and who was originally ordered to be taken into custody.[34] Did Luke's provision of surety secure his release? He next appears on the record as surety for payment of half a mark on the amercement of a man who beat another man's wife, and then as one of two sureties on

[32] *PKJ*, ii, nos.270, 579.
[33] *PKJ*, ii, nos.302, perhaps 583.
[34] *PKJ*, ii, nos.313, 584.

the amercement of a man who withdrew an allegation of robbery against a named individual 'and many others', guaranteeing the payment of one mark.[35]

All of the above instances of Luke offering pledge were crown pleas, but he was similarly active on the civil side also. He stood surety in the sum of half a mark on the amercement of a disseisor, and again for an identical sum on the amercement of another disseisor, a second surety guaranteeing the same amount again.[36] In an assize of *mort d'ancestor*, Luke acted jointly with another in guaranteeing the payment by the tenant to the king of five marks to have judgment.[37] He also acted as the first-named of six sureties for the payment of five and a half marks for a named individual's release on bail, and was also one of several sureties for the payment of fines of varying amounts by five individuals so that they might be *in custodia*.[38] In one final reference to Luke's activities as a surety, he is recorded as being one of three *plegii* for Ailwold of Saltash *ut senescallus*, suggesting that he was Ailwold's steward.[39] He features on the record also as a litigant in his own right, being found by a jury to have mounted a fabricated defence on a writ of entry.[40]

Odo, son of Frawin, is recorded as standing surety at the eyre on ten occasions.[41] His pledge for ten shillings alongside Luke, son of Bernard, has already been mentioned. His other pledges were for a variety of purposes, including the amercement of several appellants who withdrew their charges, two of whom were taken into custody; the enablement of bail to be granted; and the guaranteeing of payment of fines for licences of agreement between two men accused of robbery and wounding and their respective appellants. Whether Odo was instrumental in the negotiation of the terms of those agreements is unstated. On the civil side,

[35] *PKJ*, ii, nos.314, 584; 402, 593.
[36] *PKJ*, ii, nos.410, 594; 412, 594.
[37] *PKJ*, ii, nos.544, perhaps 596.
[38] *PKJ*, ii, nos.597; 598.
[39] *PKJ*, ii, no.188.
[40] *PKJ*, ii, no.545.
[41] *PKJ*, ii, nos.251, 252/577, 270/579, 581, 289/582, 338/585, 367/588, 392/592, 411/594, 431/595.

he also stood pledge on the amercement of wrongdoers in assizes of nuisance and *novel disseisin*. Odo was also embroiled in litigation of his own, being able in an assize of *mort d'ancestor* to continue in possession of one carucate of land by claiming it as the property of an under-age ward of whom he was the guardian.[42] A jury also found that he had corruptly taken money from a named individual 'in order that he should release him from an appeal which Robert the outlaw made against him'.[43]

Occasional pledging, *per se*, as an ancient and ingrained element of court process, had nothing to do with the provision of any sort of legal service. But, when done on an industrial scale by men like Luke and Odo, something more systematic is implied. The obvious possibility is that both men were stewards tasked with the responsibility of supporting their lords' men and tenants in both crown and civil pleas. Indeed, it is known that Luke was a seneschal, apparently of one Ailwold of Saltash.[44] Alternatively, they may have been particularly busy tithingmen. But there are several reasons to think that their pledging was unconnected to stewardship or to tithing arrangements.

Firstly, neither Luke nor Odo stood surety for the performance of any non-financial duty; they did not guarantee that a plaintiff in a civil suit would prosecute or that a defendant would attend on summons. They only pledged the payment of sums of money for which they could previously have obtained security, hence avoiding liability to personal amercement. Secondly, if they were stewards and no more, their lords must have had extensive, county-wide, estates; the men who were supported seemingly came, within the confines of Cornwall, from far and wide. Luke acted as surety for men from the hundreds of Kerrier and Penwith in the heel and toe respectively of the county, Trigg and West Wivel close to its centre and East

[42] *PKJ*, ii, no.457.
[43] *PKJ*, ii, no.369.
[44] *PKJ*, ii, no.188 above.

Wivel on its border with Devon. Odo cast his net even wider, some of his 'clients' coming not just from Kerrier, Penwith, Trigg and East Wivel, but also from Powder on the county's south coast and Stratton in its far north. The size of each catchment area renders redundant the possibility that either man was an active tithingman and greatly reduces that of proactive stewardship.

The third reason to think that Luke and Odo were other than stewards acting as such lies within the single case in which both of them appeared as sureties.[45] Each of them independently guaranteed payment of one-half of the fine of twenty shillings payable to the king to have an inquest. They were not acting jointly, each being separately responsible for his own allocated liability. In so doing in a suit involving just two named individuals and their 'companions' from a single settlement they surely cannot both have been acting as stewards for two different lords. They must have been present in some other capacity. In speculating on the nature of that other capacity, we can observe that because the twenty shillings given to the king must have been offered and accepted before the inquest was ordered or took place, so must Luke's and Odo's individual pledges have also preceded it. Consequently, any support provided by them could have commenced with the application for the inquest and included representation at the inquest itself. Certainly, their provision of security for the initial fine enabled those appealed to be vindicated.

In order to have acted as guarantor to so many parties, both Luke and Odo must have been present in Launceston throughout the week in which the justices were in session. The most probable explanation for their garnering work from all over Cornwall is that, being present at the eyre, they picked up work as it materialised and did not, for instance, come to the eyre armed with a list of men to pledge (as would, to large extent, have been the case if they were

[45] *PKJ*, ii, nos.270/579.

simple stewards). Although the support provided by them may have been entirely financial, Luke and Odo being mere money-lenders funding impoverished or disorganised litigants, their willingness to involve themselves in the processes of the court and their assumption of the risk of amercement in the event of default, renders this unlikely. It seems more probable that they were offering a rudimentary legal service.

At a time when there was little use of or perceived need for attorneys in court, and when those who were appointed in that capacity by small freeholders were simple substitutes, the activity of pledging might have been capable of being a primitive form of lawyering. By being present in court to provide financial support for civil litigants or for parties involved in crown pleas and by giving necessary assurances to the court, men like Luke and Odo would have been well placed to assist procedurally, perhaps also speaking for their 'clients', negotiating settlements and achieving outcomes.

Whatever its precise function, one reason to think that pledging on the scale practised by Luke and Odo was a hangover from a bygone age rather than a reflection of a contemporary norm or a pointer to the future is that there is no evidence from the surviving record of anything similar at the 1203 eyre of Shropshire, one of the counties included on the west midland circuit of the same visitation. Convened on 1 October at Shrewsbury, its civil pleas are recorded within plea roll JUST 1/732.[46] Although less remote geographically than Cornwall, Shropshire's location no doubt also limited or delayed the absorption of centralising influences which may, in part at least, explain a similarly low level of recorded attorney participation and the predictable character of those attorneys who were appointed or active. However, whereas it is thought that the surviving Cornish record is reasonably complete, the probability of lost membranes from Shropshire makes quantification difficult.

[46] Printed in *PKJ*, iii, nos.769-856.

Fourteen attorneys are mentioned, of whom four (three canons and a monk) were appointed by abbots (one on adjournment), three were husbands appointed by their wives, and one was a son appointed by his widowed mother.[47] Two men appointed other men (one of whom is shown elsewhere to have been a knight).[48] Petronilla, the wife of one of the county's great men, Warner of Willey, initially attorned a man other than her husband in a specified action, but a later entry has Warner himself acting in that capacity in traditional manner.[49] There is also a passing reference to a named clerk making an appearance on behalf of his mother, and mention also of an unspecified number of knights reporting to the court an appointment by a sick litigant of his co-tenant as his attorney.[50]

The final visitation of John's reign took place in 1208-9, extending to just fourteen eyres, of which only in Norfolk has a plea roll, JUST 1/558, containing civil pleas survived. Justices were in session from 18 January 1209 until 13 February at Norwich and between 5 and 8 May at King's Lynn.[51] Civil pleas are set out in translation and in print, and incorporate references within the 424 relevant entries to the appointment or appearance of 105 attorneys.[52] Of that number, nineteen appointees were husbands appointed by wives, five were brothers and eleven were sons. Forty-one other secular males were appointed, but only two ecclesiastical appointments, respectively of a chaplain and a monk, are recorded, and just one of a woman. In addition, there were five instances of knights reporting appointments made before them, four appointments attested by writ, and seventeen references to attorneys, usually anonymous, being given a day or otherwise appearing in court. In only six cases overall were appointments made of two men to act for a particular litigant, the great majority

[47] *PKJ*, iii, nos.769, 776, 850, 855; 791, 802, 802; 831.
[48] *PKJ*, iii, nos.834, 856.
[49] *PKJ*, iii, nos.793, 837.
[50] *PKJ*, iii, nos.841, 777.
[51] *Records of the General Eyre*, p.70.
[52] *PKJ,* iv, nos.4040-4463.

being of a single appointee. The overwhelming majority of the named attorneys received a single appointment or made a single appearance only, just two men, Simon of Elmham and Reginald de Gloz/Gloce, apparently acting for two different principals.[53]

As is clear from the bare statistics outlined above, the extent of attorney participation at the Norfolk eyre of 1209 was far greater than was evident at either of the earlier eyres of Cornwall in 1201 or of Shropshire in 1203. Part of the explanation for this no doubt lies in the relative proximity of Norfolk to Westminster and consequent exposure to centralising and progressive influences. But it seems likely also that chronology was at play, the handful of years between the earlier eyres and that of Norfolk witnessing a shift in attitudes towards the use of attorneys in court.

Three caveats, however, remain. Firstly, although basic skills were presumably being honed by some attorneys, there is no reason to doubt that the great majority of them were simple attorneys, offering and providing no more than the core service of appearance. Specialist skills such as literacy and administrative acumen are likely to have remained largely the preserve of the monks and canons who represented their religious houses and the stewards and bailiffs who appeared in place of great lords. Secondly, the observable increase in the use of attorneys was just a matter of degree. As will be seen, evidence from later decades suggests that for much of the thirteenth century the majority of litigants in eyre proceedings appeared in person. Thirdly, there is no indication that attorneyship had to any material extent become professionalised. Very few men may be seen to be enjoying more than the occasional appointment or appearing for more than one independent principal. Although one or two attorneys, William of Taunton acting for the bishop of Exeter at the Cornish eyre for instance,

[53] *PKJ*, iv, respectively nos.4347, 4413; 4278, 4291.

exhibited lawyerly qualities - in his case that of having been a capable institutional fixer, a man who got things done - none such were independent practitioners.

Chapter 3: The vocabulary of attorneyship

All attorneys appointed or present at the earliest eyres for which plea rolls survive appear on the face of the record to possess one defining characteristic. Each, whether husband or son, neighbour or friend, retainer or monk, steward or bailiff, stood in the place of his principal *ad lucrandum vel perdendum*, 'for gain or loss'. He was the principal's *alter ego*, his 'other self'. This universality implies a single point of origin. There are, however, clues within the written record to suggest that the attorney of *circa* 1200 had evolved from a number of coalescing sources. Those clues lie in the vocabulary used by clerks and scribes in writing up the official plea rolls recording the appointment of attorneys and the proceedings in which they featured, and also in the language of contemporary legal treatises and tracts.

The range and diversity of that vocabulary and language is startling. A litigant's representative in court may be variously described as *attornatus*, *responsalis*, or *procurator*, or he may be referred to participially, as with *attornatus loco, positus loco, cuius loco ponitur or summonitus*. Looser terminology such as *alterius loco suo* or *loco alterius ponitur* may also be employed. The verbal constructions describing his appointment or deployment in court are similarly diverse, being based variously upon *ponere*, *attornare*, *mittere* or (occasionally) *facere*; such men may be put [in place], attorned, sent or made. Numerous grammatical and syntactic variations of these linguistic constructions occur in practice. Particular nouns and verbs are usually encountered in association; *responsales* were normally sent, whilst *procuratores* may be put in place, and *attornati* made.

The enquiry that now follows into the nature and extent of such a range of linguistic constructions and the underlying rationale provides a novel approach to understanding the origins of attorneyship, and hence those of the later, legal, professional attorney. It is confined largely to the records of the eyre proceedings with which this thesis is concerned,

but inevitably where reason requires, draws on other sources also. It is suggested that had there been a single point of origin, it would most probably have given rise to a single linguistic framework, and that a multiplicity of frameworks therefore indicates a multiplicity of points of origin. Specifically, it is argued, the identifiable constructions, whether nominal, participial, verbal or adjectival, may be allocated to one of three broad linguistic groups, based upon the respective traditions of putting in place, attornment, and procuration.

The great majority of references to attorneys in eyre plea rolls from the 1190s onwards occur in the entries recording the appointment by named litigants of one or more named individuals in a stated suit. In this context, whether such appointment is being made in anticipation of the hearing of an action in court or on its adjournment, the use of the verb *ponere* is universal. It is to be found in the record of proceedings of successive eyres from the earliest visitation for which plea roll evidence is extant, that of 1194-5. Examples abound. At Wilton in Wiltshire in October 1194, *Ricardus Fusor ponit loco suo Walkelin de Wint' versus Robertum Aurifabrum de placito recognitionis ad l. vel p.*, and *Baldewinus de Bureford ponit Robertum filium suum loco suo versus Thomam de Cherebure de placito terre alvp*.[1] Similarly, *Prior de Bradenestoke ponit loco suo fratrem Rob' versus Milonem de …et versus episcopum Herefordensum*…. in an assize of *novel disseisin*.[2] At the eyre of Bedfordshire-Buckinghamshire, probably in 1195, *Willelmus de Hudcot ponit loco suo Simonem de Hudcot versus…de placito advocacionis ecclesie de Hudcot*….[3] Subject to the occasional inconsequential variation, the same formula appears in every successive eyre throughout the thirteenth century. Such universal employment of the concept of 'putting in place' in the

[1] Plea Roll KB26/3, printed in *Placitorum…Abbreviatio*, pp.11-12.
[2] Ibid., p.12.
[3] 'Some Lost Pleas of 1195', p.404.

official, public appointment of a litigant's representative to act in specified proceedings in the Common Law courts of Richard I and John onwards was clearly deliberate.

Although the principal use of the verb *ponere* in the context of the appointment of attorneys is in the indicative mood, active voice, present tense, third person singular or (if there are two or more appointors) plural number - *ponunt* - it was used in other tenses, moods and voices also. A writ of the justiciar, sent from Leicester on 11 September 1199 to the justices at Westminster, informed them that four named individuals *posuerunt coram nobis loco suo*, 'have, before us, put in their place', Henry Mansell *ad lucrandum vel perdendum* in a stated plea of land.[4] This is reinforced by the command that Henry be received in their place. Appointments made out of court were similarly noted. The record of a plea before the king in either Easter or Trinity term 1200 that four named men, sent to Joanna de Thornham, a married woman, *ad sciendum quem poneret loco suo*, 'to know whom she may have put in her place', versus the abbot of York in a plea of advowson, report to the court that *ipsa posuit loco suo inde* four named men in the alternative *ad lucrandum vel perdendum*.[5] The use of verbal structures based on *ponere* in describing both the reason for the four men being sent (in the subjunctive mood, imperfect tense) and their reporting on the outcome (indicative mood, perfect tense) indicates that, by this early date, 'putting in place' was as formulaic in this narrow context as it was in the appointment process generally.

Given such formulism, it is necessary to look further back in time for clues on its origination. In Book XI of *Glanvill*, the legal position on the use of deputies generally in court proceedings is set out.[6] Such phrases as *loco alterius ita ponitur, ita loco alterius poni* and *loco suo ponere* emphasise the core element of representation, the putting of another in one's

[4] *PKJ*, i, no.3545.
[5] *PKJ*, i, no.3208.
[6] *Glanvill*, p.132 *et seq*.

place. Chapter 1 opens with a detailed account of the formalities associated with the creation of the sort of representative it describes, and we are told that anybody who puts another in his place – *qui alium loco suo ita ponit* - must attend court and do so in person. With five general references in chapter 3 to people being put in the place of another, it is clear that the connection between putting in place and the appointment of a legal representative in court was established by the mid-1180s.

Analysis of a number of final concords transcribed by Van Caenegem is revealing in this regard. It confirms firstly that the concept of putting in place was current in 1185. In a final concord of January of that year, the abbot of Croyland, as defendant, appeared through William of Leicester *quem predictus abbas posuit loco suo ad lucrandum vel perdendum* ….[7] The abbot 'has put' William in his place to gain or lose. The significance of the use of the verb *posuit* in the perfect tense is discussed below. Similarly, a final concord of May 1185 was made between…*priorem et canonicos de N[ewnham] per Walterum celerarium de N[ewnham] quem idem prior et canonici loco suo posuerunt in curia domini regis ad lucrandum et perdendum*…and another party.[8] The prior and canons appear by Walter the cellarer whom they 'have put' in their place in the court of the lord king. The use of the third person plural perfect tense*, posuerunt*, should be noted. Again, a final concord of October 1185 was made by…*Rad[ulfum] de Hampton et Orreis uxorem suam que posuit predictum Radulf[um] virum suum loco suo coram predictis justiciis ad lucrandum vel perdendum* ….[9] Orreis 'has put' her husband in her place. *Ponere* is used again in the perfect tense in five further recorded final concords, dated to 1187, 1188 and 1189.[10]

[7] *EL*, ii, no.560.
[8] *EL*, ii, no.561.
[9] *EL*, ii, no.564.
[10] *EL*, ii, nos.583, 587, 590; 601; 608.

1185 was apparently a watershed year in the development of the concept of putting in place. Not only have no earlier recorded examples of the use of a verbal structure based upon *ponere* in the representation process been traced, but prior to that year a different verb, *attornare*, had seemingly enjoyed currency. In a final concord of October 1182, the abbot of St Alban's, as defendant in the action which preceded the making of the fine, appeared *per Petrum monachum et Gaufridum de Gorham quos abbas attornaverat loco suo ad lucrandum vel perdendum*. The abbot made the fine 'through Peter the monk and Geoffrey de Gorron whom the abbot had attorned to gain or lose'.[11] Not only is a different verb employed but it appears in a different tense, that of the pluperfect. Taken at face value, the use of the pluperfect tense suggests that the act of attornment happened further back in time than would have been the case had the perfect tense been used. The inference is that the attornment of the abbot's attorneys was both earlier than and detached from the decision being made to send them into court in his place in the particular suit the subject of the fine.

A year later, in July 1183, a final concord was made…*inter Mauricium de Creun…per Widonem filium et heredem ipsius Mauricii et Alexandrum dapiferum suum quos ipse Mauricius atornaverat loco suo ad lucrandum vel perdendum de hac loquela coram Willelmo Basseth et Nigello filio Alexandri quos justiciarii domini regis a capitali curia domini regis ad ipsum Mauricium miserant ad hoc audiendum*….[12] The selected tense for recording the attorning (and, indeed, also the original sending of William and Nigel to attend upon Maurice) is again the pluperfect, suggesting verbal action further back in the past than if the perfect tense had been used. In one further final concord, dating from November 1188, *attornare* is again employed as the operative verb in the pluperfect tense.[13] It states that the abbot of Ramsey…*per magistrum Herbertum quem idem abbas attornaverat loco suo in*

[11] *EL*, ii, no.539.
[12] *EL*, ii, no.546.
[13] *EL*, ii, no.602: Document A.

curia domini regis ad lucrandum vel perdendum…claims an advowson. Master Herbert is, presumably, a canon lawyer.

Thus, the verb *attornare*, having been in use in the pluperfect tense since at least 1182 (and, presumably, before) has, with the single exception of one final concord from 1188, disappeared from the record by 1185. Instead, *ponere* has appeared in the perfect tense. Whilst it is difficult to avoid concluding that one verb has simply replaced another in common usage, a reason for such a replacement is less obvious. Perhaps it was simply a whim that caught on or, in some way, a perceived improvement in a single continuing process. More probably, however, the use of the different verbs in different tenses may reflect different processes, the need to replace one with the other arising from underlying legal change.

We can be sure that the use of the perfect tense for *ponere* and of the pluperfect tense for *attornare* was not mere happenstance; in the eleven cited circumstances, it must have been deliberate. All three instances of *attornare* are in the pluperfect tense, and all eight instances of *ponere* are in the perfect tense. In relation to the making of the fine to which each referred, the three acts of attornment are stated to have occurred further back in time than the eight acts of putting in place. The significance of this is that in the latter - *ponere* in the perfect tense - there is a clear and unbroken connection between the act of putting in place at some specific moment in past time and the event to which that act is directed, namely the making of the fine. The event flows from the act. In contrast, use of the pluperfect tense suggests that the verbal action of attornment not only took place at some unspecified time prior to the making of the final concord but that attornment and fine are unconnected.

Although the paucity of relevant source material prior to the early 1180s deprives us of the opportunity of knowing practice in earlier decades, it appears probable that the apparent

replacement of attornment by putting in place not only accompanied the advent of the final concord as a solemn and formal process but was necessitated by it. Final concords were relatively novel in the 1180s, Round giving the date of 1175 as that of the first known.[14] This was made *in curia domini Regis* at Evesham before several named justices and others who, according to Round, were in Worcestershire on eyre. The king was there also, and confirmed the fine by royal charter. Further concords dated to 1176 were made at, respectively, Leicester and Oxford, in each case before itinerant justices. It seems probable that regular fines were introduced as part of Henry II's remodelling of the c*uria regis*.

It is in the context of a final concord that one of the two references in *Glanvill* to the verb *attornare* is made, a hint of the coalescence of attornment and putting in place being discernible.[15] A specimen chirograph made at Westminster to record the terms of a final concord has as one of the parties *Willelmum filium Normanni per Alanum filium suum quem ipse attornavit in curia domini regis ad lucrandum vel perdendum*. Alan is appearing in his father's place having been 'attorned' in the king's court. Unlike the use of *attornare* in the pluperfect tense in the three final concords recited above, the operative verb in *Glanvill*'s specimen is, as with *ponere* in the same context, in the perfect tense, implying linkage between the attornment and the final concord.

Alan was probably not simply a son of William, but was both his eldest son and heir apparent. Fathers had long authorised such issue to represent them, the sons thereby having the opportunity of protecting both their fathers' vested interests and also their own interests expectant. Such a substitution is featured in the report of a dispute over an advowson dated to 1166-8 in which the claimant abbot is represented by a monk and the defendant is represented by his son *pro patre suo et se qui heres ejus videbatur*, 'on behalf of his father and of himself

[14] J.H. Round, *Feudal England* (London, 1895; reset, 1964), p.385.
[15] *Glanvill*, Book VIII, pp.94-5.

as heir apparent'.[16] Although no formalities are mentioned, and neither is it stated that the son is 'attorned' (he merely appears on his father's behalf), the son's authority extends to being able to renounce his father's right of patronage.

The second use of the verb *attornare* in *Glanvill* occurs in a specimen writ recited in Book XII, chapter 19, and appears within the phrase *ut dicitur attornastis alios loco vestro*, which may be translated as 'as it is said, you have attorned others in your place'.[17] It is again employed in the perfect tense, implying linkage between the appointment and the event for which it was made.

In any event, by the 1180s and probably shortly before, the necessity that the final concord be immutable and unchallengeable made it vital that in the absence in person of a party to it, his or her permitted representative must be a true substitute, unambiguously appointed as his principal's *alter ego* in the particular plea, and empowered to win or lose. The change of verb and tense that, on the above evidence, occurred after (or perhaps, on) the introduction of the fine, suggests that the process underlying the use of *attornare* had proved or was proving to be inadequate for the required purpose. Perhaps, for instance, concords concluded by attorned men on behalf of absent litigants were being challenged on the ground of improper representation or, alternatively, agreements struck were being successfully reneged upon. Despite the three concords concluded by attorned men stating that they appeared in place of their respective principals *ad lucrandum vel perdendum*, and despite also the attornment by Maurice de Creun of his son and his steward being stated to concern the particular plea the subject of the 1183 fine, it may be inferred that in practice, 'commitments' given by attorned men were proving problematic, and that the process of using such men was coming to be regarded as fundamentally flawed. Only by replacing that underlying process with another,

[16] *EL*, ii, no.445.
[17] *Glanvill,* Book XI, p.145.

much tighter, process could the absolute integrity of the final concord as an instrument of record be restored and guaranteed. Whether the new formality of putting representatives in place in the making of final concords was at the same time also introduced into ordinary court proceedings is unknown; all that can be said is that such formality is evident from the first surviving plea rolls of the mid-1190s.

If this interpretation of the apparent replacement of attornment by putting in place is correct, and if its rationale was indeed the perceived inadequacy of attornment as a means of guaranteeing the absolute and specific ability of a representative to commit his principal irrevocably for the required purpose, we must ask what, precisely, was the purpose for which attornment had previously been regarded as sufficient. The original meaning of the verb *attornare* is uncertain. According to Pollock and Maitland, an attorney was so-called because 'he has been appointed, attorned (that is, turned to the business in hand)'.[18] Birks suggests that the term *attornare* meant 'to put in order, furnish or arrange'.[19] Christian maintains that the origins of attornment lay, not in the idea of taking the turn or place of another but in the Old French verb *atourner*, 'to attorn', in the sense of one appointed or constituted.[20] Brand expands on this view, agreeing that the term indeed derives from the French verb, but giving it the extended sense of 'assign or depute for a particular purpose'.[21]

Whatever its precise meaning, attornment was a process capable of existing in several forms, the common threads of each being the assignment of a right or obligation, the concept of substitution, and the acceptance or acknowledgement by third parties. Significantly, it was also a process of general application, albeit within a stated framework. One such form was attornment of tenant, as illustrated by a case heard in the presence of the king at Lichfield in

[18] Pollock and Maitland, *History of English Law*, i, p.212.
[19] Birks, *Gentlemen*, p.12.
[20] Christian, *Short History of Solicitors*, p.1.
[21] Brand, *Origins*, p.46.

1204.[22] William Dacus, on being summoned to explain his tenure of certain lands from the widow of Henry II and to account for alleged arrears of rents, claimed that the fee originally held of her had been given by her to two named servants, and that her seneschal at that time, as William said, *eum attornavit ad faciendum eis servicium suum et tenendum de eis*, 'attorned him to do his service to [the two servants] and to hold of them'. Although William's version of events was disputed in part, the subject of the claimed attornment was the service that William was bound by tenure to provide, the burden of which remained with William, but the benefit of which had passed from one lord to another.

A further application of the concept of attornment is demonstrated by a recital that on an occasion prior to a hearing at the Lincolnshire eyre in 1218-19, twelve burgesses of Stamford *attornati fuerunt loco*, 'were attorned in place', of the coroners to keep the pleas and attachments of the king's crown in Stamford.[23] This was clearly an important and solemn appointment, and yet wide-ranging in nature and far from limited to any single specific circumstance. Yet another mode of attornment appears in a case heard by the king in 1204 in which, in an assize of darrein presentment, the treasurer of York claimed to be the parson of Calverley church which, he said, a previous archbishop of York *attornavit* to the chapel of St Mary in York, of which the treasurer was the priest.[24] A church (or more precisely the sum of its perquisites) was seemingly capable of being attorned.

A further form of attornment, and one that most directly impacts upon the apparent replacement of attorned men by men put in place for a specific purpose, is illustrated by a case heard at Norwich in 1209 in which the justiciar made known by his letters that Richard of Clare, earl of Hertford, *atornavit coram eo* Hugh of Bottisham as his seneschal 'touching

[22] *PKJ*, iii, no.993.
[23] *RJE,* no.864.
[24] *PKJ*, iii, no.1004.

all his lands in the counties of Norfolk and Suffolk etc'.[25] Hugh, as attorned seneschal, has been authorised to appear for and in place of the earl as his deputy in relation to his affairs generally throughout the two named counties. However, such a general authority did not extend to appearances on the hearing of substantive pleas. In the same session in which he publicised the attornment of Hugh of Bottisham as Richard's seneschal, the justiciar attested by his writ that the earl also *posuit loco suo coram nobis* another man in a particular suit *ad lucrandum vel perdendum*.[26] We are told that the earl has 'attorned' his seneschal touching his lands, but has 'put in place' a different representative in the determination of a specific plea in court. The insufficiency of appointment as steward or bailiff in an age of putting in place is highlighted in Chapter 1 of Book XI of *Glanvill*. This provides that 'the appointment of a man as bailiff or steward with power to dispose of lands and goods, even where this is known to the court, will not entitle him to be received in court in place of his principal in any plea'.[27] To do so, the bailiff or steward must first be formally put in place *ad lucrandum vel perdendum*. The significance of this provision is twofold. Firstly, it clearly reflects the discontinuance of earlier practice whereby bailiffs and stewards might rely upon their appointed status to represent their masters in the prosecution or defence of pleas in court. Secondly, the very fact that the author saw fit to make the point suggests that the discontinuance was of recent occurrence, and that there remained some ignorance of it or reluctance to follow the new routines.

Although attornment for general seignorial purposes was seemingly, therefore, insufficient for the narrow purpose of court representation, there is no reason to believe that it was a novelty in 1209, even though no earlier examples of linkage between attornment and stewardship has been traced in the extant eyre plea rolls. Indeed, the attorned men named in

[25] *PKJ*, iv, no.4205.
[26] *PKJ*, iv, no.4299.
[27] *Glanvill*, p.133.

the final concords of 1182, 1183 and 1188 discussed above were seemingly the equivalents of Hugh of Bottisham, authorised to depute for their ecclesiastical or secular masters in their affairs generally, but whose ability to commit those masters absolutely in any specific instance, so vital to the integrity of final concords and pleas in court had, it is argued, been called into question.

The ability of stewards to represent their lords in the reign of Henry II is confirmed by a reported royal writ of uncertain date but attributed to the period 1170-81.[28] It directed justices to accept in place of the abbot of Abingdon *senescallum suum vel aliquem alium in loco suo*, 'his steward or anybody else in his place', to deal with outstanding assizes and pleas. It suggests that, by whatever date the writ was issued, a representative appearing on a lord's behalf would need to prove his entitlement to do so, presumably by production of the king's writ of authority. It suggests also that although a steward was the official most commonly expected to be a lord's representative, a degree of informality might attach to the arrangement. It may be that the above event took place in the early part of the stated period and that the purpose of the writ was to enable the steward (or other) to perform suit of court in place of the abbot. Certainly, a burden of lordship lay in the necessity to do suit of court which attached to land and which imposed upon the holder an absolute commitment to attend communal courts for the purpose of dispensing justice and for other purposes. Although it was only in 1236, with the passing of the Statute of Merton, that all freemen were permitted to do suit in those courts by attorney, 'greater men were privileged to send their stewards…' to do so on their behalves since at least the reign of Henry I.[29] Moreover, and significantly, sometimes 'the tenant who was bound by his tenure to discharge the suit due from the land was spoken of as the enfeoffed attorney or attorned feoffee of his lord'.

[28] *EL*, ii, no.528.
[29] Pollock and Maitland, *History of English Law*, ii, p.547.

Despite the absence of confirmatory evidence, it is probable that the practice of attornment by lords of their stewards or bailiffs is of comparable antiquity to that of deputyship itself. As touched upon *ante*, the origin of the ability of great men to use substitutes to represent their interests in the public domain is lost in the mists of time, but must have involved from the outset some form of appointment, not only to establish the authority of the appointee but also to advertise that authority to third parties expected to accede to or rely upon it. Attornment, a 'turning over' by lord to steward or bailiff of the general conduct of affairs, seemingly fits the bill. Critically, however, such attornment would surely not have involved or signified any surrender or loss of power by the lord; his attorned man would not have replaced him but merely deputed for him, utilising the power which remained vested in the lord. Furthermore, the extent to which the lord might be bound by the actions of his deputy is likely to have been, at best, a grey area, the probability being that limitations upon delegated authority and degrees of retention of the rights of ratification and revocation would become evident only in the event of dispute.

Although, as discussed, the very much tighter process of putting in place was required at least by the 1180s for the purpose of representation on the making of a final concord and by at least the 1190s for the purpose of disposing of a plea in court, attornment seemingly continued as a general process, as demonstrated by the 1209 case involving Hugh of Bottisham. Performance of the more general duties of stewardship, including those requiring attendance in court, required no need for further formality. One such duty was to seek a lord's court, involving the steward's attendance upon the hearing of a plea in a royal or other court and an application that it be heard instead in the court of his lord, thereby allowing the profits of justice to accrue to the lord rather than elsewhere. Two instances of seneschals apparently appearing in court on behalf of their masters without having been put in place for the purpose occur in 1200. In one, *Senescallus de Rames' petit curiam suam tercio die…*, 'the seneschal

of [the abbot] of Ramsey claims his [the abbot's] court on the third day' before the hearing of a stated plea.[30] In the other case, the plaintiff is the count of Perche who fails to appear within the permitted four days, but *postea venit Hugo de Tabari senescallus comitis…et dixit quod nolvit inde placitare*.[31] Hugh is apparently admitted and allowed to speak in his capacity as the count's seneschal, if only to say that he [the count] is unwilling to plead at that time. The count's plea is dismissed on the ground of his and his seneschal's non-appearance within the permitted period of grace, not on that of Hugh's inadmissibility in the proceedings.

At the same time, however, the concept of attornment was being absorbed into that of putting in place. The evidence of the final concords and of *Glanvill* discussed above suggests that this was in train by the 1180s. By the first decade of the thirteenth century, the verb *attornare* had in certain contexts become interchangeable with *ponere*, although the latter was invariably used in the appointment process - we never read that A *attornat* B versus C or that D and E *attornant* F against G - but that invariability extended only to appointment in present time. Examples of the use of *attornare* to reference the past are to be found in two writs from the king to the justices at Norwich in 1209. In one, *Dominus Rex significat Justiciariis per breve suum* that William of Horning *attornavit loco suo* a named clerk in a plea of land and meadow.[32] The representative has been attorned rather than put in place. On the other occasion, the king signified to the justices that Hubert de Burgh *atornavit loco suo coram eo* John of Ingworth to prosecute a certain suit.[33] Again, the representative has been attorned. Occasionally, the term *attornavit* was used otherwise than within a royal writ. At Norwich in 1209, Richard of Bradenham was the tenant of land the subject of a claim of *mort d'ancestor*.[34] He vouched to warranty his wife, Cecilia, having already been put in her place

[30] *PKJ*, i, no.3227.
[31] *PKJ*, i, no.3114.
[32] *PKJ*, iv, no.4337.
[33] *PKJ*, iv, no.4405.
[34] *PKJ,* iv, no.4264.

in the usual way.[35] The record reflects that appointment by stating that she previously *venit et attornavit*, 'came and attorned', her husband who is accordingly legally able to agree the assize. In this context, attornment and putting in place must mean the same thing.

The verb *attornare* is also encountered in describing appointments yet to be made, appearing in its infinitive form. On the summoning of a grand assize at the Shropshire eyre of 1203, an unspecified number of *milites* were sent to one of two tenants, Thomas of Corve, *qui infirmus est* to hear *quem vellet inde attornare loco suo*.[36] The knights subsequently came to court to say of Thomas *quod posuit loco suo* his fellow-tenant Walter of Corve *ad lucrandum*. Having been sent to hear whom Thomas wished to attorn in the suit, the Shropshire knights reported back on whom he had put in his place. The use by the clerk who made the record of both verbal constructions within the space of barely a dozen words must mean that, in the given context, he regarded attornment and putting in place as one and the same thing. And yet the use of both forms is curious, a possible explanation lying in their respective tenses and the nature of the directive. Given the necessity that Thomas's representative be put in place, the use of *posuit loco suo* to record the earlier appointment of Walter is unsurprising. Any expectation, however, that the knights might therefore have been sent to hear *quem vellet inde ponere loco suo* is perhaps countered by a lingering cultural adherence within the higher reaches of society and the judiciary to the concept of attornment as the time-honoured means of official delegation of power, the use of *attornare* thus being an echo of a redundant past.

The argument thus far is that, on the evidence of the contemporary use made of verbal constructions based upon the two verbs *ponere* and *attornare*, acceptance of attorned men such as stewards, eldest sons and other nominees in place of absent principals was, during the reign of Henry II, found to be unsuitable for the purpose of making final concords and

[35] *PKJ*, iv, no.4259.
[36] *PKJ*, iii, no.777.

conducting court proceedings, and that thereafter representatives needed to be specifically put in place to win or lose in the particular suit. The extent to which this argument is supported by similar use of related nominal and participial constructions is now examined.

Chapter 4: Attornment and putting in place

The term that enjoyed currency and appeared frequently in the earliest extant plea rolls in describing a litigant's representative in court was the clumsy participial construction, *positus loco*, '[he who has been] put in place'. In a Wiltshire case heard at Westminster in the autumn of 1194, *Will[elm]us fili[us] Elie posit[us] loco Emme de Perci,* 'William, having been put in place of Emma', claims on Emma's behalf two knight's fees with appurtenances from William Basset, apparently speaking for her in the process.[1] In another case heard at the same session, *Fulco fili[us] Warini posit[us] loco Hawisie uxoris sue* seeks a jury.[2] Although in each of these examples the term follows the name of a person, it does not tell us what either William or Fulco is but rather what has previously happened to him – he has been put in place.

Although wives infrequently represented their husbands, there was seemingly no bar upon their doing so. On the making of a final concord in September 1194 between *Edid de Leg' petentem pro se et positam loco Willelmi fabri viri sui ad lucrandum et perdendum* and the prior of Worcester as tenant, Edith of Leigh appeared both for herself and also in place of William the smith her husband to gain or lose in settlement of an assize of *mort d'ancestor*.[3] Use of *positus/am* remained common throughout the 1190s. At the hearing of a Suffolk case at Thetford in 1198, a grand assize had to be adjourned because *Eustacius positus loco* Reginald de Argentan *essoniavit se*.[4] Eustace, who had been put in place of Reginald had essoined himself. Similarly, a Somerset case heard before the King in 1200 describes William Briewerre as being *positum loco* Reginald de Albamara in a plea of land.[5] At the Cornwall eyre of 1201, an assize of darrein presentment was adjourned due to the non-appearance of

[1] *Placitorum…Abbreviatio*, p.6.
[2] Ibid., p.6.
[3] *EL*, ii, no.632
[4] *PKJ*, ii, no.83.
[5] *PKJ*, i, no.3226.

the defendant following *Robertus niger positus loco Rogeri de Valletorta* having offered himself on the fourth day.[6] The record of essoins accepted at Westminster in Michaelmas Term 1201 contains in excess of fifty such references involving both plaintiffs and defendants.[7]

It may be reasonably surmised that the term *positus loco* gained currency at or shortly after the introduction of 'putting in place' as a formal pre-requisite to the appearance of a representative in court. Just as A *ponit loco suo* B *versus* C etc., so B appeared *positus loco* A in the ensuing proceedings. The term appears twice in *Glanvill* and had thus been in use since at least the 1180s. In Book XI, chapter 1, it occurs in slightly amended form within the statement that civil pleas may be prosecuted either in person or *per responsalem loco suo positum ad lucrandum vel perdendum*, 'by *responsalis* put in his place to win or lose'. Book XI, chapter 3, contains a discussion on the ability of a wife to claw back her marriage-portion or dower previously lost or released *per maritus positus loco uxoris sue*. In both cases, the function of the term was entirely participial, qualifying a *responsalis* in the first example and a husband in the other. The nature of the *responsalis* is discussed *post*.

It will be recollected that in the early 1200s, the verb *attornare* enjoyed an expansion of usage, becoming capable in some contexts of bearing the same meaning as *ponere*. This process coincided with the emergence of the term *attornatus* which is first encountered in the *curia regis* rolls of Michaelmas term 1200.[8] It briefly appeared in past participial form in a case of dower heard at Taunton in 1201.[9] The suit between a husband and wife as plaintiffs and two named defendants was dismissed because the wife neither appeared in person nor essoined herself and, although the record implies that the husband did appear,

[6] *PKJ*, ii, no.446.
[7] *PKJ*, iii, nos.11-628.
[8] Brand, *Origins*, p.46.
[9] *PKJ*, ii, no.679.

nec…attornatus fuit loco suo, 'nor was [he] attorned in her place'. The term also appears on three occasions in the essoin roll for Michaelmas of the same year.[10] In one case, Hugh Revel was essoined against *Willelmum filium Michaelis et Henricum atornatum ipsius Willelmi* in a plea of land. Henry is an attorney; *atornatum* is clearly a noun. In another case, an essoin was cast for *Simon le Gort atornatus abbatisse de Anestowe* in a plea concerning the advowson of a church. Again, *atornatus* is clearly a noun. Similarly in the third instance, Robert Palmer was essoined against his opponent and also against his opponent's *attornatum*. It is surely not mere happenstance that this emergence of *attornatus*, first in participial and subsequently in nominal form, coincided with the resurgence and expansion of *attornare*. There must be linkage.

The term *positus loco* did, however, remain current at Michaelmas 1202, still appearing much more frequently on the record than did *attornatus*. The first roll of the itinerant justices recording pleas and assizes heard at Westminster in October and November of that year contains 59 uses of *positus loco* or its usual variations, and just six of *attornatus*.[11] However, in the plea roll recording essoins, appeals, pleas and assizes heard about a year later, at the Shropshire eyre of October 1203, some parity of use seems to have been reached, *positus loco* occurring twice, and *attornatus* three times.[12] Although the data base for this observation is tiny, the pattern is repeated some six months later in the record of pleas and assizes heard at York, Bridgnorth and Lichfield in the presence of the King whilst on a royal eyre in the spring of 1204, although again with a limited data base.[13] There are four mentions, in three entries, of a *positus loco* and five of an *attornatus*.[14]

[10] *PKJ*, iii, nos.85, 189, 594.
[11] *PKJ*, ii, nos.756-1235.
[12] *PKJ*, iii, nos.629-879.
[13] *PKJ*, iii, nos.892-1026.
[14] *PKJ*, iii, respectively nos.969, 976, 981; 973, 978, 990, 1004, 1019.

While the gradual replacement on the record of *positus loco* by *attornatus* is thus apparent in late 1203 and early 1204, what ensues is dramatic. Well before the year end, on the evidence of the list of essoins taken in Michaelmas Term, 1204, the expression *positus loco* almost entirely disappears.[15] In a run of 301 entries listed on the plea roll concerned, just one entry retains the usage,[16] with forty instances of the use of *attornatus*. The rate of change in vocabulary between the end of 1202 and the autumn of 1204 (that is, in some 21 months) is startling. The permanency of use of *attornatus*, excepting only the very occasional *positus loco* survivor, is confirmed in subsequent years. In the list of essoins taken in Hilary Term of 1207, there is but a single use of *positus loco* which may itself be suspect.[17] The story is the same, both in the list of essoins from the Eastern Counties eyre in October 1208,[18] and in the list of those received at Westminster in 1212 containing 65 mentions of *attornati* and just six of those *positi loco*.[19]

By the time of the Lincolnshire eyre of 1218-19 (as to which, see *post*), the archaic *positus loco* has been almost entirely superseded by *attornatus*.[20] It occurs in both the singular and plural number, most frequently in either the nominative or accusative case, with examples of other cases also. It is used on 52 occasions within the phrase *per attornatum suum*, on just eight of which the attorney is named. A plaintiff is said to be so represented 27 times, a defendant or tenant 24 times, and there is lack of clarity on one occasion.

Furthermore, the term *attornatus* might be employed in the context both of an attorned seneschal and of someone appointed to act in specified proceedings. The record of an essoin cast at Norwich in 1209 on behalf of Hugh of Bottisham, attorned by Richard of Clare as his

[15] *PKJ*, iii, nos.1027-1327.
[16] *PKJ,* iii, no.1166.
[17] *PKJ*, iv, no.2698d, and see footnote.
[18] *PKJ,* iv, nos.3510-4039.
[19] *PKJ*, iv, nos.4565-4783.
[20] *RJE*, pp.1-440.

seneschal, describes Hugh as *atornatus comitis de Clare per breve Justiciarii*.[21] We might infer from this that the justiciar's formal notification of attornment sufficed to enable Hugh to deal with purely procedural steps such as being essoined on the earl's behalf, with no further formality necessary. On the other hand, John of Ingworth, attorned before the king in place of Hubert de Burgh in a specified suit, essoined himself on three successive occasions in the same suit, being described each time as *aturnatus Huberti de Burgo*.[22] Also at Norwich, the justiciar informed the justices that the prior of the Hospital of Jerusalem *ponit loco suo* his monastic brother Thomas to sue for certain liberties, and commanded that Thomas be received in the prior's place.[23] In an unrelated assize, the Hospital was vouched to warranty, the prior attending *per Thomam de Trumpington atornatum suum per breve domini Regis*, presumably the same man as brother Thomas just mentioned.[24] Thus, by 1209 and probably from the time of its emergence, the noun *attornatus* was established as describing a man who had been either attorned or put in place.

The existence of such a term prior to its first recorded mention in 1200 is, however, uncertain. There is no mention of an *attornatus* in *Glanvill*, even though Book XI is devoted to the appointment of representatives in court proceedings. There may be three reasons for this absence. The term may not have existed in any context in the mid-1180s. Alternatively, it may have been then current in the context of representation in the royal courts, but *Glanvill* was ignorant of it. Thirdly, the term may have existed but in a different context. Although the extent of *Glanvill's* knowledge of all aspects of the common law system as it existed at the time is uncertain, it seems improbable that he would have been unaware of the term *attornatus* if it was then in use in the particular context of which he wrote. And if it was in

[21] See *PKJ*, iv, nos.4205 *ante*, 3709.
[22] *PKJ*, iv, respectively nos. 4405; 3851, 3958, 3997.
[23] *PKJ*, iv, no.4330.
[24] *PKJ,* iv, no.4257.

use in the context of representation in the royal courts, some mention of it in surviving plea rolls prior to 1200 is to be expected. We can probably, therefore, discount the possibility that the term enjoyed currency in the context of court proceedings at the time of *Glanvill*.

Whether we can also discount its existence in any context whatsoever until its 'invention' in around 1200 is more difficult, as appearances by attorned men on behalf of lords, prelates, fathers, and suitors, together with litigation arising from their activities, would have been concentrated in the county, hundred and seigniorial courts whose records either remained unwritten or are long lost. Also, with the advent of putting in place, attornment in its several general forms would have been of no direct concern to the royal courts. Some evidence for the existence of attorneys operating in the background is, however, provided by incidences of *attornati* not being received in a royal court, having been attorned generally but not formally put in place for a particular plea. In a Lincolnshire case in 1218-19 in which the prior of Sempringham was the claimant in an assize of *novel disseisin*, one Roger Poidras *venit qui dixit se esse attornatum eius de omnibus loquelis*, 'came and said he was his [the prior's] attorney for all suits'.[25] Following objection, and on the ground *quod non fuit specialiter attornatus eius*, 'that he was not his [the prior's] attorney for this particular suit', Roger was not received, with the consequence that the defendant went without day and the prior and his sureties were amerced. Roger had previously represented the prior successfully in other suits. In one such, the prior *per attornatum suum* and an opponent were given a day to receive a chirograph, and subsequently the prior *per Rogerum Poidras attornatum suum* offered himself in the same suit and the opponent defaulted.[26] Whether Roger relied in that case on

[25] *RJE*, no.869.
[26] *RJE*, nos.338, 541.

his ‘attornment for all suits’ is unclear, but in a different matter, an assize of *mort d’ancestor*, he was properly put in place.[27]

A similar situation arose in another assize of *novel disseisin* heard at the Lincolnshire eyre in which the plaintiff did not attend, but sent his son, Alan, who claimed *se esse attornatus eius in comitatu coram vicecomite*, ‘to be his father’s attorney in the shire before the sheriff’.[28] On the disseisors seeking and obtaining judgment, Alan’s father and his sureties were amerced. Although, presumably, Alan’s status as his father’s attorned man in the shire court was not doubted, it did not suffice for the purpose of the suit in hand. Alan had not been put in place.

It is significant that until its decline, disappearance and replacement by *attornatus*, the term *positus loco* remained entirely participial. *Attornatus*, on the other hand, seemingly evolved from being participial to achieving nominal status. Two inferences may be drawn. Firstly, until the end of the twelfth century, men and women who were put in place of others in court were disparate individuals, it being sufficient for any one of them to be described as being *positus loco*. By circa 1200, increasing numbers of such representatives and their enhanced prominence within the legal process created a need for a noun to be coined to describe them. Secondly, and flowing from that, it was apparently inappropriate for that need to be met by the adaptation of the obviously available existing participial form *positus*, perhaps because that word loses context when detached from *loco*. To describe someone as a ‘put man’ is meaningless. While the noun *attornatus* to describe someone as an ‘attorned man’ is sufficiently informative, its adoption requires explanation. It is an obvious truth that someone who has been attorned is an attorney. A man to whom the verbal action of attornment has been applied, and who is said to have been *attornavit* is, *de facto*, *attornatus*. Given the probable perceived need for a collective noun to describe people who had been put in place in

[27] *RJE*, no.326.
[28] *RJE*, no.41.

royal court proceedings, and given also the unsuitability of the phrase *positus loco* for upgrade to nominal status, the similarity of putting in place and attornment would have made *attornatus* an obvious candidate. The specificity and formality of putting in place would have been sufficiently well established by 1200 for the hitherto general nature of attornment to be glossed over. In the common law courts, it had become accepted that if A *ponit loco* B as his *alter ego*, *ad lucrandum vel perdendum*, B was his *attornatus*.

A linguistic device employed within the eyre plea rolls may contain a clue as to the origins of the concept of 'putting in place'. In a case heard at the Shropshire eyre of 1203 Warner of Willey, *pro se et Petronilla uxore eius cuius loco ponitur* on a plea of land, offered himself on the fourth day against the plaintiff .[29] Warner appeared both for himself and for his wife 'in whose place he is put'. Although the present tense is used, it is clear from the context that the putting in place has happened prior to the action being described. Use of the passive voice is seemingly deliberate; we are told that Warner has been put in his wife's place, not that his wife has put him in her place. Shortly beforehand, Petronilla had put another man in her place in the same suit, but it is her husband, Warner, who actually appears on her behalf.[30] The combination of the earlier appointment and Petronilla's presence as a joint litigant with her husband suggests that the land at issue is Petronilla's, and that Warner's interest in it arises entirely from the marriage, in right of wife.

The status of the property being litigated over is clearer in other cases in which the same phrase, *cuius loco ponitur*, is used in the record of proceedings. In a plea at York in 1204, Richard son of Hubert *pro se et Ysabella uxore eius cuius loco ponitur* appears and speaks in defence of his wife's right to the soke of Downham.[31] It is her inheritance that Richard

[29] *PKJ*, iii, no.837.
[30] *PKJ*, iii, no.793.
[31] *PKJ,* iii, no.913.

defends as her husband. At the Lincolnshire eyre of 1218-19, John de Beregate, *pro se* and Alina his wife, *cuius loco ponitur*, sought against William Berner two bovates of land and half a toft with appurtenances '…as Alina's dower of the gift of her former husband...'.[32] Alina's entitlement is the subject of the litigation, John's interest in it being both on his own behalf in right of wife and on Alina's behalf by virtue of his having been put in her place. The same phrase, *cuius loco ponitur*, occurs in the Lincolnshire eyre roll on a further nine occasions.[33] In each case, the plaintiffs are Nicholas de Chavincurt and his wife, Sybil, seeking restitution of Sybil's dower from a previous marriage. Nicholas's appearances are invariably *pro se*, 'for himself' and his wife, in who's place he is put, and are for a variety of purposes ranging from offering himself on the fourth day, receiving a day on adjournment, apparently speaking in support of the suit, being granted licence for a chirograph and obtaining judgment.

Although the data base for use of the phrase *cuius loco ponitur* is small, certain characteristics are identifiable. Firstly, it is limited to instances of a husband appearing in place of his wife, never to any other relationship. It is not used, for instance, in the case of Edith of Leigh, who appeared both for herself and her husband in an assize of *mort d'ancestor* in 1194, discussed above.[34] Secondly, in every case the husband appears, not just for his wife but in his own stead also. Thirdly, the available evidence suggests that the asset at issue is the property of the wife, brought to the marriage by her, the husband's interest deriving entirely from that marriage, and being in right of wife. The use of the passive voice emphasises the importance of the husband in the arrangement, and also avoids being specific as to the means by which he has come to be put in the wife's place.

[32] *RJE*, no.508.
[33] *RJE*, nos.524, 531, 581 (twice), 618, 648, 701, 705, 912.
[34] *EL*, ii, no.632.

This is not to suggest that the wives mentioned in the proceedings of 1203, 1204 and 1218-19 were compelled to appoint their respective husbands in their place. The stock phrase *cuius loco ponitur* may, however, in the single context in which it apparently occurs, preserve the memory of an earlier tradition whereby a married woman not only needed her husband's consent to deal with or litigate over her own property (which was still the case at the time of the relevant proceedings), but was also obliged to submit to the convention that the required consent was expressed by his being put in her place for the purpose of prosecuting or defending the action in hand. And at risk of making a speculation too far, the 'putting in place' at the heart of such a convention could have provided the inspiration for the identical (albeit voluntary) 'putting in place' that came to characterise the appointment of attorneys in late-Henrician royal courts and thereafter.

Chapter 5: Procuration

Thus far in our enquiry into the origins of attorneyship through analysis of the vocabulary used by twelfth and thirteenth-century clerks, scribes and other contemporaries in the recording of proceedings and otherwise, we have identified two contributary traditions, the general process of attornment (as evidenced by recorded use of the verb *attornare* and the noun *attornatus*), and the specific process of 'putting in place' introduced within Henry II's programme of reform (as evidenced by *ponere* and the participial *positus loco*). A third contributary tradition based upon the verb *mittere* and of the nouns *responsalis* and *procurator*, is now examined.

As noted in the previous chapter, one of the two references in *Glanvill* to someone being *positus loco* another concerned a *responsalis*.[1] Although that term has not been found in the eyre plea rolls examined, there are occasional references in the Curia Regis rolls and elsewhere to such a type of person. It appears extensively in *Bracton*, perhaps most famously within the statement, made in the context of a discussion on the powers of a bailiff, that *Est…differentia magna inter responsalem et attornatum*, 'There is a great difference between a responsalis and an attorney'.[2] The term is also employed in three specimen writs from 1199.[3] Each writ envisages four knights being sent to view the sickness of an essoining litigant and being commanded to give to the litigant a day, either at the Tower of London or at Westminster depending upon the presence or otherwise of *languor*, a condition greater than simple infirmity. It is directed that the litigant must appear *vel sufficientem pro se mittat responsalem*, 'in person or send a sufficient representative'. This precise wording is used on six occasions in the three writs, on five of which (the sixth probably being an oversight) it is

[1] *Glanvill*, Book XI, chapter 1.
[2] *Bracton*, iii, p.142.
[3] *PKJ*, i, nos.3479, 3493, 3501.

preceded by a statement that the purpose of the required appearance by the litigant is *responsurus*, that of 'replying' or 'answering'.

On this evidence, a *responsalis* is thus someone who responds or answers on behalf of another. Furthermore, he is in some unspecified way 'sufficient'. The obvious questions arising go to the nature of that 'sufficiency' and what, precisely, it permitted the *responsalis* to do? Were some *responsales* 'insufficient' in some way? And what was the relationship between this form of representative (whether 'sufficient' or otherwise) and respectively one who was *positus loco* and one who was *attornatus*?

An early, perhaps the earliest, surviving recorded use of the term *responsalis* dates from between 1158 and 1161, and concerns a protracted dispute between the abbot of St Alban's and Robert de Valognes over the tenure of a wood.[4] At the final hearing in the king's court, and on the fourth occasion of being summonsed, Robert *non apparente nec responsalem mittente vel exceptorem*, translated by the editor as 'did not appear and did not send anyone to answer for him or plead an exception'. The term *responsalis* is clearly being used in the abstract - a 'responder' - and not as meaning a member of an identifiable body of men called *responsales*. Nonetheless, it appears to exhibit three characteristics. Had a *responsalis* attended, he would have been 'sent' (and not, for instance, 'put in place'). Secondly it would have been a person summonsed who did the sending. Thirdly, use of the conjunction *vel* suggests that the *responsalis* would have confined himself to answering or responding, and that if any exceptions were to have been pleaded, a different sort of person - an 'exceptor' - would have attended for the purpose. There is no mention of the *responsalis* envisaged needing to be 'sufficient' for the contemplated purpose.

[4] *EL*, ii, no.396.

A mention of a *responsalis* actually attending court is contained within a report, dated to between 1159 and 1163, of another dispute heard in the king's court involving the abbot of St Albans.[5] Following an opening by the demandant, the bishop of Lincoln, in which the bishop of Hereford spoke for him, the abbot replied, seemingly in person. He introduced his defence, stating that it would be 'by way of reply but not at law for we have not come hither for that'. Having then taken counsel, the abbot *respondens per responsalem*, translated by the editor as 'answered through a spokesman', who is shortly identified as master John of Tilbury and who was presumably academically qualified and perhaps a canon lawyer. It is again to be noted that the *responsalis* appeared for the defendant, and although he answered for him, he did not plead any point of law. There is again no mention of 'sufficiency'.

It is clear from the above cases that in *circa* 1160 *responsales* operated in the king's court and were capable of representing both secular and ecclesiastical litigants. They appear by then to be established players, perhaps therefore pre-dating Henrician reforms and the introduction of the common law. On the evidence of *Glanvill*, written some 25 years later, they remained a significant presence in court, being mentioned on 24 occasions within the treatise. Their precise status at that time is however difficult to determine with certainty, *Glanvill* being riddled with inconsistencies. These probably result from confusion on the part of the author of *Glanvill* between practice in the common law courts, of which it purports to be a statement, and practice in the canon law courts, with which the author is thought to have been more familiar. Furthermore, the common law system was itself during the 1180s in a fast-developing state of flux, and thus even insofar as *Glanvill's* comments relate to that system, some in-built redundancy is likely.

[5] *EL*, ii, no.405.

Nonetheless, a feasible interpretation is forthcoming. It is immediately apparent from those numerous references that a *responsalis* differed from an essoiner sent to cast an essoin, or from a *nuncius* sent to convey a message or make an announcement. The first mention is in Book I, chapter 12, during a discussion on essoins for sickness on the way to court.[6] After summarising the ability of a party summoned to essoin himself on three successive return days, *Glanvill* tells us that the party will be directed by the court to appear on a fourth (and final) return day *in propria persona aut pro se sufficientem responsalem mittat ad lucrandum vel ad perdendum loco suo*. The litigant has a choice; he may either appear in person or he may send in his place a *sufficientem responsalem*.

Similar phraseology appears twice in chapter 19 of Book I. This contains a specimen writ requiring that a person essoined for house sickness and who is found by four lawful knights to have *languor* be before the king or his justices a year and a day thereafter. It allows that he may appear either in person *vel sufficientem responsalem mittat*.[7] If there is no *languor*, then he must attend on a stipulated day, either in person *vel sufficientem responsalem mittat inde responsurus*. In both instances, the *responsalis* must again be 'sufficient', his role on a stipulated day being to appear and answer for whoever sent him.

This requirement for 'sufficiency' seemingly distinguishes the *responsales* of Book I of *Glanvill* from those of *circa* 1160, and we have two clues as to its nature. Firstly, the *sufficientem responsalem* must appear *ad lucrandum vel ad perdendum*, 'for gain or loss'. The words, actions and omissions of the *responsalis* will commit the litigant regardless of consequences and without the need for ratification or possibility of revocation. The second defining characteristic of the *sufficientem responsalem* is that he is sent by the litigant *[in] loco suo*, 'in his place'. Although this might simply be a statement of the obvious, that if the

[6] *Glanvill,* p.8.
[7] *Glanvill,* p.12.

litigant does not attend court in person, his representative must of necessity be there 'in his place', it is better interpreted as confirming the representative to be the litigant's *alter ego*, his 'other self'. The *sufficientem responsalem* is not simply empowered to bind the litigant but, for the purpose of the proceedings in hand, is effectively deemed to be the litigant himself. As such, he is 'competent' (that is, in the context of the courtroom, 'qualified in law') to perform the duties required of him.

It is significant that the phrases *loco suo* and *ad lucrandum vel ad perdendum* are both to be found in the earliest surviving plea rolls recording the appointment of attorneys in which the operative verbal action is that of 'putting'. But the formality attaching to such an appointment appears at first sight to be lacking in the reception of the *responsalis* of chapter 12 into court. He will be received, we are told, if he comes on the return day 'offering to defend the case on behalf of the absent tenant with letters of authority from him, and even without letters if he is known to be a connection of his'. On the face of it, a 'competent representative' may turn up armed only with 'letters of authority' and then be admitted to make his response on behalf of and in place of the absent tenant who sent him, doing so for 'gain or loss'. If this were so, such a representative would differ from one who had been formally put in place. But it seems that *Glanvill* (not for the only time) is being ambiguous. Later in the treatise, in chapter 5 of Book XI, he refers back to chapter 12 of Book I and explains that the informal procedure outlined there does not apply 'when anyone seeks with the approval of, or under constraint from, the court to put another in his place to gain or to lose for him in a plea'.[8] It is simply 'part of the judicial process', by which *Glanvill* presumably means the many procedural steps to be taken by the parties prior to issues being pleaded and judgment heard, such informality becoming inappropriate when all such steps have been taken.

[8] *Glanvill*, p.135.

The significance of this section of *Glanvill* is its near-confirmation that a *responsalis* may be either 'competent' or not. To be 'competent' he must have been formally put in place, and is able in law to stand in place of his principal for gain or loss. Otherwise, it suffices that he is able to produce 'letters of authority' if called upon so to do, that authority being limited to 'responding' in the manner contemplated in *circa* 1160. It seems probable that the former evolved as a variant of the latter, the two forms of representative being thereafter different. It is also likely that *Glanvill* failed always to appreciate that difference. Other than the three quoted references in Book I to a *responsalis* being competent for the specified purposes, no such qualification is stated on any of the remaining 21 occasions on which a *responsalis* is mentioned. Indeed, in only two cases is there any sort of qualification at all. One such is discussed below, the other (in chapter 1 of Book XI) confirming the ability of a litigant to appear on the hearing of a civil plea *per se ipsum quam per responsalem loco suo positum ad lucrandum vel perdendum*, either in person or by a *responsalis* put in his place for gain or loss.[9] Otherwise, almost all the references to *responsales* merely have them being sent, and there is constant uncertainty as to whether *Glanvill* is describing a 'simple' *responsalis*, informally appointed and capable only of appearing by way of response to a summons, or one who possesses an additional competence to represent his appointing litigant absolutely. The probability is that although some of the references do, indeed, look back to an earlier era, the majority of them are to those who are 'competent', even though this is unstated. Mention of competence may well have been regarded as unnecessary, for instance, on the several occasions that the outcome in given circumstances of someone neither coming in person nor sending a *responsalis* is discussed.

Book XI of *Glanvill*, dealing as it does with the appointment of representatives in court, contains some 35 separate references to the use of deputies, ten of which are to *responsales*,

[9] *Glanvill,* pp.132-3.

twenty are general and descriptive as, for instance, with *loco alterius ponitur* and *loco suo ponere*, and five are to a type of representative of whom *Glanvill* has made no previous mention, the *procurator*.[10] The rubric to chapter 1 sets the scene: *De responsalibus loco dominorum in curia constituendis*. The chapter is concerned with the appointment of *responsales* in court. It is firstly stated that all civil pleas may be prosecuted either in person or *per responsalem loco suo positum ad lucrandum vel perdendum.* But, we are told, such a *responsalis* should not be received unless appointed by his principal in court. *Per procuratorem*, the chapter continues, *itaque talem potest placitum illud deduci in curia et terminari sive per judicium sive per finalem concordiam adeo plene et firmiter ut per eum qui alium loco suo inde posuit*, which may be translated loosely as ' The plea can be tried and determined, by judgment or final concord, as fully and finally by a procurator as by the person in whose place he has been put'. This first mention of a *procurator* has him able to act in either or both a judgment or a final concord, having been 'put in place' for the specific purpose of participating in the trial and determination of the particular plea with which the court is concerned.

Procuratores, or proctors, are known to have had an established role in the management of causes in civil proceedings in ecclesiastical or canon law courts since the early years of Henry II, and it may be inferred that this was the case in the previous reign of Stephen and perhaps earlier.[11] They were agents who both appeared on behalf of their principals and stood in their place.[12] They were experienced litigators whose speciality was to oversee the smooth running of cases under their control by being closely familiar with the working habits and foibles of court personnel with whom they dealt. Light is shed upon their activities by the

[10] *Glanvill,* p.132 *et seq.*
[11] For a detailed account of the emergence and establishment of proctors within the courts of the medieval church in England and elsewhere, see J.A. Brundage, *The Medieval Origins of the Legal Profession* (Chicago, 2008).
[12] Brundage, *Medieval Origins*, p.4.

report of a civil dispute dated to between 1156 and 1161 concerning an advowson in which earl Reginald started a proprietary action in archbishop Theobald's court, *et procuratores comitis adversus praenominatum E petitorium instituerunt*, 'and the earl's proctors at once instituted a proprietary suit against E'.[13] The absent earl's proctors not only represented him in court but also seemingly argued his case and produced a writ from the king in support. There is a very clear impression from the text that these proctors were not mere stand-ins for an absent litigant, but men familiar with court practice and procedure. They appear as having been lawyerly, and it should also be noted that, unlike *responsales* who seemingly represented only tenants and others summoned, they were acting for a demandant.

There is, however, evidence that the role of *procurator* was from a similar date to be equated with that of a 'sufficient' *responsalis*. It is reported that in 1164, Thomas Becket was summoned to appear before the king.[14] On failing to appear, he was visited by the justiciar and another earl and found to be ill in bed. Summoned again for the following day, Becket not only appeared but also claimed that the previous day *responsalem sufficientem miserit*. He had sent not just a *responsalis* but one that was competent. Although the context is not one of proceedings in court, the report nonetheless clearly implies that the competence of the *responsalis* would have enabled Becket's absence in person to be excused. The report includes also the statement that Becket did not appear in person at the earlier hearing, *misso tamen procuratore*, 'although he sent a proctor'. A competent *responsalis* and a proctor appear to be the same thing.

And there is no doubt that in describing the representative of Book XI, chapter 1 as both *responsalis* and *procurator*, *Glanvill* is also equating the two. In this context, at least, they are identical. But the *responsalis* of Book XI differs from that of the earlier books in two material

[13] *EL*, ii, no.395.
[14] *EL*, ii, no.421.

ways. Whereas the *responsales* of the earlier books are invariably 'sent', those of Book XI must be 'put' in place. The verbal treatment of appointment changes completely, p*onere* replacing *mittere*. Indeed, this core element of representation, the putting of another in one's place, is highlighted in the text. We are told that anybody who puts another in his place – *qui alium loco suo ita ponit* - must attend court and do so in person. It is also customary, we are told, for the court in question to be that of royal justices sitting on the Bench. In contrast to the mandatory presence in court of the party making the appointment, neither his representative (if known to the court) nor his opponent in the proceedings need attend. The appointor may appoint one or more representatives in his place, multiple appointees acting either jointly or (usually) severally. Although the *responsalis* of Book XI is not stated to be *sufficiens*, it would seem certain that he is, given the stated powers vested in him, and he/the *procurator* would seem to be the kind of representative that would within the ensuing ten to fifteen years be mentioned in the earliest surviving plea rolls and be described firstly as *positus loco* and subsequently as *attornatus*.

The second material distinction to be drawn between the *responsales* of Book XI and the earlier books lies in the role envisaged for him. This seems to be that of prosecuting pleas rather than defending them. If the sort of *responsalis* referred to in this book may be appointed only by plaintiffs or demandants, he therefore clearly differs from the sort of *responsalis* whom we have already seen answering exclusively for defendants, tenants and others summoned into court after repeatedly essoining themselves. But this surely cannot be right; the idea that a *responsalis* cannot respond on behalf of a tenant or defendant is clearly perverse. This raises the probability that not only is the *responsalis* capable of being 'competent' or otherwise, but also that whereas the 'simple' *responsalis* acts only for tenants and others summoned into court and is authorised only to respond rather than to represent, his 'sufficient' counterpart may act for both plaintiffs and defendants, able to prosecute or

respond according to circumstances and to do so in place of the principal and for gain or loss. He is a *procurator*.

Some support for this proposition lies in the introduction by *Glanvill* of the concept of the *dominus* which may, according to context, be translated as 'lord', 'master', 'social superior' or 'principal'. It is significant that the first mention of such a person accompanies the first occasion upon which the term *procurator*, as a type of representative, is used. *De responsalibus loco dominorum* in the heading of chapter 1 is followed by two references in the text to *domini* appointing representatives in court, one preceding and the other following the first mention of *procuratores*. Further mentions of a *dominus* appear in the heading and text of ensuing chapters 2 and 3 of Book XI and accompany the four remaining references to *procuratores*. It is clear that the *dominus* and the *procurator* are to be associated.

The references to *procuratores* in chapter 3 of Book XI relate to the inability of a *dominus* to cast an essoin in person if he has put another in his place.[15] Although the rubric to this chapter is typically wide in its terms, *Utrum essonium domini vel responsalis ipsum responsalem excuset,* the term *responsalis* is absent from the text which follows. The nine references in that text to any sort of representative are the four specific mentions of *procurator* in addition to five general references to people being 'put in the place' of another. The first two references to a *procurato*r occur in one sentence: *Et quidem essonia ipsius procuratoris solummodo habent in tali casu donec scilicet revocetur ipsa procuratio*, translated by Hall as 'The answer is that only the essoins of the representative are allowable in such a case, until his appointment is revoked'. Once a *procurator* has been put in the place of another in accordance with the required formalities set out in Book XI, chapter 1, he has so completely (albeit metaphorically) become one with his *dominus* that only he, the *procurator*,

[15] *Glanvill*, pp.133-4.

may cast future allowable essoins. The *dominus* has in law been subsumed into the person of his *procurator*, at least for the purposes of the immediate plea. This situation pertains until the procuration - the management of the case - is revoked. Use of *scilicet* - 'specifically' - underlines the continuing authority of the *procurator* to represent his *dominus* until revocation removes that authority. Significantly, as the context of the chapter is the casting of essoins, the ability to engage a *procurator* must have been available to all parties including the tenants and defendants who most usually employed the device.

The concept of revocation is developed in the following section of chapter 3, which contains the treatise's two remaining mentions of a *procurator*. It is stated that even though a *procuratorem* may have performed the particular duty in respect of which he was appointed, doing (in Hall's words) 'what is appropriate in court concerning that plea', he may subsequently be removed. In that event, the *dominus* himself may prosecute his own plea or (subject to the requirement that it be done in court) appoint another *procurator* in place of the original. Although *Glanvill* reverts in the following two chapters to discussion of *responsales* and, more generally, of people put in the place of others, chapter 4 is undoubtedly building on previous chapters in defining the characteristics of the *procurator*. Not only is a *dominus* bound by everything done in court by his representative, *sive per judicium sive per concordiam*, but also the representative cannot be made personally liable to third parties for the financial consequences of his actions; they are deemed to be those of the *dominus.*

Both *responsales* and *procuratores* are mentioned in the treatise known as *Dialogus de Scaccario*. Although concerned primarily with financial matters, it refers in passing to the use by litigants of representatives in court or elsewhere. It tells us that every official who is directed to attend regularly at the Exchequer 'by the King's command' must do so regardless of all else. To protect such officials against personal loss which may arise from the strict enforcement of this policy, rules governing appearances in other courts of law, both secular

and ecclesiastical, are laid down.[16] On the one hand, a plaintiff in any such court has a choice; he may opt to postpone his case and have it adjourned to a future date, or he may opt to proceed with his suit and appear in the relevant court *per procuratorem*. On the other hand, an official, whether clerk or layman, summonsed to any such court of law, is excused attendance on account of his public duty, unless the summons is to hear judgment, in which case he must appoint a representative to appear in court in his place: *Procuret itaque sibi procuratorem vel responsalem*. He may appoint either a *procurator* or a *responsalis* under the general law, the use of the conjunction *vel* clearly suggesting that they are different creatures available only in the alternative.

Given the need for both plaintiffs and defendants to attend to hear judgment so as to avoid loss by default, this may be interpreted in two ways. Firstly, the sort of representative available for appointment might depend upon whether the court of summons is of canon law or common law, *procuratores* practising in the former, *responsales* in the latter. But, secondly, bearing in mind the earlier, explicit statement that a plaintiff may appear *per procuratorem* (no distinction being made between secular and ecclesiastical courts), a better inference is that both a plaintiff and a defendant may appoint a *procurator* to manage his cause or to mount a defence in any court, the defendant being additionally able (at least, in the secular courts) to send a *responsalis* for the limited purpose of answering or responding. In this interpretation, the *procurator* of the *Dialogus* is to be equated with both the *procurator* and the *responsalis sufficiens* of *Glanvill*.

Notwithstanding this interpretation, the difficulties associated with deciphering *Glanvill* prompt a nagging uncertainty as to whether the *procurator* or proctor featured as such in the common law courts, or whether such a practitioner confined his activities to the ecclesiastical

[16] *Dialogus*, ed. Johnson, pp.45-6; ed. Amt, 70-1.

courts, his secular counterpart, the *responsalis sufficiens*, fulfilling an identical role in the royal sector. What is clear, however, is that the ecclesiastical proctor provided a model for the secular attorney insofar as he introduced the element of lawyerliness that was key to subsequent professionalisation.

Thus, the simple *responsalis*, the *responsalis sufficiens*, and the *procurator* together provide a third contributary ingredient in the make-up of the 'mature' attorney of the early thirteenth century. The tradition of the attorned man of pre-Henrician England, encountered in the customary courts and elsewhere in the stead of lords and prelates, suitors and fathers, provided the basic concept of deputyship, albeit general and informal and unsystematically applied. Subsequently and independently, on the introduction of the final concord and, simultaneously or rapidly thereafter, on the hearing of pleas generally in the royal courts, there was imposed a requirement that such a deputy be formally appointed and 'put in place', so removing uncertainty as to his status and power. From the 1160s, and perhaps before, practitioners able either to make the simplest of responses on behalf of absent tenants and defendants or, being modelled upon the proctor of the ecclesiastical courts, being competent to appear in place of absent litigants, gave to attorneyship a legal edge.

Such an edge was, however, as yet lacking in professionalism. Although canon law proctors may fairly be described as lawyers they were, according to Brundage, 'pre-professional only'.[17] Within the common law sector, no early attorney was likely to have been legally 'qualified' or professional. *Glanvill* certainly makes no mention of lawyers or of representatives in court possessing legal knowledge or expertise beyond the norm. And *Glanvill* does imply that attorneys, although permitted in principle, were used infrequently. Within chapter III of Book XI, he tells us that the reason a litigant may put another in his

[17] Brundage, *Medieval Origins*, pp.164 *et seq*.

place - *alium loco suo ponere* - is *scilicet si ipsemet interesse non possit*, translated by Hall as 'only because he cannot be present in person'.[18] The very clear inference of this statement is that if a litigant was able to attend in person he did so and, indeed, was encouraged so to do. Not only, therefore, did most litigants of the 1180s apparently not seek an advantage by sending into court in their place substitutes who possessed skills and experience (legal or otherwise) that exceeded their own, they seemingly did not use attorneys at all if able to appear in person. It is to the erosion of that principle and to the reasons for it that we now turn.

[18] *Glanvill*, p.134.

Chapter 6: Men-about-court

Attention has been drawn to the apparently small number of attorneys present at the Cornish eyre of 1201 and to the change which had seemingly occurred by the time of the Norfolk eyre of 1209 at which attorneys were much more in evidence. Considering also the introduction of the noun *attornatus*, presumably to meet a need for such a descriptor, in place of the clumsy, participial *positus loco*, we can probably regard the first decade of the thirteenth century as providing the chronological context for the coming-of-age of attorneyship. While the great majority of the men (and occasional women) who acted as attorneys did so by virtue of some association with their principals, there are signs that a minority were receiving appointments because they could in some way add value. Such added value may broadly have taken one of three forms, the most basic of which derived from an innate ability such as common sense or articulacy, the attorneys in question remaining in essence simple substitutes. In a limited number of cases, enhanced skills such as literacy and administrative acumen may have been exhibited by the likes of dedicated stewards and monks representing their respective estates and institutions. Thirdly and, it is suggested infrequently at first, the added value may have related to some knowledge of the legal system within which the appointees operated. It is from within the second and (particularly) the third cohorts that legal attorneys emerged.

In speculating upon the emerging legal attorneys' background in the early decades of the thirteenth century, Birks maintains that because most would-be litigants would have had little knowledge of court procedure, some would have sought advice and assistance from men of their acquaintance who possessed such knowledge, and who might help them commence their actions and take necessary legal steps to progress them.[1] Most litigants would have known the sheriff's officers who collected feudal dues and taxes, among whom were clerks and

[1] Birks, *Gentlemen*, p.30.

bailiffs responsible for assisting the sheriff in executing writs, summoning juries and generally administering royal justice. Such clerks were active in the county court over which their sheriff presided. They acquired, as they performed their duties, extensive experience of taking pledges from intending litigants, investigating essoins and endorsing writs. They understood the inner workings of the king's courts and were well placed to 'sell' some of that understanding for a fee.

While such men might have advised on process, their own duties would have prevented them from offering representation in court. However, a litigant lacking a reliable attorney to appear for him on the numerous occasions his case might come before the justices would need to look no further than a court clerk. One appearance in person would suffice for the engagement of a willing and knowledgeable clerk to deputise as necessary and to ensure the maintenance of progress, again no doubt for a fee.

Doris Stenton identified a number of 'minor professional men in the courts of justice' in and around the first decade of the thirteenth century, and recited details of their known careers.[2] Some were members of prominent London families or similar families elsewhere, whilst others came from the home counties 'to try their luck in London'. She suggested that they 'seem to be professional attorneys', because their names recurred on the rolls in different cases for different litigants with whom they had no other known connection. While acknowledging that the majority of attorney appointments were clearly not of professional practitioners, she concluded by suggesting that a nascent legal profession could be discerned during the reign of King John.[3]

Paul Brand disagrees with Stenton's suggestion that professional legal attorneys were emerging at that time, arguing that her criteria for professionalism were insufficiently

[2] *PKJ*, iii, pp.ccxcv-cccxix.
[3] *PKJ,* iii, p.xxxvi.

demanding.[4] While recognizing that a number of men did exhibit characteristics later to be found in the professional attorneys of the reign of Edward I - for instance, the number and frequency of appointments received from different principals with whom they had no known connection regarding land and other property in various different counties; the number of years during which they operated; and the other roles such as surety that they undertook - Brand maintains that although some attorneys from John's reign were no doubt competent and reasonably knowledgeable and may have been compensated for their efforts, none was sufficiently active to be accorded professional status.

He does, however, accord to eleven men nationwide (ten of whom were among Stenton's 'minor professional men') the status of being 'proto-professionals', precursors of the later true professionals.[5] He categorises such men as being of three general types, office-holders in the courts or in the Exchequer for whom attorney work was simply a profitable side-line; substantial landholders who acted over time both as attorneys and serjeants; and lesser men holding little or no land and without office. In the first group, Brand names four men who acted as attorney and who were court clerks or otherwise attached to the staff of the Justiciar, none of whom is recorded as ever working as a serjeant. They were Stephen Boncretien, apparently a court clerk, William of Buckingham, also a court clerk, Richard Ducket who was attached to the staff of the Justiciar, and Robert of Rockingham, also a clerk. Stephen was apparently the busiest, undertaking work from fifteen counties with at least 27 recorded appointments as attorney and seventeen further appearances in court in various capacities between 1200 and 1231. Such men were clearly well placed to fulfil simple attorney duties (being already in court) and did have the added value of being knowledgeable, well-

[4] Brand, *Origins*, p.50.
[5] Ibid., pp.51-4.

connected and accessible, encouraging their use by high-status litigants. Nevertheless, there would not have been sufficient work for a living to be generated from attorney work alone.

Two substantial landholders of high status are named, acting both as attorneys and as serjeants during the reign of John and into that of Henry III. Matthew of Bigstrup was a 'member of a rural Buckinghamshire knightly family' who acted for powerful and high-born clients. He clearly moved in the highest social circles, and may have received an academic training, being referred to early in his career as 'master Matthew'. He was a pure litigator, and not at all a typical attorney, being interested only in the best work available. His impeccable connections and involvement in high society make it extremely doubtful that he was a professional practitioner of any description, still less a professional lawyer. The second man, John Bucuinte, came of a prominent merchant family, living, working and holding property in London and its environs, and also in adjoining counties. He was the busiest attorney of the period, remaining active in the law courts for 24 years from 1198. Stenton lists 77 examples of him pursuing various activities, including 40 as an attorney and also those of surety, juror, witness, pleader, litigant in person, appointor of his own attorney, sheriff and appellor.[6] Half of his work came from Middlesex or Essex, the rest from numerous counties from Somerset in the south west to Northumberland in the north east.

The remaining five men identified by Brand as being 'proto-professionals' were 'of no particular local standing and only small or no traceable property holdings who did not hold positions in the courts or in royal administration'. Like the office-holder attorneys, these men were never serjeants. Aubrey of Barking (alias Aubrey Buc), who operated between 1201and 1209 was relatively busy; of the seventeen recorded references to his activities in the royal courts, the first two were as a champion, the ensuing fourteen as an attorney, and the final one

[6] *PKJ*, iii, pp.cccvii-cccxi.

as a surety for amercement. Although he garnered work from twelve different counties, much came from his native Essex and adjoining Middlesex. Thomas Beivin was busier still, first appointed as an attorney in 1204 and remaining in view until 1224. He acted principally for the abbot of Westminster and his associates, but also for residents of his native Essex. Reiner de Gloz was mainly local to Norfolk. Thomas de Ho enjoyed a long career between 1194 and 1224 as an active attorney and essoiner, his busiest years as an attorney being in 1212, with six cases, and in 1214 with five. Most of his work came from East Anglia, with a sizeable chunk from the south midlands. Finally, Thomas Tutadebles of Therfield in Hertfordshire stood surety twice in 1200 and is also recorded receiving three attorney appointments in 1212-14.

It is within this context that the activities of one Geoffrey of Sandon and members of the family to which he belonged are now considered. Such activities have not been previously written about. At the Suffolk eyre of 1198, Geoffrey appeared at Thetford as an amerced surety for a defaulting appellant, doing so jointly with one Adam of Therfield.[7] It is of immediate interest that Thomas Tutadebles, just mentioned as a 'minor professional man'/'proto-professional', is also associated with Therfield, a parish in north Hertfordshire adjoining that of Sandon. Geoffrey and other members of his family were much involved in a variety of ways in the legal process over the course of a dozen or more years. No fewer than seven men bearing the same locative surname, sometimes alone and sometimes in combination, featured in different capacities in legal proceedings in Hertfordshire, adjoining counties and at Westminster, suggesting that men who were able and willing to act as attorneys if requested were equally prepared to act variously as pledges and essoiners, and

[7] *PKJ*, ii, no.106.

indeed may often have had experience of court practices and procedures by virtue of personal litigation.

The first recorded family reference, dated to 1195-7, is to John of Sandon. He is named as one of four pledges for one Emma, a widow, who was attached for intrusion on the manor of La More (which lay within the parish of Sandon) to the detriment of an underage heir.[8] One of John's co-pledges was Adam of Therfield, with whom Geoffrey of Sandon was later jointly amerced. A few years afterwards, during Michaelmas 1199, a number of cases involving members of the family came up at Westminster. On 27 October, Richard of Sandon was essoined on a plea of land, his opponent being Ralf of Stortford.[9] Shortly thereafter, at the same session, Geoffrey of Sandon essoined William the chaplain in a dispute over land in Hertfordshire between Ciprianus of Throcking (another parish adjoining that of Sandon) and Richard of Wimbis, the case being adjourned to 27 January 1200.[10] Later in the term, on 18 November, Geoffrey again acted as essoiner, this time for Ciprianus, son of Robert (perhaps the same Ciprianus as in the previous case), on a Hertfordshire plea of dower against Agnes of Estflewik (called Ailfledewike in a duplicate roll), the adjourned date being 11 February 1200.[11]

In the very next case at the session, John of Sandon, one of the pledges cited in the writ of 1195-7 but now acting as the attorney of one Robert Rumbald, was essoined in a plea of receiving a chirograph relating to land in Hertfordshire.[12] His essoiner is named as Simon of Sandon, although because this is the only known reference to a possible family member of that name and also because the name appears as Simon of Munden in a duplicate roll, this may be incorrect. Robert's opponent was Richard son of Agnes, named in a duplicate roll as

[8] *PKJ*, i, writ 3474, pp.350-1.
[9] *PKJ*, i, no.2278.
[10] *PKJ,* i, no.2292.
[11] *PKJ*, i, no.2543.
[12] *PKJ*, i, no.2544.

Richard of Ailfledewik, suggesting a link with the previous case (this case also being adjourned to the same date in Hilary). John of Sandon had been formally appointed as Robert Rumbald's attorney against Richard (therein described as 'son of Peter') on 14 June 1199.[13]

Members of the family remained busy at Westminster during Hilary Term, 1200, including the adjourned action between Ciprianus of Throcking and Richard of Wimbis referred to above.[14] Geoffrey of Sandon was again an essoiner, this time for Nigel the priest who was clearly a co-litigant with Ciprianus against Richard. Geoffrey had previously essoined Nigel at Westminster on 27 June, 1199.[15] Ciprianus himself was essoined by Richard of Sandon who had previously featured on the record as a litigant in his own right. Yet another presumed family member, William of Sandon (previously the party described as William the chaplain), was essoined also. Subsequently, on a day being given to the parties to receive a chirograph, Ciprianus, Nigel and William appointed Geoffrey of Sandon as their attorney for this purpose.[16] Shortly thereafter, William of Sandon/the chaplain attended at Westminster as the essoiner of one John son of Geoffrey, in a Hertfordshire plea of homage.[17] Walter of Sandon then made his first appearance on the record, as the essoiner of Ralf of Porle on a plea of assize in Hertfordshire.[18]

Thus far in the account of the court-oriented activities of the Sandon family, those activities have been concerned largely with land located within their home county of Hertfordshire. In 1201, several members of the family became involved in cases originating in other counties also. On 18 November, 1201, John of Sandon, as the abbot of Crowland's attorney, was essoined on a Lincolnshire case against the prior of Spalding.[19] Almost a year later, on 13

[13] *Rotuli Curiae Regis*, ed. F. Palgrave, i (1835), p.382.
[14] *PKJ,* i, no.2649.
[15] *PKJ*, i, p.256.
[16] *Rotuli Curiae Regis*, ed. F. Palgrave, ii (1835), p.190.
[17] *PKJ*, i, no.2670.
[18] *PKJ*, i, no.3071.
[19] *PKJ*, iii, no.482.

October, 1202 at Westminster, Walter of Sandon essoined the prior of Nostell on a plea of land in Buckingham.[20] On 3 November 1204, John of Sandon, as claimant, was essoined in a Bedfordshire case referred upwards from its county court against Richard of Bainhard, and on the 18th of that month Robert of Sandon was essoined in what would seem to be the final stages of the dispute with Ralf of Stortford on a plea of having a chirograph.[21]

A year or so later, on 20 October 1205 Geoffrey of Sandon, in his capacity as attorney to Warin de Bradenache, was essoined in his principal's long-running dispute with the abbot of Ramsey.[22] On the same day, John of Sandon was again essoined in his dispute with Richard of Bainhard, his essoiner being Richard of Sandon.[23] This case was seemingly further adjourned on 16 April 1206, with John being essoined yet again, the plea now being described as receiving a chirograph.[24] On 11 May 1208, Geoffrey of Sandon appeared at Westminster to essoin Hugh le Lorimer and his wife, Muriel, in a Hertfordshire case against Matthew the baker, and on 25 June of the same year, Richard of Sandon essoined one Roger of Calceto, the claimant on a plea of land in Hertfordshire against Richard of Mountfichet in Wallington, another adjoining parish.[25] On 1 July 1208, Hugh le Lorimer and Muriel, his wife, were again essoined in their case against Matthew the baker, their essoiner this time being Robert of Sandon in place of Geoffrey.[26]

Geoffrey of Sandon, for his part, seems now to have been breaking through into bigger times. On 20 October 1208, Geoffrey of Rochesford appointed him as his attorney in a Norfolk plea of services involving one Roger of Buketon.[27] A further appointment of Geoffrey as an

[20] *PKJ*, ii, no.998.
[21] *PKJ*, iii, nos.1192, 1255.
[22] *PKJ*, iii, no.1647 above.
[23] *PKJ*, iii, no.1673.
[24] *PKJ*, iii, no.1829.
[25] *PKJ*, iv, nos.3019, 3134.
[26] *PKJ*, iv, Ibid., no.3177.
[27] *PKJ*, iv, Ibid., no.3212.

attorney followed on 3 June 1212, before the king. Geoffrey's principal on this occasion was Hugh of Duxford on a plea of dower in Cambridgeshire, his opponent being Amice, the widow of Peter le Bonde.[28] On 12 November 1212 Geoffrey, in his role as Hugh's attorney was essoined.[29] Earlier, on 6 October 1212, Geoffrey acted as one of the two pledges for Geoffrey Britonem, the essoiner of Agnes de Rupe, in her Huntingdonshire dispute with Gilbert de Gant.[30] His fellow pledge was Thomas de Ho, now a little over midway in his thirty-year career, and who has already been encountered as a 'minor professional man' (as per Doris Stenton) and a 'proto-professional' (as per Paul Brand). Geoffrey's involvement with a man like Thomas might suggest his own establishment as a substantial 'man-about-court'. On 1 December 1212, Eudo de Rupe, whom Agnes had vouched to warranty, appointed two attorneys, one of whom was Peter of Sandon.[31] Agnes' essoiners were both pledged by Matthew of Bigstrup, an even more successful practitioner than was Thomas de Ho, whose known career extended from 1204 to 1231 and who, like Thomas, has been described as a 'minor professional man' and as a 'proto-professional'.

The extent to which Geoffrey of Sandon and other members of his family acted, on separate occasions, as essoiner and pledge as well as attorney is evident. Two inferences might be drawn from this willingness to undertake different sorts of work around the courts. Firstly, such flexibility might suggest that attorneyship was just one of a number of activities that aspiring men-about-court might pursue at the very beginning of the century. They would not have regarded themselves as being specifically attorneys, essoiners or pledges (and most certainly not as lawyers), but simply as men prepared to act in a variety of roles in and about the courts.

[28] *PKJ*, iv, no.4531.
[29] *PKJ*, iv, no.4695.
[30] *PKJ*, iv, no.4602.
[31] *PKJ,* iv, no.4773.

Secondly, perhaps the role of essoiner was not at this time regarded as the base activity it later became, carrying with it such responsibilities as pledging attendance of the absentee on the adjourned date. This point is illustrated by the preparedness of William of Walsham, a knight, who was prepared to act as an essoiner, at least for one of his own class.[32] He fulfilled that role for a fellow knight, Ralf de Spinevill, in Michaelmas 1201.[33] Just as litigants might wish to ensure that their appointed attorney was of a similar social standing and status to themselves – Walter de Capella in Michaelmas 1199 appointing as his attorney in a Suffolk case Roger Huscarl who by 1210 had risen to the rank of junior justice, for example – so was essoining for another of comparable social standing apparently respectable.[34]

The seven members of the Sandon family who featured in one way or another in the legal process did so on 31 occasions over the period covered, six as litigant, twelve as essoiner, three as pledge and ten as attorney. John, Geoffrey and Peter received attorney appointments and, although it may be coincidental, they did so sequentially, John acting in that capacity in 1199 and 1201, Geoffrey between 1205 and 1212, and Peter making his debut in 1212. Although the construction of a family tree is impossible, it may be speculated that they did not form a single household, but were members of an extended family within which John, Geoffrey and Peter, as the only three men to receive attorney appointments, shared a direct lineage.

What is the reason that so many members of a single (albeit extended) family from a rural backwater in north Hertfordshire should have been, over a period of some fifteen years, so involved in the workings of the courts? Such an involvement cannot have been serendipitous; there must have been a driving influence. The answer may lie partly in the nature of the

[32] See *PKJ*, ii, no.939.
[33] *PKJ,* iii, no.507.
[34] *PKJ*, iii, pp.cclxxvi *et seq*., cccxvi-vii.

place. Sandon is an ancient minster parish on the boundaries of which, to this day, nine other parishes abut. During the Anglo-Saxon period its manor was held by the Crown, and in around 930 was gifted by Athelstan to the Canons of St Paul's, London.[35]

Shortly after the Conquest, the manor was assigned to the use of the deans of St Paul's, and so it still was in the late twelfth century when the chronicler Ralf de Diceto, who was dean between the early 1180s and the turn of the century, surveyed the manor, finding there two lay 'farmers', one of whom was Richard of Sandon.[36] Ralf is known to have been concerned from an early date with matters of law, being on record as chronicling the instructions of Henry II to his judges on appropriate sentences to be imposed in cases of homicide and treachery,[37] and seemingly commenting on the role and seniority of episcopal justices at the eyre of 1179.[38] He, or one or more of his canons, may therefore have been instrumental in introducing Richard of Sandon to the intricacies of the legal system, although it may be that the deanery of St Paul's itself, as an ecclesiastical institution, provided the catalyst and the context for the involvement of members of a rural farming family in the practices of the court in the decades spanning the turn of the thirteenth century. The deanery certainly had a traditional legal or judicial connection; Martin of Pattishall, sometime Chief Justice of the Common Pleas, became dean towards the end of his life.[39]

There may be more to it even than that. Reference has been made to the involvement, albeit fleeting, of members of the family with Thomas de Ho and with Matthew of Bigstrup, and also to the association of another 'minor professional man'/'proto-professional', Thomas Tutadebles, with Therfield, from whence also presumably came the Adam of Therfield who,

[35] Sir Henry Chauncy, *The Historical Antiquities of Hertfordshire*, 2nd edn, i (Dorking, 1975), p.159; J.E. Cussans, *History of Hertfordshire*, i (Wakefield, 1972), p.147.
[36] *Victoria County History of Hertfordshire*, ed. W. Page, iii (London, 1912), p.271.
[37] *PKJ*, i, p.135 and note thereto.
[38] *PKJ,* iii, p.lxiv.
[39] Chauncy, *Historical Antiquities*, i, p.160.

as we have seen, featured at the Suffolk eyre of 1198. A further local man, Gilbert of Kelshall (yet another parish adjoining that of Sandon) is recorded as being appointed as an attorney on three occasions and twice as an essoiner.[40] There seems little doubt that something interesting was happening, law-wise, in north Hertfordshire at the turn of the thirteenth century.

[40] *PKJ,* iv, nos.3319, 3956, 4470, 4483, 4728.

Part Two:

Stepping-stones

Chapter 7: Attorneys at the median eyres

The last years of King John and the succession of his son, Henry III, witnessed a changing legal environment in which the Bench, having been peripatetic since its inception, became fixed after 1215, usually at Westminster but also at different times at Shrewsbury and York. Common pleas (as opposed to those affecting the Crown) were thus thereafter heard in the Bench sitting only in some 'certain place', it coming to be known as the Common Bench and later as the Court of Common Pleas. Legal business of particular interest to the royal government was, however, retained for hearing *coram rege*, before the king, and the court of King's Bench was created in or about 1234 to hear relevant pleas.[1]

Concentration of civil justice in Westminster, far from the home counties of many litigants, provided an obvious boost to the use of attorneys. As increasing numbers of litigating parties opted to be represented in central court proceedings by attorneys of choice, so were those attorneys correspondingly able to attract more work and, in the fullness of time, both to undertake it cost-effectively and, to a greater or lesser extent, garner an income therefrom. By around 1260, professional attorneys were emerging in the Common Bench.[2] Their numbers thereafter increased, particularly during the reign of Edward I, there being more than 140 by 1292 and at least 210 by 1300. Additionally, around 25 professional attorneys practised in the King's Bench, fourteen in the Exchequer (many of whom operated in both courts), and ten in the London city courts.[3] By *circa* 1300, almost two-thirds of the litigation of the Common Bench and almost three-quarters of that in the King's Bench was being handled by obviously professional attorneys.

[1] P.A.Brand, *The Origins of the English Legal Profession* (Oxford, 1992), p.24.
[2] P.A.Brand, *The Making of the Common Law* (London, 1992), p.14.
[3] Brand, *Origins*, p.159.

It is within the context of such a timescale in the emergence and establishment of professional legal attorneys at Westminster that the evolution of such practitioners in eyre proceedings is now considered. Numerous questions require answers. Who used attorneys, and why, and in what circumstances? Who were the attorneys and what sorts of action were they involved in? Are there any observable geographical variations? What material changes in the behaviour, either of the appointing litigants or their attorneys, are observable over time? On the specific issue of professionalisation, when and where can its elements be seen to be emerging, and what were its defining characteristics? Was it a smooth, cumulative process, or was it spasmodic or sudden? Did professional legal attorneyship, with its inherent complexity, in fact emerge from within simple attorneyship, the straightforward process whereby one person represented another, or was the original form of representation colonised from without?

At the heart of the search for answers to such questions are the recorded activities of attorneys at eight eyres commencing with that of Lincolnshire in 1218-19 and taking in those of Buckinghamshire in 1227, Surrey in 1235, Berkshire in 1248, Wiltshire in 1249, Shropshire in 1256, Surrey (again) in 1263, and Derbyshire in 1281. The proceedings of each eyre have been separately published and appear in printed transcription or translation (usually both). Additionally, digitised images of the original plea roll membranes and, where appropriate, feet of fines, have been viewed on the AALT website.[4] Lest it be thought that the eyres for which the proceedings are available in print may not be representative of mid-thirteenth century eyre proceedings generally, there is no reason to believe this to be so. Furthermore, not only are the published proceedings reasonably evenly spread over the period covered, but they are also among those for which the original plea rolls have best survived and for which the greatest amount of relevant evidence is therefore available. As

[4] As previously referenced.

will be seen, although allowance needs to be made for differences in the number of days that eyres sat and in the overall volume of legal business transacted at them, and the possibility of lost membranes is ever-present, comparison of data from eyre to eyre is fruitful.

The visitation of the general eyre of 1208-9 proved to be the last of John's troubled reign, and the next visitation (the first Henry III's reign), did not commence until 1218, terminating in 1222. It provided for nine circuits, the eyre of Lincolnshire being on the so-called East Midland circuit. One plea roll survives from that eyre, JUST 1/481, containing membranes recording civil proceedings which are printed in their entirety by the Selden Society and edited and translated by Doris Stenton.[5] The eyre opened at Lincoln on 25 November 1218, the itinerant justices breaking up on 20 December, reconvening on 7 January 1219 and continuing to sit until 16 February. Some Lincolnshire pleas and assizes were then heard at Nottingham between 18 February and 17 March, and from 29 April to 17 May and also on 23 May at Southwell, before the return of the justices on 25 June 1219 to Lincoln where they remained until 20 July when the final session closed.[6] No eyre had visited the county since 1208, the accumulation of outstanding legal business explaining the necessity for up to 141 sitting days.

JUST 1/481 contains 912 enrolments on the 29 membranes devoted to civil pleas and assizes. Within those enrolments are contained 144 recorded acts of appointment of one or more attorneys, mostly made by sole litigants but some made by two or more. Thus 161 litigants (husbands and wives litigating together being counted as one litigant) made appointments, of whom 112 (within 95 acts of appointment) did so in contemplation of proceedings scheduled for hearing at the eyre, and 49 (within 49 such acts) did so following the adjournment of

[5] *Rolls of the Justices in Eyre for Lincolnshire 1218-9 and Worcestershire 1221*, ed. D.M. Stenton (London, Selden Society, 53, 1934) (hereafter *RJE*), pp.1-440.
[6] *RJE*, pp.xxxvi *et seq.*; *Records of the General Eyre*, ed. D. Crook (Public Record Office Handbooks, 20, London, 1982), p.75.

cases to which they were party, sometimes to a later date in the eyre and on other occasions elsewhere. Plaintiffs and defendants made appointments in broadly similar numbers. All pleas heard were local to Lincolnshire. Of the 161 appointments, 138 were of a single attorney and 23 of two attorneys, usually in the alternative but occasionally jointly.

As will be demonstrated this bare data, both in itself and in conjunction with other material, may be analysed in several different ways, each with a bearing on the development of the activity of attorneyship, and hence upon the emergence of professional legal attorneys. It can be seen, for instance, that the great majority of appointments were of a single attorney, only some 14% of the 161 appointments being of two attorneys. Such appointments, particularly when made severally rather than jointly, may perhaps be taken as indicating an awareness on the part of the appointing principal of the importance of ensuring the availability of a representative when required. Relatively few litigants in 1218-19, it seems, yet possessed such an awareness.

The second visitation of the reign, that of 1226-9, included the Buckinghamshire eyre of 1227 which took place in October and November of that year at Dunstable and Newport Pagnell, with 22 available sitting days.[7] This was clearly a much smaller eyre than that which had commenced in Lincolnshire in 1218, the same year in which an eyre had last visited Buckinghamshire. The sole surviving plea roll, JUST 1/54, is thought to be that of the chief itinerant justice on the circuit, Stephen Seagrave. Its contents have been calendared and printed in translation.[8]

Some 404 enrolments on approximately eleven membranes record various stages of relevant civil pleas and assizes, the great majority of which were local to Buckinghamshire, but with a

[7] *Records of the General Eyre*, pp.83-4.
[8] *Calendar of the Roll of the Justices on Eyre, 1227*, ed. J.G. Jenkins (Records Branch of the Buckinghamshire Archaeological Society, 6, 1945).

scattering of foreign pleas (originating elsewhere) within. Appointments of one or more attorneys by 81 litigants are recorded within 71 acts of appointment for pleas both local and foreign, of whom 57 (within 54 acts) made their appointments prior to the commencement of the proceedings to which they were intended to relate, and 24 (within seventeen acts) did so on the adjournment of cases for various reasons such as on a day being given or for a chirograph to be taken. Seventy-one appointments were of a single individual, the remaining ten being of two individuals either together or in the alternative. As we have seen, only some 14% of the appointing principals at the Lincolnshire eyre of 1218-19 appointed two attorneys. Although the comparable figure for Buckinghamshire is even lower, at 12%, it is sufficiently proximate for us to suspect that the two figures reflect a norm. Awareness of the advantages of making a multiple appointment was low.

Following an uncompleted visitation of 1231-2 and an eyre in Cornwall in 1233, the visitation of 1234-6 included the eyre of Surrey between 6 and 20 October 1235 (fifteen available sitting days) at Bermondsey.[9] An eyre had previously visited the county in 1229. The contents of the single surviving plea roll, JUST 1/864, have been printed in transcription and translation.[10] Although the surviving plea roll is not the main roll of the eyre (now lost) it does include a complete record of civil pleas and assizes. [11]

Within eleven membranes are recorded 310 enrolments of civil pleas and assizes, 271 relating to legal business originating within the county of Surrey but including also 39 relating to foreign pleas. Also included are 52 acts of appointment of attorneys by 54 litigants, of whom 40 (in 39 acts) made them prior to and in contemplation of proceedings at the eyre, and fourteen (in thirteen acts) on actions being adjourned. Of the 40 anticipatory appointments,

[9] *Records of the General Eyre*, p.94.
[10] *The 1235 Surrey Eyre*, ed. C.A.F. Meekings (3 vols, Surrey Record Society, 31 (1979), 32 (1983), 37 (2002)).
[11] *The 1235 Surrey Eyre*, i, p.1.

33 relate to local pleas and seven to foreign pleas, and of the fourteen appointments made on adjournment, seven relate to each of local and foreign pleas. Overall, therefore, 40 appointments relate to local pleas and fourteen to foreign pleas. Forty-three of the 54 appointments were of a single individual and eleven of two in the alternative. The proportion of litigants appointing two attorneys, eleven out of a total of 54, is some 20%, a noticeable increase on the comparable figures for Lincolnshire (14%) and for Buckinghamshire (12%) but, in isolation, not to be relied upon as indicative of a trend. Attorney-related issues arising from the division of pleas into those which were, respectively, local and foreign at this eyre and at ensuing eyres are discussed *post* in the light of further data.

The following visitation took place between 1239 and 1241, with eyres also in 1242-4 and 1245, being followed in short order by the visitation of 1246-9 which included, albeit on different circuits, both Berkshire and Wiltshire. Berkshire, which had last been visited in 1241 hosted its eyre on eleven sitting days in July 1248 with sessions at both Reading and Wallingford.[12] The single surviving plea roll, JUST 1/38, is thought to have been made for the senior itinerant justice on the circuit, Roger Thirkleby.[13] Several of the original membranes are probably now lost, but some twenty record local civil pleas and nine record foreign pleas. The contents of the roll, as it has come down to us, are printed in both transcription and translation.[14]

The 29 relevant membranes contain 683 enrolments, of which 460 relate to legal business originating in Berkshire, the abbot of Reading's liberty and the honour of Wallingford, and 223 to foreign pleas. Within the enrolments are recorded 147 acts of appointment of one or more attorneys by 168 litigants, of whom 89 did so on local pleas, 69 on foreign pleas and ten

[12] *Records of the General Eyre*, p.110.
[13] Ibid., p.107.
[14] *The Roll and Writ File of the Berkshire Eyre of 1248*, ed. M.T. Clanchy (London, Selden Society, 90, 1973).

on a mixture of both. Of the 168 appointments, 138 were made (in 120 acts of appointment) in contemplation of the immediate proceedings, of which 80 related to local pleas, 48 to foreign pleas and ten to a mixture of both. A further 27 acts of appointment on adjournment by 30 litigants were made, nine relating to a local plea and 21 to a foreign plea.

Sixty-five litigants appointed a single attorney on a local plea, and 44 a single attorney on a foreign plea. Nine litigants appointed a single attorney to act in pleas that were both local and foreign, giving a total of 118 appointments of single attorneys. The remaining 50 appointments were of two attorneys in the alternative, being comprised of 24 relating to Berkshire pleas, 25 relating to foreign pleas, and one appointment relating to both types of plea. The proportion of litigants appointing two attorneys is therefore almost 30%, noticeably higher than was the case in any of the three earlier eyres, and seemingly suggesting that the upturn noted at the Surrey eyre in 1235 was significant. Litigants were perhaps beginning to appreciate in greater numbers the advantages inherent in appointing two attorneys in the alternative as a means of ensuring representation.

The Wiltshire eyre of 1249 took place on 58 available days between 18 April and 14 June of that year with sessions at Wilton, Marlborough and Salisbury.[15] An eyre had previously taken place in 1241. Three plea rolls survive, two of which (JUST 1/777 and JUST 1/996) are thought to have belonged to junior justices, the other (JUST 1/997) probably to the senior justice on the circuit, Henry of Bath. Much of the material on the civil side recorded within the three rolls is available in translation.[16] The bulk of such material is taken from plea roll JUST 1/996, comprising civil pleas at Wilton, civil pleas of the liberty of the bishop of Salisbury, and attorney appointments (22 membranes in all), complemented by a single membrane from JUST 1/777 (containing 33 pleas and assizes, and thought to belong with

[15] *Records of the General Eyre*, p.114.
[16] *Civil Pleas of the Wiltshire Eyre, 1249*, ed. M.T. Clanchy (Wiltshire Record Society, 26, Devizes, 1971).

JUST 1/996). Enrolments of foreign pleas contained within JUST 1/777 and JUST 1/997 are omitted, although a number of attorney appointments relating to foreign pleas are contained within the roll of attorneys, and a few foreign pleas were recorded among the Wiltshire pleas.

The 23 membranes referred to contain 565 operative enrolments which include 67 acts of appointment of attorneys by 75 litigants. Of them, 57 made their appointments in 55 acts in contemplation of proceedings at the eyre, the remaining eighteen doing so in twelve acts on adjournment. Single attorneys were appointed on 47 occasions, by 29 litigants in advance of the hearing of a local plea, by seven in advance of a foreign plea, and by eleven on the adjournment of a local plea. Two attorneys were appointed on 28 occasions, by fifteen litigants in advance of a local plea, by six on a foreign plea, and by seven on the adjournment of a local plea. The increasing incidence of two attorneys being appointed, observable at the Surrey eyre of 1235 and the Berkshire eyre in 1248, is again evident with some 37%, 28 out of 75, of principals opting so to do.

Following the holding of a small number of eyres in 1250-2, the next major visitation took place between 1252 and 1258. The Shropshire eyre of 1256 was held on 34 available sitting days in January and February of that year at Shrewsbury.[17] The previous eyre had visited in 1248. The single surviving plea roll, JUST 1/734, is thought to have been made for a junior justice. It appears to be comprehensive, and includes nineteen membranes containing civil pleas, attorney appointments and foreign pleas. The contents of the roll have been printed in both transcription and translation.[18]

The nineteen membranes of the plea roll contain 444 relevant enrolments, of which 344 relate to Shropshire civil pleas and 100 relate to foreign pleas. Within a dedicated *Rotulus Attornatorum* and scattered elsewhere are recorded 59 acts of appointment of attorneys by 63

[17] *Records of the General Eyre*, p.121.
[18] *The Roll of the Shropshire Eyre of 1256*, ed. A. Harding (London, Selden Society, 96, 1980).

litigants in anticipation of proceedings, of which 49 relate to local pleas and fourteen to foreign pleas. A further ten acts of appointment by eleven litigants were made on adjournments, nine relating to Shropshire pleas and two to foreign pleas. There were thus 58 appointments made in respect of local pleas and sixteen in respect of foreign pleas. Of the total of 74 litigants involved in the 69 acts of appointment, 49 appointed a single attorney, the remaining 25 appointing two attorneys in the alternative. Almost 34% of principals hence appointed two attorneys, slightly fewer than the finding at Wiltshire seven years earlier, but in line with the overall continuing upwards trend observable at the earlier eyres.

As part of the next, albeit uncompleted visitation of 1261-3, the Surrey eyre of 1263 took place at Guildford on 21 available sitting days between 14 January and 3 February of that year before four justices led by Martin of Littlebury.[19] Adjourned cases from Warwick had been heard at Bermondsey between 13 and 20 October 1262. An eyre had previously visited the county in 1255. The proceedings of the eyre are recorded on plea roll JUST 1/874, which was almost certainly made for the senior justice, and is estreated and process marked. It has been printed in full, in both transcription and in translation.[20] It is thought likely, on the basis of internal evidence, that 'the roll is complete in its present form', 22 of its 33 membranes containing a record of civil pleas, foreign pleas, and attorney appointments.[21]

Within those 22 membranes are to be found a total of 434 relevant enrolments, of which membranes dedicated to local pleas contain 315 entries and membranes recording foreign pleas contain 119 entries (excluding essoins). Included, on a dedicated roll, are 113 acts of appointment of attorneys by 135 litigants, all made in contemplation of proceedings scheduled for hearing at the eyre, 115 of whom did so on local pleas and twenty on foreign

[19] *Records of the General Eyre*, p.132.
[20] *The 1263 Surrey Eyre*, ed. Susan Stewart (Surrey Record Society, 40, 2006).
[21] Ibid., p.xxxix.

pleas. In addition, 22 litigants (in twenty acts) made appointments on the adjournment of pleas, of whom sixteen did so on local pleas and six on foreign pleas. Of the resulting 157 litigants appointing attorneys in 133 acts, 119 appointed a single individual (eleven doing so on adjournment), the remaining 38 appointing two individuals (eleven, again, doing so on adjournment). The proportion of principals appointing two attorneys is therefore brought out as some 24%, considerably fewer than the comparable numbers for the three previous eyres and out of line with the general upwards trend previously observed.

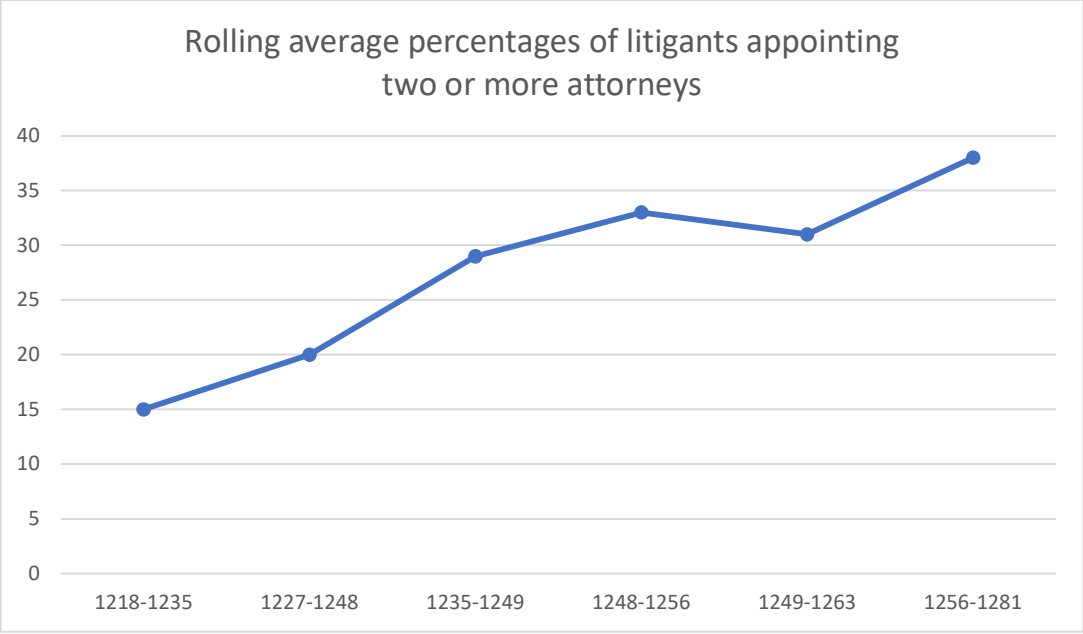
The last general eyre visitation of the reign of Henry III took place between 1268 and 1272 and was followed firstly by a handful of eyres between 1274 and 1277 and then by the long visitation of 1278-89. This was interrupted by the Welsh war between the spring of 1282 and that of 1284, before which the Derbyshire eyre of 1281 took place at Derby on an available 21 sitting days in April and May of that year.[22] Derbyshire's previous eyre had taken place in 1269. The eyre fell within the northern circuit led by the chief justice, John de Vaux, whose roll, JUST 1/151, estreated and process marked, contains fifteen membranes containing civil pleas and attorney appointments. These have been calendared and printed in translation.[23] Enrolments relating to foreign pleas recorded on Vaux's plea roll are not included in the printed calendar and are thus not considered here.

The relevant membranes contain precisely 400 enrolments recording civil business originating in Derbyshire. These include 128 acts of appointment of one or more attorneys by 136 litigants, one of whom was a prior whose appointment of two general attorneys with power to appoint special attorneys in their discretion because he was about to go 'on business overseas', was attested by the king's writ. Of that number, 118 made their appointments in 110 acts in contemplation of proceedings at the eyre, with fifteen further acts of appointment

[22] *Records of the General Eyre*, p.150.
[23] *The Rolls of the 1281 Derbyshire Eyre*, ed. A.M. Hopkinson (Derbyshire Record Society, 27, 2000).

by fifteen litigants being made on cases being adjourned, three more being against the king in crown pleas of Ragman and *quo warranto*. Of the 136 litigants who appointed attorneys, 59 did so of a single named attorney, 72 of two named attorneys, the remaining five appointing three named attorneys. All such, as stated, were made in respect of local pleas. The proportion of principals appointing more than one attorney was therefore 56% (77 out of 136), considerably greater than it had been at any of the earlier eyres reviewed.

Figure 1



By 1281, there had therefore been an observable development in the numbers of attorneys appointed by litigating parties. The very clear trend towards the appointment of two (and, in Derbyshire, for the first time, three) attorneys, as illustrated in Figure 1 above, is summarised by a comparison of the rolling averages for consecutive three-eyre groupings. The average number of such appointments made in 1218, 1227 and 1235 is 15%; followed by 20% in 1227, 1235 and 1248; 29% in 1235, 1248 and 1249; 33% in 1248, 1249 and 1256; 31% in 1249, 1256 and 1263 and, finally, by 38% at the eyres of 1256, 1263 and 1281.

This trend could simply be reflective of an increasing anxiety to ensure the availability of representation in the event, for example, of attorneys needing to be in several places at once or of illness. Alternatively, it could indicate a separation of duties, one of the named men being appointed specifically to deal with legal issues, the other(s) to cover procedural appearances as the suit unfolded. The merits of this latter possibility and its implications for the professionalisation of attorneys are discussed *post*.

Chapter 8: Attorneys in court

The twin issues of why professional legal attorneys emerged when they did and the mechanism by which this emergence was achieved are discussed in depth in Part Four of this thesis, but it is appropriate now to consider a number of contributary themes. What were the reasons that litigants appointed attorneys to represent them in court and, having made such appointments, what did litigant principals expect of their appointees? Put another way, what did attorneys do in court, having been appointed to act? Did things change over time? One, in many cases the only, method of beginning to answer such questions is to analyse the available data on the activities of appointed attorneys in open court which is primarily to be found within the plea rolls. An immediate problem is the extent to which the official record can be trusted on the issue of attorney attendance. Although the original enrolments of appointment within the plea rolls can be regarded as being largely accurate, yielding relevant data on the identities respectively of the appointing principal(s), their appointed attorney(s) and their opponent(s), and also the nature of underlying pleas, it is rare for an ensuing account of the hearing of any such plea to indicate the presence or otherwise of the appointed attorney in place of the litigant in court, hence leaving open the question of whether an appointed attorney actually appeared. Almost invariably, the official record suggests the presence of participating litigants in person.

The abbot of Missenden, for example, as a busy prelate appointed two men to represent him in four specified actions at the Buckinghamshire eyre of 1227.[1] There is no record of one of those actions being disposed of, but the abbot is recorded as appearing, apparently in person, in the remaining three.[2] Perhaps significantly, on two occasions the abbot was pledged by one of his appointed attorneys, the inference being that the attorney was in fact perhaps present in

[1] *Calendar of the Roll, 1227*, no.109.
[2] Ibid., nos.316, 426, 451.

place of the abbot, albeit unacknowledged in that particular role. In another case at the same eyre, Peter of Goudington appointed an attorney to represent him on a plea of warranty of charter which, when heard, has Peter apparently appearing in person to give the warranty demanded.[3] We cannot know whether Peter's appointment was precautionary only, covering the possibility that he may have been unable to attend in person, or whether in the event the attorney's attendance is unrecorded.

Occasionally, however, it is specifically stated that a litigant is not present in person, but appears *per attornatum suum*, and the question arises, therefore, whether any pattern of recording is discernible. A literal interpretation of the official record is that attorneys did in fact appear only in those cases where their presence is specifically stated. This is improbable given that an attorney is often, in an appropriate case, referred to in an ensuing final concord as standing in for a participating party, thereby increasing the likelihood that he did the same at the earlier hearing, even though unacknowledged. Also, towards the end of the period under review, the contents of contemporary court reports which become available for scrutiny sometimes mention the presence of an attorney who is unacknowledged in the official plea roll record. An alternative possibility, therefore, is that the presence or otherwise of attorneys in place of litigants is recorded entirely randomly, dependent upon clerical whim, no significance attaching to whether an attorney is referred to in one case but not in another. Yet another possibility, however, is that although attorneys did appear in cases in which their presence is unrecorded, the recording or otherwise follows a pattern – they are referred to only where there is some perceived good reason. If so, this is probably now lost to us.

A further difficulty is that, even when the presence of an attorney in place of a litigant is recorded, the degree of participation is rarely stated, and it is difficult to gauge the extent of

[3] Ibid., nos.328, 418.

his possible contribution to proceedings. This is compounded by the almost universal omission from the record of the involvement of specialist advocates, whether the narrators, counters and pleaders of the early period or the serjeants of later decades. Sometimes, for instance, an attorney seems from the record to have presented his principal's case, speaking and arguing persuasively, but whether he actually did so in person or through the medium of an advocate is frequently both unknown and unknowable.

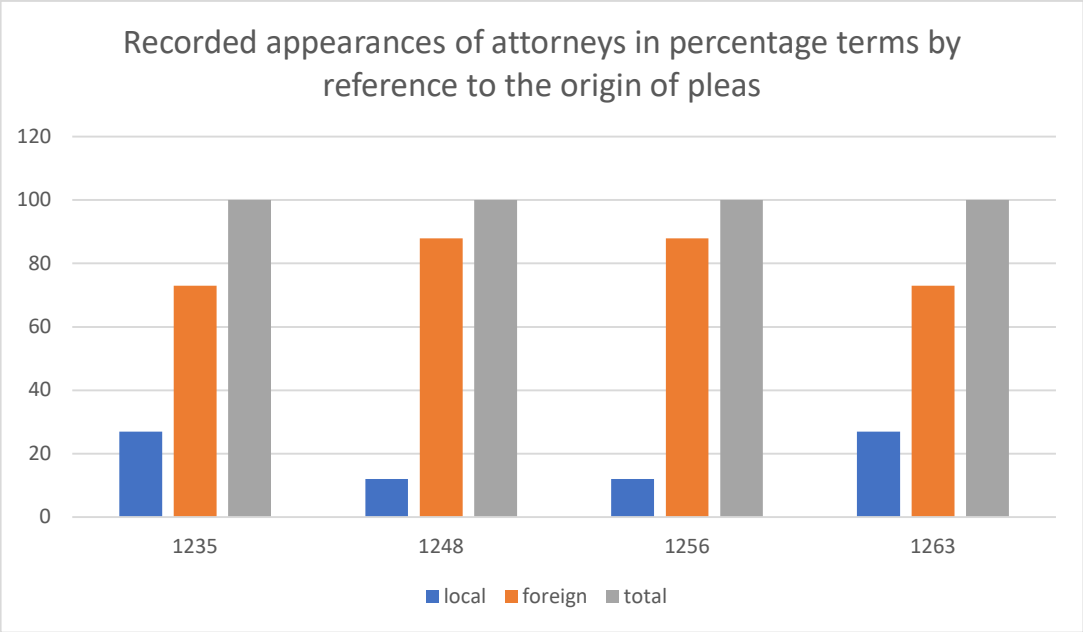
Nonetheless, despite these difficulties, the number of recorded instances of attorneys appearing in court on behalf of absent litigants suffices to make analysis worthwhile. In seeking to establish what was expected of attorneys in court, and whether any pattern emerges, four broad approaches are adopted, the first of which is to consider the origin of any given plea attended upon by an attorney. Was it a 'local' plea, originating within the particular county hosting the eyre, or was it a 'foreign' plea, originating in another county, usually earlier in the circuit and adjourned on for resolution or progression? The most obvious reasons that a litigant would send an appointed attorney to attend a hearing in his place were those of necessity or convenience. The personal circumstances of a litigant may have been such that it was impossible or, at least, highly difficult, for him to attend in person. Alternatively, a litigant may simply have been reluctant to make a personal appearance, preferring to send an attorney in his stead. Attorneys appointed for either of these reasons are more likely to appear on the record in greater numbers on the hearing of foreign pleas, in which time away and distance from home would be matters of concern to busy principals or those whose domestic duties inhibited travel, than on the hearing of local pleas where such concerns would normally be less pressing. A litigant might, however, send an attorney into court for reasons unconnected to personal necessity or convenience but linked to qualities exhibited by the attorney himself. He might, for instance, opt to be represented by an attorney of or with greater articulacy or intelligence, knowledge or experience, than he himself

possessed. Appointments made for such attorney-related reasons would be expected to be made regardless of whether the plea was local or foreign and in approximately equal numbers on the records, respectively, of each sort of plea.

The first of the eyres under review at which foreign and local pleas can be meaningfully distinguished is that of Surrey in 1235 at which, in addition to the recorded acts of appointment, attorneys are recorded as appearing in court, either anonymously *per attornatum suum* or as named individuals, on 22 occasions. It will be recollected that, of the 40 litigants who appointed attorneys in contemplation of proceedings, 33 (82%) did so on local pleas and just seven (18%) on foreign pleas. However, as is illustrated in Figure 2 below, of the 22 recorded appearances by attorneys, only six (27%) were made on the hearing of local pleas, and sixteen (73%) on the hearing of foreign pleas. Although it is to be expected that the use of attorneys in the disposal of pleas by litigants not resident in Surrey would have been greater than such use by local litigants prosecuting or defending local pleas, the imbalance is striking. Furthermore, and allowing for the probability that some attorneys attending on the hearing of foreign pleas received their appointments in their counties of origin or in Chancery, the contrast between the high proportion of appointments relating to local pleas (82%) and the low proportion of actual recorded appearances on the hearing of such pleas (27%) is remarkable. When set alongside the 73% of recorded appearances by attorneys relating to the hearing of foreign pleas which followed just 18% of the appointments made in their contemplation, the apparent lack of use of appointed attorneys on the hearing of local pleas prompts the immediate inference that attorneys at this time were predominantly used for reasons of convenience or necessity, connected to the circumstances of the litigants rather than to the inherent qualities of the appointed representatives. In general terms, a local litigant, despite having made an appointment, perhaps on precautionary grounds, seemingly appeared in person if he or she could. That is not, of course, to conclude

that the attorneys who featured were necessarily inarticulate or unintelligent, unknowledgeable or inexperienced - a litigant unable to appear in person would still, presumably, wish to be represented by someone of competence - but rather that the principals who appointed them were primarily motivated by an inability or unwillingness to appear in person. Those who could appear in person did so.

Figure 2



At the much larger eyre of Berkshire in 1248, and in addition to the recorded acts of appointment of attorneys, there are 78 recorded instances of attorneys actually appearing in court and participating in proceedings. As in Surrey in 1235, the majority of the appointments made in contemplation of proceedings - 80 out of 138, or 58% - related to local pleas, a further ten relating to a mixture of local and foreign pleas, the remaining 48 being made in contemplation of the hearing of foreign pleas. The overwhelming majority, however, of recorded appearances of active attorneys, 69 in number (88%), are within the record of foreign pleas, just nine (12%) relating to Berkshire pleas. The use of attorneys on foreign

pleas is again entirely comprehensible, but the almost total lack of such use on the hearing of local pleas is startling. Given that just one-third of the civil plea enrolments on the Berkshire plea roll relate to foreign business (223 out of 683), the recorded incidence of more than seven times as many attorneys appearing on foreign pleas as did on local pleas is remarkable.

As posed above, the question arises as to whether the record can be trusted. Might it be possible that the clerks and scribes who compiled and wrote up the membranes recording local pleas and foreign pleas respectively might have chosen or been instructed to record the attendance of attorneys on the hearing of foreign pleas but not necessarily on the hearing of local pleas? The rationale for such an inconsistency of treatment is difficult to comprehend. In the absence of any good reason for recording the attendance of attorneys on local pleas less fully than on foreign pleas, and allowing for the possibility of under-recording across the board, the record is likely to reflect the reality that attorneys were used very much more intensively on the hearing of foreign pleas than on those that originated locally. An interpretation of the Berkshire evidence might therefore be that, whereas litigants from other counties both appointed and used attorneys for reasons of necessity or convenience, many local litigants, despite having appointed one or more attorneys to represent them in court, chose in the event to appear in person in preference to sending their appointed attorney in their stead. If this interpretation is correct, it suggests that the prior appointment of an attorney by such local litigants was merely precautionary or, perhaps, made simply for the purpose of attendance at preliminary stages only.

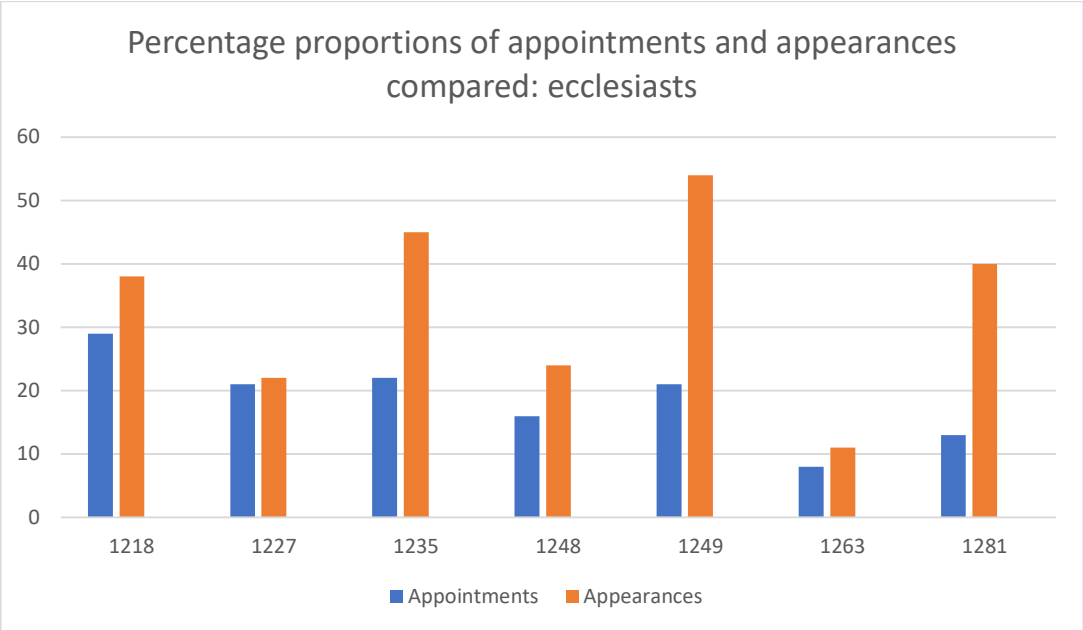
A similar picture is presented by evidence from the Shropshire eyre of 1256 at which, in addition to the 63 recorded appointments made in contemplation of proceedings (49, or 78%, of which related to local pleas, and fourteen to foreign pleas), there are just four recorded instances of attorneys participating in open court in local pleas (12%), in contrast to 30 instances of attorneys appearing and being active in foreign pleas (88%). The difference is

not simply numerical but proportional also; it will be recollected that foreign business occupied just 100 entries on the eyre plea roll as opposed to 344 devoted to local pleas. A further indicator of the extent to which attorneys were used primarily on foreign pleas is the number – nineteen – of attorneys who essoined themselves *de malo veniendi* on such pleas. As in Surrey and Berkshire, the more extensive use of attorneys on the hearing of foreign pleas is understandable, particularly as Shropshire's greater geographical remoteness would have necessitated a correspondingly greater need for the use of substitutes. But, again, given the likelihood that the record of actual appearances is at least proportionately accurate, it may be inferred that the great majority of Shropshire litigants appeared in person, even though they may have earlier appointed attorneys to represent them. A second inference to be again drawn is that convenience and (particularly) necessity remained the over-riding reasons that attorneys were used in court, few litigants apparently opting to send in their place a man who would acquit himself better in court than they themselves could.

At each of the eyres of Berkshire and Shropshire, the recorded attendance of attorneys on foreign pleas exceeds that on local pleas by a factor of more than seven. Evidence of a considerable closing of that gap comes from the Surrey eyre of 1263 at which, in addition to the 135 recorded litigants making appointments in contemplation of proceedings (115, or 85%, of which related to local pleas and just twenty, or 15%, to foreign pleas), there are 88 references to attorneys appearing in court for absent litigants. Although only 24 (27%) of them did so in local pleas, 64 attorneys appearing on foreign pleas (73%), the difference has reduced to a factor of less than three. A similar reduction is apparent in the respective ratios of local plea appearances to local plea appointments. Whereas in Berkshire, where nine such appearances followed 80 such appointments (a ratio of 1:8.88), and in Shropshire where four appearances following 49 appointments (1:12.25), a lesser ratio of 1:4.79 is brought out by Surrey's 24 appearances following 115 appointments.

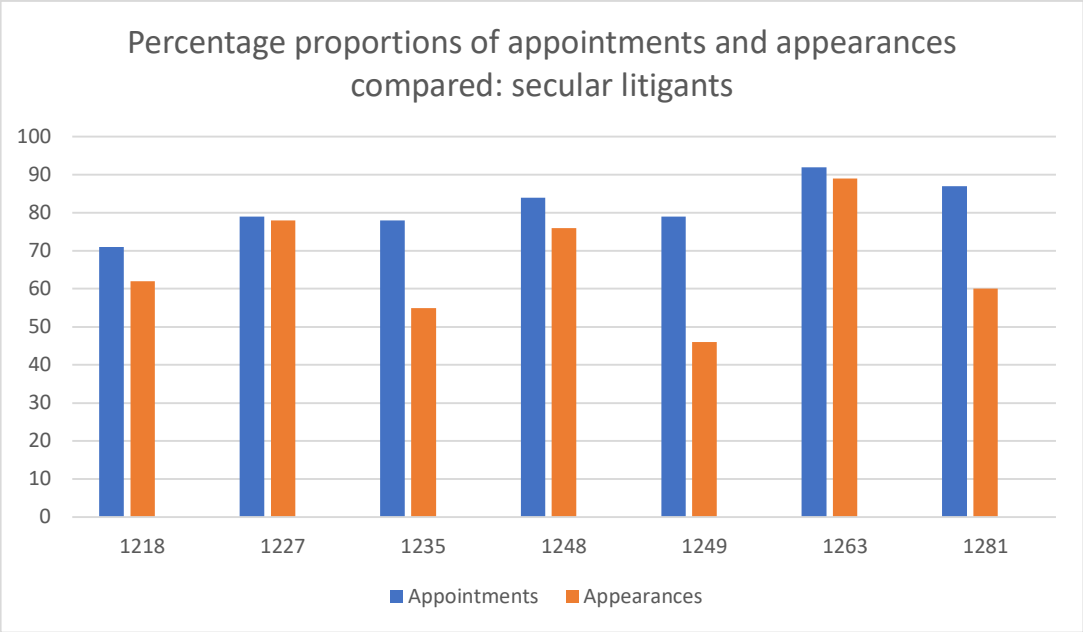
On the face of it, a lessening in the usage of attorneys purely for reasons of necessity or convenience is suggested. This raises the possibility that other, more attorney-related, factors were at play. However, caution must be exercised. The percentage differential between local plea appearances and those relating to foreign pleas is identical to that apparent in the same county's eyre in 1235. Furthermore the corresponding ratio for the earlier eyre, at which six local plea appearances followed 33 local plea appointments, is 1:5.50, and it may be that we are not seeing evidence of changing motivation nationwide but simply the result of Surrey being more accessible to out-of-county litigants than were either Berkshire or Shropshire, more of them being thus able to appear in person. In any event, the apparently relative lack of use by local litigants of attorneys previously appointed by them remains noteworthy, and the impression gained from distinguishing appearances on local pleas from those on foreign pleas is that, typically, litigants who had previously appointed attorneys actually used them only when obliged to do so for reasons of necessity or convenience.

Figure 3



Did that, however, apply across the board? The second approach to understanding what motivated appointing principals is to distinguish between secular and ecclesiastical litigants. Can lay men and women be seen to have behaved differently to bishops, abbots and priors, and the masters of hospitals and humble parsons in their use of attorneys in court? Figures 3 (above) and 4 (below) refer.

Figure 4



Of the 112 recorded appointments of attorneys in contemplation of the hearing of local pleas at the Lincolnshire eyre of 1218-19, 33 or 29% were made by ecclesiasts of various descriptions. There are also 50 recorded examples within the text of absent litigants being present *per attornatum suum*, nineteen or 38% of whom were ecclesiasts, ranging from the parson of Toft to the Dean and Chapter of Lincoln. Attorneys appointed by ecclesiasts, proportionately just 29% of all, thus accounted for a much greater proportion - 38% - of all appearances, clearly suggesting that ecclesiasts actually used attorneys with greater intensity than did secular litigants, whose 71% of all appointed attorneys made only 62% of all

recorded appearances. And this is despite the probability that many (certainly some, such as the earl of Arundel and Simon of Kyme) of the 31 absent secular litigants were men of substance, whose personal circumstances may have had similarities to those of the greater ecclesiasts.

Such a distinction between secular and ecclesiastical litigants is less in evidence at the Buckinghamshire eyre of 1227. In addition to the 57 recorded appointments in contemplation of proceedings (twelve or 21% of which were made by ecclesiasts), the plea rolls record the active presence in court of eighteen attorneys, four of whom (22%) were representing ecclesiasts, two abbots and two priors. It is probable that most of the secular litigants who were represented were men and women of substance, having access to and able to meet the cost of maintaining attorneys over time. On a local plea concerning a third part of a manor, for instance, William de Cantilupe appeared by attorney, as did Joanna de Bray in a plea of dower for a half part of a virgate of land.[4]

Data from the Surrey eyre of 1235 not only permits analysis of the nature of appointing principals and those who actually used attorneys in court but does so also in the context of whether the pleas were local or foreign, as discussed above. It will be recollected that 33 of the 40 appointments made in contemplation of proceedings related to local pleas, and just seven to foreign pleas. Of the overall 40 appointments, nine (22%) were made by ecclesiasts, all on local pleas. It will also be recollected that attorneys are recorded as appearing in court on 22 occasions. Of the sixteen occasions on which they did so on foreign pleas, five were representing ecclesiastical litigants, who also accounted for five of the six local plea appearances. Ten of the 22 recorded attorneys (45%) were appearing, therefore, on behalf of ecclesiastical litigants. Considerable significance attaches to this statistic.

[4] Ibid., nos.202, 429.

It appears to confirm the impression gained from the earlier eyres that when ecclesiasts appointed attorneys, they did so with a view to actually using them in court. Having made 22% of the recorded appointments, they accounted for 45% of the recorded appearances. Conversely, secular litigants, having made 78% of the appointments, account for just 55% of the appearances. Furthermore, the type of plea in which ecclesiastical attorneys, and those acting for secular litigants, were deputed to appear is revealing. Whereas ecclesiastical attorneys appeared five times on each of local and foreign pleas, secular attorneys appeared overwhelmingly (eleven to one) on foreign pleas. On the one occasion that a local secular litigant (a woman) appeared by attorney, that attorney was probably her husband.

We can, therefore, flesh out the observation made above that litigants as a whole apparently sent appointed attorneys into court more frequently on the hearing of foreign pleas than with local pleas. It now seems that the reason for this is that whereas ecclesiastical litigants, as a class, sent attorneys into court without regard to the origin of the various pleas litigated, secular litigants tended to do so only if involved in a foreign plea. They rarely appeared by attorney on the hearing of a local plea despite, in many cases, having previously made a relevant appointment. This lack of use of attorneys by secular litigants in local pleas must suggest that such litigants saw no need for representation otherwise than when motivated by necessity or convenience. In contrast, although ecclesiastical litigants were as much obliged as were secular litigants by necessity or convenience to use attorneys on the hearing of foreign pleas, their willingness to do the same on the hearing of local pleas suggests that other factors were at play. The abbot of Chertsey, who sent an attorney into court on no fewer than four occasions on the hearing of local pleas, was no doubt a busy man by the very nature of his position and less able to make time for court appearances than the average secular litigant.[5] He was however local, and senior churchmen did on occasion apparently make

[5] *The 1235 Surrey Eyre*, ii, nos.89, 107, 108, 135.

personal appearances in court. To a degree, therefore, his use of attorneys is likely to have been voluntary and not forced upon him by circumstances.

Ecclesiasts were proportionately fewer in number at the Berkshire eyre of 1248 than had been the case in Surrey thirteen years before. Of the 138 appointments made in contemplation of proceedings, ecclesiasts made twelve of the 80 that related to local pleas and ten of the 48 relating to foreign pleas. The ten appointments that related to a mixture of both kind of plea were all made by secular litigants. Ecclesiasts thus made 22 (almost 16%) of all appointments in contemplation of proceedings. Once again, however, they actually used their attorneys in court proportionately more, doing so on nineteen of the 78 occasions upon which such representation is recorded (24%). This again suggests a considerably greater intensity of use of appointed attorneys than is evident with secular litigants. Inevitably, within the context of 69 of the 78 overall appearances relating to foreign pleas, the majority of the nineteen made by ecclesiastical attorneys - fifteen - were made on the hearing of foreign pleas and just four on the hearing of local pleas. This does, however, contrast starkly with secular litigants, whose use of attorneys on the hearing of foreign pleas was overwhelming, being recorded on 54 occasions, as opposed to just five occasions on the hearing of local pleas. A difference in the use of attorneys respectively by absent ecclesiastical and secular litigants is again both obvious and suggestive that their respective collective motivations differed.

The much greater extent to which ecclesiasts actually used their appointed attorneys in court than did secular litigants is again evident at the Wiltshire eyre of 1249. Of the 57 recorded appointments in contemplation of proceedings, 44 of which related to local pleas and thirteen to foreign pleas, ecclesiasts accounted for twelve overall (21%), eight on local pleas and four on foreign pleas. However, of the 22 recorded occasions on which attorneys appeared in ongoing proceedings (all of which were seemingly on the hearing of local pleas), a much higher proportion - 54% - did so on the twelve occasions that they represented ecclesiastical

litigants. Even given that such use may have been founded, in part at least, on necessity or convenience, the probability of a different motivation also coming onto play is clear. Whereas a typical secular litigant seemingly minimised his use of attorneys in court, his ecclesiastical counterpart seemingly maximised such use. The obvious inference is that the religious houses and institutions headed by ecclesiastical litigants saw advantage in being represented by attorney. The quality of the appointed representatives rather than the personal circumstances of the litigants had become a motivating force.

Ecclesiasts were very much less in evidence at the Surrey eyre of 1263, making just eleven (8%) of the 135 appointments made in contemplation of its proceedings, nine on local pleas and two on the hearing of foreign pleas. Unsurprisingly therefore, recorded appearances by attorneys on behalf of ecclesiasts are few, although their ten such appearances out of the total of 88 on behalf of all litigants represents 11%, again suggesting active use of attorneys in court. Furthermore, the spread of such appearances between the two categories of plea - six on local pleas and four on foreign pleas - indicates that ecclesiasts continued to use attorneys even when geographically able to attend in person. Secular litigants, on the other hand, seem again to have eschewed the actual use of appointed attorneys on an industrial scale. Despite their collective pattern of appointment of attorneys being overwhelmingly in contemplation of the hearing of local pleas - no fewer than 106 of their overall 124 appointments being so - they are recorded as being represented *per attornatum* on the hearing of local pleas on only eighteen occasions, their remaining 60 appearances being on the hearing of foreign pleas.

In addition to the 118 recorded appointments of attorneys in contemplation of the hearing of local pleas at the Derbyshire eyre of 1281, of which 102 were made by secular litigants and sixteen by ecclesiasts, there are fifteen recorded instances of attorneys appearing in ongoing proceedings in place of absent litigants, of whom nine were acting for secular litigants and six

for ecclesiasts. Despite, therefore, collectively comprising just 13% of all appointing principals, ecclesiasts appeared by attorney on 40% of all recorded occasions of attorney use.

The overall extent to which ecclesiastical attorneys seemingly appeared for their principals proportionately more than the record of appointments would suggest probable, and to which secular attorneys did the opposite, is revealed by aggregating and averaging the relevant data. Over the course of the several eyres, ecclesiastical attorneys received on average fewer than 19% of all appointments, and yet made over 33% of recorded appearances. Secular attorneys, receiving over 81% of all appointments, made fewer than 67% of all appearances. Unless the use in court of attorneys by secular litigants was deliberately under-reported by court clerks and scribes (and there is no known evidence that this was so), such litigants do seem to have made sparing use of attorneys in court, doing so almost exclusively on the hearing of foreign pleas, their presumed motivation therefore continuing to be convenience or necessity. Ecclesiasts, on the other hand, although no doubt similarly motivated in many instances, seem to have preferred to be represented by appointed attorneys even when personal appearance might have been possible. This may reflect a cultural phenomenon, a collective perception perhaps on the part of high ecclesiasts that habitual representation was appropriate, given their status and religiosity. Alternatively, it may indicate a different, hard-nosed motivation, that of perceived advantage over unrepresented opponents which manifested itself in securing the best possible outcomes to the actions in which they were involved. And it is this very issue, that of outcomes, that is next considered.

Chapter 9: Outcomes

The first two approaches to addressing the issue of what motivated litigants to appoint and use attorneys in eyre proceedings between *circa* 1220-1280, namely by reference to the origins of pleas and the religiosity or otherwise of absent principals, go to background and context. The third, and more focused, approach to the issue is to consider the aims and aspirations of those principals by examining the outcomes of proceedings in which their appointed representatives appeared on their behalves. At the same time, a fourth approach is adopted, based upon whether the appointing principal is a plaintiff/demandant or a defendant/tenant/warrantor in the proceedings in which his or her attorney appears. Although the extent to which any given outcome might reflect either the intention of the litigating principal or the ability or contribution of his attorney in court is, of course, uncertain as many factors will have been in play, that outcome may nonetheless be significant if a pattern emerges, and yet more so if changes over time are discernible. In that event, an attempt may be made to identify a role for participating attorneys and the demands placed upon them.

At the Buckinghamshire eyre of 1227, eight attorneys are recorded as appearing in court for plaintiffs, seven for defendants, two for warrantors, with one uncertain. The majority of the eighteen seem to have been active in the sense that the pleas in which they were engaged were heard, as opposed to simply being adjourned following a procedural intervention. In a foreign plea remitted from Yorkshire, for instance, in which a secular plaintiff, by his attorney, claimed the right of presentation of a parson to a vacant church, the attorney is credited with arguing on the salient facts of the matter including the issue of whether the church was a mother church or a mere chapel.[1] Whether it was the attorney who spoke or whether a pleader did so is hidden from us, but nonetheless it seems clear that the attorney

[1] *Calendar of the Roll, 1227*, no.489.

was both empowered to have conduct of proceedings on behalf of his principal and capable of doing so competently.

On only six of the eighteen recorded occasions upon which an attorney attended on behalf of an absent litigant was his role simply to act procedurally. Three attorneys appeared on a fourth day in the absence of the opponent, one received a day, and two more attended respectively to seek a view (as defendant) and to be adjourned for a view to be taken (as plaintiff). There is thus a clear impression that attorneys who appeared at this particular eyre were not only acting on behalf of a narrow sector of society, senior ecclesiasts and substantial secular freeholders, but also that they were sent into court to represent their principals as fully as circumstances permitted.

Although no real differentiation in recorded outcomes between cases involving ecclesiastical attorneys and those involving secular attorneys is discernible in Buckinghamshire, they can to a degree be distinguished at the Surrey eyre of 1235. Of the 22 recorded appearances of attorneys on behalf of absent litigants, twelve were for defendants (eight of whom were ecclesiastical and four were secular), five for plaintiffs (two ecclesiastical and three secular), three for warrantors (all secular), the remaining two being uncertain (both secular). Although it is probably mere happenstance, with no significance attaching, that ecclesiastical attorneys appeared for more defendants, by a factor of four, than they did for plaintiffs, the imbalance may reflect a determination on the part of the religious establishment to defend existing interests and not allow them to lapse by default. The ecclesiastical litigants who appeared by attorney include the prior of Warter and the abbot of Fountains who, by their respective attorneys, went without day in a case originating in Yorkshire, following the non-appearance of the demandant on the fourth day.[2] In a Lincolnshire plea of services, a day was given to the

[2] *The 1235 Surrey Eyre*, ii, no.206.

attorneys of two priors to hear judgment.[3] The abbot of Pipewell's attorney was authorised to capitulate on a Warwickshire plea of land, and did so on being licensed by the court.[4] The bishop of Exeter, through his attorney, fought a Surrey claim of right to land, and following adjournment for the convening of a grand jury, agreed to concord.[5] The most active prelate at the eyre, with four recorded appearances by attorney on Surrey pleas, was the abbot of Chertsey, sending an attorney on three assizes of *mort d'ancestor* and one of nuisance.[6] Although jurors found in the nuisance action that a hedge had been overthrown on the orders of the abbot, he had greater success in the remaining three cases, going without day on the various bases that the plaintiff was a bastard, that the plaintiff's uncle did not (as claimed) die seised of the land at issue, and after agreeing an entitlement to common of marsh.

The cumulative nature of the outcomes of the ten hearings in which ecclesiastical attorneys were involved differs from that of the outcomes of the twelve hearings in which secular attorneys appeared, in only three of which were substantive issues addressed. In one case, a claim for acquittal of a pledge to repay two moneylenders was successfully resisted and in another, a claim of right in land failed because the defendant was seen to be under age.[7] A claim by a presumed Yorkshireman, by his attorney, for performance of a range of customary services was partially admitted by the defendant and the parties were licenced to concord.[8] The remaining nine appearances by an attorney for a secular litigant preceded adjournments to Westminster and elsewhere, in five cases without any previous recorded activity, the other four adjournments following brief proceedings involving, respectively, three vouchers to warranty and an appearance on the fourth day.[9]

[3] Ibid., no.220.
[4] Ibid., no.257.
[5] Ibid., no.105.
[6] Ibid., nos.89, 107, 108, 135.
[7] Ibid., nos.307, 254.
[8] Ibid., no.179.
[9] Ibid., respectively nos.153, 205, 218, 253 (two examples); 210, 255 (two examples); 252.

A tentative interpretation of the outcomes of these 22 appearances by attorney is that a substantial number of them were sent into court by their principals in the knowledge (if acting as instigator) or expectation (if acting for the other party) that they would be involved in no, or little, more than putting in an appearance and taking a purely procedural step. Such knowledge or expectation is likely to have inhibited any requirement on the part of the litigant principal that his attorney acquire or possess any particular skill, legal or otherwise. But this is subject to the caveat that such basic, 'simple' attorneys were less in evidence when acting for ecclesiastical litigants than when acting for secular litigants. This in turn suggests that ecclesiastical attorneys were more likely to be proactive in seeking some sort of conclusion, whether on judgment or by the verdict of an assize, or by agreement or withdrawal. Although not all outcomes would have been those that were wished for, it may be surmised that attorneys across the board were attempting to carry out the instructions and comply with the demands of their respective principals, and that ecclesiastical attorneys were therefore more likely to be authorised to exercise discretion and to make significant decisions. Over time, and although lacking independence, such men would inevitably be capable of cultivating lawyerly characteristics, in contrast to those secular counterparts whose required role in court was simply to prevent default or oversee a procedural advance.

Of the 78 recorded instances of attorneys appearing in court and participating in proceedings at the Berkshire eyre of 1248, 52 such appearances were made on behalf of absent plaintiffs (of whom eleven were ecclesiasts and 41 were secular), and 26 on behalf of absent defendants and warrantors (of whom eight were ecclesiasts and eighteen were secular). The outcomes of the eleven occasions upon which attorneys appeared for ecclesiastical plaintiffs may be summarised as follows. Judgment was awarded in two related pleas of warranty

following the non-appearance of the defendant.[10] A debt was acknowledged.[11] A claim of land was adjourned on the defendant vouching another to warranty, as was a plea concerning a weir due to a jury not turning up.[12] Adjournments were ordered in four cases in which the defendant defaulted on the fourth day, and days were given to hear judgment in two further cases.[13] As to the eight occasions upon which attorneys appeared for ecclesiastical defendants, one matter was settled by agreement following denial of the plaintiff's right, and another by a fully compensatory agreement following a voucher to warranty.[14] A denial of force and injury was entered, and attorneys for an abbot and a prior went without day on the non-appearance of plaintiffs on the fourth day.[15] Two adjournments were ordered by agreement, and others in order to receive a day to hear judgment and to levy a chirograph respectively.[16]

In seeking to assess the motivation of the nineteen ecclesiastical litigants who were represented by attorneys, it is difficult to see how any of their representatives could have achieved more than they did by way of outcome. There certainly appears to be no evidence of procrastination or undue delay in seeking resolution. Can the same be said of the secular sector? Of the eighteen attorneys who appeared for secular defendants or warrantors, four sought and obtained adjournments, in one case by vouching another to warranty and in three more by claiming a view. In four further cases, days were given to the parties. The remaining ten instances of recorded attorney participation on behalf of a secular defendant or warrantor were less procedural and more substantive. One such was an appearance by the attorney for a warrantor to argue that his principal should not be required to warrant the defendant, putting

[10] *The Roll of the Berkshire Eyre*, nos.218, 393.
[11] Ibid., no.577.
[12] Ibid., nos.334, 582.
[13] Ibid., respectively nos.586, 587, 588, 646; 619, 658.
[14] Ibid., nos.27, 534.
[15] Ibid., nos.555, 384.
[16] Ibid., nos.462, 528, 612, 679.

himself on a jury in that regard, while another attorney attended an assize hearing on a contested claim for advowson.[17] Three hearings involved a denial by the defendant of the plaintiff's claim on factual grounds.[18] The other five proceedings were contested on legal grounds, for instance by disputing a need to answer a writ or by denying an entitlement to dower in law.[19]

As with ecclesiastical attorneys across the board, attorneys acting for secular defendants or warrantors would not seem on the above evidence to have been procrastinatory (other, perhaps, than those who sought a view), but the motives of the 41 attorneys who represented secular plaintiffs is less clear cut. Three attended simply to withdraw, and on six occasions a day for judgment was given. On no fewer than 23 further occasions, an attorney presented himself on the fourth day, whereupon the matter was adjourned in the absence of the defendant in each case. Although, in theory, a defendant's non-appearance would not have been known when the attorney appointment was made, and the attorney would have to be prepared for the opponent to appear and for all that that would entail, the sheer number of non-appearances might suggest that they were, in practice, not only commonplace but predictable also. On four other occasions, a claim was met by the defendant vouching another to warranty, and on another, the parties rapidly agreed terms suggesting capitulation on the part of the defendant. On only four occasions out of 41 was the attorney for an absent secular plaintiff involved with substantive issues, disputed evidence or legal argument.[20]

Given this very high proportion of cases that required little of the plaintiff's attorney, other than that he avoid default as constant delays were negotiated and the long drawn-out legal process ground on, it might seem that this was the overriding purpose of plaintiffs sending

[17] Ibid., nos.674, 496.
[18] Ibid., nos.410, 430, 509.
[19] Ibid., nos.463, 510, 533, 557, 573.
[20] Ibid., nos.27, 463, 510, 650.

attorneys into court. If so, there would be no need for their attorneys to possess qualities beyond those present in the bulk of the free population. There would certainly be no obvious need to despatch a 'lawyer' (even if one was available), to hang around in court at great expense simply to be given another day. When, down the line, a defendant's delaying options were exhausted and the matter finally fell to be resolved, a plaintiff might opt to do what most litigants seemingly did and appear in person, supported perhaps at this late stage of the proceedings by a pleader. If such was the general pattern, the professionalisation of attorneyship would not have been thereby encouraged.

Evidence from the Wiltshire eyre of 1249 reinforces this impression that much of what an attorney, ecclesiastical or secular, was required to do was largely procedural. Of the 22 recorded appearances of attorneys, eight were made on behalf of plaintiffs (five of whom were ecclesiastical), thirteen on behalf of defendants (six of whom were ecclesiastical) and one for a warrantor. Sixteen of the 22 appearances may be regarded as being for procedural reasons. They ranged from four instances of an attorney (three of whom represented ecclesiasts) presenting himself for a plaintiff on the fourth day, having also presumably attended on the three preceding days, the matter being then adjourned following the non-appearance of defendants; two instances of a day being given to ecclesiastical plaintiffs; one matter being adjourned on the defendant opponent claiming a view; one plea being terminated on the plaintiff's withdrawal by licence; four instances, two of which concerned ecclesiastical defendants, of calling another to warranty; one instance of an attorney turning up and conceding; two instances of receiving a licence to capitulate; and one case of acknowledgement of an opponent's right.[21]

[21] *Civil Pleas of the Wiltshire Eyre*, respectively nos.57, 312, 431, 539; 280, 301; 153; 559; 61, 167, 334, 401; 217; 209, 452; 288.

It should be emphasised that although an attorney who attends court simply to take a procedural step would not need to possess any great skill or expertise so to do, it does not follow that any such attorney would necessarily be unable to deal with anything more complicated. Indeed, of the sixteen actions just summarised, seven were dealt with by ecclesiastical attorneys who, it is suggested, were more prepared for involvement in substantive proceedings than were many of their secular counterparts. Perhaps significantly, on the hearing of no fewer than four of the remaining six pleas, all of which required a degree of proactivity on the part of the litigant's attorney, ecclesiastical attorneys were involved. The abbess of Caen sent her attorney to respond to an assize of *mort d'ancestor* relating to land held by her.[22] Her attorney was able to agree terms, the tenor of which suggest either that the claimant was bought out or that the parties colluded in a conveyance of the land at issue. Either way, positive action and an ability to negotiate on the part of the abbess's attorney may be assumed. In another case a jury found in favour of the abbess of Wilton whose attorney attended on her behalf.[23] Although, as ever, the possible involvement of a pleader cannot be discounted, the attorney for the master of the Knights Templar in England is seemingly given a speaking role in resisting a claim for dower in which he exhibits a sufficiently detailed knowledge of the claimant's familial circumstances to ensure her amercement and a successful outcome for the master.[24]

The abbess of St Edward of Shaftesbury in Dorset was cited as defendant in an assize of *novel disseisin* of common of pasture.[25] Despite the restriction imposed upon the use of attorneys in defending such actions in or around 1227, she is clearly stated to be represented by an attorney, not by a bailiff. Indeed, her appointment of two attorneys for the purpose is

[22] Ibid., no.39.
[23] Ibid., no.190.
[24] Ibid., no.309.
[25] Ibid., no.86.

recorded in the roll of attorneys.[26] In the event, he entered a spirited defence on her behalf, based in part on the Statute of Merton and in part on a further submission that the matter had already been adjudicated upon at a previous eyre. The assize found substantially for the abbess, the complainant being in mercy, both for the false claim and for failing to prosecute a writ of warranty of charter arising out of the same action.[27] In the secular sector, a plea of *mort d'ancestor* was resisted on the ground that the land at issue was held in wardship by the defendant, and the attorney for Isabel de la Brome apparently spoke in her defence to a writ of right finally adjourned for judgment elsewhere.[28]

Due to the relatively minor involvement of ecclesiastical litigants in the proceedings of the Shropshire eyre of 1256, little data is available on the issue of whether ecclesiastical attorneys were more likely to be proactive and authoritative than their secular counterparts. There is, however, good evidence on the issue of whether many attorneys (largely secular in the event) were programmed to take procedural steps but little more. On 28 of the 34 occasions upon which an attorney is recorded as appearing for an absent litigant (nineteen of whom were plaintiffs, thirteen defendants and two warrantors), purely procedural steps were taken or default for non-appearance was avoided. On fourteen of those occasions, the attorney for a plaintiff appeared and, on the non-appearance of the defendant on the fourth day, was given an adjourned day. On a further five occasions (twice in conjunction with an opponent's attorney), an attorney was simply given a day for some stated purpose. Attorneys for defendants sought a view on four occasions, and another vouched a third party to warranty. In a Buckinghamshire case, in which the defendants in a writ of entry sent an attorney to witness a tussle between the plaintiff and a warrantor who had been vouched at a previous hearing, the matter was adjourned by agreement to allow a jury of twelve knights

[26] Ibid., no.504.
[27] Ibid., no.386.
[28] Ibid., nos.102, 314.

and witnesses to speak on the authenticity of a charter produced by the warrantor. An attorney for two warrantors appeared in a contested assize of *mort d'ancestor* in which both warranties were rescinded.

The six occasions on which attorneys for absent parties were seemingly more active occurred within the hearing of four pleas, both sides being represented on two of them. In a substantial claim for dower originating in Warwickshire, both parties sent attorneys to argue their respective cases in open court before it was finally adjourned for the verdict of a jury.[29] Attorneys again represented both parties in a trial concerning competing markets.[30] The plaintiff complained, through his attorney, that the profitability and viability of his existing market, obtained by the grant and charter of the king, had been prejudiced by the defendant's introduction of his market, albeit on a different day and in another place to that of the plaintiff. The defendant's attorney countered by arguing that the defendant's market, held on the previous day, was of benefit to the plaintiff because it brought traders to the area. The jury found for the plaintiff, and the case was further adjourned to Westminster for judgment. In another contested trial, the defendant, through his attorney, had to deal with a reluctant warrantor in a complicated claim of land.[31] Although the presence of a specialist advocate for the defendant cannot be discounted, the wording of the official record strongly suggests that the attorney was speaking for his principal. Eventually, the warrantor capitulated, and was ordered to compensate the defendant in the usual way following the enforced surrender of the land at issue to the plaintiff. Fourthly, an attorney representing the Dean and Chapter of St Mary's, Shrewsbury, seemingly put forward a spirited (but unsuccessful) defence to an assize of *mort d'ancestor*, which resulted in the Dean and Chapter being amerced.[32]

[29] *The Roll of the Shropshire Eyre*, no.398.
[30] Ibid., no.403.
[31] Ibid., no.459.
[32] Ibid., no.64.

Clearly, these four cases demonstrate that some attorneys were both presumably trusted by their principals to act for them in contested actions and also were seemingly capable of bearing the responsibility of doing so (the presence or otherwise of a specialist advocate being unknown). But the more common relationship between attorney appearances and the meeting of procedural requirements is again suggested by data from the Surrey eyre of 1263, that data also allowing such relationship to be viewed in the context of whether pleas originated locally or elsewhere. Of the 88 recorded appearances of attorneys on behalf of absent parties, 78 were made on behalf of secular litigants, and 64 concerned foreign pleas (as discussed *ante*). Plaintiffs were represented on 57 occasions, on no fewer than 30 of which (28 on the hearing of foreign pleas and two on local pleas) the attorney waited out the four required days and, upon the non-attendance of the defendant, the action was adjourned. On a further five occasions (three foreign and two local), the defendant's non-appearance on such an attendance led to recovery of seisin by the plaintiff. A plaintiff's attorney also appeared on each of four days in a foreign plea to hear judgment upon the defendants who were not in attendance, again with seisin being recovered. Adjournments were granted on the hearing of nine more pleas, three foreign because the defendant claimed a view, three foreign on a day being given and two foreign and one local on the defendant vouching another to warranty. One attorney in a Surrey plea withdrew by licence, another in a foreign plea reached agreement by licence, and in three instances (one foreign and two local) a defendant was permitted to surrender by licence.

Thus, of the 57 occasions upon which attorneys appeared for absent plaintiffs, 50 saw no pleadings, just eight originating locally and 42 being foreign. Three of the remaining seven such occasions were to hear foreign pleas, all the plaintiffs concerned being secular. On one such (a foreign plea), the matter was finally adjourned elsewhere.[33] Just six concluded, one

[33] *The 1263 Surrey Eyre*, no.232.

foreign plea and two local pleas in the plaintiff's favour, and one local and one foreign plea leading to amercement for a false claim.[34] In one local plea, the plaintiff was partially successful.[35]

The very strong impression is, therefore, again given that the great majority of attorneys who are recorded as representing plaintiffs did so in a purely functionary manner, permitting by their mere presence their principals' suits either to proceed to the next stage or, in cases in which the defendant had effectively withdrawn from the fray, to receive judgment. Furthermore, the overwhelming majority of such cases originated in counties other than Surrey. A similar picture is presented where attorneys appeared for absent defendants. Of the 31 recorded instances, twelve attorneys (nine on local pleas and three on foreign pleas) vouched another to warranty, while four more on foreign pleas sought and were granted a view, matters being thereafter adjourned. A day was given in three more foreign pleas, and in one further foreign plea the attorney attended simply to surrender by licence. An attorney on a foreign plea attended upon the plaintiff's withdrawal by licence (an agreement perhaps being struck),[36] and three pleas, one local and two foreign, were settled by licensed agreement, one by the attorney for the abbot of Chertsey, another on a writ of cosinage, and a third on behalf of the Countess of Ferrars in regard to extensive holdings of land in the counties of Derby, Northampton, Stafford and Lincoln.[37] In three further cases, each on the hearing of a foreign plea, an attorney attended to deny the plaintiff's claim, whereupon the action was adjourned for a jury.[38]

Only four cases reached a contested conclusion, two of which were local and three of which involved ecclesiastical attorneys. In one, the attorney in a foreign plea made an ultimately

[34] Ibid., respectively nos.144, 185, 286; 154, 311.
[35] Ibid., no.196.
[36] Ibid., no.306.
[37] Ibid., nos.101, 265, 310.
[38] Ibid., nos.228, 232, 311.

unsuccessful denial on behalf of the prior of Kenilworth.[39] In two local pleas and one foreign plea, the defendant's attorney made a successful denial, going in each case without day after a favourable jury verdict. The defendants were respectively the abbot of Chertsey, the master of the Knights of the Temple in England and, in a Sussex plea of wardship, the widow of John of Gatesden, a former sheriff of Surrey and Sussex, knight and *curialis*.[40] The principals in all four cases were powerful and important people whose use of skilled and lawyerly attorneys to protect their interests in court is unsurprising. But it may be surmised that attorneys acting in many of the cases that did not reach a contested conclusion were not of that ilk, but sent by out-of-county litigants to do a simple job requiring no particular expertise.

An aspect of attorney attendance that has been touched upon in the context of the Surrey eyre of 1235 is again observable at the Derbyshire eyre of 1281, at which are recorded appearances *per attornatum* on the hearing of local pleas by five secular plaintiffs, four secular defendants, one ecclesiastical plaintiff and five ecclesiastical defendants. The seemingly high proportion of appearances made on behalf of ecclesiastical litigants is immediately noticeable, and has been remarked upon. Also evident, however, is the incidence of attendance by attorneys sent by such litigants when summonsed as a defendant, in contrast to secular defendants who are frequently recorded as defaulting. Of the five instances of attorneys appearing for ecclesiastical defendants, two appearances on behalf of a prior were made on the fourth day and on the non-appearance of the plaintiff in each case, the prior went without day.[41] Appearances were made by the attorney for a dean to secure an adjournment for a jury to be convened, and by an abbot's attorney to be warranted by a previous

[39] Ibid., no.286.
[40] Ibid., respectively nos.53; 66; p.xxii, no.314.
[41] *The Rolls of the 1281 Derbyshire Eyre*, nos.147, 148.

vouchee.[42] In only one case did an attorney (for the abbot of Cumbermere) attend for the purpose of a contested hearing which, after much legal argument was finally adjourned for judgment.[43] In the one recorded case of an attorney appearing for a plaintiff ecclesiast, the abbot of Wellbeck's attorney appeared on the fourth day, and on the non-appearance of the defendant received judgment that the defendant be attached to be at Lincoln on a stipulated date.[44]

Of the five recorded instances of attorneys appearing in place of absent secular plaintiffs, one such appeared when the defendant claimed a view, the matter then being adjourned, another appearing on the fourth day when the defendant put himself on a jury.[45] Of the remaining three cases, one was contested but the record of the hearing is unfinished, another was similarly contested and adjourned for a jury to be elected, and the attorney for a plaintiff in an action of warranty received judgment on the non-appearance of his defendant.[46] Of the four occasions on which an attorney appeared for an absent secular defendant, one such was made simply to concede, another to claim a view, and a third to receive a day.[47] Only on the fourth occasion was there legal argument, both parties putting themselves on the country, the matter then being adjourned for a jury.[48] Thus, the use of attorneys by local litigants still seems to have been geared to the progression of actions procedurally, whether by plaintiff or defendant; on only four of the fifteen instances of attendance by attorney was the matter then and there contested.

How, then, to summarise findings from our enquiry into what motivated thirteenth-century principals in their choice of attorney, and the effect of that motivation upon the nature and

[42] Ibid., nos.247, 264.
[43] Ibid., no.151.
[44] Ibid., no.287.
[45] Ibid., nos.285, 150.
[46] Ibid., nos.130, 237, 245.
[47] Ibid., nos.89, 285, 292.
[48] Ibid., no.228.

quality of those chosen? Unless the recording of attorney appearances on the hearing of local pleas was deliberately curtailed (there being no evidence or reason that this should be so), principals collectively used appointed attorneys with much greater intensity on the hearing of foreign pleas. Although unsurprising on one level, given that necessity or convenience would be obvious drivers, it seems that the loading in favour of foreign pleas resulted in part also from a relative lack of use of attorneys in the hearing of local pleas by secular litigants. Ecclesiastical litigants, in contrast, can be seen to be represented with (as far as can be judged) equal intensity on the hearing of both types of plea, secular litigants typically being represented overwhelmingly on the hearing of foreign pleas.

This apparently much reduced intensity of use of attorneys by local secular litigants, even when previously appointed, reinforces the impression that, prior to the 1260s at least and probably throughout the period under review, their appointment of attorneys was precautionary, personal attendance where possible being preferred. Some of the greater secular lords and ladies of the kingdom should, perhaps, be excepted from this stricture, but it was ecclesiasts, in the main, who appointed attorneys with a view to actually employing them in court. As to the motivation of senior churchmen in so doing, some no doubt did so out of necessity; many of them were busy men with numerous commitments, perhaps holding land in several counties, and would thus need to use attorneys even on the hearing of local pleas. But that is not to say that necessity had to be their sole motivation in being represented. They, like some fellow ecclesiasts who were geographically or otherwise able to attend in person, might choose to use attorneys in part, at least, from a realisation that advantage lay in so doing. Their religious houses gained by being competently represented, and the resulting incentive to ensure a capability on the part of chosen representatives and for suitable men to step up to the mark is obvious.

This is borne out by the evidence of outcomes achieved. Whereas the attorneys representing secular litigants were more likely to be sent into court purely for the purpose of taking or reacting to a procedural step, particularly it would seem on the hearing of foreign pleas, attorneys representing absent ecclesiastical litigants were more likely to be additionally authorised to oversee the resolution of substantive issues, whether by the means of tactical retreat, negotiated agreement or full-blooded trial. This difference in attitude on the part, respectively, of most ecclesiasts and most secular litigants prompts the likelihood that the attorneys acting for religious houses (and great secular estates) were more likely to be specialists, honing relevant skills and being generally more 'lawyerly' than were most of their secular counterparts of whom little in the way of expertise would be expected. Indeed, the probability that some attorneys representing churchmen and powerful lords gained sufficient expertise and experience to be able to advise as well as represent can be envisaged.

Chapter 10: Lawyerly qualities and characteristics

Having considered what motivated litigants to appoint attorneys at selected eyres between 1218 and 1281, we now focus upon the attorneys themselves. As will be seen, the great majority of attorneys appointed to appear at any one of the eyres under review were 'simple' attorneys, their duties seemingly confined to appearing in court in place of their principals without any expectation of adding value. But from the earliest days, occasional glimpses may be had of men who seemingly offered more than mere substitution. To what extent, therefore, were attorneys appointed who, in meeting the demands of those appointing them, exhibited what may be termed lawyerly qualities or characteristics? And in so doing, might any such attorneys be properly described as being 'professional' either in outlook or in terms of employment?

The most obvious indicator of possible professionalism is the number of appointments received by any given attorney. In principle, the greater the number of appointments received, the greater the likelihood of the recipient generating a living from the activity. But it is feasible for an independent professional attorney to act for a small number of clients, particularly those of a litigious bent. Conversely, the two or more appointments received by another attorney may be related or linked by, for instance, having a common principal or different principals in a single action. Thus, although the number of appointments by different principals in different actions remains the key factor, there is a necessity to look more widely at appointments in the round.

The coming of the general eyre to Lincolnshire in 1218 attracted a large gathering of litigants and attorneys. No fewer than 151 different men and (very occasional) women are identifiable as attorneys at the eyre, all of whom, with the exception of just seventeen men, received a single appointment only. Twelve men received two appointments and five men received

three. The appointments of a majority of those with two appointments were related. Some men received their appointments from the same principal in the same suit, as with Jordan le Rat, or in different suits, as with brother Gilbert of Hauton, William of Blyth, Walter son of Simon, and Rannulf of Healing.[1] Others received appointments from different principals in the same suit as with John of Barton or in related suits as with Walter of Whitton.[2] Brother Gilbert's appointments illustrate also the common use of monks by prelates, in this case the abbot of Bardney. The appointments of others appear independent, although the possibility of principals being acquainted cannot be discounted. Gervase of Arnold, for instance, was appointed in different proceedings by Master William of Lincoln and by Hugh de Neville, and Alexander of Sleaford was similarly appointed by the archdeacon of Stow and by Peter of Bath, as was Alan of Keal by the dean and chapter of Lincoln and by Gilbert de Lacy.[3] Roger de Poidras was appointed by the prior of Sempringham and by a widow in separate suits.[4] The twelfth man to receive two appointments, Rannulf of Friskney, is dealt with below.

Of the five men who received three appointments, Osbert of Newport was appointed respectively by the dean and chapter of Lincoln, by master William of Lincoln and by his own brother.[5] Osbert son of Richard received one appointment by a female litigant on an adjournment and two appointments by the same man, respectively in contemplation and on adjournment of the same suit.[6] The second of these two appointments was made in the alternative to another man to be appointed three times, Robert of Burton, whose two other appointments were made by different principals in related suits in the alternative to Walter of

[1] *RJE*, respectively nos.490, 578; 614, 790; 418, 439; 550; 322, 328.
[2] *RJE*, respectively nos.322; 619, 620.
[3] *RJE,* respectively nos.432, 628; 1, 231; 31, 105.
[4] *RJE*, nos.326, 396.
[5] *RJE*, nos.31, 225, 711.
[6] *RJE*, nos.488, 522, 618.

Whitton, mentioned above.[7] This illustrates an observable curiosity within the pattern of appointment of attorneys at the eyre that several of the seventeen men who received more than one appointment did so in the alternative to another member of the same small group. Alan of Keal and Osbert of Newport, for instance, shared an appointment by the dean and chapter of Lincoln.[8] Although this should not be taken as suggesting any degree either of lawyerliness or of professionalism on the part of the attorneys concerned it might, in the context of some men acting for different litigants in different suits, suggest a willingness on the part of such men to act as simple attorneys if requested. Whether they might have done so in fulfilment of an obligation, or have been reimbursed expenses or even remunerated is unknowable.

Another instance of two men from within the group being jointly appointed lies in the use made by Simon of Kyme of his bailiff, Rannulf of Friskney in two entirely different suits, the second of which was in conjunction with Simon's son, Philip of Kyme who received two other appointments by his father.[9] This case illustrates well the traditional nature of much attorneyship in *circa* 1220. Simon, as a substantial landholder, was presumably too busy to appear in person in the several suits in which he was involved, choosing to send in his place his bailiff or his son and presumed heir. Curiously, however, at the same time as he was attorning his bailiff and his son in specified actions, one of which was an assize of *novel disseisin* brought by Simon against the abbot of Bardney, he appointed a third man, Thomas son of Miles of Wainfleet, to represent him in a related plea of warranty of charter brought against him by the abbot.[10] On that plea being heard, Simon *per attornatum suum* acknowledged the charter and Simon's seal and, after successfully seeking a view, warranted

[7] *RJE,* nos.619, 620.
[8] *RJE*, no.31.
[9] *RJE*, nos.366, 5, 833.
[10] *RJE*, no.366.

the land at issue.[11] Quite why Thomas was brought in for this particular plea is unknown, but perhaps he drew up the charter. In any event, there is no reason to regard him otherwise than as, metaphorically, a horse for a particular course, and neither a lawyer nor a professional practitioner.

Indeed, there is no evidence of any demand at this time for the assistance of professional attorneys. Many appointments followed traditional lines, as with the prior of the Hospital of Jerusalem who appointed brother Ralf of Seagrave on three occasions in at least five separate pleas.[12] Ralf clearly had the prior's trust, representing him in court on at least one occasion, and it may be inferred that he was both experienced and competent in safeguarding the legal and landed interests of the Hospital.[13] The prior had no perceived need for the services of an independent professional. Such traditional appointments abounded at the eyre. Wives appointed husbands, fathers and widowed mothers appointed sons, men appointed their blood brothers, and abbots and priors appointed monks, clerks and canons.[14] Possible specialists featured, as with the appointment by priors of their cellarers, or that by a magnate of his seneschal.[15] An interesting aside is that although the prohibition on the use of attorneys by defendants in assizes of *novel disseisin* was not enforced until 1227, it was almost, if not absolutely, invariable for such a defendant to be represented, if at all, by his bailiff and not by an attorney. There are at least seventeen instances recorded.

At the 1227 Buckinghamshire eyre, 76 different individuals received appointments as an attorney, of whom 70 received only a single appointment and six received two. Of the six men who received two appointments, those of Paulinus Peuvre (an important man and steward of the King's Household) were made by the same principal, William of Cantilupe,

[11] *RJE*, nos.666, 758.
[12] *RJE*, nos.19, 206, 584.
[13] *RJE,* no.610.
[14] *RJE*, respectively nos.16, 18; 738, 751; 39; 4, 140.
[15] *RJE*, respectively nos.10, 443; 11.

also a steward of the King's Household.[16] Not only were both men thus acquainted but also from the same social drawer. Both of John Neirenut's two appointments were made on adjournment to the ensuing eyre of Bedfordshire, one by an apparent relative.[17] Robert of Tievill's two appointments were made by plaintiffs in assizes of *novel disseisin*, in one of which the defendant admitted the disseisin and in the other of which the jury found for the defendants.[18] Robert of Aylesbury received two seemingly unrelated appointments, one for proceedings at the eyre (by a possible relative), and the other on an adjournment.[19] He seemingly appeared for the first principal at a subsequent hearing at which that principal was quit.[20] William of Shirinton's two appointments were also unrelated, the first of which was made following leave to agree being granted, and he stood as pledge in one further matter.[21]

The provision of pledge, sometimes alongside acceptance of an attorney appointment, was not uncommon. William of Stanes, for example, is recorded as standing as a pledge on two occasions in addition to his single appointment as an attorney on the adjournment of an assize of *mort d'ancestor* in which he had just provided warranty.[22] Roger of Wymbervill combined his one appointment as an attorney with three offerings of pledge.[23] Members of the knightly class also played occasional roles in court proceedings, William Russel, for example, being elected as a grand juror on two occasions, acting also twice as an essoiner, and once as an attorney.[24]

The sixth man to receive two appointments at the eyre was William de la Dene, and he is one of three attorneys who are of particular interest. One appointment, by Philip of Buterfeld in

[16] *Calendar of the Roll, 1227*, nos.99, 321.
[17] Ibid., nos.457, 458.
[18] Ibid., nos.197, 198, 282, 369.
[19] Ibid., nos.117, 225.
[20] Ibid., no.270.
[21] Ibid., nos.208, 330, 219.
[22] Ibid., note to no.153; nos.477, 163.
[23] Ibid., nos.416, 166, 279, 282.
[24] Ibid., nos.311, 312, 15, 43, 44.

William's sole name, was in a plea of land involving Robert, chaplain, of Essebir'.[25] At a subsequent hearing, Robert and his pledges to prosecute were amerced because he did not sue Philip for a tenement in Chalfont, and yet Philip is later recorded in an incomplete or degraded entry on the plea roll as giving half a mark for leave to agree with Robert in an unspecified matter.[26] Whilst the precise relationship between the appointment and the first of those actions is uncertain, the subsequent agreement is certainly related as William, in addition to being Philip's sole attorney, provided pledge for payment of the fine. As will be seen, this was one of two occasions upon which William apparently acted in a dual capacity within the legal process. William is also recorded as standing as one of two pledges on the presumed amercement of two litigants who withdrew from an assize of *novel disseisin*.[27] He may also be the same man as the 'Wm son of Dene' amerced as one of the pledges of a plaintiff who withdrew from an action of *novel disseisin* concerning a dyke.[28]

The other appointment of William de la Dene as attorney, made by the abbot of Missenden (in the alternative to one Nicholas of Burton) contemplated four separate pieces of litigation against, respectively, Hugh of Saunford in an assize of *novel disseisin*, William of Eyneford in a similar plea, Robert del Broc in a plea of warranty of charter and Alexander of Hamden in a similar plea.[29] There is no record of any trial of the plea between the abbot of Missenden and Hugh of Saunford, but the plea involving William of Eyneford for common of pasture was resolved by the abbot's withdrawal from the suit.[30] Two pledges are named, one of whom was William de la Dene who also, presumably, appeared as the abbot's attorney, although this is unstated. Whether the withdrawal reflected the merits of the case or was

[25] Ibid., no.110.
[26] Ibid., no.301, 425.
[27] Ibid., no.406.
[28] Ibid., no.265.
[29] Ibid., no.109.
[30] Ibid., no.316.

tactical and part of a negotiated settlement behind the scenes is unknown. The third named opponent of the abbot of Missenden, Robert del Broc, was a minor and, although there is no recorded trace of the trial of a plea of warranty between them, Robert did withdraw from an action of *mort d'ancestor* concerning forty shillings rent pending his coming of age.[31] The abbot is stated to have given to Robert the sum of forty shillings and to have agreed to pay future rents. William's role, if any, as the abbot's presumed attorney, is unstated. In a separate case involving Robert, a charter is produced and its sixteen witnesses examined on oath, one of whom was William de la Dene.[32]

The abbot's final opponent, Alexander of Hamden, was a man of sufficient social standing to be nominated as a grand assize juror on several occasions.[33] The abbot's warranty of charter plea involving him was settled, the abbot giving one mark for leave to agree on the pledge of William de la Dene.[34] In the absence of any other recorded stage of the proceedings, this could well have been a collusive conveyance of land. Although we cannot be certain that William actually acted as the abbot's attorney on the day, as the co-attorney Nicholas of Burton may have fulfilled that role, William's known involvement in the capacity of pledge might render the duplicative presence of Nicholas unnecessary. This is therefore probably the second occasion upon which William has seemingly acted as both attorney and pledge for the same litigant in a single action. If William did indeed fulfil both functions, some lawyerliness may be suggested.

Although it certainly appears that William acted as something of a fixer for the abbot of Missenden, he was not the only man used by the abbot for attorney duties. In addition to Nicholas of Burton with whom William was appointed in the alternative as above, the abbot's

[31] Ibid., see nos.314, 410; 426.
[32] Ibid., no.410.
[33] Ibid., see nos.138, 142, 143, 312.
[34] Ibid., no.451.

canon Richard de Grange featured in such a role on one recorded occasion against John son of Geoffrey in a plea concerning a meadow.[35] In the record of the ensuing hearing, it is stated that the abbot attended by his attorney 'Richard, a canon', who sought a view and the matter was adjourned to Bedford.[36] Given the procedural formality and certainty of such a defensive move, perhaps the abbot felt it unnecessary to trouble William with it, Richard being capable of taking the required step.

Prior to the hearing of the plea concerning the abbot of Missenden and Alexander of Hamden, Alexander had himself appointed as his attorney one Stephen Crook, the second attorney of interest at the eyre.[37] As mentioned, this plea was perhaps settled collusively, and it may be wondered whether both Stephen and William de la Dene, on behalf of their respective principals, had a role to play in that process.[38] Certainly, this was not the only occasion upon which the legal paths of William de la Dene and Stephen Crook crossed. Stephen was the second pledge in the withdrawal of the abbot of Missenden against William of Eyneford referred to above (William being the other), and was also a pledge for the amercement of the plaintiff referred to above who withdrew in an assize of *novel disseisin* concerning a dyke in which 'Wm son of Dene' was amerced also.[39]

Although Stephen Crook received no attorney appointment other than that made by Alexander of Hamden against the abbot of Missenden, his possible legal credentials are boosted by his standing pledge on no fewer than eight occasions.[40] In addition to the pledge for the amercement of the plaintiff who withdrew from the suit together with his pledges, one of whom was 'Wm son of Dene', referred to above, Stephen pledged for damages ordered

[35] Ibid., no.366.
[36] Ibid., no.508.
[37] Ibid., no.126.
[38] Ibid., no.451.
[39] Ibid., respectively nos.316; 265.
[40] Ibid., nos.265, 273, 279, 284, 316, 343, 372, 470.

against a disseisor, and also on the amercement of two disseisors. He was amerced as the pledge of a defaulting plaintiff in another assize of *novel disseisin*, and stood as a pledge in conjunction with William de la Dene on the withdrawal of the abbot of Missenden from his writ of assize against William of Eynesford. He again stood as pledge on the making of a concord on a plea of entry, and it may be speculated that he was one party's legal advisor emerging briefly into view. In an assize of *mort d'ancestor*, he pledged on the amercement for 'unjust vexation' of two participants in what appears to have been a misguided attempt at family arrangement, and also pledged an award of damages against a defendant on an assize of nuisance.

Additionally, in an assize of *novel disseisin*, he and another man attached a defaulting disseisor as pledges for his appearance, suffering amercement on his non-attendance, and in a further case he and two other men were amerced 'because [as electors] they chose jurors who were pledges of appellors' in one or more crown pleas, thereby clearly favouring the prosecuting parties.[41] Although the confinement of Stephen's activity as an attorney to a single appointment precludes his being a specialist, he was clearly a man-about-court and it may be that he was an embryo lawyer, eking out some sort of living by taking on anything relevant that came his way.

If Stephen Crook may have had aspirations, so also may Robert le Poher, the third attorney of interest at the eyre. Like Stephen, he received only one attorney appointment, in the alternative to another man who does not otherwise feature. His principal was William de Cantilupe in two Bedfordshire pleas, respectively of land and of warranty of charter, but there is no record of either plea being dealt with at the eyre.[42] He did, however, also stand as pledge for the payment by an opponent of a fine for leave to agree with William on a plea of

[41] Ibid., nos.262, 529.
[42] Ibid., no.348.

dower in respect of which William had earlier attorned Paulinus Peyvre, mentioned above.[43] He is recorded as standing pledge on two further occasions at the eyre, once for an apparent relative and also for a suspected murderer, later acquitted.[44] He is named as one of the witnesses to a charter called to testify on oath (William de la Dene being another such witness), and was also a former bailiff of the hundred of Riseborough, and a former serjeant.[45] He was also involved in several actions heard at the eyre, in some of which he was successful and in others in which he was not.[46]

Although not as involved in legal processes as were William de la Dene and Stephen Crook, Robert le Poher's activities and background suggest the existence at the eyre of a small circle of active men-about-court. The evidence does not support the thought that any of them were professional attorneys; indeed, with none of them receiving more than two appointments, they were hardly habitual attorneys of any description. Nonetheless, in their own different ways, they may be seen to have displayed qualities and characteristics which would, later in the century, coalesce with others to provide a template for professional legal attorneyship. Stephen Crook was clearly much in attendance around the court, his habitual pledging perhaps being a means of providing support for litigating parties. His single appointment as an attorney probably related to a disguised conveyance of land, undoubtedly a legal transaction. Robert le Poher also had administrative experience, as bailiff and serjeant, and was active in court. As witness to at least one charter he may also have had a familiarity with documentation. William de la Dene was perhaps a retainer of the abbey of Missenden, although was seemingly at liberty to act for others also. His involvement in a suit which settled as a probable conveyance of land, and a probable clerical background, allow literacy

[43] Ibid., nos.268, 321.
[44] Ibid., nos.669, 690.
[45] Ibid., nos.410, 603, 630.
[46] Ibid., nos.158, 380, 397, 482; 404, 480.

to be assumed. Collectively, these three men occupied a pocket of legal enlightenment in which were seeded characteristics to be associated in the fullness of time with lawyerliness and professionalism.

At the Surrey eyre of 1235, 62 different men (no women) are named as attorneys, sixty of whom received one appointment only. Just two men, Cardon de Freschevill and William Clerk, received two appointments each. Both of Cardon de Freschevill's appointments were by his brother on a plea of lands in Surrey and Yorkshire, and related in each case to the receipt of a chirograph at Westminster in the same action.[47] Cardon was neither a professional attorney nor a lawyer. Although William Clerk's appointments related to different actions, respectively to an Oxfordshire plea of advowson and a Sussex plea of dower, each appointment being made in the alternative to different men, his principal in both cases was Lucy de Arderne, the widow of Thomas de Arderne.[48] William may have been a court clerk, but it is more probable that he was a clerk in the service of his principal and perhaps her steward also. As such, and with a presumed literacy, his qualification to oversee Lucy's property dealings might explain his appointments as her attorney. However, in the absence of evidence that he acted for other principals also he, like Cardon de Freschvill, cannot be regarded as having been an independent professional practitioner.

Meekings observes that in 1235 Surrey, knights and freeholders who appointed an attorney to represent them frequently appointed a tenant.[49] See, for instance, the appointment of Osbert de Tuyle, a tenant of Cecily de Leatherlake.[50] Similarly, the bishop of London appointed Robert of Haringey or Alan of Stepney in a plea of customs and services.[51] Robert was one of the bishop's most important military tenants, holding estates in Fulham, Stepney and

[47] *The 1235 Surrey Eyre*, ii, nos.228, 270.
[48] Ibid., nos.248, 350; p.515.
[49] Ibid., p.38.
[50] Ibid., no.51.
[51] Ibid., no.50.

Hornsey.[52] He was joint guardian of the temporalities of the see during the vacancy of 1242-3, and was sometime constable of Hertford castle. The appointment of powerful attorneys was a feature of appointments by some of the more important litigants, motivated no doubt by an understanding that a powerful presence in court carried benefit.[53] Such attorneys were neither lawyers nor professionals, but they almost certainly, in the context of early thirteenth-century justice, added value.

The heads of religious houses, however, generally appointed a member of their house. As discussed *ante*, the abbot of Chertsey was the most active prelate at the eyre, being represented by attorney in a series of actions. He had previously appointed to appear in his place in six specified actions the two most interesting attorneys at the eyre, Ralph of Chertsey, his clerk, and brother Stephen, his prior.[54] Although we are told that the abbot sent an attorney on three pleas of *mort d'ancestor* and an assize of nuisance, we are not told which of Stephen or Ralph appeared in any particular case.[55] In the assize of nuisance, one of the abbot's co-defendants was Ralph Clerk, presumably his attorney.

Much is known about Ralph of Chertsey, and there may be significance in his being a clerk.[56] He appears to have served twice as the abbot of Chertsey's steward, firstly including the period 1218-20 and again in the 1230s.[57] He is also recorded as acting as the abbot's attorney in July 1233 as well as in 1235, and in 1241 he was a hundred juror, and was probably dead by 1255.[58] In a concorded action of right between two parties with no obvious connection to the abbey of Chertsey, he stood as pledge for payment of the licence fee.[59] He also witnessed

[52] Ibid., note 50, p.449.
[53] Ibid., p.39.
[54] Ibid., no.49.
[55] Ibid., nos.89, 107, 108, 135.
[56] See *The 1235 Surrey Eyre*, i, p.235.
[57] *The 1235 Surrey Eyre*, ii, note 108, p.463.
[58] *The 1235 Surrey Eyre*, i, p.235.
[59] *The 1235 Surrey Eyre*, ii, no.76.

no fewer than 59 deeds in the Chertsey cartulary, several Egham deeds, and a Kingston deed, many of which, as a literate clerk, he may have drawn. His son and heir, Simon the clerk, was prominent as a later abbot's attorney at the Surrey eyre of 1263 (as to which, see *post*). Brother Stephen also was seemingly an experienced attorney; as sub-prior, he had been attorned by the abbot in Bench pleas in 1225 and 1228.[60] Indeed, it would appear likely that both Ralph and Stephen were 'battle-hardened' representatives of the abbey, each of them well able to prosecute or defend institutional interests with skill and determination.

The wide experience in a variety of legal and administrative contexts of Ralph of Chertsey, in particular, points up the likelihood that by the 1230s many attorneys representing high ecclesiasts and their houses exhibited lawyerly qualities and characteristics. Specifically, Ralph's clerical background and considerable involvement with documentation suggests literacy, intelligence and scholastic rigour, essential elements in the make-up of a good lawyer. Different attributes may be discernible in other attorneys. The engagement by the bishop of London of powerful men like Robert of Haringey to represent him has been noted, and while the sort of influence such men may have been able in the thirteenth century to bring to bear on court proceedings was of its time, a courtroom presence and an ability to facilitate desired outcomes and get things done remain to this day lawyerly qualities.

But, possession of lawyerly qualities does not of itself make the possessor a lawyer, and there is no evidence that any of the attorneys at, respectively, the eyres of Lincolnshire in 1218-19, Buckinghamshire in 1227 or Surrey in 1235 were lawyers. Although a very small number of men may have turned a profit by deputing on request as simple substitutes, such a limited service would be most unlikely to generate any sort of living and was certainly not indicative of lawyerliness. Nonetheless, that basic service did lie at the heart of later professional

[60] Ibid., note 49, p.449.

practice, capable of transformation into legal attorneyship in one of two broad ways. Firstly, as we have seen, by virtue of regular appointment by senior ecclesiasts, busy magnates and substantial freeholders, a small number of monks and canons, and stewards and bailiffs, acquired experience and, by extension, a measure of expertise. Being bound to or retained by the institutions or estates to which they were attached they were, however, incapable of pursuing independent professional practice, but did cultivate lawyerly qualities that cumulatively provided a repository of relevant skills upon which, in the fullness of time, members of a body of professional legal practitioners might draw. The second way in which simple attorneyship might evolve into legal attorneyship was for independent attorneys to receive a sufficiency of instructions from different litigants in different suits over a sustained period of time to enable a skills base to be developed and, ultimately, to professionalise. As is now discussed, both such processes can be seen to have progressed in parallel.

Chapter 11: Consolidation

Of the attorneys of interest thus far identified and discussed in the context of the three earliest eyres under review, those who exhibited lawyerly qualities and characteristics had acquired those attributes by virtue of their relationship with a very limited number of busy litigants. Such relationships remain in view at the 1248 Berkshire eyre, along with other traditional links between litigants and their appointed attorneys in which the overwhelming majority of attorneys continue to show no sign of particular expertise or experience. In addition, however, a small body of men may be faintly discerned to be acting both for a greater cross-section of society than was obvious at the earlier eyres, and also for a greater number of different litigants in a greater number of actions. This suggests both an increase in the size of the pool of secular litigants looking to be represented by men capable of adding value and a corresponding expansion in the numbers of such men stepping forward in response.

At the eyre, 167 different individuals are recorded as receiving appointments to act as an attorney, of whom 82 were engaged in relation to local, Berkshire, business, 83 in relation to foreign pleas, the remaining two individuals having a caseload involving both local and foreign pleas. No fewer than 147 of them received only a single appointment, 70 of whom were involved in local business and 77 in foreign pleas. Seventeen men received two appointments, eleven of whom were involved only in Berkshire business and six only with foreign pleas. The two appointments of eleven of the seventeen were, however, respectively related either by virtue of having a common principal, or because the two principals were involved in the same case with a common opponent, or through duplication of entry. Accordingly only six men, four of whom were involved in local pleas and two in foreign pleas, received two unrelated appointments at the eyre. Two further individuals received three appointments, pertaining in one case to an unrelated mix of Berkshire and foreign business,

and in the other case to purely Berkshire business in which two of the appointments were related. One man received six appointments, of which five were related.

Clearly, none of the 70 attorneys who received only one appointment in respect of Berkshire pleas, or the seven who received two related local appointments, can be regarded, on that evidence alone, as having been a professional practitioner. Indeed, many men manifestly were not professionals, being appointed in capacities such as that of husband or son, monk or clerk. The occupations of others such as Richard the Cook or Robert le Messager may be deduced from their surnames. As might be expected, a cross-section of local free society is represented. Two men are described as being knights, four as the bailiff of a hundred or liberty, one as a hundred elector, and sixteen as jurors of a hundred or vill.[1]

The improbability of professionalism on the part of any of the 81 foreign pleas attorneys with single or two related appointments is less certain. In many cases, the locative surname of the appointed attorney strongly suggests an association with the county in which the particular plea originated, and it is reasonable to suppose that he was himself resident in that county. The case giving rise to Richard of Ashwell's single appointment originated in Hertfordshire, for example, and the plea in which Henry of St. Edmund's acted originated in Suffolk.[2] Accordingly, just one or two attendances by such an attorney at the Berkshire eyre cannot be regarded as evidence on whether or not he had a professional practice in his home county.

What though of the remaining nine men? The four attorneys who received two unrelated appointments in local pleas were Hugh of Standhill, Alexander of Cookham, William of Chilswell and Henry Martin.[3] The two attorneys who did likewise in foreign pleas were

[1] *The Roll of the Berkshire Eyre*, respectively nos.174, 459; 684/5, 700, 716, writ a113; 693; 684, 686x2, 687x2, 688x2, 692, 693x2, 695x2, 701, 702, 714x2.
[2] Ibid., nos.512, 626.
[3] Ibid., respectively nos.37, 118; 109, 313; 110, 303; 317, 356.

Andrew Croc and William of Rossegill.[4] Master Roger of Gloucester received three appointments by local litigants, two of which were related, Solomon Stot's three appointments being both unrelated and also a mix of local and foreign work.[5] Geoffrey the Marshal received six appointments relating to both local and foreign pleas, five of which were related.[6] These men are attorneys of interest, as also is William of St Helen who received two appointments from a single principal.[7]

The record of a number of contested proceedings allows some insight on the role played in court by attorneys identified as being of interest. One such was a contested claim by Christine of Wytham and Eve, daughter of Nicholas, against the abbot of Abingdon for the best part of two carucates of land in Sunningwell and Kennington.[8] Although we are told that Christine and Eve appeared *per attornatum suum*, we are not given the identity of their attorney, and no appointment is recorded on the rolls. We do, however, know that the abbot of Abingdon, who is also recorded as coming by his attorney, had earlier appointed master Roger of Gloucester or William of St Helen to act on his behalf in this particular plea.[9] It is not stated which of them actually attended the hearing, and the record is equally silent on the precise role of the abbot's attorney in the proceedings. In the event, a detailed descent was recited on behalf of the plaintiffs, followed on behalf of the defendant by a denial of right and an objection to being required to answer on the writ. An agreement was then struck. The abbot gave five marks for licence to agree and the resulting fine was recorded in a chirograph, apparently received by the abbot in person.[10]

[4] Ibid., respectively nos.475/644 Buckinghamshire, 519 Berkshire; 565 Yorkshire and Staffordshire.
[5] Ibid., respectively nos.22, 24, 248; 317, 356, 650.
[6] Ibid., nos.51, 53, 70, 73, 103, 472.
[7] Ibid., nos.24, 248.
[8] Ibid., no.27.
[9] Ibid., no.24.
[10] CP25(1), 8/18/67.

Although the defence may have been put forward by a pleader on the abbot's behalf, it should be noted that Roger and William were entrusted to act in a complex legal trial at the end of which an apparently genuine dispute (as opposed to one founded upon quasi-criminal activity by one of the parties) had been resolved by negotiation and agreement. Both men were clearly favoured by the abbot of Abingdon who made a further appointment of them against eleven opponents on a plea of land.[11] The subsequent hearing is not recorded, but the plea was again settled, in part at least, by chirograph, the abbot again apparently appearing in person.[12] Roger also received a third appointment in a quite separate matter, being appointed alone by the abbot of Beaulieu on a plea of trespass.[13] He was thus one of the only two men to receive three appointments at the eyre, all in respect of local pleas, two of which were however related through having a common principal. We hear nothing further of him in the record of the eyre, but might deduce from his being a master that he was competent in the law, indeed perhaps qualified as a canon lawyer and that, having the trust of at least two senior prelates, he was possessed of lawyerly qualities. Despite the ensuing assumption, that he provided added value in performing his attorney-related duties, it is improbable that he was a professional attorney.

A little more is known about William of St Helen. His obvious connection to the church of St Helen in Abingdon evidences his local credentials, and his two appointments by the abbot of Abingdon, his only principal, are explicable by his being the abbot's steward.[14] He is stated on three occasions on the record to be a knight.[15] He also stood surety for the abbot of Abingdon on a licence to agree, gave a similar pledge on behalf of the daughters of Sarah of Bagshot, and was one of three sureties on a fine made to resolve an appeal of battery, robbery

[11] *The Roll of the Berkshire Eyre*, no.248.
[12] CP 25(1), 8/18/66.
[13] *The Roll of the Berkshire Eyre*, no.22.
[14] Ibid., p.xxxiv.
[15] Ibid., nos.101, 174, 372.

and breach of the king's peace.[16] William was almost certainly not a professional attorney but, as the abbot of Abingdon's steward, well able to represent him in court proceedings.

In a Buckinghamshire plea of dower, Isabel, widow of Peter of Windsor, otherwise known as Isabel of Sunninghill, claimed an interest in lands in Datchet, Eton and Horton against Alexander and Ellen of Langley and six other defendants, all of whom are said to have come *per attornatum suum*.[17] In a related Berkshire case, Isabel sued Alexander and Ellen and fifteen other people for dower in respect of land and rents in Windsor and Cookham.[18] As recorded in a series of entries on the roll, sixteen of the 23 defendants in the combined proceedings appointed Geoffrey the Marshal as their attorney.[19] Geoffrey was one of only two men to act as an attorney in both Berkshire and foreign pleas. Of his sixteen principals, eleven instructed him in relation to the Berkshire plea and five in relation to the Buckinghamshire plea, and his involvement as attorney for so many people was clearly concerted. The other defendants may also have been represented, but no record survives. In the event, both cases followed a similar path, the claim preceding a defence based upon Isabel's alleged non-entitlement on the ground that she was never lawfully wed to Peter of Windsor. Following an adjournment, the bishop of Salisbury certified that Isabel and Peter were lawfully wedded, and the defence accordingly failed.

Quite independently of the case involving Isabel of Sunninghill, Geoffrey received a sixth appointment, being instructed to act in a local assize of *mort d'ancestor* which was settled by chirograph, Geoffrey being stated to receive it.[20] In a further suit he stood surety on the amercement of an unsuccessful plaintiff. As to his standing, professional or otherwise, we might conclude on the basis of the available evidence that, at the very least, he was a man-

[16] Ibid., nos.96; 153; 816.
[17] Ibid., no.557.
[18] Ibid., no.211.
[19] Ibid., nos.51, 53, 70, 73, 472.
[20] Ibid., no.103; CP25(1), 8/18/54.

about-court. Although his occupational surname may suggest that he gained a living from being a farrier or groom, the greater likelihood is that he was a marshal of the court.[21] As such, his constant presence would have enabled him to combine his administrative duties and to keep order with an ability to represent as many absent litigants as cared to instruct him. If this interpretation is correct, we may assume that Geoffrey would have been remunerated for his services, his acceptance of work as an attorney being an adjunct to his main occupation. Although this would preclude his having been a full-time professional attorney, it does afford him embryo status.

In a Yorkshire plea, Joscelin and Sarah de Eyvill claimed against the abbot of Easby and seven others substantial lands as Sarah's dower.[22] Both Joscelin and Sarah are stated to appear by their attorney who is not identified. Sarah's entitlement to dower is disputed and the parties agree to put themselves on the verdict of a jury, the case being then adjourned to Herefordshire for the purpose. The entry on the roll then records the appointment by the abbot of two attorneys, one a canon and the other being Solomon Stot. Although the immediate inference is that the appointment pertained only to the adjourned hearing in Herefordshire, it may have related to the Berkshire hearing also in view of Solomon's other activity at the Berkshire eyre making it more probable that Berkshire, and not Yorkshire, was his home county. In any event, the matter was apparently subsequently settled by chirographs.[23]

Something of a pattern is emerging, Solomon Stot being the fourth attorney of interest at the Berkshire eyre to be encountered in the context of contested court proceedings in which legal issues arose and were settled by chirograph. He received two further appointments, each

[21] As per Paul Brand in conversation.
[22] *The Roll of the Berkshire Eyre*, no.650.
[23] CP25(1), 265/44/83; CP25(1), 265/46/164.

entirely independent of the other and of the appointment by the abbot of Easby, and both being made in the alternative to Henry Martin, another attorney of interest. In one, he (as Solomon Stutard) and Henry Martin were appointed to represent Philippa of Colworth before an assize called to deliver a verdict on a dispute with Nicholas Dismars over the construction of a dike by Philippa and a disseisin by Nicholas.[24] The jurors found for Philippa on both counts, and judgment was duly given. Although, as with the case involving the abbot of Easby, the reference to the appointment of Solomon and Henry appears at the very end of the formal record, the finalisation of proceedings and absence of any adjournment requires that the appointment must have related to the hearing itself. The other joint appointment of Solomon and Henry was made by Lettice, daughter of Emma of Wallingford in a local plea of *novel disseisin*, of which no record appears on the roll.[25] Perhaps it was settled out of court, or was recorded on a membrane now lost.

Although he is not recorded as undertaking any other court-related activities such as standing surety, the probability of Solomon Stot being an independent attorney, charging for his work but receiving insufficient of it to generate a dedicated living, is increased firstly by his being the only attorney recorded as receiving three independent appointments at the eyre, secondly by his being one of the only two men to undertake both local and foreign business (the other being Geoffrey the Marshal), and thirdly by his involvement in contested proceedings and negotiated agreements. As with master Roger of Gloucester, William of St Helen and Geoffrey the Marshal, such an involvement suggests that he differed from the great majority of attorneys who, as has been demonstrated *ante*, acted in a largely procedural capacity.

The remaining five attorneys of interest each received two unrelated appointments. Hugh of Standhill was appointed by Gilbert son of Sewal in a plea of land against Nicholas de

[24] *The Roll of the Berkshire Eyre*, no.317.
[25] Ibid., no.356.

Monasterio.[26] From the record of the ensuing trial, we learn that at issue was one virgate of land in Shinfield, and that proceedings were contested.[27] Although there is no mention of Gilbert appearing by attorney at the hearing, it is probable that Hugh was present in his stead as, when Gilbert lost the suit and was duly amerced, Hugh stood surety for that amercement. Hugh's second appointment was made by John of Standhill, presumably a relative, against Ralph Eleyne and Henry, son of James, on a plea of land.[28] The dispute with Ralph was resolved by licence, but that with Henry went to trial and following an exchange of pleas was adjourned for judgment at Shrewsbury.[29] Although this case arose from an alleged unjust disseisin, it was defended on a point of law. Again there is no mention of Hugh's appearance as attorney on behalf of John. However, if he was present on either occasion, his involvement in contested proceedings and willingness to stand surety might suggest a measure of lawyerliness.

A similar insufficiency of relevant data and an inability to form a view on professional status applies also to the other attorneys of interest. Alexander of Cookham was appointed by Walter de la Rue on a plea of replevin, but there is no record of it coming to trial.[30] His second appointment was made in the alternative to one Richard of Sumerton (a single-appointment attorney) by William le Butler on an assize of *mort d'ancestor* against three defendants.[31] Agreement was reached with one opponent, but there is no mention of Alexander's involvement, and there is no record of the other two cases being resolved.[32]

[26] Ibid., no.37.
[27] Ibid., no.281.
[28] Ibid., no.118.
[29] Ibid., nos.220, 319.
[30] Ibid., no.109.
[31] Ibid., no.313.
[32] Ibid., no.428.

However, on two occasions, Alexander stood surety for prosecuting a suit, on one of which he was amerced on the withdrawal of the plaintiff.[33]

William of Chilswell was appointed by Maud of St Helen, the plaintiff in a plea of nuisance, she and a co-plaintiff subsequently withdrawing and being amerced.[34] William also received an appointment from Peter of Eaton, made before four knights, but no proceedings resulted.[35] If he was the same man as William son of Richard of Chilswell, he was one of two sureties who were amerced when John de la Thorp failed to prosecute his plea.[36] He also stood surety for prosecuting for each of Thomas, vicar of the church of Seacourt and John Lambert.[37]

Andrew Croc was one of the two attorneys who received two unrelated appointments for foreign business. One was made by the abbot of Missenden on a Buckinghamshire plea in the alternative to Thomas of Coventry, both men being subsequently removed and replaced.[38] The other, again in the alternative, was from Roger de Hide in a Bedfordshire case on its adjournment to Shrewsbury to hear judgment.[39] The second attorney to receive two unrelated foreign appointments was William Rossegill, one being in respect of a Yorkshire plea and the other originating in Staffordshire.[40] Both matters were adjourned on to Shrewsbury. In support of Andrew and/or William being embryo professional attorneys might be that each of them received two appointments by different principals relating to proceedings in different counties. Indeed Andrew Croc's legal credentials are established. He is on record as having

[33] Ibid., nos.144, 204/writ a211.
[34] Ibid., nos.110, 309.
[35] Ibid., no.303.
[36] Ibid., no.286.
[37] Ibid., no.135, writ a164; no.180, writ a186.
[38] Ibid., nos.475, 644.
[39] Ibid., no.519.
[40] Ibid., no.565.

received attorney appointments elsewhere and as acting as surety and as witness to several deeds. He may also have acted as a professional serjeant.[41]

As has been noted, four attorneys of interest are recorded as acting as pledges in addition to performing their attorney-related duties. Pledging, as discussed *ante*, was an ancient activity, capable of being pursued on a substantial scale (as seen at the Cornwall eyre of 1201), or in conjunction with other court-related activities (as with members of the Sandon family of north Hertfordshire and other men-about-court). It may be that its connection with attorneyship was by *circa* 1250 contributing to the process of that activity's professionalisation by virtue of being a means of forging relationships with needy litigants. Hugh of Standhill, for example, stood surety for the amercement of an unsuccessful plaintiff who had previously appointed him as his attorney in the suit. Geoffrey the Marshal's offer of surety for the amercement of an unsuccessful plaintiff, on the other hand, related to someone who had not previously made him his attorney. Alexander of Cookham agreed to be surety for prosecuting a plea on two occasions, on one of which he was amerced following the withdrawal of the plaintiff. William of Chilswell went one better, standing as surety to prosecute on three occasions, on one of which he was amerced. None of the plaintiffs concerned had previously made him his attorney.

Numerous further examples of such multi-tasking are to be found in the 1248 Berkshire plea roll, most relating to single-appointment attorneys. Alexander the Vintner (of Wallingford), for example, was appointed as an attorney by Robert the carpenter and Isabel his wife in a plea of entry which concluded with his principals failing to prosecute and accordingly being amerced along with their two sureties, one of whom was Alexander.[42] He was both Robert and Isabel's attorney and their surety to prosecute. Alexander also provided surety to

[41] See Brand, *Origins*, pp.59, 61, and relevant references.
[42] *The Roll of the Berkshire Eyre*, nos.10, 362.

prosecute to a different litigant on one further occasion.[43] Some men seemingly concentrated more on pledging than on attorney work. Henry the clerk of Winkfield, who received one appointment as an attorney also stood surety for amercement for others on four separate occasions.[44] Similarly, Stephen de la Wyle, in addition to being appointed once as an attorney, stood surety for the making of a chirograph, for the attendance of a defendant, and on two separate occasions for prosecuting.[45]

A further activity capable of bearing upon attorneyship was that of casting an essoin to excuse the absence of a litigant. Unlike with sureties, who were entirely separate and apart from attorneys, the duties of essoiners and attorneys sometimes overlapped. On a number of occasions at the Berkshire eyre, essoiners appeared for absent litigants, not simply to cast an essoin and have a day, but to obtain judgment on the other party's default.[46] In one case, five defendants presented themselves on the fourth day against a plaintiff who did not appear.[47] Three of those defendants were represented by essoiners (who are named on the record as being the persons actually in attendance, albeit for the named litigants) and two by their attorneys (who are un-named, the actual litigants presenting themselves *per attornatos*). Although the record thus distinguishes between the essoiners, who appeared on their own behalves, and the attorneys who did so on behalf of their principals, they enjoyed identical power, all five defendants going without day and the absent plaintiff and his sureties being amerced. The court had, seemingly, drawn no distinction between the ability of essoiners and attorneys to represent their principals with a sufficiency that enabled judgment to be handed down in the absence of the litigants in person.

[43] Ibid., no.505, writ a133.
[44] Ibid., nos.90; 43, 168, 207, 240.
[45] Ibid., nos.340, 390; writs a93, a12, a99.
[46] As to which see, for example, ibid., nos.493, 561, 574, 587, 615, 663.
[47] Ibid., no.384.

The above example features essoiners appearing for defendants, but the same quality of representation existed regardless of party. In one case, a plaintiff's essoiner presented himself on the fourth day, and on the defendant's non-appearance a distraining order was made.[48] In another, the essoiner for an absent warrantor appeared on the fourth day and, on the non-appearance of the defendant who had previously vouched him, went without day and was also granted a declaration that his principal was quit of the warranty against him.[49] Furthermore, remoteness does not seem to have been an issue. The attendance on the fourth day of the essoiner of an attorney for a plaintiff prompted a distraining order to be placed upon the absent defendant and an order for the sheriff to produce him at the following eyre.[50]

Thus, at this stage of the development of the concept of attorneyship, it should still be viewed in the context of being just one of a number of complementary court-related activities that were capable of being carried on by men who may have had lawyerly tendencies. Although many men, no doubt, pledged family and friends, neighbours and servants, or acted as attorney or essoiner, for reasons unconnected with the provision of a legal service, others may in performing several functions within the court system have been exhibiting nascent lawyerly characteristics. Furthermore, they were doing so within the secular sector.

Mention has been made of the involvement of four attorneys of interest, Roger of Gloucester, William of St Helen, Geoffrey the Marshal and Solomon Stot in cases resolved by agreement and chirograph. Such cases point to an emerging aspect of attorneyship, namely its relationship to the process of land conveyancing. An example of this relationship is contained within the appointment in the alternative of Robert of Lusches and Nicholas of Wickfield, by Mabel, widow of Walter Bacon, against Peter Bacon on a plea of warranty of charter.[51] Peter

[48] Ibid., no.526.
[49] Ibid., no.584.
[50] Ibid., no.478.
[51] Ibid., no.77.

subsequently gave two marks for licence to agree with Mabel by surety of Robert, who thus not only fulfilled two legal roles in the same suit, but facilitated completion of what was probably a collusive conveyancing transaction.[52] Such transactions were not novel in 1248 but, as is demonstrated below in the context of the Wiltshire eyre of 1249, manipulation of the final concord system to record collusively, irrevocably and in perpetuity, undisputed title to land would seem to be becoming more organised than before. This collusive process may be fairly described as 'contentious conveyancing', a term invented by the author to distinguish it from the entirely uncontentious transfer of land by physical delivery of seisin, whether or not supported by a deed or charter thereafter held by the 'purchaser'. While much land continued beyond the 1250s to be conveyed by traditional means, the loss or theft of documentation and the ever-present risk of legal or other challenge encouraged thereafter an increasing use of the courts to perfect title, albeit by collusive means. As is argued *post*, this was a development with significance for the professionalisation of legal attorneyship.

Although there is no reason to regard the Berkshire eyre as other than representative of contemporary developments in the increasing exposure of attorneyship to lawyerly influences, such developments are less discernible at the Wiltshire eyre of 1249, at which 74 of the 81 different men who are recorded as having been appointed to act as an attorney received a single appointment. None of the remaining seven attorneys received more than two appointments, and furthermore the appointments of six of them were related. The two appointments of Richard Michel, for example, relate to the same case with one of the appointing principals being common to both.[53] He did however also stand surety to prosecute for a defaulting plaintiff, being amerced for his trouble.[54] Richard Scotmodi was appointed to act by one man in two different pleas of land, whilst Walter de Cormaylles and William

[52] Ibid., no.57.
[53] *Civil Pleas of the Wiltshire Eyre*, nos.507, 516.
[54] Ibid., no.23.

Bastard were appointed in the alternative to each other by the same husband and wife in two foreign pleas emanating respectively from Hampshire and from Gloucestershire.[55] Similarly, John of Shaftesbury had only one principal, the abbess of St Edward in Shaftesbury, as did Oliver the clerk, steward to the prior of St Swithun in Winchester, who received two appointments by the prior in two different matters.[56] The two appointments received by the seventh man, James le Sauvage, were made by different litigants, which sets him apart from the others in the same small group, but as one of those appointments was made by a man sharing his surname, his principal in the relevant action was probably a relative.[57] Accordingly, on the evidence thus far adduced, he is no more likely than any of the other 80 candidates to have been a professional attorney.

Several attorneys are, nonetheless, of interest. As just mentioned, John of Shaftesbury received his two appointments from the abbess of St Edward in Shaftesbury in Dorset, and was almost certainly her steward or man of affairs. As with many other ecclesiasts, the abbess was busy at the eyre, being involved in five actions. John of Shaftesbury is recorded as being appointed by her in the alternative to John of Sonning against three different parties, John of Totterdale, Claramunda the widow of Stephen Joceaume on a plea of debt, and Henry of Milbourne and Goda his wife on a plea of waste.[58] The action involving John of Totterdale has already been discussed in the context of the abbess being represented by an attorney in an assize of *novel disseisin* in which she was the defendant.[59] As to the other suits mentioned in the appointment, Claramunda subsequently received an acknowledgement of indebtedness

[55] Ibid., respectively nos.522, 523; 500, 501.
[56] Ibid., respectively nos.272, 504; 554; 58, 63.
[57] Ibid., nos.505, 530.
[58] Ibid., no.504.
[59] Ibid., no.86.

from the abbess in the sum of £20 and a schedule for payment in instalments, but there is no record of the suit involving Henry and Goda of Milbourne being heard.[60]

The abbess was, however, called to warranty against Thomas son of William the clerk on a plea *de recto*.[61] She duly warranted the defendant in the action, but denied the plaintiff's right to the land at issue, the matter finally being adjourned to be resolved by battle, whereupon she is recorded as appointing as her attorneys John of Shaftesbury or Richard of Rymbesbir'.[62] Following that appointment, the dispute was settled by licensed agreement and by chirograph, and finally the abbess acknowledged an outstanding seventeen marks on the fine and agreed a schedule for payment.[63] In one further case heard at the eyre involving the abbess, a complainant of *novel disseisin* failed to prosecute and was amerced.[64] Although there is no mention in most cases, nor in the final concord, of the abbess being present by attorney, her status as an out-of-county ecclesiastic prosecuting and defending pleas in some of which she has previously appointed attorneys makes highly probable that she was represented. As her principal attorney John, it may be assumed, was active at the eyre on her behalf.

A particular competence on the part of an attorney, that of skill in negotiation, is more than hinted at in the overall activities at the eyre of the prior of Monkton Farleigh, who litigated with no fewer than eleven opponents over twelve different pieces of land. In one plea, the prior's claim was against two married couples who were tenants of land at issue, William and Eve Maudut, and Jordan and Lucy of Grateley.[65] The prior is stated as appearing by his attorney, and on receiving a day he appointed as his attorneys William Wace or John

[60] Ibid., no.210.
[61] Ibid., no.182.
[62] Ibid., no.272.
[63] CP25(1), 251/15/17; *Civil Pleas of the Wiltshire Eyre*, no.534.
[64] *Civil Pleas of the Wiltshire Eyre*, no.82.
[65] Ibid., no.280.

Marshall. Presumably, either William or John had been the attorney in attendance at the hearing. Neither man received any other appointments, and it may be surmised that they were the prior's men. Following the matter being adjourned, Lucy of Grateley appointed her husband to represent her and on Jordan calling another to warranty, the matter was further adjourned to Westminster.[66] The related suit concerning William and Eve Maudut was, however, compromised, the prior giving one mark for licence to agree with them and also with another litigant, Walter de la Well, on a plea of covenant.[67] Chirographs were ordered in each case.[68] In a second suit in which the prior is stated to be represented by an attorney, the defendant is named as Adam de Greinvill, and we can only assume that the prior was represented by William Wace or John Marshall.[69] Following the initial grant of a day, the prior gave half a mark for licence to agree with Adam, and a chirograph was ordered.[70]

Another of the prior's opponents was Richard le Teler of Melkesham on two separate pleas, the first of which was a plea of naifty, which was also resolved and agreed by chirograph.[71] The second plea was an assize of *novel disseisin* against the prior upon which Richard came and withdrew.[72] The probability is that the withdrawal on the second suit is related to resolution of the first suit, and although there is no mention of the involvement of an attorney on the prior's behalf, it may be surmised that, given the use of William or John in other suits, the prior was represented to the extent permitted by law.

Similarly, with a suit involving Peter of Kenet in which the prior was the plaintiff in a plea of rent, a day was given to the parties, whereupon the prior gave one mark for licence to agree

[66] Ibid., nos.513, 401.
[67] Ibid., no.462.
[68] CP25(1), 251/15/39; CP25(1), 251/15/1.
[69] *Civil Pleas of the Wiltshire Eyre*, no.301.
[70] Ibid., no.445; CP25(1), 251/16/60.
[71] *Civil Pleas of the Wiltshire Eyre*, no.41; CP25(1), 251/15/49.
[72] *Civil Pleas of the Wiltshire Eyre*, no.42.

and a chirograph was ordered.[73] Although no relevant fine has survived (or, perhaps, in the event was never made), a chirograph is extant for a second issue dealt with at the same time, a plea of covenant agreed with William son of Reynold of Somerford.[74] Once again, although there is no specific mention of the involvement of an attorney acting for the prior, such involvement may be surmised, particularly as the prior featured in so many suits which, taken together, would surely indicate a workload at the eyre beyond the wish or capacity of a busy prelate.

We are told that Alice, the widow of Reynold the smith (perhaps therefore the mother of William son of Reynold referred to above) called the prior to warranty on an assize of *mort d'ancestor*, whereupon the prior gave half a mark for licence to agree, and a chirograph was permitted.[75] In another suit, the prior gave half a mark for licence to agree with Walter of Brocweye on an unspecified plea of land, and a chirograph was directed.[76]

In two further cases, the prior's agreement with an opponent was probably not appropriate due to their particular circumstances, and appear as examples of genuine contention. In one suit, land and a mill held by the prior were the subject of an assize of *mort d'ancestor*, but on his showing that he had leased the property to another for life, the plaintiff was accordingly amerced.[77] In the second suit, the prior was the defendant in a writ of entry concerning a virgate of land.[78] The prior (almost certainly in the person of an attorney) came and (either through the attorney or through a pleader) entered a denial based upon two separate factual discrepancies. The complainant had no response and was accordingly amerced for a false claim.

[73] Ibid., nos.59, 129.
[74] CP25(1), 251/16/94.
[75] *Civil pleas of the Wiltshire Eyre*, no.84; CP25(1), 251/15/4.
[76] *Civil Pleas of the Wiltshire Eyre,* no.238; CP25(1), 251/16/88.
[77] *Civil Pleas of the Wiltshire Eyre*, no.241.
[78] Ibid., no.284.

It is remarkable that of the twelve actions in which the prior was involved, no fewer than eight were compromised and settled by chirograph, one other being won in suspiciously easy circumstances. One action was adjourned, and only two were contested to judgment. It is difficult to resist the inference that the final concord system was being manipulated in the manner referred to above in the context of the Berkshire eyre, and that the prior was engaged in 'contentious conveyancing' on a grand scale. The role of his attorneys is, however, uncertain. There is scant reference on the record to his use of either of his appointed attorneys, either on the hearing of pleas or on subsequent receipt of chirographs. Indeed, in all of the seven surviving fines, the record makes no mention of representation, suggesting that the prior appeared in person. But his personal appearance in so many suits is improbable, and the sheer quantity of litigation in which he was involved would, in itself, provide an explanation for his appointment of two men to represent him, so as to ensure representation should two cases be called on at the same time. Although we can only speculate, it seems likely that the role of the prior's attorneys was greater than appears on the face of the record, one or both of his appointees perhaps conducting the negotiations leading to settlement of the eight relevant suits.

The Master of the Knights Templar in England appointed as his attorneys in a contested plea of dower either William le Wilde or Richard le Bacheler, and is recorded as having appeared by attorney on the hearing of the case.[79] It is probable that one or other of his appointees played the active role in court suggested by the record of proceedings. As a separate matter, an attorney acting for the prior of Maiden Bradley not only called another to warrant his principal but also oversaw a successful outcome for him.[80] Although the identity of the prior's attorney is not stated, it was probably brother Robert of Homington. He certainly

[79] Ibid., nos.390, 309.
[80] Ibid., no.167.

received an appointment in that particular plea, but due presumably to clerical error, the plea roll records the appointor as being a different prior, that of Bradenstoke, who is elsewhere recorded as appointing brother Gervase, his canon, on an entirely different matter.[81] In common with several other prelates, the prior of Bradenstoke was busy at the eyre, perhaps paying off a married couple who failed to prosecute a writ of *mort d'ancestor* against him, and settling a claim for arrears of rent on which a chirograph was ordered, on receipt of which he was represented by his canon.[82]

Thus, the pattern of attorneyship at the Wiltshire eyre of 1249 represents something of a throwback to that of the 1220s and 1230s. There is no echoing of the presence of practitioners like Geoffrey the Marshal or Solomon Stot in Berkshire the previous year. Although secular attorneys, acting for secular litigants, greatly outnumbered those with ecclesiastical connections, almost all did so in a very small way. The few men identified as being attorneys of interest acted for the heads of ecclesiastical institutions, and were noticeably active whether, like John of Shaftesbury and his co-attorneys who were entrusted by the abbess of St Edward with four or five separate pleas, engaged in hostile litigation or, like William Wace and John Marshall, seemingly pursuing an altogether more benign campaign to secure the property portfolio of the priory of Monkton Farleigh.

Its greater distance from the centralising influences of Westminster may explain, at least in part, the absence in Wiltshire of the apparently budding secular professionals discernible in Berkshire. Yet remoter is Shropshire, and there is scant evidence of the presence of legal attorneys, let alone any that may have professionalised, at its eyre in 1256, at which 88 different individuals, three of whom were women, are recorded as appearing as an attorney. All but four received a single appointment only. The remaining men each received two

[81] Ibid., nos.528, 531, 271.
[82] Ibid., nos.207, 378; CP25(1), 251/15/40.

appointments which were, in three cases, related. William Wootton's first recorded appointment was made by Amice, the wife of Robert de Lacy, and specified three separate suits, respectively of debt, of *novel disseisin* (as plaintiff) and in a plea of land.[83] Although the appointment was not followed by any recorded proceedings, a chirograph resulted.[84] Subsequently, Amice's husband, Robert de Lacy, appointed William as his attorney to receive a chirograph at Westminster on the adjournment of a related case concerning lands and tenements held by a husband and wife as dower out of Amice's inheritance.[85] William may well have been a de Lacy retainer.

John of Leintwardine, from his name a Herefordshire man, was appointed by Isabel, daughter of Richard of Fennemere, in two pleas of land, in which there are no recorded subsequent proceedings.[86] He received a second appointment by the same lady on a plea of land that was contested on the basis that Isabel's claim of right by inheritance was defective.[87] Again, a connection with the appointing family looks likely. The third man, Roger of Luntley whose surname also suggests a Herefordshire connection, was appointed in the alternative to another by Walter de Clifford with no plea specified.[88] No relevant proceedings followed. He also received a sole-name appointment by the same principal on pleas concerning respectively a liberty and a market.[89] The first of those pleas was tried and Walter successfully resisted a claim to various rights in a forest held by him in the west of the county.[90]

There is nothing here to suggest that any of William, John or Roger were more than retainers, if that, and certainly not lawyers or professional attorneys. Hugh of Longslow, however, the

[83] *The Roll of the Shropshire Eyre*, no.205.
[84] CP25(1), 193/4/47.
[85] *The Roll of the Shropshire Eyre*, no.238.
[86] Ibid., no.199.
[87] Ibid., nos.477, 151.
[88] Ibid., no.67.
[89] Ibid., no.201.
[90] Ibid., no.207.

one man with two unrelated appointments at the eyre, and from his name a Shropshire man, may have had aspirations. He was at the time of the eyre the bailiff of Condover hundred.[91] One of his appointments was made by Gillian of Kenley in an assize of *mort d'ancestor*, the other by the vicar of Drayton and a named clerk in a plea of dower.[92] No subsequent proceedings are recorded in respect of either appointment. Hugh is also recorded as standing pledge on three occasions, on one of which he was amerced for the plaintiff's non-prosecution on an assize of *mort d'ancestor*, and on another he guaranteed a licence fee offered by a claimant to dower, a chirograph being authorised.[93] The third pledge given by him was jointly with two others and related to the payment of 40 shillings to the king for trespass tried as a crown plea.[94]

Very little, if any, evidence of professional activity can be extracted from the recorded proceedings of the series of eyres thus far reviewed. Only at the Berkshire eyre of 1248 has there been even a hint of independent legal practice. What has been established, however, is the presence at several eyres of institutional attorneys, mainly ecclesiastical in nature, who by virtue of habitual appointment, had cultivated lawyerly characteristics and added value. In so doing they had built upon foundations laid by no later than the 1220s. Although less easy to detect, it is probable that a similar development was in train in the secular sector, with the stewards and bailiffs of great lords acquiring in parallel with their monastic counterparts the experience and knowledge that would become the cornerstones of professionalism. The 1240s and 1250s can therefore be regarded as a period of consolidation.

[91] Ibid., no.913.
[92] Ibid., nos.8, 171.
[93] Ibid., nos.219, 325.
[94] Ibid., no.882.

Institutional attorneys were again present at the next eyre under review, that of Surrey in 1263, now appearing alongside one or two men of the type glimpsed in Berkshire fifteen years earlier who were not retained by lords and prelates but who offered their services to litigants at large of lesser status, and who thereby quietly cultivated identical attributes. At the eyre, 157 different individuals received appointments, 149 of whom received one appointment only. Seven men each received two appointments, and one man received three.

One of the attorneys who received two appointments was Simon the clerk, receiving them both from the abbot of Chertsey. In one such, he was appointed in the alternative to William of Iver, a monk of the abbey of Chertsey, in two pleas, neither of which is recorded as having been heard.[1] The abbot made a second appointment, respectively of William of Henley, the abbot's monk, and Simon le Creke in three separate pleas.[2] While we can be confident that both Simons are the same man, William's different locatives create uncertainty in his case.

In the record of one plea, an assize of *mort d'ancestor*, in which the abbot was alleged to hold the messuage and land claimed, he is stated to have come by his attorney (the identity of whom is not stated) not only to defend the claim but to do so by hedging his bets in a noticeably lawyerly way.[3] The abbot's attorney said firstly that the abbot did not hold the tenements at issue and accordingly could not answer to the writ, adding that if, contrary to his original submission, the assize found that he did hold the tenements, then the claimant's deceased father (through whom the inheritance was claimed) did not die seised as of fee (as required for the claim to succeed) but as a tenant at the will of the abbot. The jury found in favour of the abbot. As ever, the involvement, if any, of a pleader is unrecorded, but the

[1] *The 1263 Surrey Eyre*, no.391.
[2] Ibid., no.467.
[3] Ibid., no.53.

flavour of the record is certainly one of intelligent participation on the part of the abbot's attorney.

In the second plea referred to in the appointment, the abbot appeared, apparently in person (which is unlikely, and the probability is that his appearance was by one of his attorneys, albeit unrecorded), and both warranted a co-defendant and vouched another to warranty.[4] On the hearing of the third plea, the abbot came *per attornatum suum* and made an agreement by licence.[5] The enrolment shows that the claimant remitted and quitclaimed for himself and his heirs all right and claim which he had in the two acres of land and appurtenances at issue for ever, on payment to him by the abbot of half a mark. Whatever legitimate interest the claimant might have held in the tenement was conveyed for value.

Simon the clerk was son of Ralph of Chertsey who was prominent at the Surrey eyre of 1235, and was more than a career churchman. At the Surrey eyre of 1255, eight years earlier, he had been the bailiff of two hundreds, those of Guildford and Woking.[6] In 1263, by which date he was in the employ of the abbot of Chertsey, he was no longer undertaking the duties of such position, but they would have prepared him for those of a legal and administrative nature that lay before him, and which extended well beyond being a mere substitute in court. In a series of seven witness lists, five from Chertsey Abbey Cartularies and two from Fitznells Cartulary, three are stated to be from grants or a quitclaim to the abbot of Chertsey, dated respectively to 1256-69, 1263-9 and 1271.[7] The final witness on each occasion is 'Simon clerk of Chertsey'. Although it may be that Simon was no more than the scribe on each occasion, writing out the document at the dictation of another, the final position on a witness list was traditionally occupied by the man who drew the deed. Even if Simon was just the

[4] Ibid., no.92.
[5] Ibid., no.101.
[6] Ibid., p.cliii.
[7] Ibid., Table 17, p.cxxxix.

scribe, employed for the clarity of his writing, it would confirm the inference of his description as 'clerk' that he, as an attorney appointed to represent a powerful principal for whom the acquisition and safeguarding of interests in real property would be of prime importance, was literate, able both to read and write. Furthermore, if Simon was the draftsman, it would make him of a legal bent and, critically, sufficiently well versed in the intricacies of conveyancing practice to be able to act not merely as a substitute for his principal but to add value by bringing to bear legal and property-related skills with a view to maximising the prospect of a satisfactory outcome. Put briefly, Simon the clerk might have been a lawyer.

The same cannot be said of five of the remaining six men who received two appointments at the eyre. Richard Payn's two appointments were not only linked but also related to proceedings in which he was himself a defendant, one appointor being his wife and co-defendant and the other the defendant in a related action.[8] Although one of John le Wolf's appointments was made in the alternative to another by a married couple in two pleas of land, the other was made by his wife in two related actions in which John himself was a claimant, being amerced in each case for a false claim.[9] Ralph Postel's two appointments are related by virtue of being by defendants in a complex plea of dower, and he also stood pledge for a couple who failed to prosecute an assize of *novel disseisin*, for which failure he was amerced.[10] None of these three men was a professional attorney.

John Drake's two appointments were seemingly unrelated, one by Hugh le Cornemanger and Avice his wife in an assize of *mort d'ancestor*, and the other (in the alternative to John son of Walter) by William Fox in a plea of land.[11] There are no recorded proceedings following the

[8] Ibid., nos.448, 449, 163.
[9] Ibid., nos.493, 421, 154, 157.
[10] Ibid., nos.478, 490, 201, 1.
[11] Ibid., nos.404, 492.

first appointment, but William Fox's claim of inheritance was not supported by a jury and he was amerced for a false claim.[12] John's role, if any, is unknowable. One of Henry of Apperdale's two appointments was made on the adjournment of a plea of warranty to Winchester, implying that Henry's role was expected to be purely as a substitute.[13] His locative surname, Apperdel, is part of Leatherhead and he was thus local. His other appointment, by a widow in a plea of dower, involved an inconclusive action finally adjourned to the Hampshire eyre.[14] The probability of Henry being a professional lawyer is reduced by the recorded circumstances of a claim brought by him personally in which he sought the return of several tenements demised by him *dum non fuit compos mentis sue*, 'while he was not of sound mind'.[15] The case terminated with Henry being gaoled for denying an earlier acknowledgment that the original transaction was good.

Robert Howeles was the only recipient of three appointments, one of which was made by William of Apperdale against a widow in an assize of *mort d'ancestor*.[16] On the hearing of the plea, and apparently without any prior pleading (although the record may be defective in this regard, or prior stages may have been heard elsewhere), the widow purchased a licence to agree and the matter was concorded by chirograph.[17] Her pledge was Roger de Loges. Under the terms of the ensuing chirograph, she acknowledged the carucate of land and water mill and appurtenances at issue to be William's right, in return for which he granted them to her and her heirs to hold from Roger de Loges and his heirs for ever for one parcel-gilt (a pair of gilt spurs) or sixpence a year and customary services.[18] This transaction bears the hallmarks

[12] Ibid., no.178.
[13] Ibid., no.194.
[14] Ibid., nos.477, 97, 177.
[15] Ibid., no.156; p.cxviii.
[16] Ibid., no.411.
[17] Ibid., no.85.
[18] CP25(1), 226/18/100, summarised in *The 1263 Surrey Eyre*, p.clxxvii.

of a collusive conveyance of land in the form of a negotiated settlement and transfer of interest by one tenant to another with the active co-operation of the superior lord.

Robert was also appointed as attorney by five named men against the prior of Merton on a plea *quo jure*, of which there are no recorded proceedings at the eyre. His co-attorney was Roger de Loges.[19] Given the involvement of both Robert and Roger in the previous matter, some connection between them is suggested. Roger was steward of the Earl of Gloucester, and very shortly thereafter he commenced the first of three terms as sheriff of Surrey and Sussex.[20] He is the seventh man to receive two appointments at the Surrey eyre, his other appointment being in a plea of land in which there are no recorded ensuing proceedings.[21] The combination of presumed administrative acumen, activity about the court, involvement in a possible conveyancing transaction and an apparent association with Robert Howeles makes feasible that Roger was, if not a professional lawyer by occupation, certainly a man exhibiting lawyerly qualities and characteristics.

The third appointment received by Robert Howeles was in his sole name and made by Thomas de Prinkham against John de Bysse in a plea of *quare ejecit*.[22] Two actions arose between Thomas and John, each of which were seemingly hostile and tortious.[23] In both cases, Thomas was defendant against whom a clear wrong was alleged, in one of which (as per the verdict of the assize) he withheld a rent from John and mounted a fraudulent defence, and in the other of which he evicted John from a meadow leased to him and failed to appear to answer the accusation.

[19] *The 1263 Surrey Eyre,* no.482.
[20] Ibid., p.clii.
[21] Ibid., no.471.
[22] Ibid., no.457.
[23] Ibid., nos.54, 205.

In addition to his three attorney appointments, Robert stood as a pledge on two occasions, once for the essoiner of an attorney in a Sussex plea, and also for the essoiner of the earl of Surrey.[24] The location of the assets at issue can be established in relation to two appointments, at Horley in the case of William of Apperdale and Lingfield.[25] The relative proximity of both places suggests that he worked within a small area in the south of the county.

Although, therefore, attorneys appeared in numbers at the Surrey eyre of 1263, the evidence suggests that the great majority, as single-appointees, were expected to do little more, if anything, than perform the basic duty of standing in place of an absent principal. Of those who received two appointments, only Simon the clerk and Roger de Loges exhibited lawyerly characteristics, and it is significant that they did so, respectively, in the service of a high ecclesiast and as the steward of an aristocratic lord. But therein lay the rub; Simon's situation almost certainly rendered him incapable of being an independent professional legal attorney, and Roger's sights were clearly set on shrieval office. With three unrelated attorney appointments to his name, however, Robert Howeles may have been a practising lawyer, although his status is difficult to assess from the limited evidence available. Certainly, he was relatively active about the court, both as attorney and pledge, and he would seem to have been competent in facilitating and completing a collusive conveyancing transaction and willing also to fight the corner of an apparently undeserving defendant.

The number of different individuals appointed to act as an attorney at the Derbyshire eyre of 1281 was 147, of whom 117 received a single appointment only. It is immediately apparent that single-appointees were proportionately many fewer in number (at below 80%) than had been the case in Surrey in 1263, at which almost 95% of all attorneys had received one

[24] Ibid., nos.323, 332.
[25] Ibid., p.clxxvii; nos.54, 205.

appointment only. Twenty men received two appointments, four men received three appointments and four more men were appointed four times. One man was appointed on seven separate occasions and one other received fourteen separate appointments.

As ever, none of the 117 individuals who received only a single appointment at the eyre can, on that evidence alone, be regarded as other than a simple attorney. Of the twenty men who were appointed twice, thirteen cannot be viewed as being other than simple attorneys also, variously because both appointments were made by the same principal or because they were themselves in holy orders. The remaining seven men, Nicholas of Clifton, William of Pontefract, William of Appleby, Simon Pakeman, John the groom, John Rosel and William of Bredon each received two appointments made by different principals in unrelated actions, and any or all of them may have been small-time professionals.[26]

Of the four men who received three appointments, three are unlikely to have been professional attorneys. Geoffrey de Dethick was appointed in a plea of land by his wife and by another principal in two other actions.[27] Henry of Kniveton and William of Bentley were jointly appointed in two pleas by a presumed relative of Henry, Matthew of Kniveton, and by Matthew's wife in another.[28] The fourth man with three appointments, Walter of Hockerton, received two appointments by the abbot of Darley, the third by the claimant in an action of right whose case was adjourned to Lincoln on the non-appearance of the warrantor vouched by the defendant, and is a possible professional.[29]

The four men who received four appointments were, respectively, Hugh of Curzon, John of Youlgreave, Richard of Marnham and Hugh of Normanton. Hugh of Curzon was not a

[26] *The Rolls of the 1281 Derbyshire Eyre*, respectively nos.295, 310; 309, 312; 376, 378; 257 (on adjournment), 378; 391, 392; 318, 359; 293, 390.
[27] Ibid., nos.302, 330, 361.
[28] Ibid., nos.305, 745, 369.
[29] Ibid., nos.328, 388, 242.

professional attorney; the appointing principal in each of his four appointments was his mother.[30] John of Youlgreave received one of his four appointments from the wife of Richard of Morley in three pleas, and the other three from one principal, Agnes the widow of Nicholas of Heanor, albeit in a series of different pleas.[31] He also stood surety for Richard of Morley and for another litigant on separate matters, and may be regarded as a possible professional attorney, albeit in a small way.[32]

Richard of Marnham, on the other hand, probably was a professional attorney, his four appointments each being made by a different principal. One appointment was to act for the defendant in a plea of warranty of charter in which his principal's opponent was represented by a certain Richard Hubert who received seven attorney appointments at the eyre, the case raising several interesting issues which are discussed below.[33] He was also appointed to act for the plaintiff in her plea of dower which was adjourned to Lincoln for production of a warrantor.[34] No recorded proceedings followed his third appointment in a plea of customs and services, and the final appointment was made by a warrantor in two related pleas of *aiel* and *mort d'ancestor* respectively which were adjourned to Lincoln.[35] In addition to Richard's four appointments, one Ralph of Marnham is recorded as being appointed in a plea of dower which was adjourned to Lincoln when the defendant demanded a view, and it is possible that 'Ralph' may have been erroneously written for 'Richard'.[36] In any event, and alongside his attorney appointments, Richard was also appointed to act as the guardian of an under-aged litigant on the adjournment of a plea of entry.[37]

[30] Ibid., nos.300, 330, 345, 361.
[31] Ibid., nos.308; 321, 362, 363.
[32] Ibid., nos.729, 737.
[33] Ibid., nos.22, 859.
[34] Ibid., nos.316, 249.
[35] Ibid., nos.326; 399, 142; 206.
[36] Ibid., nos.343, 285.
[37] Ibid., no.284.

Like Richard of Marnham, Hugh of Normanton's four appointments were unrelated each to the other, and he too was probably a professional attorney. One appointment was to act against the king in a plea of *quo warranto*, and he received another appointment by two defendants in a plea of *aiel* adjourned to Lincoln for the verdict of a jury.[38] A third appointment was made in related pleas of *aiel* and *mort d'ancestor* which were adjourned to Lincoln.[39] Finally, in a contested plea of common of pasture of 160 acres of wood and moor, adjourned to Lincoln for the verdict of a grand assize, Hugh was appointed as the attorney of the claimant on the matter being further adjourned.[40]

Richard Hubert, the recipient of seven appointments from seven different principals at the eyre, was highly probably a professional attorney. Three of his appointments were made in relation to assizes of *mort d'ancestor* and two on pleas of *aiel*, and in another case he was appointed to act in a plea of right for the defendant who had vouched another to warranty.[41] As alluded to above, he also acted for the plaintiff in a plea of warranty of charter in which the defendant was represented by Richard of Marnham, Richard Hubert's client paying one mark for licence to concord, the defendant standing surety for the same.[42] His appointment in that case was made on adjournment for receipt of a chirograph, the terms of the underlying agreement suggesting that the chirograph was being used as a vehicle to record in perpetuity the terms of a co-operative conveyancing transaction.[43]

If, as the evidence suggests, Richard of Marnham and Hugh of Normanton were probably professional legal attorneys, and Richard Hubert highly probably so, there can be no doubt with Richard of Stapleford. Presumably associated with the vill of Stapleford midway

[38] Ibid., no.307, 466; 364, 270.
[39] Ibid., nos.399, 142; 206.
[40] Ibid., no.243; A27 (Appendix A).
[41] Ibid., nos.325, 96; 334, 152; 337; 335, 65, 209; 396, 221; 358, 242.
[42] Ibid., nos.22/859.
[43] As summarised in ibid., footnote to no.22.

between Derby and Nottingham, his fourteen appointments were made by twelve different principals.[44] As one only of his principals was an obvious churchman, his practice was seemingly secular. Perhaps unsurprisingly, given the short length of time occupied by the eyre, ten of the actions which followed his series of appointments were adjourned for further stages to be held at Lincoln, the venue for the next eyre on the circuit.

Richard's caseload was exclusively land-related. A plea of *quo warranto* against the king went to his principal's right to set a warren, and two pleas related to the right to demand common of pasture.[45] Otherwise, messuages, tofts, areas of land and, in one case, a rent were stated to be at issue. In the twelve cases where the proprietary or possessory status of the principal is clear, Richard acted on five occasions for claimants, on five occasions for defendants, and on one occasion each for a warrantor and for a party intervening in proceedings. In addition to the *quo warranto* proceedings and the common of pasture cases mentioned above, the nature of the litigation was varied, with two writs of *mort d'ancestor*, a writ of *besaiel*, a writ of *aiel*, a plea of dower and four claims of right by writ of entry.[46] One principal intervened unsuccessfully in an action, while in another case, the appointment refers simply to a plea of land and does not specify the role of the principal in any contemplated proceedings (of which none are recorded).[47]

It is difficult to establish, from the summary nature of the records of the pleas in which Richard and his principals were involved, the flavour of the underlying litigation in any given case. Nonetheless, the overall impression is that the litigation was genuine in the sense that it was prompted by a *bona fide* need to establish the greater right or to resolve instances of uncertainty. There were no assizes of *novel disseisin*, for instance, in which quasi-criminal

[44] Ibid., nos.284, 307, 310, 318/359, 333, 338, 344, 349, 380/381, 383, 391/392.
[45] Ibid., nos.307, 466; 383, 265; 391, 259.
[46] Ibid., nos.310, 239; 359, 13; 349, 270; 333, 221; 380, 285; 284; 318, 64; 338, 179; 381, A29 (Appendix A).
[47] Ibid., nos.344, 113; 392.

behaviour frequently featured. Such an interpretation, uncertain as it is, may even if correct reflect mere happenstance and may not in any event be typical. However, on the other hand, it may suggest the use of a lawyer to resolve legal issues rather than the use of a substitute to hear judgment on questions of fact.

The circumstances of the four pleas of entry in which Richard was involved support this interpretation. Sarra, widow of William of Elvaston, for instance claimed against the tenant a messuage and two bovates of land which had, she said, been demised by her late husband 'whom she was not able to gainsay in his lifetime'.[48] She and her opponent had legitimate competing interests in the tenements, as did both the plaintiff and tenant in a case in which Richard of Bingham (otherwise 'son of Richard Bogge') claimed two messuages and a virgate of land (less half an acre) against a tenant to whose predecessor a demise had been made for a term which, it was claimed, had since expired. Richard's claim that the tenements had properly reverted to him as his father's heir was countered by attempts made by the apparently innocent tenant to secure the support of a warrantor which were thwarted by a succession of defaults and essoins, the action remaining unresolved eighteen months later.[49]

A claim of land against Richard of Stapleford's clients, John Palmer and two others, originally based upon a writ of entry, resurfaced as a plea of dower, the outcome of which revolved around the circumstances and legal effect of the abjuration of the realm by the claimant wife's first husband.[50] Finally, in a case adjourned to Lincoln, it was claimed against Richard's client that he had no entry to several tenements except by a predecessor to whom the claimant's father had demised them 'while of unsound mind'.[51] This was clearly an issue worthy of trial and was adjourned for a jury to deliver a verdict.

[48] Ibid., nos.123, 284.
[49] Ibid., nos.318, 64; A12 (Appendix A).
[50] Ibid., nos.338, 179; A5 (Appendix A).
[51] Ibid., nos.381, 278; A29 (Appendix A).

Of Richard of Stapleford's fourteen appointments, nine were in the alternative to one other appointee, one in the alternative to two others, and alone in the remaining four cases. A similar apportionment, albeit in a smaller way, is apparent with Richard of Marnham, three of whose appointments were made in the alternative to another, with one in his sole name. Hugh of Normanton also received three joint-name appointments, and just one in his sole name. This pattern is, however, entirely different in the case of Richard Hubert, all seven of whose appointments were in his name alone. Although this may be mere happenstance, it might suggest he practised in a different way to the other three perceived professionals. The nature of such a difference is, however, difficult to detect as, like the others, his caseload was concerned with issues of property.

Thus, of the 147 different individuals identified as acting as attorney at the 1281 Derbyshire eyre, four can be confidently given professional status, a fifth possibly so. Others may have enjoyed such status also although, as at the earlier eyres reviewed, the overwhelming majority of attorneys were seemingly either 'simple' or, to the extent that they added value by virtue of their appointment, did so otherwise than to generate a living. Nonetheless, the professionalisation of attorneyship that had been vaguely discernible at the Berkshire eyre of 1248 and a little more in evidence at the Surrey eyre of 1263 was by 1281 a reality.

An interesting, perhaps significant, aspect of the small number of available professionals in Derbyshire is the extent to which they can be seen to be acting in the same actions, whether as joint appointees or in opposition. On no fewer than seven occasions, two of the four most probable or certain professional attorneys were involved in the same suits. Hugh of Normanton received two joint-name appointments, one in the alternative to Richard of Stapleford in a plea of *quo warranto*, and the other in the alternative to Richard of Marnham

in contemplation of related pleas of *aiel* and *mort d'ancestor* adjourned to Lincoln.[52] More frequently, however, the professionals were in opposition. The appearance of Richard of Marnham and Richard Hubert on opposing sides in a warranty of charter case has been remarked upon, as has the possibility that the intention of the parties was to record for posterity the terms of a conveyancing transaction.[53] The presence of a lawyer attorney on each side may be revealing of the role such men were expected to perform, being engaged not simply to represent their respective clients but also to negotiate terms and to ensure that the chirograph accurately recorded those agreed. Hugh of Normanton and Richard of Stapleford acted for opposing parties in a plea of *aiel*, Richard of Stapleford being opposed by professional attorneys on two further occasions, by Richard of Marnham on a plea of dower and by Richard Hubert on an assize of *aiel*.[54] Richard of Stapleford and Richard of Marnham were in opposition on one other occasion, the former as attorney and the latter as guardian for an under-aged defendant and authorised to sue on her behalf.[55]

Thus, three of Hugh of Normanton's four engagements involved also another of the four certain or probable professional attorneys active at the eyre, as did four of Richard of Marnham's five engagements (including his appointment as a guardian), two of those of Richard Hubert's seven and five of Richard of Stapleford's fourteen. In a field of 147 attorneys concerned with 278 separate actions,[56] such a concentration of professional expertise in just seven actions might suggest that, whereas most litigants still regarded attorneyship as a matter of simple substitution, an 'enlightened' minority saw merit in legal representation, as also did observant opponents anxious not to be disadvantaged.

[52] Ibid., nos.307, 466; 399, 142, 206.
[53] Ibid., nos.22, 859.
[54] Ibid., nos.349, 364; 343, 380; 333, 396.
[55] Ibid., no.284
[56] Ibid, Appendix C, p.250.

This apparent clustering of probable or certain professionals is observable also for those men identified as possible small-time professionals. William of Appleby and Simon Pakeman, each of whom received two appointments, shared one such to seek judgment on an action of entry.[57] Simon's second appointment was made on the adjournment of a case to Lincoln in the alternative to Hugh of Kibworth, a certain professional legal attorney active at the eyres of Leicestershire and Northamptonshire later in the visitation.[58] For his part, William of Appleby received his second appointment from a man whose opponent in a plea of dower was represented by two attorneys in the alternative, one of whom was Richard of Marnham.[59] Both of John the groom's appointments were made in the alternative to Richard of Stapleford.[60] John of Youlgreave received three of his four appointments from a widow, Agnes of Heanor, one of several defendants in a claim by Geoffrey the carter who had earlier appointed Richard of Stapleford as one of his attorneys.[61] Hugh of Normanton acted for a co-defendant in the same action.[62] In the action in which Walter of Hockerton was appointed to attend in Lincoln on adjournment, the defendant was represented by Richard Hubert who is recorded as essoining himself in the adjourned proceedings.[63] One of Nicholas of Clifton's two appointments was made in the alternative to Richard of Stapleford by the demandant in an assize of *mort d'ancestor* adjourned to Lincoln.[64] Either Richard or Nicholas appeared subsequently to receive a day.[65]

The eighteen years that elapsed between the eyres of Surrey in 1263 and Derbyshire in 1281 clearly witnessed an observable expansion in the number of attorneys who attracted sufficient

[57] Ibid., no.378.
[58] Ibid., no.257, and see *post*.
[59] Ibid., nos.376, 316.
[60] Ibid., nos.391, 392.
[61] Ibid., nos.321, 362, 363; 270, 349.
[62] Ibid., no.364.
[63] Ibid., nos.242; 358, A53 (Appendix A).
[64] Ibid., nos.310, 239.
[65] Ibid., A37 (Appendix A).

work to make professionalisation feasible. The issue arises, therefore, whether that process of expansion was smooth and incremental or suddenly apparent at any particular point in the available timescale. Data from an eyre held in Buckinghamshire between 30 September and 13 October 1272 is revealing.[66] Although some cases which were adjourned until January 1273 were not heard due to the intervening death of Henry III, the record of the appointment of attorneys is probably complete. The single surviving plea roll, JUST1/60, is that of the chief justice, Gilbert Preston, and is estreated and process marked. Nineteen attorneys are recorded as receiving more than one appointment at the eyre, of whom twelve men received two and four men received three appointments each. One man, Simon Bridel, received four appointments and another, John le Waledon, received six. Roger of Southcote was appointed on seven occasions.[67]

The Buckinghamshire eyre of 1272 took place exactly midway between the eyres of 1263 and 1281. With startling precision, the intensity of use of attorneys in 1272 was also exactly midway between such use at the earlier and later eyres respectively. Professionalism was clearly in its infancy in 1263, with just eight men receiving more than one appointment, seven of whom received two appointments and one received three. The tally of appointments received by those eight men is seventeen. At the eyre of 1281, when professionalism was much more in evidence and thirty men received more than one appointment, a tally of 89 appointments results from twenty men receiving two, four men receiving three, four more receiving four, one man receiving seven and one man receiving fourteen appointments. In Buckinghamshire in 1272, the corresponding tally from the nineteen attorneys who received more than one appointment is 53, precisely midway between seventeen and 89. Although the exactitude of the calculation is fluky in the extreme, its general thrust does suggest that, in the

[66] *Records of the General Eyre*, p.139.
[67] As to Roger's subsequent career, see *The Earliest English Law Reports*, ed. P.A. Brand, iii (London, Selden Society, 122, 2005), pp.cxlii-cxlv

absence of contrary evidence, the professionalisation of attorneyship materialised slowly and steadily through the 1270s, having been effectively non-existent in the 1250s (as per Shropshire in 1256), emergent in the 1260s, and established and recognisable by the early 1280s.

Part Three:

The Professional Attorney

Chapter 13: Attorneys at the later eyres

As touched upon in the context of the Derbyshire eyre of 1281, what proved to the only major visitation to be commissioned during the reign of Edward I opened in 1278, eyres being held on two circuits. The southern circuit commenced in Hertfordshire, whilst the northern circuit first visited Cumberland. In 1282, each circuit was interrupted, and proceedings suspended, by the Welsh war. Following resumption of the visitation in 1284, it ran through to 1289 when plans to extend it were thwarted by a judicial scandal. In 1292, it recommenced, but preparations for war with France in 1294 caused it to be again interrupted, and it was never resumed.[1] The age of the General Eyre was over, only occasional eyres (culminating with that of Kent in 1348) and a short-lived attempted revival in 1329-31 being held thereafter.

At the time of suspension of proceedings in 1282, and after having visited Cumberland, Westmorland, Northumberland, Durham, Yorkshire, Nottinghamshire and Derbyshire (as to which eyre, see *ante*), the northern circuit had reached Lincolnshire. On recommencement in 1284, its itinerant justices completed their business there in May of that year, thereafter visiting twelve further eyre districts starting with Leicestershire between October 1284 and January 1285. They continued in Warwickshire in January and February 1285 and Northamptonshire between September and December of that year. Between January and May 1286 they progressed via Rutland to Buckinghamshire, and thence to Cambridgeshire in June and July, Ely in August, and to Huntingdonshire in September and October. Eyres were then held in Bedfordshire in January and February 1287, Ramsey in June, and Gloucestershire between April and July of the same year. The final eyre on this leg of the northern circuit took place in Dorset between May and July of 1288.[2]

[1] See *Records of the General Eyre*, ed. D. Crook (Public Record Office Handbooks, 20, London, 1982) for details of the visitation.
[2] Ibid., pp.146-157.

With the exception of Dorset, which does not adjoin any other county on the northern circuit, and Gloucestershire, which shares a boundary with one other only, the eyre districts visited by the justices from Leicestershire onwards collectively form a discrete area of Middle England. It is with the recorded activities of attorneys at the several eyres that took place in that area between October 1284 and February 1287 that this section of the thesis is primarily concerned. Central to that concern are the activities of those attorneys who appear from the available evidence to have been active professional lawyers, for whom acting for client litigants in court proceedings was a means of generating a living. These men may be called legal attorneys, as opposed to simple attorneys, and in order to give to their activities a sufficient context and to be able to assess their collective contribution to the judicial process, we firstly examine the usage of attorneys generally by litigants at the series of eyres held on the northern circuit between 1284 and 1288.

Attorneys were present at every eyre (with the possible exception of Ramsey, for which no relevant evidence survives), and may be identified in the usual way from the record of proceedings set out in the plea rolls compiled at each of them. The number and quality of such rolls surviving from each of the individual eyres however varies.[3] Although not all of them contain details of attorney appointments, the estreated roll of the leading justice (usually John Vaux) at each of the eyres invariably does so, and it is from those rolls that relevant material has been extracted. In the case of the eyre of Northamptonshire, some further detail has also been taken from the roll of a second justice, John Mettingham. Use has also been made of the transcription and translation of the plea rolls from the Buckinghamshire eyre contained within *The Buckinghamshire Eyre of 1286*, edited by Lesley Boatwright,[4] and of

[3] See ibid. for details of the extant plea rolls for every eyre and summaries of contents.
[4] *The Buckinghamshire Eyre of 1286*, ed. L. Boatwright (Buckinghamshire Record Society, 34, 2006).

the transcription of the proceedings of the Huntingdonshire eyre within *Royal Justice and the Medieval English Countryside*, edited by A.R. and E.B. De Windt.[5]

Nowhere in the plea rolls is the degree of professionalism of any given attorney stated, and it must be deduced from the limited data available. As previously discussed, obvious indicators of professionalism are the number of appointments received and the number of different principals who make those appointments. Broadly, the greater the number of each, the greater the probability of professionalism, but an attorney whose tally of appointments came from the same number of principals is more likely to have had a larger practice than another whose identical tally of appointments were made by fewer principals. Independence is also a factor. Those attorneys who are unconnected to their principals, and not relatives, retainers or acquaintances, will more probably be professional lawyers, their principals being also paying clients.

The first stage in identifying professional attorneys is to identify all men (there are no women) who qualify as 'attorneys of interest'. This term has been used *ante* as describing attorneys who exhibit lawyerly characteristics or who otherwise stand out as differing in some material particular from their peers. It is now coined in a much narrower context, namely as descriptive of legal attorneys who, with varying degrees of probability or certainty, may be regarded as having been professional practitioners by virtue of having received five or more appointments on the circuit. The choice of five appointments as a threshold for professionalism is, of course, arbitrary and it is entirely possible that a man who received four (or even three) appointments at any given eyre may have been a professional practitioner, albeit in a small way of business and unlikely to have been handling a sufficient workload to generate a profitable living. Conversely, not all men who received five or more appointments

[5] *Royal Justice and the Medieval English Countryside*, eds A.R. DeWindt and E.B. DeWindt (2 vols, Toronto, 1981).

were necessarily professional lawyers. Friends and relatives of litigants might receive several appointments or appear in a couple of eyres, as might retained stewards of great lords or monks representing religious houses. William of Trayly, for example, received seven appointments in Northamptonshire and one in Buckinghamshire, but as they were made collectively by his wife, an acquaintance and his acquaintance's wife, we can be certain that he was not a professional practitioner.[6]

Despite shortcomings, the qualifying criterion is designed to identify, as closely as possible, men who were, to a greater or lesser extent, professional practitioners. But uncertainties remain. What, for instance, may be made of John of Clifton, who received three appointments in Warwickshire, two in Northamptonshire and two in Gloucestershire?[7] Four of his seven appointments, covering all three eyres, were made by the abbot of Evesham, and an assessment of his professional status (or lack of it) is a matter of judgment. John of Clifton's case points up another difficulty, that of possible conflation of two or more individuals who share a surname, particularly when appointments are received in different eyres. It so happens that although John's surname reflects a place-name that is not uncommon, with the consequent possibility of conflation, his use by the abbot of Evesham in each of the three eyres in which he features makes it almost certain that all of the entries in the plea rolls refer to the same man. But, in the case of, say, John de Sancto Edwardo, whose three appointments by different clients in Cambridgeshire were followed by two others in Gloucestershire (both to another client), we may be looking at two different Johns.[8]

The same difficulty attaches to men who come down to us with names that were doubtless borne by countless different individuals. It is most unlikely that the Robert the Messenger

[6] JUST 1/622, mm.65, 66d, 67; JUST 1/67, m.40.
[7] JUST 1/960, m.31; JUST 1/622, mm.62, 64; JUST 1/283, mm.45, 46d.
[8] JUST 1/91, mm.31d, 32, 33; JUST 1/283, m.47d.

who received single appointments in each of Leicestershire, Warwickshire, Northamptonshire, Bedfordshire and Gloucestershire is the same man in every case.[9] Although we can be confident that the Robert who appeared in Northamptonshire and in Gloucestershire are identical, as the appointing principal in each is the same, no obviously helpful evidence exists for appointments in the other eyres.

The problem of confident identification is exacerbated in cases of idiosyncratic spellings of the surnames of attorneys, particularly (presumably) of those who were not known to the clerks and scribes who recorded proceedings on the plea rolls. We can be reasonably sure that the William who is variously recorded as being of 'Wyndelesdon', 'Wendelesdon', 'Wendlesdon', 'Wyndelisdon', 'Wyndelysdon', 'Wyndelsdon' and 'Wyndliston' in the two appointments he received in Northamptonshire, three in Buckinghamshire, two in Cambridgeshire and one in Gloucestershire, is the same man in each case.[10] But what of the John who received three appointments in each of Buckinghamshire and Bedfordshire (one in Bedfordshire being as a guardian) who is described variously as being of Rogecote/Rugcote/Radecote/Redcote/Radcote.[11] Even if we can be satisfied that a single individual is being described, the choice of name is arbitrary in the absence of a firm identification with a particular place.

Occasional difficulty can arise from the same man being referred to in two entirely different ways in different plea rolls. An attorney may, for instance, be known in one quarter as being 'of' a particular place and in another as the son of a stated individual. Alternatively, his former name may be transitioning to a new one if, for instance, he has recently moved residence or acquired land with which he is becoming associated. In such cases, and given the

[9] JUST 1/462, m.33d; JUST 1/960, m.33d; JUST 1/622, m.62; JUST 1/12, m.23d; JUST 1/283, m.45d.
[10] JUST 1/622, m.65d; JUST 1/67, mm.39d, 42, 43; JUST 1/91, mm.31d, 33; JUST 1/283, m.44d.
[11] JUST 1/67, mm.39, 40d; JUST 1/12, mm.22, 22d.

obvious difficulty of confidently merging two separate 'existences' into one, attorneys of interest and, indeed, professionals may escape detection. However, the better known to the courts was any particular attorney, the less is the likelihood of such a difficulty arising.

A further challenge is presented by attorneys who, although comprehensively meeting the criteria respectively for being attorneys of interest and for being apparent active professionals on the circuit, were not full-time independent private practitioners, but men who combined work as an attorney with paid employment elsewhere. Such men may have been itinerant court clerks, moving from eyre to eyre, accepting paid instructions from litigants to act as their attorney as they went. Their continuous presence in court made them well placed to take procedural steps and to deal with issues arising. Or such men may have been sheriff's officers, often knowledgeable on legal matters and widely known within their communities, and able in conjunction with their official duties to undertake attorney work 'on the side'. Stewards and bailiffs too, acting independently of their employers, may have done the same.

Subject to all the stated caveats, it is calculated that a total of 124 different men who received appointments at the series of eyres commencing with that of Leicestershire in 1284 and culminating with that of Dorset in 1288 are attorneys of interest (as defined above), the majority of whom were accordingly possible, probable or certain professional legal practitioners. No fewer than 100 of them received their five or more 'qualifying' attorney appointments at a single eyre (some doing so in conjunction with appointments at other eyres also). The remaining 24 attorneys of interest did not receive five or more appointments at any single eyre, but garnered such a tally from two or more eyres on the circuit.

The first of the eyres under review took place at Leicester between 6 October and 12 November 1284, and perhaps also on 20 January 1285.[12] Appointments of attorneys are

[12] *Records of the General Eyre*, p.152.

recorded within four surviving plea rolls, one of which is that of Vaux, estreated and process marked.[13] A total of 247 acts of appointment by one or more litigants in contemplation of proceedings at the eyre are recorded on the membranes dedicated to the appointment of attorneys, 131 being of a single attorney, 112 of two attorneys in the alternative, and four of three such attorneys. Some 47% of the acts of appointment made in contemplation of proceedings were accordingly of two or more attorneys.

The number of different individuals appointed to act in contemplation of proceedings at the eyre is calculated at 245. A single appointment was received by 194 of them (some 79% of all attorneys), a further 33 receiving two appointments, five receiving three and five more receiving four. Additionally, one man received five appointments, two men received six, two more received seven, and single individuals received respectively eight, eleven and sixteen appointments. Of the 237 attorneys who received fewer than five appointments at the eyre, fifteen appeared elsewhere also a sufficient number of times to accumulate five or more in total and hence to qualify as attorneys of interest. Therefore, 23 of the total of 245 attorneys at the eyre may be classified as attorneys of interest, receiving 91 appointments between them.

The Warwickshire eyre took place at Warwick between 14 January and 9 February 1285.[14] Appointments of attorneys are recorded within four surviving plea rolls, one of which is that of Vaux and estreated.[15] A total of 239 acts of appointment by one or more litigants in contemplation of proceedings at the eyre are recorded, 139 being of a single attorney, 95 of two attorneys in the alternative, and five being of three. Accordingly, some 42% of all acts of appointment made in contemplation of proceedings were of two or more attorneys.

[13] JUST 1/462, mm.31-33d.
[14] *Records of the General Eyre*, p.152.
[15] JUST 1/960, mm.31-33d.

The number of different individuals appointed to act in contemplation of proceedings at the eyre is calculated at 219. Of that number, 163 (74%) received only a single appointment, a further 28 receiving two appointments, sixteen receiving three appointments, and four receiving four. Ten of this cohort receiving fewer than five appointments at the eyre appeared elsewhere also on a sufficient number of occasions to qualify them as attorneys of interest. In addition, four men received five appointments at the eyre (in one case, including an appointment as a guardian), with lone men receiving respectively six, seven, eight and nine appointments. Eighteen of the 219 appointees are, therefore, identifiable as attorneys of interest at the Warwickshire eyre, receiving 76 appointments between them. Eleven of them had already appeared at the earlier eyre of Leicestershire, leaving seven attorneys of interest joining the circuit in Warwickshire.

The Northamptonshire eyre took place at Northampton between 30 September and 5 December 1285.[16] Appointments of attorneys are recorded within three surviving plea rolls, one of which is that of Vaux, estreated.[17] A total of 671 separate acts of appointment by no fewer than 787 litigants in contemplation of proceedings at the eyre are recorded in that roll (with a few additions from a different roll),[18] of which 407 were of a single attorney, 263 were of two attorneys in the alternative, and a single appointment was of four attorneys. Accordingly, some 39% of all acts of appointment made in contemplation of proceedings were of two or more attorneys.

The number of different individuals identified as receiving attorney appointments in contemplation of proceedings is calculated at 521, of whom 373 (some 71%) received only a single appointment, 81 received two appointments, 24 received three appointments and

[16] *Records of the General Eyre*, p.153.
[17] JUST 1/622, mm.62-67d.
[18] JUST 1/620.

eleven received four appointments. Twenty-four of this cohort who received four or fewer appointments at the eyre are attorneys of interest, appearing also with qualifying frequency at one or more of the other eyres on the circuit. A further 32 attorneys of interest qualify as such by virtue of their record of appointments at the eyre. Eight of them each received five appointments, seven received six, five received seven, two received eight, one received nine, and three received ten. One man received twelve appointments, one other received fourteen, three received sixteen and one man received 22 appointments at the eyre. There were therefore 56 attorneys of interest at the eyre, receiving 316 appointments between them. Of the 56, only fifteen had earlier appeared at either or both of the eyres of Leicestershire and Warwickshire, 41 thus joining the circuit in Northamptonshire.

The small eyre of Rutland took place at Oakham between 7 and 14 January 1286.[19] Appointments of attorneys are recorded within four surviving plea rolls, one of which is that of Vaux and estreated.[20] Just 44 appointments in contemplation of proceedings are recorded on those membranes, fifteen being of a single attorney, 27 being of two attorneys and two being of three attorneys. Accordingly, some 66% of all acts of appointment made in contemplation of proceedings were of two or more attorneys. Just five attorneys of interest were present at the eyre of Rutland, all of whom received a single appointment in conjunction with appointments at one or more of the earlier eyres.

The Buckinghamshire eyre took place at Newport Pagnell between 20 January and 3 February 1286, and at High Wycombe between 22 April and 19 May 1286.[21] Appointments of attorneys are recorded within five surviving plea rolls, one of which is that of Vaux and estreated.[22] Its civil proceedings have been transcribed and translated and are available in

[19] *Records of the General Eyre*, p.153.
[20] JUST 1/725, mm.10-10d.
[21] *Records of the General Eyre*, p.154.
[22] JUST 1/67, mm.39-43.

print.[23] A total of 423 separate acts of appointment by 490 litigants in contemplation of proceedings at the eyre are recorded, 241 being of a single attorney, 169 being of two attorneys in the alternative, twelve being of three attorneys, and one appointment being of four attorneys. Accordingly, some 43% of all acts of appointment made in contemplation of proceedings were of two or more attorneys.

The number of different attorneys appointed at the eyre in contemplation of proceedings is put at 372, of whom 269 (some 72%) received only a single appointment, 55 received two appointments, seventeen received three and fifteen received four. Of that cohort, 21 also appeared with sufficient frequency at other eyres on the circuit to qualify as attorneys of interest. Additionally, six men received five appointments at the eyre, two received seven, three received eight, two received nine, two received thirteen, and one man received 21. Accordingly, 37 men are identifiable as attorneys of interest at the eyre, receiving 178 appointments between them. Twenty of them had already appeared at one or more of the earlier eyres on the circuit, seventeen therefore making their first appearance in Buckinghamshire.

The Cambridgeshire eyre took place at Cambridge between 16 June and 24 July 1286.[24] Appointments of attorneys are recorded within five surviving plea rolls, one of which is that of Vaux and estreated.[25] A total of 282 acts of appointment by one or more litigants in contemplation of proceedings at the eyre are recorded on those membranes, 158 being of a single attorney, 117 being of two attorneys in the alternative, and seven of three. Accordingly, some 44% of all acts of appointment made in contemplation of proceedings were of two or more attorneys.

[23] *The Buckinghamshire Eyre of 1286.*
[24] *Records of the General Eyre*, p.154.
[25] JUST 1/91, mm.31-33d.

It is calculated that 250 different individuals were appointed to act as an attorney in contemplation of proceedings at the eyre. Of that number, 190 (76%) received only a single appointment, with 33 receiving two appointments, ten receiving three, and five receiving four. Fifteen of this cohort qualify as attorneys of interest by virtue of additional appointments received elsewhere. Four more men received five appointments at the eyre, two received six, two received seven, and lone men each received, respectively, ten, eleven, thirteen and 23 appointments. Hence, 27 men qualify as being attorneys of interest, receiving 134 appointments between them. Seventeen of them had already appeared at one or more of the earlier eyres, ten therefore making their first appearance on the circuit. Furthermore, sixteen attorneys of interest subsequently received appointments at one or more of the later eyres also.

The Ely eyre took place in Ely between 5 and 11 August 1286.[26] The sixteen appointments of attorneys in contemplation of proceedings are recorded in the only surviving plea roll, that of Saham and estreated.[27] Of the sixteen different attorneys appointed at the eyre, just three men identify as attorneys of interest, all of whom had already appeared earlier in the circuit. Each of them received only a single appointment but made a sufficient number of appearances elsewhere also.

The Huntingdonshire eyre took place at Huntingdon between 30 September and 28 October 1286.[28] Appointments of attorneys are recorded within five surviving plea rolls, one of which is that of Vaux, estreated and process marked.[29] Its civil proceedings have also been transcribed and printed.[30] A total of 120 acts of appointment by 124 litigants in contemplation of proceedings at the eyre are recorded, 56 being of a single attorney, and 64 being of two

[26] *Records of the General Eyre*, p.155.
[27] JUST 1/90, m.5.
[28] *Records of the General Eyre*, p.155.
[29] JUST 1/350, mm.20-21.
[30] *Royal Justice and the Medieval English Countryside*, i.

attorneys in the alternative. Accordingly, some 53% of all acts of appointment made in contemplation of proceedings were of two or more attorneys.

A consequence of such a high proportion of multiple-name appointments is that, on the only occasion at the eyres under review, more different attorneys were appointed than were appointing litigants, the 124 principals appointing between them in contemplation of proceedings 131 different individuals to act as attorney at the eyre. Of that number, 100 (some 76% of the total) received only a single appointment, nineteen receiving two, eight receiving three, and one man receiving four. Sixteen of this cohort received a sufficient number of appointments at one or more of the other eyres on the circuit to qualify as attorneys of interest. Only three men received five or more appointments at the eyre, respectively of six, eight and ten. The resulting nineteen attorneys of interest received 50 appointments in Huntingdonshire between them. Eighteen of them had previously received appointments at one or more of the earlier eyres, seven of whom appeared also at the following eyre of Bedfordshire. The one remaining attorney, joining the circuit in Huntingdonshire, also appeared later in Gloucestershire. In only two cases did an attorney receive more appointments in Huntingdonshire than he did at any one of the other eyres.

The 1287 Bedfordshire eyre took place at Bedford between 14 January and 9 February, and between 20 and 22 February, and at Dunstable between 17 and 19 February of that year.[31] Appointments of attorneys are recorded within five surviving plea rolls, one of which is that of Vaux, estreated and process marked.[32] A total of 180 acts of appointment by one or more litigants in contemplation of proceedings are recorded, 103 being of a single attorney, 75 being of two attorneys in the alternative, and two being of three attorneys. Accordingly, some

[31] *Records of the General Eyre*, p.155.
[32] JUST 1/12, mm.22-23d.

43% of all acts of appointment made in contemplation of proceedings were of two or more attorneys.

It is calculated that 171 different individuals were appointed to act as attorney in contemplation of proceedings at the eyre. Of that number, 143 (83%) received only a single appointment, seventeen receiving two, four receiving three, and two receiving four. Fifteen of them qualify as attorneys of interest, having received a sufficiency of appointments also in one or more of the other eyres on the circuit. One further man received five Bedfordshire appointments, another received nine and three more each received ten. The resulting twenty attorneys of interest received 74 appointments in Bedfordshire between them. Eighteen of them had already received appointments at one or more earlier eyres, leaving just two who appeared for the first time on the circuit in Bedfordshire.

The 1287 Gloucestershire eyre took place at Gloucester between 14 April and 16 May, and between 2 and 22 June, and at Bristol between 1 and 8 July of that year.[33] Appointments of attorneys are recorded within four surviving plea rolls, one of which is that of Saham and estreated.[34] A total of 352 acts of appointment by one or more litigants in contemplation of proceedings at the eyre are recorded, 187 being of a single attorney, 162 being of two attorneys in the alternative, and three being of three. Accordingly, some 47% of all acts of appointment made in contemplation of proceedings were of two or more attorneys.

The 352 appointments made in contemplation of proceedings were of 312 different individuals to act as attorney at the eyre. Of that number, 230 (almost 74% of the entirety) received only a single appointment, with 39 receiving two appointments, 21 receiving three, and eight receiving four. Fourteen members of this cohort are attorneys of interest, each receiving a sufficiency of appointments also at one or more of the other eyres on the circuit.

[33] *Records of the General Eyre*, p.155.
[34] JUST 1/283, mm.44d-47d.

Fourteen further men received five or more appointments in Gloucestershire, five of whom received five, two received six, two received eight, one received nine, two received ten, one received eleven, and one received thirteen appointments. The resulting 28 attorneys of interest received 130 appointments in Gloucestershire between them. Sixteen of them had received appointments earlier on the circuit, twelve men therefore making their first (and in nine cases, sole) appearance on the circuit.

The eyre of Ramsey took place at Smithscroft on 2 and 3 June 1287, the sole surviving plea roll containing no separate membrane recording attorney appointments.[35]

The Dorset eyre took place between 30 May and 1 July 1288 at Sherborne, Lyme Regis and Melcombe Regis.[36] Appointments of attorneys are recorded within three surviving plea rolls, one of which is that of Mettingham and estreated.[37] A total of 232 acts of appointment by one or more litigants in contemplation of proceedings are recorded, 128 being of a single attorney, 101 being of two attorneys in the alternative, and three being of three attorneys. Accordingly, some 45% of all acts of appointment made in contemplation of proceedings were of two or more attorneys.

The number of different individuals appointed in contemplation of proceedings to act as attorney at the eyre is put at 169, of whom 121 (almost 72% of the entirety) received only a single appointment, with nineteen receiving two and nine receiving three. Seven men received four appointments, two of whom are attorneys of interest, having previously appeared also at the Gloucestershire eyre. A further thirteen attorneys of interest received five or more appointments in Dorset, two of whom received five, three received six, two received seven, and one other received ten. Another man received eleven appointments, three men

[35] *Records of the General Eyre*, p.157; JUST 1/351B.
[36] *Records of the General Eyre*, p.157.
[37] JUST 1/213, mm.26-28.

each received twelve, and another received 20 appointments at the eyre. The fifteen attorneys of interest received 127 appointments in Dorset between them. In only four cases had such an attorney received one or more appointments at any earlier eyre (in three cases solely in Gloucestershire), and accordingly eleven of Dorset's fifteen attorneys of interest appeared in that county alone.

Chapter 14: Statistical overview

Mention has been made, in the context of each successive eyre reviewed, of the percentage proportion of appointing principals who chose to nominate two or more individuals together or (much more frequently) in the alternative. It seems clear that after a gradual increase from some 14% evident at the Lincolnshire eyre of 1218-19, through 20% in Surrey in 1235 and 30% in Berkshire in 1248, to 34% in Shropshire in 1256 and 56% in Derbyshire in 1281, the use of multiple-name appointments had, to a degree, stabilised by the mid-1280s. Other than the low usage of 39% in Northamptonshire and the high usage of 53% in Huntingdonshire, the relevant percentages at the remaining seven main eyres (omitting, therefore, for this purpose those of Rutland, Ely and Ramsey), all fell within the range of 42%-47%. This sits well with Brand's findings that in the Common Bench in 1280, 'almost half' the litigants appointing attorneys appointed more than one, it being noted, however, that by 1300 barely 30% did so.[1]

It is possible, albeit crudely, to measure the intensity of use of attorneys at the nine main eyres under review. The relative size of each of those eyres may be gauged by reference to the number of folios (that is, the fronts and dorses of membranes) that make up the estreated plea roll devoted to the recording of civil business in each case. Although the number of enrolments recorded on individual folios no doubt varies, the probability is that within all the folios for each of the eyres reviewed, the average number of enrolments per folio is similar. On this measure, the greatest amount of civil business was transacted at the eyre of Northamptonshire, being recorded on 134 folios of plea roll JUST1/622. This figure provides a context for the 671 acts of appointment of attorneys in contemplation of proceedings at the

[1] P.A. Brand, *The Origins of the English Legal Profession* (Oxford, 1992), pp.75-6.

eyre (the greatest number at any of the eyres under review). The resulting ratio of 134:671 equates to an average of 5.01 acts of appointment per folio.

As evidenced by the 92 folios recording civil business in plea roll JUST1/283, Gloucestershire was the second busiest eyre on the part of the circuit under discussion. Its 352 acts of appointment of attorneys in contemplation of proceedings prompts a resulting ratio of 92:352, or an average of 3.83 acts of appointment per folio, suggesting a lower intensity of use of attorneys in Gloucestershire than in Northamptonshire. In contrast, although civil business at the Buckinghamshire eyre was recorded on slightly fewer folios (84) than in Gloucestershire, they accommodate a greater number of acts of appointment (423), and the resulting ratio of 84:423 (5.03 acts per folio) indicates not only a greater intensity of attorney use in Buckinghamshire than in Gloucestershire, but also approximate parity with Northamptonshire.

The eyres of Warwickshire, Leicestershire and Cambridgeshire were, on the evidence of the surviving record, similarly busy each to the others, although with different degrees of attorney use. Within Warwickshire's 69 civil plea folios in plea roll JUST1/960 are recorded 239 acts of appointment in contemplation of proceedings, with which may be compared 247 such acts within the 65 folios of plea roll JUST1/462 given over to recording civil pleas at the Leicestershire eyre, and 282 such acts within the 67 folios devoted to such business on plea roll JUST1/91 at the Cambridgeshire eyre. The respective ratios of intensity of use of attorneys, expressed in terms of the average number of acts of appointment per folio, are 3.46 for Warwickshire, 3.80 for Leicestershire, and 4.21 for Cambridgeshire. The three apparently least busy eyres were those of Dorset (54 folios in JUST1/213) at which are recorded 232 acts of appointment, Bedfordshire (46 folios in JUST1/12) with 180 such acts, and Huntingdonshire at which 40 folios of JUST1/350 record civil business, including 120 acts of appointment of attorneys. Their respective ratios of intensity of use accordingly equate to an

average of 4.30 acts of appointment per folio for Dorset, 3.91 for Bedfordshire, and 3.00 for Huntingdonshire.

By this measure, crude as it is, litigants at each of the Buckinghamshire and Northamptonshire eyres were seemingly most inclined to appoint attorneys, with those of Dorset and Cambridgeshire a little less so. Slightly less inclined again to appoint attorneys were litigants at the eyres of Bedfordshire, Gloucestershire, Leicestershire, and Warwickshire, the least inclined of all being litigants in Huntingdonshire.

But the appointment of attorneys is one thing, the appointment of professional attorneys quite another. How selective were litigants at the several eyres in their choice of attorney? By calculating the proportion of attorneys at each eyre who are attorneys of interest (as previously defined and discussed, and given that the majority of such attorneys may be regarded as having been, to a greater or lesser degree, professional practitioners), and again bearing in mind the obvious caveat that precision is elusive, a broadly indicative impression may be gained of the degree of selectivity exercised by local litigants. The higher the proportion in any given case, the more discerning in their choice of attorney the litigants would seem to have been.

Curiously, in Huntingdonshire where, on the above evidence, litigants were apparently least inclined to appoint attorneys at all, those who did so seemingly opted for professional representation more intensively than in any other county. Of the total of 131 different men and women identified as having been appointed as attorneys at the eyre, nineteen are attorneys of interest, a percentage return of 14.50%. The return for Bedfordshire of 11.69% (twenty attorneys of interest within a body of 171 different appointees) also suggests a degree of selectivity when set alongside the extent to which local litigants appointed attorneys at large. There would seem to have been approximate parity between litigants' usages,

respectively, of attorneys at large on the one hand and of professional attorneys on the other at each of the eyres of Northamptonshire (56 attorneys of interest within 521 attorneys overall, a return of 10.74%), and of Cambridgeshire (27 out of 250, a return of 10.80%), but litigants in Buckinghamshire, in which 37 out of 372 attorneys (9.94%) were professionals, were apparently slightly less discerning. Relative parity is again suggested in both Leicestershire on 9.38% (23 out of 245) and in Gloucestershire on 8.97% (28 out of 312). Litigants in Dorset however, where fifteen out of 169 attorneys overall (8.87%) were professionals, were noticeably undiscerning within the context of their use of attorneys at large. Finally, Warwickshire litigants, whose overall use of attorneys displayed the second-lowest degree of intensity were also, with just 8.21% of appointed attorneys being professionals (eighteen out of 219), the least discerning of all on the circuit under review.

It is noticeable that in each of Huntingdonshire and Bedfordshire (where the use of professionals apparently enjoyed its greatest intensity) a relatively low number of attorneys of interest received five or more appointments at the eyre in question. Only three men did so in Huntingdonshire and five men in Bedfordshire, an unusually large number of attorneys of interest qualifying in each case by virtue of having received a sufficient number of appointments at other eyres also. This distinction between those attorneys of interest who garnered five or more appointments at any given eyre and those who accumulated five or more appointments at two or more eyres serves as a means of starting to distinguish two very different types of legal practitioner, those whose practices were entirely, or largely, confined to a single county and those who roamed more widely. Not only, therefore, must the membership of each category be quantified, but also an attempt must be made to differentiate members of the latter category into those who received a sufficiently high proportion of their overall appointments at a particular eyre to suggest a centre of operations within the host

county, those for whom no 'home' base is apparent and who were seemingly nomadic, and those whose pattern of appointments suggests a cross-border, even a regional, practice.

Such cross-border or regional practitioners did not, of course, necessarily confine their activities to the northern circuit. Opportunities for interested attorneys to appear elsewhere existed in six adjoining counties visited by justices on the southern circuit which was followed at the same time as the northern circuit. The eyre of Berkshire, which took place in October and November 1284, coincided exactly with that of Leicestershire, as did the Oxfordshire eyre with that of Warwickshire in January and February 1285. Similarly, the eyre of Essex took place at the same time as the Northamptonshire eyre between September and December 1285, and the extended eyre of Norfolk coincided with all of those of Buckinghamshire, Cambridgeshire and Huntingdonshire which occupied most of 1286. The second part of the eyre of Suffolk and the whole of that of Bedfordshire clashed chronologically in January and February of 1287, as did those of Hertfordshire and Gloucestershire in April and May of the same year. Whilst no attorney could be in two places at the same time, choices of venue made by individuals are clearly capable of significance.

Unsurprisingly, given its geographical remoteness and lack of proximity to any other district on the circuit, the eyre of Dorset was populated with the highest proportion of apparently local professional attorneys. Of the fifteen attorneys of interest who appeared there, thirteen (86%) received five or more appointments at the eyre, eleven of whom appeared nowhere else on the circuit, and may for that reason be regarded as having been local professionals. The second highest proportionate turn-out of men who received five or more local appointments was at the Northamptonshire eyre at which 32 of the 56 (57%) attorneys of interest who appeared there did so. Such substantial proportionality cannot, of course, be geographical remoteness or lack of proximity to other eyre districts; Northamptonshire marches with Warwickshire, Leicestershire, Rutland, Cambridgeshire, Huntingdonshire,

Bedfordshire and Buckinghamshire. Its very centrality would seem, therefore, to be at the heart of its concentrated use of apparently local professional attorneys, into which category must fall the thirteen men in receipt of five or more appointments at the eyre who did not appear at any other eyre reviewed.

Gloucestershire, fourteen of whose 28 attorneys of interest (50%) received five or more appointments at the local eyre, had the third-highest such concentration, no doubt (like Dorset) due in part at least to its relative remoteness on the circuit. Indeed, nine of those fourteen men appeared nowhere else, and were almost certainly local professionals. Proportionately, the numbers of attorneys of interest who received five or more appointments at the eyres of Warwickshire, Cambridgeshire and Buckinghamshire respectively were similar. Eight of Warwickshire's eighteen such attorneys (44%) did so, as did twelve of Cambridgeshire's 27 attorneys of interest (also 44%) and sixteen of Buckinghamshire's 37 (43%). Three of Warwickshire's eight such men appeared nowhere else on the circuit and may, therefore, be regarded as having been local practitioners. Although five of Cambridgeshire's twelve such attorneys and seven of Buckinghamshire's sixteen similarly made no other appearances on the northern circuit, two of Cambridgeshire's five and one of Buckinghamshire's seven did also make a sufficient number of appearances at eyres on the southern circuit for them to be regarded as having been more than purely local lawyers. The eyres of Leicestershire, with eight of the 23 attorneys of interest (34%) who appeared there receiving five or more appointments, Bedfordshire, with five out of twenty (25%) and Huntingdonshire with just three out of nineteen (15%) doing so, seemingly took place in counties with relatively small populations of home-spun professional attorneys. Only two of Leicestershire's eight attorneys in receipt of five or more appointments appeared nowhere else also, as did just one of Bedfordshire's five, and none at all of Huntingdonshire's three.

As is clear from the foregoing, there was considerable fluidity of movement by some attorneys on the circuit. In addition to those attorneys of interest who received their five or more qualifying attorney appointments at two or more eyres, many attorneys who received five or more appointments at particular eyres appeared in other counties also. Twenty-one of the 23 attorneys of interest who appeared in Leicestershire did so, eleven of whom worked at the following eyre of Warwickshire, eight progressing further still. Seven of the resulting eighteen men who appeared at eyres subsequent to that of Warwickshire went no further than Northamptonshire, the remaining eleven appearing later on the circuit, two of whom did so at the Gloucestershire eyre in 1287.

Nine of Leicestershire's 23 attorneys of interest received only a single appointment in that county, garnering the majority of their tally of appointments elsewhere. Indeed, eight of the eleven men who worked in both Leicestershire and Warwickshire were seemingly busier in Warwickshire (including two of the three who went no further), receiving more appointments there than in Leicestershire. One received an identical number of appointments in each county, and two received more in Leicestershire. Of the ten men whose progression omitted Warwickshire, six received more appointments in at least one other county than in Leicestershire, and it is difficult to see in that county a thriving local legal scene.

Of the fifteen men who worked in Warwickshire and elsewhere, only seven progressed further on the circuit than Northamptonshire, the remaining eight restricting themselves to that county and/or to Leicestershire. Forty-three of Northamptonshire's 56 attorneys of interest received appointments in other counties also. Fifteen of them had previously appeared at one or both of the earlier eyres of Leicestershire and Warwickshire, and 35 men (including seven who had appeared earlier on the circuit) progressed to one or more later eyres. Eighteen of those men appeared in one subsequent eyre only. Of Northamptonshire's

43 nomadic attorneys of interest, 22 received more appointments there than they did in any other single county.

Ten of Buckinghamshire's 31 nomadic attorneys of interest appeared also only in Northamptonshire, Rutland or Cambridgeshire, the remaining twenty appearing in eyres more remote. Of the 24 attorneys of interest who appeared at the Cambridgeshire eyre and elsewhere also, sixteen had also appeared at one or more of the three earliest eyres or were to progress to one or more of the last three. No fewer than ten of the nineteen attorneys of interest who appeared in Huntingdonshire received only one appointment at its eyre, the overwhelming majority of their appointments being made elsewhere. Indeed, twelve of the nineteen had earlier appeared at the Northamptonshire eyre, and eight at the eyre of Buckinghamshire, seven men progressing subsequently to Bedfordshire and four to Gloucestershire.

Six of Bedfordshire's twenty attorneys of interest received a single appointment only at that eyre, all of whom together with thirteen others appeared elsewhere also. Only five of them, however, progressed to either or both of Gloucestershire and Dorset, four of whom had already appeared earlier on the circuit. Of the eighteen men who had thus made an earlier appearance, nine had done so for the first time in Northamptonshire, five of whom appeared also in Buckinghamshire, a further six commencing their progression in that county. Five men had earlier appeared at the Cambridgeshire eyre, and seven in Huntingdonshire.

Of the nineteen attorneys of interest who appeared in both Gloucestershire and elsewhere, seven received more appointments locally than at any other eyre. Four men appeared at the subsequent eyre of Dorset, and sixteen had appeared at one or more of the earlier eyres on the circuit, in twelve cases at that of Northamptonshire some eighteen months earlier and in two cases at that of Leicestershire in 1284. Dorset's two men with five or more appointments who

appeared elsewhere had earlier appeared at the Gloucestershire eyre, one of whom was probably a Gloucestershire man (with eleven appointments in that county and six in Dorset) and the other (with four and five appointments respectively) of less certain attribution. The two attorneys of interest who received fewer than five appointments in Dorset were, in one case probably, and in the other case certainly, resident elsewhere, one in Gloucestershire (where he received eight appointments in addition to four in Dorset) and the other much further afield.

In seeking to calculate from the above how many of the total of 124 attorneys of interest were local to particular counties, we can be reasonably certain that the 48 men who received five or more appointments in a given county and appeared nowhere else on either the northern or the southern circuit practised exclusively in that county. By that token Northamptonshire, with thirteen such practitioners appearing at its eyre, was the most densely populated with local professional attorneys, followed by Dorset with eleven, Gloucestershire with nine, Buckinghamshire with six, each of Cambridgeshire and Warwickshire with three, Leicestershire with two, Bedfordshire with one, and Huntingdonshire, and Rutland and Ely with none at all. Furthermore, in the absence of contrary evidence, there may be a presumption that a further 40 men who received five or more appointments in a single county in conjunction with many fewer appointments elsewhere were local to the county concerned. Twelve attorneys of interest meet this criterion in Northamptonshire, as do five in each of Warwickshire and Buckinghamshire, four in each of Leicestershire, Cambridgeshire and Gloucestershire, three in Bedfordshire, two in Dorset, and one in Huntingdonshire. No such attorneys appeared in Rutland or Ely.

Therefore, by way of best estimate only, it is suggested that within the eleven eyre districts under review, around 88 men practised law as professional attorneys, doing so entirely or largely within the particular counties in which they respectively resided. Northamptonshire,

with 25 local men practising as professional legal attorneys, had the highest concentration of such lawyers on the circuit. Gloucestershire and Dorset were each home to thirteen such practitioners, Buckinghamshire to eleven, Warwickshire to eight, Cambridgeshire to seven, Leicestershire to six, Bedfordshire to four, and Huntingdonshire to just one home-spun professional legal attorney.

Thirty-six attorneys of interest remain to be categorised. Twenty-four of them received fewer than five appointments at any one eyre on the northern circuit, but did accumulate five or more at two or more such eyres. Most of this group had no observable attachment to any particular county, perhaps following the circuit either through employment as a court clerk or in another capacity, or opportunistically gathering work from any available source along the way. The remaining twelve attorneys of interest are men whose respective patterns of appointment suggest practices that were cross-border and, to a greater or lesser extent, regional. Two members of this group received five or more appointments at three separate eyres on the northern circuit, while five members did so at two such eyres. Each of the five further group members not only received five or more appointments at one or more eyres on the northern circuit but received also a significant number of appointments at one or more eyres on the southern circuit.

Chapter 15: Meet the professionals

Having considered prevailing patterns of appointment of attorneys in general and of professional attorneys in particular, and having touched upon discernible patterns of legal practice in the several counties under review, we next need to identify the men concerned and to place them within the landscape, within the communities they served. Who were they, and where did they practice? What was the extent of the localities in which they worked and how, if at all, did their individual territories relate each to the others? A single-county lawyer may have practised in part only of it, a town or borough perhaps or a cluster of villages within travelling distance of a central residence. Similarly, an attorney in receipt of appointments to act in two or more counties did not necessarily practice throughout the counties concerned. He may have done so only within the area of their conjunction. It is necessary, therefore, to examine the plea roll evidence more closely so as to place the attorney concerned within an identifiable professional territory.

One means by which this may be done is to establish the location of his place of residence and hence, by implication, the place of business from which he practised law. As with the population at large, many attorneys of interest who were apparently professional lawyers bore locative surnames. Although the identification of such surnames with particular places can be problematical, some place-names being of untraceable topographical features or of settlements or manors long forgotten, it is straightforward in many cases. Where there is uncertainty, assistance is available in the relevant county volume(s) of the Survey of English Place-Names published by the English Place-Name Society.[1] However, even when identification of a surname with a particular village or town is clear, the nature of the relationship of the individual concerned with that place may be less so. It may indicate where

[1] Various editors and dates of publication.

he lived, but may also signify his place of birth or origin, or a place from which he is known to have come before reaching his immediate place of residence, or the location of land or a manor presently held by him.[2] As to which may apply in any given case, it is probable that if the place with which the attorney in question's surname is associated lay within, or close to, the eyre district(s) in which the plea rolls indicate he received appointments to act, that place was where he lived and carried on his professional business.

If a place with which an attorney may be associated lay outside such an eyre district, and probably therefore signified his place of origin, previous residence or landownership, the locative surnames (if applicable) of his client, his client's opponent and that opponent's own attorney may be helpful in establishing his place of practice, as may the location of fixed assets (such as arable or pasture land, manors and territorial rights) at issue. A litigant wishing to appoint a professional attorney would be likely to choose someone known or recommended to him. If he was tenant in possession of the land or other asset at issue, his appointee would probably be from his own locality and, indeed, attorneys would tend to attract clients from within their own spheres of influence rather than from areas in which they were unknown. The same applies to a claimant residing in the vicinity of that asset, although if he lived elsewhere, he may instead have opted to appoint an attorney from that other place. Clearly, there can be no evidential certainty in any of this, but if names of parties or attorneys do coincide with those of localities in which other evidence suggests an attorney may practice, useful corroboration is provided.

In his study of the activities of attorneys at the Buckinghamshire eyre of 1286, the author identified 35 men who received three or more appointments at the eyre, sixteen of whom received five or more appointments and were, on that ground, regarded as being probable or

[2] For a discussion of this topic, see P.H. Reaney, *A Dictionary of British Surnames* (London, 1961), pp.ix-l.

certain professionals.[3] Seven further men received four appointments and twelve received three. Now that the necessarily limited conclusions of such an focused study can be placed within the context of the visitation of which the Buckinghamshire eyre formed part, it can be seen that some of those attorneys confined their professional activities to that eyre, working in no other eyre district on the northern circuit.

One such was Robert of Morton. He was appointed eight times (being once described as a clerk), by eight clients.[4] His name suggests a connection with Maids Moreton immediately to the north of Buckingham, and indeed he acted for three clients with claims to land in that village and also in an action for land in nearby Barton. It seems probable that he practised almost entirely within that locality. John of Dagnall's surname also suggests an intimate connection with Buckinghamshire, at the eyre of which he received seven appointments from six clients, appearing nowhere else on the circuit.[5] However, the village with which he may thus be associated lies to the east of Aylesbury, close to the boundaries with Bedfordshire and Hertfordshire, and his lack of instructions at the eyres of those counties and his work on lands in Addington and North Marston between Buckingham and Aylesbury and also in Barton may suggest he practised further to the north-west. This may in turn suggest a connection with the hamlet of Dagnall in Wicken, Northamptonshire, very close to the Buckinghamshire border. Another leading attorney at the Buckinghamshire eyre who appeared nowhere else on the northern circuit was Hugh del Brok with eight appointments by seven clients.[6] Lands with which Hugh was concerned lay in Marston, Oving and Soulbury in the centre of the county, suggesting a practice in the Aylesbury area.

[3] Andrew Whiting, unpublished M.A. dissertation, University of Leicester (2012).
[4] JUST 1/67, mm.40d, 41, 42, 42d.
[5] JUST 1/67, mm.39d, 40, 40d, 42, 42d.
[6] JUST 1/67, mm.40d, 41d, 42d.

It is now, however, clear that some of the leading attorneys at the Buckinghamshire eyre received appointments to act elsewhere on the northern circuit also. John del Brok's eight appointments in Buckinghamshire from eight clients, involving property in the Aylesbury area, at Cheddington, Marston and Oving, together with Adstock by Buckingham, were followed by one appearance in Cambridgeshire. Almost certainly, however, he lived and mainly practised in central Buckinghamshire.[7] John de la Lude received seven appointments (one as 'Hilude') from six clients in Buckinghamshire having, if the same man, previously received one appointment from a different client in Northamptonshire (as 'de Luda').[8] He was concerned with lands located in Great Risborough and Horsenden on the Chiltern escarpment to the north of Wycombe, those locations suggesting a practice in the area of High Wycombe**.** Robert Partridge received five appointments from five clients in Buckinghamshire and, subject to possible conflation, one at the earlier eyre of Leicestershire.[9]

Other attorneys worked also at eyres on the southern circuit. William of Haddenham, for example, who received nine appointments from seven clients in Buckinghamshire, had previously picked up single appointments at each of the adjoining eyre of Berkshire on the southern circuit, and at the Northamptonshire eyre.[10] William's locative surname probably reflects the location of family estates, making him very much a Buckinghamshire man. The village of Haddenham lies to the south-west of Aylesbury, and as the lands with which William was concerned at the Buckinghamshire eyre were largely located within a few miles of Aylesbury (at Burstall, Thornborough, Westcott, Waddesdon, Marston, Oving and within Aylesbury itself) a very local practice is suggested.

[7] JUST 1/67, mm.39, 40, 40d; JUST 1/91, m.31d.
[8] JUST 1/67, mm.40d, 41, 41d, 42d; JUST 1/622, m.66.
[9] JUST 1/67, mm.40d, 41, 41d; JUST 1/462, m.31d.
[10] JUST 1/67, mm.39, 40d, 42, 42d; JUST 1/48, m.23d; JUST 1/622, m.65.

John of Banbury received five appointments in Buckinghamshire from five clients. His surname suggests he had perhaps migrated at some time in the past from Oxfordshire, but with his clients litigating over property in Denham, Aylesbury and Whaddon, no pattern emerges as to where he may have resided. He did, however, also receive a single appointment at the Oxfordshire eyre on the southern circuit.[11] Robert of Elstead's two cases (from five separate appointments) in Buckinghamshire involved land in Maids Morton, close to Buckingham. He also picked up two further appointments in Bedfordshire, one of which was made by a Buckinghamshire client, and made a single appearance at the eyre of Hertfordshire on the southern circuit.[12]

Adam of Shortecumbe, whose eleven clients favoured him with thirteen appointments at the Buckinghamshire eyre, was one of its busiest attorneys.[13] Although he was professionally concerned with lands at Addington and Tingewick in the north-west of the county, those at the heart of most of his cases were in the Chiltern belt and the region to the south-east of the county, at Wexham, Taplow, Denham, Great Risborough, Chalfont St Giles and Amersham. This suggests the possibility that Adam was resident in High Wycombe, which provided one of the two venues for the meeting of the eyre and was hence almost certainly an established legal centre at the time.[14] Although he received no appointments at any eyre on the northern circuit other than that of Buckinghamshire, he is recorded as being active in three eyres on the southern circuit. In the first of those eyres, that of Berkshire, he received four appointments, followed by five in Oxfordshire and a further three in Essex.[15] A regional practice in the area in which the counties of Buckinghamshire, Berkshire and Oxfordshire conjoin is suggested.

[11] JUST 1/67, mm.39, 39d, 40; JUST 1/710, m.29d.
[12] JUST 1/67, mm.41d, 42, 42d; JUST 1/12, m.22; JUST 1/328, m.44.
[13] JUST 1/67, mm.39, 40d, 41, 41d, 42d, 43.
[14] *Records of the General Eyre*, p.154.
[15] JUST 1/48, mm.23, 23d, 24; JUST 1/710, mm.29, 29d, 30, 30d; JUST 1/246, mm.60, 60d, 63.

Also quite possibly with a base in High Wycombe was Roger of Batchworth with professional concerns in tenements at Bledlow, Denham, Kingshill and Hughenden, as well as at Addington and Aylesbury. He was appointed nine times by eight different clients and, as with Adam of Shortecumbe, he appeared at no other county on the northern circuit. But, also like Adam, he did appear at eyres on the southern circuit, receiving a single appointment at the Oxfordshire eyre, and two at the eyre of Essex.[16]

The busiest attorney overall at the Buckinghamshire eyre was Roger of Newport with 21 appointments by nineteen different clients, plus one appointment as the guardian of an under-age litigant.[17] His Buckinghamshire caseload (where locatable) largely concerned lands situated within an arc running from the area of Newport Pagnell in the north-east of the county, through Buckingham, and out to the west of Aylesbury. Newport Pagnell featured twice, South Caldecote and Brickhill (also in the north-east of the county) twice, Shabbington (hard on the Oxfordshire border to the west) twice, Twyford or Poundon by Twyford (in the north-west) three times, Charndon (north-west) twice, and Kingshill and Hughenden (near Wycombe to the south) four times (once in conjunction with Little Missenden). Single cases involved litigated land in each of Ickford (to the west), Astwood (far north-east on the Bedfordshire border), Lathbury (far north-east), Dorton (to the west), and Little Eye and Kerselawe (locations unknown). Relatively little work seemingly emanated from the Chilterns, suggesting that Roger did not practice in or to the south or east of Aylesbury. Based purely on his work record in Buckinghamshire, his business appeared to be centred in the north of the county.

It is now evident that before attending the Buckinghamshire eyre, Roger was active in Northamptonshire where he received nine appointments from eight clients. He was also

[16] JUST 1/67, mm.39, 39d, 40, 42; JUST 1/710, m.29; JUST 1/246, mm.60, 63.
[17] JUST 1/67, mm.39, 39d, 40, 40d, 41, 41d, 42, 42d.

appointed once in Bedfordshire later on the circuit.[18] The clients who instructed him in Northamptonshire and in Bedfordshire were different to those who did so in Buckinghamshire, and Roger thus acted for 28 different clients at the three eyres in which he appeared. In view of this, and given Roger's locative surname, it is now thought reasonable to place both his residence and the centre of his law practice in Newport Pagnell which, as did High Wycombe, provided one of the two Buckinghamshire eyre venues.[19] Newport Pagnell's proximity to the Northamptonshire and Bedfordshire county boundaries might explain his ability to build a practice that extended beyond Buckinghamshire and into neighbouring counties.

The probability that Roger worked out of a fixed location in Newport Pagnell is strengthened by his absence from the eyres of Leicestershire and Warwickshire, which preceded that of Northamptonshire, and from the Cambridgeshire, Ely and Huntingdonshire eyres which came later. Such a pattern of absence also strongly suggests that he was not attached to the circuit (for instance, as a court clerk) and that he did not garner work speculatively by following it. Although his single appointment in Bedfordshire suggests a lack of interest in developing his practice to the east, he may be categorised as a very busy professional attorney with a regional practice.

John of Islip was appointed as an attorney in Buckinghamshire thirteen times by twelve different clients, and was also on one occasion authorised by the court to act for a minor as his guardian.[20] His work in the county was focused upon disputed assets located, to some extent, in the north of the county but also in the Vale of Aylesbury. He was involved with lands in Aylesbury on three occasions, in Wycombe twice, with single cases at Esses and

[18] JUST 1/622, mm.64d, 65, 66, 66d, 67; JUST 1/12, m.23.
[19] *Records of the General Eyre*, p.154.
[20] JUST 1/67, mm.39, 40, 41, 41d, 42, 42d.

Whaddon (east of Buckingham), Turweston and Shalstone (each west of Buckingham), Drayton Beauchamp (east of Aylesbury) and Stoke Hammond (north of Aylesbury). This pattern of distribution originally suggested that John may have been based in Aylesbury, due east of a village in Oxfordshire which, given his locative surname, may have been his place of origin. It now seems certain that it was the village of Islip lying in Northamptonshire, and not that in Oxfordshire, from which John took his name.

Before appearing in Buckinghamshire, John received instructions to act from sixteen different clients at the Northamptonshire eyre (in one of which he is described as a clerk), and one appointment in Rutland. He was afterwards appointed six more times in Huntingdonshire.[21] The appointment in Rutland and one of those in Huntingdonshire were made by one of John's Northamptonshire clients, and two of his Northamptonshire clients instructed him in Buckinghamshire as well. Thus John of Islip acted for 32 different litigants at four eyres on the circuit. In addition, he may have been the same person as either or both John of Issele (with one appointment in Buckinghamshire) and Simon of Islip (with one in Northamptonshire).[22]

The scale of John's activity in Northamptonshire, Rutland, Buckinghamshire and Huntingdonshire strongly suggests that he, like Roger of Newport, had a regional practice in the south midlands. But it also suggests that his horizons were wider than those of Roger. If, as is surmised, he was based in the village of Islip which lies to the north-east of Northampton, hard up on the Huntingdonshire border, his workload in that latter county is explained. Just as Roger of Newport's absence from eyres to which he lacked easy geographical access strongly suggests that he was not a clerk or otherwise part of the circuit's itinerant staff, so also with John of Islip who attended at no eyre before that of

[21] JUST 1/622, mm.62, 63, 63d, 64, 66d, 67; JUST 1/620, m.52; JUST 1/725, m.10; JUST 1/350, mm.20, 20d, 21.
[22] JUST 1/67, m.40; JUST 1/622, m.64.

Northamptonshire, nor any after Huntingdonshire. His absence from the eyres of Cambridgeshire and Bedfordshire is particularly significant in this regard. The single reference to his being a clerk may reflect his being in minor holy orders or, perhaps, his literacy or perceived wisdom.

Stephen of Keysoe received at the Buckinghamshire eyre only four appointments from three clients, but his record elsewhere proves him to have been far more active in adjoining and nearby counties. Like Adam of Shortecumbe, Roger of Newport and John of Islip, he was a regional player. Ten previous appointments in Northamptonshire from nine clients (one of whom appointed him also in Buckinghamshire) were complemented by four subsequent appointments (by four different clients) in Huntingdonshire, and ten appointments from ten new clients in Bedfordshire.[23] He thus received 28 appointments by 25 different clients over four eyres. His presumed residence in or near to Keysoe in north-east Bedfordshire, with access to Northampton and other urban centres to the north-west, Huntingdon to the east, and Buckingham to the south-west, explains his concentration professionally upon his home county and three of those which abutted. The only surprise, perhaps, is his non-presence at the eyre of Cambridgeshire.

Roger of Newport, John of Islip and Stephen of Keysoe were not, of course, the only attorneys who spent time in Buckinghamshire after having previously visited Northamptonshire. Only three of the others were, however, particularly busy at the earlier eyre. Thomas of Oxford received ten appointments in Northamptonshire before making one appearance, to a new client, in Buckinghamshire.[24] A John of Thorp (who may be a conflation of two men) received two appointments in Buckinghamshire following one in

[23] JUST 1/67, mm.39, 40; JUST 1/622, mm.62, 62d, 63d, 64, 65, 66d; JUST 1/350, mm.20, 20d; JUST 1/12, mm.22, 22d, 23, 23d.
[24] JUST 1/622, mm.62, 62d, 63, 64, 64d, 65, 65d, 67; JUST 1/67, m.43.

Leicestershire, sixteen in Northamptonshire and one in Rutland.[25] It is probably a yet different John of Thorp who received a single appointment at the later Gloucestershire eyre.[26] Although both Thomas and John were almost certainly professionals, they were probably of local significance only, as also was Roger Malecake, whose single appointment in Buckinghamshire was preceded by three appointments in Leicestershire and seven in Northamptonshire, all of which were made by different clients.[27]

Of all the men who acted only within Northamptonshire and in no other eyre on the northern circuit as it progressed through the midlands, just three received double-figure appointments. Robert Russell was the busiest, with 22 appointments by 21 clients.[28] He was followed by William West (sometimes described as being 'of Stanton' or 'of Staunton') who received sixteen appointments in Northamptonshire and who is probably not the man of similar name who received two later appointments in Huntingdonshire.[29] Simon of Harrowden received twelve appointments from six clients in Northamptonshire, having previously featured on the southern circuit with two appointments in Berkshire and one in Oxfordshire.[30] Of the remainder, William of Hundell, clerk, was appointed eight times, with each of Bartholomew of Hetham, Paul of Somersham and Walter of Pattishall receiving seven appointments. John of Pattishall had six appointments, as did each of Geoffrey of Somersham, Stephen of Staunton and Thomas of Tuttebury. Thomas Madefrey of Northampton, Henry Puttock and Hugh of Uffington, all with five appointments were the busiest of the rest.[31]

As we have seen, a certain amount of cross-border fluidity existed between Northamptonshire and Buckinghamshire, with several significant attorneys practising in both counties. Did a

[25] JUST 1/462, m.31; JUST 1/622, mm.63, 64, 65; JUST 1/620, m.52; JUST 1/67, m.39; JUST 1/725, m.10.
[26] JUST 1/283, m.45.
[27] JUST 1/462, mm.31d, 32, 33d; JUST 1/622, mm.62, 64, 64d, 65d; JUST 1/67, m.39d.
[28] JUST 1/622, mm.62d, 63, 63d, 64, 65, 65d, 66, 66d, 67; JUST 1/620, mm.51, 52, 54.
[29] JUST 1/622, mm.62, 62d, 63, 63d, 64d, 66, 66d, 67; JUST 1/350, mm.20d, 21.
[30] JUST 1/622, mm.62, 62d, 64, 67; JUST 1/48, m.23; JUST 1/710, m.31.
[31] Reference to all of them are within JUST 1/622, mm.62-67d.

similar fluidity exist between Northamptonshire on the one hand and either or both of Leicestershire or Warwickshire on the other? Roger Malecake's three appointments in Leicestershire and seven in Northamptonshire have already been mentioned. Similarly, Adam le Werreur who was appointed on three occasions in Northamptonshire had previously received two appointments in Leicestershire, and he had also received a further five appointments at the intervening eyre of Warwickshire. He is described in one plea roll entry as being 'of Hoton' and may, perhaps, have originated in the village of that name north of Leicester.[32]

Hugh of Kibworth also operated in the same three midland counties as did Adam le Werreur, but on a larger scale, and he may be regarded as having been of regional importance. Presumably to be associated with Kibworth Harcourt or Kibworth Beauchamp between Leicester and Market Harborough, he commenced his eyre activities with six appointments in his presumed home county of Leicestershire, receiving two more in Warwickshire to the west and ten in Northamptonshire to the south.[33] He also appeared once as an essoiner (for a Northamptonshire client) at the Buckinghamshire eyre.[34] His eighteen appointments as attorney were made by seventeen different clients. A professional heartland in the area encompassed by Leicester to the north, Coventry to the west, Corby to the east and Northampton to the south is suggested.

No obviously professional attorney appeared at both the Warwickshire and Gloucestershire eyres, despite the counties sharing a common boundary. Similarly, fluidity between Warwickshire and Northamptonshire was slight. Indeed, other than Adam le Werreur and Hugh of Kibworth, only one practitioner was at all busy at both county eyres. Roger of

[32] JUST 1/462, mm.31, 31d; JUST 1/960, mm.31d, 32, 33; JUST 1/622, mm.63, 64d.
[33] JUST 1/462, mm.31, 31d, 32, 33d; JUST 1/960, m.32, JUST 1/622, mm.62, 62d, 63, 64, 64d, 65.
[34] JUST 1/67, m.38.

Langeport enjoyed three appointments in Warwickshire before receiving eight in Northamptonshire (in one of which he is said to be 'of Langeford'), acting for ten different clients.[35] Professional practitioners who worked in Warwickshire and nowhere else on the circuit were also thin on the ground. The busiest was William of Bromwich who received nine appointments and whose locative surname might place his practice near to the boundary with Staffordshire. Robert Jabet was close behind with eight appointments in Warwickshire alone, whilst Thomas Baudry received five.[36]

Rather more men, including Hugh of Kibworth and Adam le Werreur mentioned above, attended the eyres of both Warwickshire and Leicestershire. Philip of Alcester, for example, received seven appointments in Warwickshire to follow a single engagement in Leicestershire. He also received two later appointments in Buckinghamshire, each involving the same (Warwickshire) client and opponent (and, hence perhaps, duplicates).[37] Philip's appointments in the three eyres came from eight different clients. He is presumably to be associated with Alcester in south-west Warwickshire close to the boundary with Worcestershire, and indeed one of his principals (with two appointments) was the abbot of Alcester. His relative lack of professional activity in Leicestershire to the north suggests Alcester to have been his residence and place of business.

The same path was trodden by Richard Turvill who received just one appointment in Leicestershire, four in Warwickshire and one in Buckinghamshire.[38] A similar pattern is discernible in the record of Thomas of Saltfleetby. His two appointments as an attorney in Leicestershire were followed by five in Warwickshire (including one as a guardian) and one in Northamptonshire.[39] His locative surname suggests an association with the cluster of

[35] JUST 1/960, mm.32, 33; JUST 1/622, mm.62, 62d, 63, 63d, 64d, 66.
[36] Collectively, JUST 1/960, mm.31, 31d, 32, 32d, 33.
[37] JUST 1/462, m.33; JUST 1/960, mm.31, 31d, 32, 32d, 33d; JUST 1/67, mm.16d, 39d.
[38] JUST 1/462, m.33d; JUST 1/960, mm.31, 32d, 33; JUST 1/67, m.43.
[39] JUST 1/462, m.33d; JUST 1/960, mm.31, 32d, 33; JUST 1/622, m.63d.

villages bearing the prefix of Saltfleetby on the Lincolnshire coast east of Louth, presumably signifying origin rather than residence. The practice of Richard of Pontefract, whose origins or earlier residence may have been in west Yorkshire, was seemingly confined to Leicestershire where he received two appointments, and Warwickshire where he received a further six.[40] William of Austeley's practice was evenly spread between the two counties, with four appointments in Leicestershire (one of which was as a guardian) and a further five in Warwickshire.[41] As three of his Warwickshire appointments were linked and two of his clients instructed him in both counties, his practice was probably limited.

William of Houghton's practice was very much more centred on Leicestershire. He received eleven appointments in that county and just one in Warwickshire, and was almost certainly a Leicestershire man, perhaps based in the village of Houghton on the Hill, a little to the east of Leicester.[42] His practice seemingly serviced the legal needs of a clientele with landed and other interests largely confined to his county of residence. Another whose practice was almost entirely conducted in Leicestershire, in which county he received sixteen appointments, was Robert of Belgrave, who subsequently received one more in Northamptonshire.[43] We may see him also as being very much a local man, whose practice (if his name reflects his residence rather than his place of origin or previous abode) revolved around Belgrave, now within the environs of the city of Leicester. Robert's son, Richard of Belgrave received two appointments in Leicestershire and one in Warwickshire, and another member of the same family perhaps, Simon of Belgrave, received three appointments in Leicestershire and a further five in Northamptonshire.[44]

[40] JUST 1/462, mm.31, 33; JUST 1/960, mm.31d, 33, 33d.
[41] JUST 1/462, mm.31, 31d, 32, 33d; JUST 1/960, mm.31, 32, 32d.
[42] JUST 1/462, mm.31, 31d, 32, 32d, 33; JUST 1/960, m.33.
[43] JUST 1/462, mm.31, 31d, 32, 32d, 33, 33d; JUST 1/622, m.63.
[44] JUST 1/462, mm.31d, 32, 32d, 33; JUST 1/960, m.31d; JUST 1/622, mm.64, 64d, 65, 66.

The practices of two further attorneys of interest seem to have been totally concentrated within the boundaries of Leicestershire. Richard of Willoughby, whose eight appointments on the circuit were all made locally, may be associated professionally with Willoughby Waterleys to the south of Leicester.[45] Ralph of Kirkby, who received seven appointments in Leicestershire, was perhaps similarly associated with Kirkby Mallory to the south-west of the same city.[46] The centrality of each location within the county might explain Richard and Ralph's lack of instructions elsewhere on the circuit. In a smaller way of business, seven further men were instructed on three or four occasions in Leicestershire, appearing nowhere else on the circuit.

Having examined the extent to which some busy attorneys seemingly practised within the particular counties of Buckinghamshire, Northamptonshire, Warwickshire and Leicestershire, while others crossed county boundaries, we now turn to the extent to which such men looked eastwards, into Rutland, Huntingdonshire and Cambridgeshire. As might be expected, few of the major attorneys on the circuit appeared at the eyre of Rutland, only John of Thorp and John of Islip visiting and each receiving a single appointment. Otherwise, Peter of Luffenham, who received six appointments in Northamptonshire and one in Rutland,[47] Richard of Middleton with one in Leicestershire, two in Northamptonshire and one in Rutland,[48] and John of Tilton with five appointments in Leicestershire and one in Rutland,[49] require mention. John of Tilton's presumed residence at Tilton on the Hill, close to the county boundary with Rutland, might explain receipt of his appointment. The busiest attorneys working in Rutland alone, William of Amwell and Walter of Spalding, each

[45] JUST 1/462, mm.31, 31d, 32, 32d, 33, 33d.
[46] JUST 1/462, mm.31, 32, 32d, 33d.
[47] JUST 1/622, mm.64, 66d; JUST 1/725, m.10.
[48] JUST 1/462, m.31d; JUST 1/622, mm.64d, 65d; JUST 1/725, m.10.
[49] JUST 1/462, mm.32, 33, 33d; JUST 1/725, m.10.

received three joint appointments by the Abbot of Peterborough and were clearly not professionals.[50]

If the John Bartolf of Cotes who received seven appointments in Leicestershire and one in Cambridgeshire was a single individual and not a conflation of two men, he was the only attorney of significance who confined his professional attention to those two counties alone.[51] Similarly, of the several men who made the trip eastwards from Northamptonshire into Cambridgeshire, the William of Abington who received five appointments in the former and one in the latter may also be a conflation, as settlements bearing his locative surname are to be found in each county.[52] We can be a little more certain about others. John of Haverhill, for instance, received two appointments in Northamptonshire followed by six in Cambridgeshire,[53] whilst William le Norreys received six appointments in Northamptonshire and one in Huntingdonshire.[54] Roger of Clopton went one better with five appointments in Northamptonshire and single appointments at each of the eyres of Cambridgeshire and Huntingdonshire, both of which are explicable by virtue of his presumed village of residence being to the far east of his home county.[55]

The two most interesting and enigmatic attorneys to migrate from the Midlands into Mid-Anglia were Ralph of Selby and Gerard of Byker, each of whom was of more than just local significance. Ralph of Selby, whose locative surname suggests origins or residence in south-east Yorkshire, received six appointments in Leicestershire, five in Northamptonshire, one in Buckinghamshire, three in Cambridgeshire and one in Huntingdonshire.[56] He may also have

[50] JUST 1/725, m.10.
[51] JUST 1/462, mm.31, 32, 33, 33d; JUST 1/91, m.31.
[52] JUST 1/622, mm.62d, 63, 64d, 65, 66d; JUST 1/91, m.31.
[53] JUST 1/622, m.62; JUST 1/91, mm.31 31d, 32, 33.
[54] JUST 1/622, mm.62d, 63, 67; JUST 1/350, m.20.
[55] JUST 1/622, mm.64d, 66, 66d, 67; JUST 1/91, m.33; JUST 1/350, m.20d.
[56] JUST 1/462, mm.31, 31d, 32, 33; JUST 1/622, mm.62, 64, 65d; JUST 1/67, m.42; JUST 1/91, mm.31d, 32; JUST 1/350, m.20d.

received two more appointments in Leicestershire, respectively as William or Robert of Selby.[57] His pattern of appointment is curious, and it is difficult to translate it into a territory in which he may be seen to practice professionally. He may have been a true itinerant, being one of only five men who appeared both in Leicestershire and in Cambridgeshire eighteen months later, a statistic suggesting that few, if any, attorneys set out to follow the circuit in the opportunistic hope of picking up clients, as opposed to attending to existing clients' needs at successive eyres. Alternatively, his attorney work may have been a side-line to occupation as a court clerk. If this is correct, however, he would seem to have too busy with such work at the eyres of Leicestershire and Northamptonshire to have properly performed his clerical duties, and also it is puzzling that he attracted no appointments at the eyres of Warwickshire or Bedfordshire.

Gerard of Byker's locative surname suggests a connection either with the Newcastle area of Northumberland or, more probably, with the village of Bicker in south Lincolnshire. He received no appointments at either of the first two eyres, those of Leicestershire and Warwickshire, appearing on the record first in Northamptonshire where he received fourteen appointments.[58] He was inactive in Rutland and Buckinghamshire, re-emerging in Cambridgeshire with five appointments, and receiving a further single appointment in Huntingdonshire.[59] As that single appointment was made by the abbot of Crowland, who appointed him also in both Northamptonshire and Cambridgeshire, it would seem likely that Gerard was a professional practitioner, and that he was based in the east of Northamptonshire, the abbot of Crowland being, perhaps, his most substantial client.

[57] JUST 1/462, mm.31d, 33d.
[58] JUST 1/622, mm.62, 64, 64d, 65, 65d, 66, 67.
[59] JUST 1/91, mm.31d, 32d; JUST 1/350, m.20.

Several men appeared at the Cambridgeshire eyre and nowhere else on the northern circuit. The busiest of this cohort was Gilbert of Tothby with eleven appointments,[60] followed by John of Barnwell with seven.[61] Each of William of Clavering,[62] and Adam of Cambridge received six appointments.[63] Both men also appeared extensively at the eyre of Essex on the southern circuit, where William of Clavering received no fewer than 31 appointments, two of which were to sue as guardian, and Adam of Cambridge received an almost equally impressive 21.[64] Each of them was clearly a serious professional attorney operating across county lines.

John of Caldecote was appointed four times in Cambridgeshire, having earlier in the circuit received two appointments in Northamptonshire.[65] Adam of Bourn, with his five appointments in Cambridgeshire and two in Huntingdonshire, was one of only four men who worked exclusively in Cambridgeshire and Huntingdonshire.[66] Another was Simon of Stowe who, with the exception of a single appointment in Huntingdonshire, appeared only in Cambridgeshire where he received no fewer than 23 appointments, in one of which he is described as 'clerk'.[67] If he is to be associated residentially with Stow-cum-Quy, due east of Cambridge, the central location of his practice would explain why his professional activity was almost entirely limited to his home county.

William of Beche was also active in Cambridgeshire, receiving ten appointments there and one in Ely, one of only two men to visit both eyre districts.[68] The other was John of Washingley whose practice was largely focused upon Huntingdonshire, in which county he

[60] JUST 1/91, mm.31d, 32, 32d.
[61] JUST 1/91, mm.31d, 32, 32d, 33.
[62] JUST 1/91, mm.31, 31d, 32, 32d.
[63] JUST 1/91, mm.31d, 32, 32d.
[64] Collectively, JUST 1/246, mm.59, 59d, 60, 60d, 61, 61d, 62, 63, 63d, 64, 65.
[65] JUST 1/622, m.62; JUST 1/91, mm.31d, 32, 33.
[66] JUST 1/91, m.31d, 32, 32d, 33; JUST 1/350, mm.20, 20d.
[67] JUST 1/91, mm.31d, 32, 32d, 33; JUST 1/350, m.20.
[68] JUST 1/91, mm.31d, 32, 32d, 33, 33d; JUST 1/90, m.5.

picked up ten appointments (one of which was as a guardian) following single appointments in each of Cambridgeshire and Ely. He received a further four appointments in Bedfordshire, representing in total sixteen different clients. John also received two appointments at the Hertfordshire eyre on the southern circuit.[69]

Henry of Staploe made no appearance at any eyre prior to that of Buckinghamshire where he received five appointments from three clients, but did receive a further thirteen in Cambridgeshire (from ten clients) and eight more in Huntingdonshire (from seven).[70] He therefore acted for a total of twenty clients at three eyres. His locative surname places him in Staploe in Bedfordshire, hard up on the county boundaries with Huntingdonshire and Cambridgeshire, but if that was where he lived his lack of work at the Bedfordshire eyre is curious. Staploe may, therefore, have been his place of origin (or, perhaps where he held land) rather than that of residence, in which case his involvement as a litigant in two cases at the Huntingdonshire eyre, in addition to his activities as an attorney, suggests that he may have resided there.[71] Certainly, residence in Buckinghamshire is unlikely. The several locations of lands litigated upon in court hearings arising from his work in that county, from Wexham in the far south-east to Whaddon east of Buckingham and Newton Blossomville in the far north, reveal no pattern. Despite his apparent absence of activity in Bedfordshire, Henry's record of appointment, with five or more engagements in three different eyres, suggests a cross-border or regional practice.

Henry's brother, Geoffrey of Staploe, was appointed five times in Cambridgeshire.[72] He may have been the same man as the Geoffrey de Stabulo who received five appointments from five clients in Buckinghamshire, in one of which he is stated to be 'of Newport'.[73] Another

[69] JUST 1/91, m.31; JUST 1/90, m.5; JUST 1/350, mm.20, 20d, 21; JUST 1/12, mm.22, 22d; JUST 1/328, m.44d.
[70] JUST 1/67, mm.39, 39d, 41, 42d; JUST 1/91, mm.31, 31d, 32, 32d, 33; JUST 1/350, mm.20, 20d, 21.
[71] JUST 1/350, mm.16d, 21.
[72] JUST 1/67, mm.41d, 42, 42d; JUST 1/91, mm.32d, 33.
[73] JUST 1/67, mm.41d, 42, 42d.

attorney who followed the same progression was William of Bragenham, whose recorded four appointments by four clients in Buckinghamshire were followed by five appointments by four different clients at the Cambridgeshire eyre. William also picked up a single appointment at the Hertfordshire eyre on the southern circuit.[74] Similarly, Freymund of Houghton followed up on his three Buckinghamshire appointments with four more in Cambridgeshire and two in Bedfordshire.[75] He represented seven different clients and, given the apparent distribution of his clientele, his residence may have been Houghton Conquest, south of Bedford and well placed for access to the other two counties in which he operated.

Several men received ten appointments at the Bedfordshire eyre. The regional practice of Stephen of Keysoe, whose ten appointments in Bedfordshire followed appearances in Northamptonshire, Buckinghamshire and Huntingdonshire, has already been mentioned. John of Riseley's ten Bedfordshire appointments followed three in Northamptonshire and one in Huntingdonshire.[76] William Cotel's two appointments in Buckinghamshire were followed by four in Cambridgeshire, two in Huntingdonshire, and ten in Bedfordshire. In total he represented eighteen clients at four consecutive eyres, and a Bedfordshire base is surmised. He also appeared at the Hertfordshire eyre on the southern circuit, receiving there six appointments.[77] William may be regarded as being an attorney of regional importance.

If William de Fonte and William de Ponte are the same man (which is probable as each is associated within occasional plea rolls with Totternhoe in Bedfordshire), he received one appointment in Northamptonshire, three in Buckinghamshire and nine in Bedfordshire.[78] A

[74] JUST 1/67, mm.39d, 40d, 43; JUST 1/91, mm.32, 32d, 33; JUST 1/328, m.44d.
[75] JUST 1/67, mm.40, 42d; JUST 1/91, mm.31d, 32d, 33; JUST 1/12, m.23d.
[76] JUST 1/622, mm.62, 65; JUST 1/350, m.20; JUST 1/12, mm.22, 22d, 23, 23d.
[77] JUST 1/67, mm.39d, 43; JUST 1/91, mm.31d, 32d, 33; JUST 1/12, mm.22, 22d, 23, 23d; JUST 1/328, mm.44, 44d, 45.
[78] JUST 1/622, m.62; JUST 1/67, mm.41, 42, 43; JUST 1/12, mm. 22, 23, 23d.

presumed residence in Totternhoe in east Bedfordshire would have served him well to build up a clientele who supplied him with work at each of the three eyres.

The only attorney of interest who appeared at the Bedfordshire eyre and nowhere else on the circuit was Peter of Northwood, who received five appointments.[79] Richard of Foxton had a modest cross-boundary practice, his two appointments in Bedfordshire following five in Northamptonshire.[80] William of Holecote trod the same path, receiving one appointment in Northamptonshire followed by four in Bedfordshire.[81] The pattern of appointment of John of Hauvill (who may be a conflation of more than one individual) resembles that of Ralph of Selby, albeit in a smaller way. He received six appointments at the Northamptonshire eyre, two in Buckinghamshire, and one in each of Cambridgeshire, Huntingdonshire and Bedfordshire. He also received one further appointment at the Hertfordshire eyre on the southern circuit, which would suggest that he was not a court clerk.[82] John of Lynleye (perhaps Lilley, east of Luton and just over the county boundary in Hertfordshire) received three appointments in Bedfordshire after earlier receiving two in Buckinghamshire, three in Cambridgeshire and three in Huntingdonshire.[83]

It has been remarked upon that no apparently professional attorney worked at both the Warwickshire and Gloucestershire eyres, despite those two counties abutting. In terms of legal practice, they looked in different directions. Interestingly, therefore, and despite Gloucestershire lying well to the west of most of the other counties and districts on the northern circuit, several attorneys seemingly attended its eyre having already received appointments elsewhere. John Spigournell, for example, apparently followed his two

[79] JUST 1/12, mm.22d, 23.
[80] JUST 1/622, mm.62, 63, 64, 66d; JUST 1/12, mm.22, 22d.
[81] JUST 1/622 m.65; JUST 1/12, mm.22, 22d, 23.
[82] JUST 1/622, mm.63d, 64, 65; JUST 1/91, m.32; JUST 1/67, mm.39, 40; JUST 1/350, m.20d; JUST 1/12, m.22d; JUST 1/328, m.44d.
[83] JUST 1/67, mm.42, 42d; JUST 1/91, mm.31, 31d; JUST 1/350, mm.20, 20d; JUST 1/12, mm.22d, 23d.

appointments in Bedfordshire with a further eight in Gloucestershire.[84] Andrew of Beringham, who received one appointment in Huntingdonshire, received a further five in Gloucestershire. This pattern is curious, as an Andrew of Beringham also received three appointments at the Hertfordshire eyre on the southern circuit which partially coincided chronologically with that of Gloucestershire on the northern circuit.[85]

The most interesting attorney to migrate westwards was John of Goldore. Commencing his peregrinations in Buckinghamshire, where he received five appointments from different clients, John subsequently received one more in Bedfordshire before being appointed nine times in Gloucestershire (all from different clients) and finally four more times by three clients in Dorset. He therefore had eighteen clients in total, a statistic precluding his being the representative of a great landowner with extensive and widespread interests. As with Ralph of Selby, an explanation for such a pattern of appointment might be that John of Goldore was a clerk, travelling with the court as it progressed from county to county, picking up his numerous commissions as a presumably profitable side-line. However, there are two objections to this explanation. Firstly, were it to have been so, and given his acceptance of five appointments in Buckinghamshire at the beginning of his cycle, more than a single further appointment on the circuit would have been expected in the several eyres which followed Buckinghamshire and preceded those of Gloucestershire and Dorset. Secondly, John also appeared at the Oxfordshire eyre on the southern circuit, receiving seven appointments. Although the Oxfordshire eyre did not coincide with any eyre on the northern circuit at which John's attendance might, as a clerk, have been expected, the implied freelancing seems inconsistent with clerkship.[86] Therefore, a more compelling explanation for his travels, as

[84] JUST 1/12, mm.22, 22d; JUST 1/283, mm.46, 46d, 47, 47d.
[85] JUST 1/350, m.21; JUST 1/283, mm.46d, 47, 47d; JUST 1/328, mm.44, 44d.
[86] JUST 1/67, mm.41d, 42d; JUST 1/12, m.23; JUST 1/283, mm.45, 45d, 46, 46d, 47d; JUST 1/213, mm.26, 27; JUST 1/710, mm.29, 30d, 31.

with Ralph of Selby, is that he was an itinerant professional attorney of much more than local significance.

The busiest attorney of interest to appear at the Gloucestershire eyre and nowhere else on the circuit was William son of William of Weley with thirteen appointments. Roger Capertun and Thomas of Swabougere each received ten, Roger Coby and Thomas the Sergeant each received six, and four men, William of Cheltenham, John Bron, William Turgis and Peter the Walker each received five appointments. Several more seemingly had practices which extended south from Gloucestershire into Dorset. Miles of Rodborough, for instance, received eight appointments from seven clients in Gloucestershire and four more appointments from two clients in Dorset. Elias of Querendon was busier still in both counties, receiving eleven appointments in Gloucestershire and six in Dorset. He acted for thirteen different clients. In a smaller way, John of Legh operated similarly with four appointments in Gloucestershire and five in Dorset.[87]

Attorneys with practices which were entirely local to Dorset (in the sense that they appeared at no other eyre on the circuit) include Bartholomew of Otery with twenty appointments (plus one as the guardian of an under-aged litigant), followed by John of Godwyne, John son of John of Assolde and Walter of Hocle, each of whom received twelve appointments. William Cole of Dorchester/William of Dors was appointed on eleven occasions, and John de la Bere ten times in addition to three appointments as a guardian. John of Stapelbrigg's seven appointments were accompanied by one as a guardian. Also receiving appointments only at the Dorset eyre were John Blaunchenal with seven, William Payn and John of Hales, each with six, and John of Denys with five.[88]

[87] Collectively JUST 1/283, mm.44d, 45, 45d, 46, 46d, 47, 47d; JUST 1/213, mm.26, 27, 27d.
[88] JUST 1/213, mm.26, 27, 27d

As is therefore apparent, there existed in Middle England in the mid-1280s a relatively small number of very active legal attorneys who may be categorised in three general ways. There were the local professionals such as Robert Russell and William West in Northamptonshire, William of Bromwich and Philip of Alcester in Warwickshire, Robert of Belgrave and William of Houghton in Leicestershire, and Gilbert of Tothby and Simon of Stowe in Cambridgeshire, whose professional work was carried on entirely, or almost so, in a single county. It is probable that most such men both resided and practised in or close to their respective county towns. Then there were those, like Ralph of Selby and John of Goldore, whose patterns of appointment are difficult to interpret, but who were probably opportunistic, itinerant professionals following the work wherever it took them. Thirdly, there were the professional practitioners who worked in several different districts on the circuit and who had seemingly built up regional practices extending across county boundaries. The principal members of this group are Roger of Newport, John of Islip, Stephen of Keysoe, Hugh of Kibworth, Gerard of Byker, Henry of Staploe, Adam of Shortecumbe, William of Clavering, Adam of Cambridge, and William Cotel.

Allowing for some inevitable overlap, and with the exception of William of Clavering and Adam of Cambridge whose practices seem similar, each of these men occupied different territories. Roger of Newport had a substantial following in north Buckinghamshire and a significant presence also in Northamptonshire. John of Islip, although busy in Buckinghamshire, was busier still in Northamptonshire, and with appearances also in Rutland and Huntingdonshire seemingly had a practice centred to the north-east of that of Roger. Although Stephen of Keysoe, who also attended the eyres of Northamptonshire and Huntingdonshire, had a lesser profile in Buckinghamshire, he enjoyed a substantial presence in Bedfordshire. His territorial focus was thus seemingly to the east of that of Roger and to the south-east of that of John.

Hugh of Kibworth's area of practice lay mainly in Leicestershire and Northamptonshire, firmly to the north-west of that of John of Islip. Gerard of Byker's pattern of appointments in Northamptonshire and Cambridgeshire (which share a short common boundary east of Peterborough) suggests a practice area wrapping around the northern and eastern reaches of that of John of Islip. Henry of Staploe's record in Cambridgeshire and Huntingdonshire indicates a substantial practice territory lying to the east of that of John of Islip, but with a significant presence in Buckinghamshire also. Adam of Shortecumbe operated in an area largely to the south-west of that of Roger of Newport, in south Buckinghamshire, Berkshire and Oxfordshire, whilst William of Clavering and Adam of Cambridge practised exclusively in Cambridgeshire and Essex in the east. William Cotel's professional concerns ranged over territory from Buckinghamshire in the south-west, through Hertfordshire and to Cambridgeshire in the north-east.

Chapter 16: Legal practice

The legal landscape of a great swathe of Middle England was, therefore, in the 1280s structured in such a way that, although there would no doubt have been fluidity and shift, it contained identifiable territories in each of which a single professional attorney was pre-eminent. While it is unremarkable that individual practitioners would wish to work within areas in which they were comfortable and respected, and that they would be unwilling to stray, either physically or professionally, too far from a central 'office', their apparent predominance in different centres of operation prompts enquiry into how professional legal attorneys might have organised themselves in the performance of their duties and what form their practices might have taken. Did they, within their respective practice areas, for instance, act entirely individually and apart from fellow-professionals, or is there evidence that some, if not all, of the region's most successful attorneys organised themselves in a co-operative and collaborative manner, even to the extent of apparently forming embryonic partnerships?

There is little published comment on whether attorneys may have collaborated professionally as early as the thirteenth century. Christian thought it likely, seeing early seeds of legal partnership in multiple appointments, and observing the frequency with which the same attorneys were appointed together by independent principals.[1] He identified many instances of known King's Bench attorneys essoining for other attorneys, often both making excuses and deputising. In such circumstances, collaboration between attorneys to prevent the setting up of a contradictory defence was, he thought, probable. Birks, however, counselled against the idea that such collaboration indicated the beginnings of law firms and partnerships, arguing that such structures did not exist before the seventeenth century. Prior to then, he claimed, attorneys always practised as individuals, collaborative arrangements being based

[1] E.B.V. Christian, *Solicitors: An Outline of their History* (London, 1925), p.28.

purely on propinquity or friendship.[2] He conceded, however, that collaboration might have been more common in eyres where local attorneys would have known each other, and also once *nisi prius* was in place, one attorney attending at Westminster, the other being present at the jury trial within the relevant county.

In seeking evidence for or against the existence of collaborative arrangements between professional attorneys in the eyre proceedings with which we are concerned, we look firstly at the appointments record of the circuit's leading practitioners. Did they receive all, or at least a substantial majority, of their appointments in their sole names or, conversely, were all or most of their appointments received in the alternative to another or others? The inference of a given attorney receiving only sole-name appointments might be that he worked alone, perhaps with a limited client base such as the tenants of a particular estate or the residents of a particular vill. Sole practice may also be inferred into joint appointments with obvious non-professionals such as the sons or husbands of appointing principals or the monks or canons of religious houses. On the other hand, habitual appointment jointly with the same individual(s) might indicate some sort of professional association.

Three apparent professional attorneys at the Buckinghamshire eyre received only sole-name appointments, Robert of Morton eight times, and both John of Goldore and Geoffrey de Stabulo five times. This may have been mere happenstance, but may alternatively reflect the nature of their respective legal practices. In the case of John of Goldore, his subsequent single appointment in Bedfordshire was of him alone, as were four of his nine appointments in Gloucestershire. In Dorset, his four appointments were all sole-named. Although the precise nature of John's practice is difficult to pin down, we can be sure that he worked alone. The practices of some other attorneys on the circuit were seemingly similarly structured towards a

[2] M. Birks, *Gentlemen of the Law* (London, 1960), pp.56-7.

majority of sole-name appointments. In Northamptonshire, for instance, seven of Roger of Langport's eight appointments were of him alone, as were his three appointments in Warwickshire. Eight out of ten of Thomas of Oxford's appointments at the Northamptonshire eyre were sole-named.

The majority of appointments received by each of the two principal regional attorneys whose extensive practices included both Northamptonshire and Buckinghamshire, Roger of Newport and John of Islip, were in their sole names, suggesting they were both independent sole practitioners, with strong personal followings. Seven of Roger's nine appointments in Northamptonshire were sole-named, as were fourteen of his twenty-one appointments in Buckinghamshire, a further six being in the alternative to non-professionals, and one with a fellow professional, Robert Partridge. His one appointment in Bedfordshire was jointly with another. Other than the single, tenuous link to a fellow-professional which probably has no significance, Roger of Newport does appear to have been self-sufficient in his professional activities.

Similarly, eleven of John of Islip's sixteen appointments in Northamptonshire were of him alone, as were ten of his fourteen appointments (including a guardianship) in Buckinghamshire, two other appointments being in the alternative to clergymen and two to laymen. His only appointment in Rutland was joint-named, as were three of his six appointments in Huntingdonshire. Although those three shared appointments were all in the alternative to John of Washingley, a certain professional, this brief association should not, in isolation, be regarded as indicating any sort of professional relationship. It may simply reflect the availability of the two men at the operative time and a relative paucity of professional attorneys in attendance at the eyre. John of Islip, like Roger of Newport, seems to have been an independent practitioner with no professional association with any other attorney.

The appointments record of John of Washingley illustrates the reality that most professional attorneys enjoyed an apparently arbitrary mix of sole and joint-name appointments. In addition to John's three shared appointments with John of Islip in Huntingdonshire, two others were in the alternative to different men and five were in his sole name. His only appointments in each of Ely and Cambridgeshire were joint-named, as were two of his three Bedfordshire appointments. Likewise, six of Ralph of Selby's eighteen appointments in various eyres on the circuit were sole-named and twelve were joint-named. Fourteen of Robert Russell's 22 appointments in Northamptonshire were of him alone, as were nine of William West's sixteen appointments. Receipt of a combination of sole-name and of joint-name appointments would appear to have been the norm.

Furthermore, most joint appointments enjoyed by professionals were with obvious non-professionals with whom any form of commercial association may be discounted. All five of Robert of Elstead's appointments at the Buckinghamshire eyre were joint, but two were with clergymen and three with secular non-professionals. Similarly, although Robert of Balbegrave shared appointments on three occasions in Leicestershire with brother Roger of Barkeby and on four occasions with William of Digeby, no professional relationship between Robert and either co-attorney should be inferred. Brother Roger was clearly a monk, the principal on each of the three occasions of his appointment being the abbot of Leicester. Similarly, William was probably the steward or bailiff of one of his appointing principals.

Some professionals, whilst receiving a majority of joint-name appointments, did so with a sufficiently high number of different attorneys to make collaboration improbable. Although nine of Hugh of Kibworth's ten appointments in Northamptonshire were joint-named, he worked with seven different co-attorneys and there is no evidence that he was associated with any of them. Similarly, although Gerard of Byker enjoyed a remarkably high proportion of joint-name appointments - eleven out of fourteen in Northamptonshire, two out of five in

Cambridgeshire, together with his single appointment in Huntingdonshire - he worked with numerous co-attorneys, and the three occasions that he did so with the otherwise unrecorded Ralph of Dodington are unlikely to be significant.

However, allowing for all of the foregoing, there are recorded cases of two or more professional attorneys being habitually appointed together by unconnected litigants, some of whom were rarely if ever appointed alone or with anybody else, an association between the participating attorneys being thereby suggested. Two such relationships are observable at the Buckinghamshire eyre, the faintest outlines of separate embryo professional 'partnerships' being discernible. John del Brok and Hugh del Brok each received eight appointments, five of which were of them in the alternative to each other. Furthermore, one of John's other appointments and two of Hugh's were received in the alternative to an academic master called Nicholas of Oving who received none other than those three appointments at the eyre. Clearly, John del Brok and Hugh del Brok were associated, presumably both by blood and commercially, each also having apparent connections with master Nicholas.

Adam of Shortecumbe and Roger of Batchworth were appointed together in the alternative on three occasions at the Buckinghamshire eyre, respectively by an archdeacon, an academic master, and a landholder. One such appointment was in conjunction with a third professional, John of Banbury, who was also appointed jointly with Roger of Batchworth on another occasion. Of Adam's three appointments at the Essex eyre on the southern circuit, two were received jointly with Roger. Yet further evidence that Roger worked closely with Adam lies in a fine recording the terms of settlement of an action heard at the Buckinghamshire eyre in which Roger had been appointed attorney in the alternative to another. At the hearing to receive the chirograph at Westminster in 1287 Roger's client, the abbot of Bec Hellouin, was represented, not by his authorised general attorney or by Roger of Batchworth, but by Adam

of Shortecumbe.[3] The joint appointment in various combinations in unrelated cases of three professionals, Adam of Shortecumbe, Roger of Batchworth and John of Banbury, strongly suggests an arrangement between them.

Other instances of professional attorneys sharing appointments are evident. Each of Simon of Harewedon and Bartholomew of Hetham practised only in Northamptonshire, Simon receiving twelve appointments and Bartholomew seven. Five of Simon's appointments were of him alone, six of the remaining seven being in the alternative to Bartholomew, a local professional arrangement being strongly suggested. Similarly, at the Cambridgeshire eyre in which brothers Henry of Staploe received thirteen appointments and Geoffrey of Staploe received five, four were in their respective joint names. A similar family association may be seen in the relationship between Paul of Somersham and Geoffrey of Somersham in Northamptonshire. Of Paul's seven appointments and Geoffrey's six, four were shared. Although the six appointments received at the Cambridgeshire eyre by each of William of Clavering and Adam of Cambridge were entirely separate, they had earlier enjoyed eight joint appointments at the Essex eyre on the southern circuit, at which William was appointed an attorney on 31 occasions and Adam 21 times. Not only were William and Adam serious professional practitioners, but they would seem to have established a formidable joint presence in the legal landscape of the eastern flank of Middle Anglia.

If late thirteenth-century eyre attorneys may have had professional relationships, so may they have employed assistants or clerks. In addition to his joint appointments with Roger of Batchworth and John of Banbury in Buckinghamshire, Adam of Shortecumbe enjoyed two appointments jointly with one Robert of Havokesherd and three with a Philip of Wyke, neither of whom feature elsewhere on the record. In the absence of any apparent connection

[3] *The Buckinghamshire Eyre of 1286*, no.184; see also *A Calendar of the Feet of Fines for Buckinghamshire 1259-1307*, ed. A. Travers (Buckinghamshire Record Society, 25, 1989), no.385.

between the appointing principals, each of Robert and Philip was seemingly appointed because of his relationship with Adam, perhaps as his assistant. Other examples of the same sort of arrangement exist. Just two of William of Haddenham's nine appointments in Buckinghamshire were in his sole name, four of his seven joint appointments being in combination with one Ralph of Saunderton who is otherwise absent from the rolls. Although the appointing principals on three occasions were members of the fitzNigel family, Ralph perhaps being their steward, the litigant on the fourth was the abbot of Evesham, making such stewardship improbable. Can an association between William and Ralph therefore be inferred?

Stephen of Keysoe was not simply a professional attorney of regional importance, but stood at the centre of a legal network. He received a total of 28 appointments on the circuit, all of which were joint-named. He is to be associated closely with two other attorneys, sharing with one or other of them 22 of the appointments he received. One such attorney, John of Hauvill, shared five of his six appointments in Northamptonshire with Stephen, together with both of his appointments in Buckinghamshire and one appointment in Huntingdonshire, the two men thus acting together on eight occasions. The second attorney to be associated with Stephen of Keysoe, John of Riseley, was appointed to act jointly with Stephen on three occasions in Northamptonshire, once in Huntingdonshire, and on no fewer than ten occasions at the Bedfordshire eyre. John of Riseley worked with nobody else, nor alone, in any county on the circuit, and there is a clear inference that he owed his fourteen engagements as an attorney to a dependence upon Stephen. It would seem highly probable that Stephen and John presented themselves to client principals as a package. The alternative possibility, that unconnected individual principals in different counties made identical joint appointments in a series of unrelated actions, seems highly unlikely. Whilst propinquity may be assumed from the probability that they originated or lived in the adjoining villages of Keysoe and Riseley in

north Bedfordshire, we might here be looking at a clear example of 'master and servant', John perhaps being Stephen's clerk. John's lack of activity otherwise than alongside Stephen militates against equality of status.

In principle, the encouragement of clients to make joint appointments of associated attorneys is not the only way of garnering work. Indeed, a more efficient way of doing so might be for them to operate in different places at the same time, an opportunity so to do being provided by the several occasions on which eyres on each of the northern and the southern circuit coincided chronologically. However, no examples have been found of attorneys, known by virtue of joint appointments to be associated, appearing separately at eyres which coincide, such as Northamptonshire and Essex, both of which took place in the closing months of 1285. Perhaps spheres of influence did not extend sufficiently widely.

But, there are hints from within the northern circuit that family 'businesses' may have been operating. We have already referenced possible examples featuring John and Hugh del Brok, Henry and Geoffrey of Staploe and Paul and Geoffrey Somersham. A number of further such arrangements, based at least in part upon different operating areas rather than the use of joint appointments, are vaguely discernible. Might Robert of Belgrave, with his sixteen appointments in Leicestershire and one in Northamptonshire, his son Richard of Belgrave with two appointments in Leicestershire and one in Warwickshire, and Simon of Belgrave with three in Leicestershire and five in Northamptonshire, although not sharing joint appointments, have together operated a joint venture for the purpose of mutual gain? Although we do not know if Ralph, Robert, Gilbert and Ingald of Kirkby were related by blood, they may have acted collectively with their sixteen separate appointments in Leicestershire, Northamptonshire and Rutland. An apparent group of attorneys comprising three generations of one family were the Thedingworths, Roger of Thedingworth receiving one appointment in Leicestershire, two in Warwickshire and two in Northamptonshire,

Thomas, son of Roger, receiving one in each of Leicestershire and Warwickshire, and Avelina daughter of Thomas receiving a single appointment in Leicestershire. None of the appointments was shared with another family member.

Just as the use by many litigants of joint-name appointments has thrown light upon the issue of professional or familial association, so also it may reflect the relative status of different attorneys. Consistency in the order in which particular men were jointly appointed is frequently noticeable. Of the five joint appointments enjoyed by John and Hugh del Brok at the Buckinghamshire eyre, John was the first-named on every occasion. This is unlikely to be coincidence. Was John the 'preferred' attorney in each case, Hugh providing back-up if necessary? Similarly, John of Dagnall was first-named on each of his three joint appointments, and William of Haddenham was first-named on all of his four appointments with Ralph of Saunderton. Adam of Shortecumbe was first-named attorney on eight occasions, including two triple appointments. Conversely, in all four of his joint appointments, Robert Partridge was last-named, as was Robert of Elstead on each of his five.

In Northamptonshire, Geoffrey of Somersham was first-named in each of his four shared appointments with Paul of Somersham. Both Hugh of Kibworth and Stephen of Keysoe also enjoyed a majority of first-name appointments. Of the nine occasions in Northamptonshire in which Hugh was jointly appointed with another, he was first-named in six. Of the fourteen appointments shared in Northamptonshire, Huntingdonshire and Bedfordshire with John of Riseley, Stephen of Keysoe was first-named eleven times. Similarly, of the eight appointments shared by Stephen with John of Hauvill, seven were as the first-named attorney. Stephen received a total of 21 first-named appointments (out of 28), four in Buckinghamshire, six in Northamptonshire, three in Huntingdonshire and eight in Bedfordshire. Of Gerard of Byker's eleven joint-name appointments in Northamptonshire, he

was first-named in nine, the two occasions on which he was second-named being appointments by ecclesiasts, respectively an abbot and a vicar.

Gerard of Byker's record is illuminating. Being first-named with such consistency must have reflected some perceived attribute, possibilities including the stated preference of the appointing litigants, the extent to which he was known to the court, his perceived seniority, professional status or wisdom, or the role in proceedings he was expected to play. But whichever attribute operated in Gerard's case, he nonetheless played second fiddle on the record of appointment to religious co-attorneys. This was not mere happenstance. It is observable that on the numerous occasions upon which a secular attorney was appointed by an ecclesiast in the alternative to a monk or canon, the almost universal custom was for the religious appointee to be first-named, even when the secular appointee was a professional practitioner. On fourteen of the fifteen occasions at the Buckinghamshire eyre upon which ecclesiasts of various descriptions appointed a fellow churchman in the alternative to a secular attorney, the name of the appointed monk, canon, clerk or chaplain appears on the record ahead of that of his secular co-attorney. Such a clear pattern of appointment is reflected elsewhere. Of William of Bromwich's nine appointments at the Warwickshire eyre, three were to act jointly with brother Richard of Bromsgrove, Richard being first-named on each occasion. Similarly, four of Robert Jabet's eight appointments at the same eyre were shared with brother Henry of Thurlaston, Robert being last-named on each occasion.

The seniority of the secular co-attorney was irrelevant. In both of Henry of Staploe's joint appointments in Huntingdonshire in which he was second-named, his first-named co-attorneys were, respectively, brother John of St Neots and brother Richard of Farendon, appointed respectively by the general attorney of the abbot of Colchester and by the prior of Dissemede. One of Henry's two second-named appointments in Cambridgeshire was made by the abbot of Santre, the first-named appointee being a monk, brother Henry of Ashwell. In

Leicestershire, Hugh of Kibworth had one ecclesiastical client, in his appointment by whom he was second-named to brother Alan of Ounesby.

Although such a pattern of appointment is clear, the reason for it is not. Perhaps court clerks were instructed to record the names of monks, canons and other religious appointees ahead of secular counterparts, or they did so consciously or unconsciously in deference to them. Alternatively, the appointing ecclesiasts may understandably have put their own men's names forward ahead of those of secular alternatives. It is unlikely to be that the monastic appointees were better known to the court clerks than were their secular co-attorneys, and that such familiarity is reflected in the recorded order of appointment. It is feasible that a similar convention existed also in the appointment of the stewards and bailiffs of important secular magnates. Only rarely is a steward or bailiff identified on the roll as such, and the involvement of such men as attorneys is thus difficult to monitor. If, however, the practice in the ecclesiastical sector is any sort of model, it could well have been replicated in the naming of lords' retainers ahead of non-retained co-attorneys, including independent professionals.

It is difficult, therefore, to assess the degree to which the recorded order of appointment may have reflected how well known an appointee was to the court. Although it is useful as a tool in identifying the best-known professionals (who might be expected automatically to appear as first-named on the record of their joint appointments), caveats apply. Roger of Newport was first-named in five of his seven co-appointments in Buckinghamshire, including that with fellow-professional Robert Partridge, but his two second-named appointments were, respectively, to men with only one other attorney appointment between them. Similarly, he was second-named twice also in Northamptonshire, once behind Roger of Thedingworth who received a total of five appointments at the three consecutive eyres of Leicestershire, Warwickshire and Northamptonshire, and on the other occasion to a man who received no other appointments on the circuit. In Bedfordshire, he was also second-named in his single

appointment. Not one of Roger of Newport's first-named co-attorneys was as senior a lawyer as was he.

Accordingly, however numerous are the available examples of some men being always, or almost always, first-named either generally or in conjunction with other given individuals, we cannot conclude that the practice was sufficiently comprehensive for there to have been an immutable framework. It is likely that the recorded order of enrolment of joint-name appointments was, in many cases, arbitrary, with no significance attaching. It is certainly improbable that it reflected any difference in the role that each attorney was expected to play, although there may be an inference that in the appointment of two or more attorneys of broadly equal status, the role of the second or third-named attorney was to provide cover if the first-named fell ill, became double-booked, or was otherwise unable to act.

This leads into the issue of whether, in any given alternative-name appointment, it was the intention of the litigant and the understanding of the attorneys concerned that those attorneys would perform different duties. It may be surmised that when two attorneys of equal status were jointly appointed, both attorneys were expected, if called upon, to perform broadly similar duties, either with one providing cover as just suggested or on a 'whoever is available' basis. The nature of those duties would, of course, depend upon the expertise and experience of the appointees. But numerous recorded pairings have a known professional appointed in the alternative to an obvious non-professional attorney (usually, but not invariably, with the professional as first-named), and the thought that the non-professional could provide adequate cover for the expert is surely fanciful. Was a widow's inexperienced brother-in-law, for instance, expected to provide equality of function with someone like Stephen of Keysoe? Even when the non-professional co-attorney had experience, as with stewards and monastic cellarers, some division of duties is probable. An obvious such division would be for the non-professional attorney to be responsible for routine or

procedural formalities such as making appearances or applications for adjournments, the professional appointee dealing with legal aspects of the underlying litigation such as the issue of process, the instruction of a pleader and the conduct of substantive proceedings in court.

A further means of distinguishing attorneys and the nature of their respective practices is the extent to which they were engaged by litigants respectively for 'all pleas' or to prosecute or defend specific actions. Prior to 1285, it was a very strict rule that a litigant could not appoint an attorney in a suit that had not actually commenced.[4] Only by obtaining a royal writ (which would be forthcoming only in exceptional circumstances) might a principal who was, for instance, about to be absent overseas on the king's business have been permitted to make a general power of appointment, not limited to one specific action that had already started.[5] Clause 10 of the second Statute of Westminster in 1285, which preceded the Northamptonshire eyre of the same year, introduced a much wider general power of appointment to superior courts. Thereafter, a litigant with 'lands in divers shires' was able to appoint an attorney to deal with any plea that had arisen or would arise before the justices rather than, as hitherto, having to make separate appointments for every action in which he became involved. Such appointments were effectively watching briefs, the principals in question not necessarily being engaged in litigation at the time of their being made, although they would equally suffice for litigation in hand or contemplated. Roger of Batchworth and Adam of Shortecumbe, for example, were appointed at the Buckinghamshire eyre by the archdeacon of Oxford as his attorneys (in translation) 'against everyone on all pleas brought or to be brought, and to claim, pursue and defend his liberties'.[6]

[4] E.B.V Christian, *A Short History of Solicitors* (London, 1896), p.10.
[5] F. Pollock and F.W. Maitland, *The History of English Law Before the Time of Edward I*, 2nd edn, ed. S.F.C. Milsom (2 vols, Cambridge, 1968), i, p.213.
[6] *The Buckinghamshire Eyre of 1286*, no.452.

Receipt of an appointment from a litigant holding 'lands in divers shires' may, therefore, be significant in that, unless the attorney in question was known or suspected to be a court clerk (being, thereby permanently in court whilst it sat), he was likely to be a trusted, probably long-standing, and successful representative of an established, high-status client. The appointment by the archdeacon of Oxford of Adam of Shortecumbe and Roger of Batchworth mentioned above is surely a case in point. Many attorneys received a mix of specific appointments and those for 'all pleas'. Roger of Newport had such a practice, six of his 21 appointments at the Buckinghamshire eyre being for 'all pleas', the remaining fifteen, in addition to the nine appointments previously received in Northamptonshire and the subsequent one in Bedfordshire specifying particular actions. The 'all pleas' appointments may themselves be categorised into two which preceded his involvement in numerous pleas, presumably contemplated at the time of the appointment, two which preceded just one or two pleas, and two more in which no ensuing litigation is recorded. John of Islip's appointments portfolio, like that of Roger, was also mixed. At the Northamptonshire eyre, five of his appointments were for 'all pleas', eight were for specific pleas, and three were hybrids (made for both 'all pleas' and for one or more specific suits). Just two of his thirteen appointments in Buckinghamshire were for 'all pleas', and his Huntingdonshire pleas were all specific, as was his single appointment in Rutland.

It seems probable that 'all pleas' appointments of attorneys would be more numerous where they were best-known, reflecting their respective centres of operations. Although Roger of Newport's haul of such appointments was relatively modest, it places him more into Buckinghamshire than Northamptonshire, as is supported by other relevant evidence adduced. John of Islip, on the other hand, leans more towards Northamptonshire, a premise again supported elsewhere. If this association of 'all pleas' appointments with places of business is correct, there is no doubt that Hugh of Kibworth, despite his locative surname,

lived and worked principally in Northamptonshire, nine of his ten appointments in that county being for ‘all pleas’, and just one for a specific plea of *mort d’ancestor*. In Leicestershire, all his six appointments were for specific pleas, as were his two related appointments in Warwickshire.

A similar pattern is discernible for William Cotel, who received two appointments in each of Buckinghamshire and Huntingdonshire, four in Cambridgeshire and ten in Bedfordshire. The obvious inference that his base lay in Bedfordshire is supported by his receipt at that county’s eyre, of eight ‘all pleas’ appointments, his only other such appointment being once in Huntingdonshire. If the legal practices of Hugh of Kibworth and William Cotel were anchored by a solid core of well-heeled clients in their home counties, that of Gerard of Byker is more difficult to pin down. There is, however, in his very limited ‘all pleas’ portfolio a strong hint as to his power base. Of his fourteen appointments in Northamptonshire, just one was for ‘all pleas’, one was hybrid and the remainder specific, the ‘all pleas’ appointment being made by the abbot of Crowland. Gerard received five further appointments in Cambridgeshire, one of which was made by the same abbot who also appointed Gerard for ‘all pleas’ in his single engagement in Huntingdonshire. Not only was the abbot seemingly Gerard’s best client, but the (relative) geographical proximity of Crowland and Bicker in Lincolnshire supports the premise that he was based in that general neighbourhood. Such an association of ‘all pleas’ appointments with centres of operations does not, however, hold good universally. Although John of Goldore received three such appointments in Gloucestershire (the remaining six appointments in that county, the five he had previously received in Buckinghamshire and the four that he subsequently received in Dorset all being specific), there is no reason to regard that county as being his base.

One final way in which the respective practices of professional attorneys might be categorised is by reference to whether they attracted instructions from plaintiffs or defendants

or both. In theory, an apparent bias in favour of plaintiffs for instructions might suggest an inclination to prosecute clients' claims, even a reputation for doing so successfully, whilst a contrary bias towards defendants might suggest skill in defending vested or established interests. In practice, however, there is little evidence that professionals made the distinction. In Buckinghamshire, for instance, on the eleven occasions that hearings are recorded in which John of Islip had been appointed to appear, his principals were plaintiffs on five occasions and defendants on six, suggesting an indifference on his part. Similarly, of the 25 occasions upon which Roger of Newport might have appeared, he would have represented plaintiffs on fifteen occasions, defendants on nine and a warrantor once. Any slight inclination towards the prosecution of causes rather than the defence of interests is likely to have reflected the collective circumstances of his clients rather than his own professional preferences.

Chapter 17: What did professional legal attorneys do?

Following the emergence of professional legal attorneys during the second half of the thirteenth century, what did they actually do? Their basic core function, as had been the case with every non-professional or 'simple' attorney since the days of Henry II, was to attend court in place of their principals. If acting for a plaintiff, and to prevent his principal's case being dismissed for want of prosecution, an attorney needed to be in court on the actual day appointed for appearance. Several such appearances over consecutive legal terms were often necessary before a reluctant defendant's attendance in court was secured.

In addition to such elementary duties, capable of being performed by the 'simplest' of attorneys, competent non-specialists needed to be able where necessary to speak for their principals and to take certain positive steps. Attorneys acting for defendants frequently employed delaying tactics such as seeking a view, or made arrangements for their principals to be essoined. For his part, a plaintiff's attorney had a duty to seek judgment on each occasion that the defendant failed to appear, waiting out the three days of grace permitted to defendants before making his application on the 'fourth day'.[1] He also needed to ensure that his own appearance, the absence of the defendant and agreed adjournments were correctly noted within the plea rolls. When required, he would need to make technical or tactical decisions for the benefit of his principal, such as the seeking of final judgment if the defendant repeatedly defaulted.

The taking of procedural steps was one thing, active participation in the resolution of substantive issues quite another. The provision of an enhanced level of service was no doubt within the capability of many institutional attorneys such as monastic cellarers and stewards and their secular counterparts acting for great estates, but would be beyond that of the great

[1] Brand, *Origins*, note 6, p.196.

majority of attorneys who lacked the necessary degree of experience and expertise. Most ordinary litigants requiring such a level of service would therefore need professional representation so that when, for instance, the defendant or his attorney finally appeared in court, the plaintiff's attorney could arrange for the case to be called for hearing. Both attorneys would then stand at the bar of the court, listening to what their respective serjeants said, so as properly to perform the duty of avowal or disavowal. Although an attorney was for most purposes treated as the principal's *alter ego*, the court might regard him also as a channel of communication with the principal if, for instance, that principal's attendance in person was required or if the court was anxious that he be made personally aware of some development. Once pleading had finished, a plaintiff's attorney often needed to make several further appearances, seeking judgments on defaults made by the defendant or by jurors, if necessary challenging individual jurors prior to their handing down their verdict. When final judgment was awarded, he ensured that it was executed. He also checked the accuracy of the plea roll record, insisting if necessary that he have access to the rolls for the purpose.

In cases in which no serjeant was engaged, the attorney would need to speak for his principal in open court. Recorded instances of attorneys doing so suggest that it was regarded as acceptable and not uncommon. There were risks however; Brand illustrates the dangers of an attorney both appearing in place of a litigant and speaking in court for him, citing a case in 1261 in which such an attorney made a fatal courtroom error of which he was unable to disavow himself.[2] It is probable that the extent of attorney advocacy declined during the course of Henry III's reign as it became normal for serjeants to speak for Common Bench litigants. Indeed, pleading in the higher courts was ultimately monopolised by serjeants as specialist advocates, although the date of crystallisation of that monopoly is uncertain.

[2] P.A. Brand, The *Making of the Common Law* (London, 1992), p.8.

Despite it becoming increasingly common during the reign of Edward I for ecclesiastical institutions to retain serjeants directly, professional attorneys probably engaged most serjeants to act for their clients.[3] They assumed responsibility for briefing them on the salient facts of the case, and if several serjeants had been employed, co-ordinated tactics. A preliminary meeting, *consilio narratorum* (a forerunner of the modern-day conference between solicitor, client and counsel), was frequently held before commencement of the case.[4] Similar meetings normally followed a serjeant's request to 'imparl' during the course of pleading. Attorneys also took custody of deeds and other muniments relating to litigation in hand, and subsequently settled their serjeant's fees.

During the thirteenth century, plaintiff's professional attorneys increasingly advised on the choice of 'original' writ necessary to commence litigation, purchasing them for clients and discharging requisite fees.[5] It was vitally important that the appropriate writ was purchased, being critical to the entire case and dictating the procedures and methods of trial available. Those procedures and methods came to assume greater importance than the substantive law underlying the cases themselves. Compartments of law and practice associated with particular writs, known as 'forms of action', varied with the nature of proceedings contemplated.[6] Professional attorneys needed a detailed knowledge of the formula appropriate to each writ so as to check that the Chancery clerk had drawn it properly.[7]

From the time of their inception, the number of original writs expanded rapidly, with new forms being drafted as need arose. From a maximum of fifteen in around 1180 it increased to some 33 in 1236, to around 59 in the 1250s, to about 85 in the early 1270s, and to more than

[3] Brand, *Origins*, p.100.
[4] Ibid., p.96.
[5] Birks, *Gentlemen*, p.46.
[6] For a detailed account of this topic, see F.W. Maitland, *The Forms of Action at Common Law*, eds A.H. Chaytor and W.J. Whittaker (1909; reprint, Cambridge, 1962).
[7] Brand, *Origins*, p.119.

130 by 1307.[8] Consequently, the purchase of original writs and the process of suing out evolved from being a task requiring method and organisation to one of considerable knowledge and expertise. Only on receipt of the appropriate returned original writ did justices possess jurisdiction, being able thereafter to issue further 'judicial' writs authorising the next stage of process against a defendant. These judicial writs were also of various forms, and it was incumbent upon a plaintiff's attorney to ensure issue of the correct form and delivery to the local sheriff. In the event of procrastination by sheriff or defendant, the plaintiff might himself issue further writs of 'mesne process' to compel the defendant's attendance in court, the wording of which varied with the form of action.

In addition to possessing an encyclopaedic knowledge of writs and forms of action, successful professional attorneys had to keep abreast of prevailing law, and to master court procedure. For instance, given the large part that delay played in medieval justice, they needed to keep up with ever-changing regulations governing both delay itself and the attitudes of the courts to developments in the 'complicated framework of delaying tactics'.[9] Furthermore, knowledge of laws and legal procedures needed to be augmented by linguistic skills**.** Writs and court records were recorded in Latin, an understanding of which was therefore required by an attorney needing to be certain of the wording of a writ (an absolute pre-requisite to success) or checking the rolls of earlier hearings. Also, as the language of the courtroom was Anglo-Norman, fluency of understanding at least was vital to enable attorneys to follow the proceedings generally and specifically to undertake such actions as (dis)avowing serjeants. These pleadings were ultimately the attorney's responsibility. He decided whether to avow a serjeant's speculative plea, and could be called upon in open court to agree a statement just made. As Christian stresses, 'No plea of fact from which no

[8] Ibid., pp.33-4.
[9] Ibid., p.36.

withdrawal could be made might be pleaded without the attorney's consent. When such an admission was made, the record put the responsibility on the attorney'.[10]

As has been discussed in the context of attorneys appearing for absent litigants at various eyres between those of Lincolnshire in 1218-19 and Derbyshire in 1281, it is difficult to assess the role played by any such attorney in the conduct of proceedings. Not only is the attendance of an attorney rarely referred to in the official record, the very occasional mention being almost invariably anonymous, but also the role played by him is almost never stated. Even when he apparently speaks, we cannot be certain that the words are his, or whether they are those of a serjeant whose presence is entirely unrecorded. Although, regrettably, a continuing official inscrutability causes the same to hold true for professional practitioners in the 1280s, imaginative interpretation does permit some insight to be gained into their activities in court. An attempt to make such a gain now follows, on a case-study basis, by reference to the four leading professional legal attorneys at the Buckinghamshire eyre of 1286. Particular attention is paid to the types of principal for whom they acted, the nature of the litigation in which they were involved, and the outcomes achieved in the cases in which they were appointed to act.

Twenty-eight pieces of recorded litigation arose from fifteen of Roger of Newport's 22 appointments at the eyre as attorney or (in one case) as guardian to an underaged litigant. Despite being in every case framed by reference to a specific action as opposed to being for 'all pleas', the remaining seven appointments apparently gave rise to no recorded litigation.[11] Two such appointments contemplated dower proceedings, one of which was to act in the alternative to another for a plaintiff widow, and the other, again in the alternative to a co-attorney, for a husband and wife as defendants. In two further cases, Roger was appointed

[10] Christian, *Solicitors: Outline*, p.17.
[11] *The Buckinghamshire Eyre of 1286*, nos.510, 602, 683, 684, 786, 787, 788.

alone by a prior, once on a plea of trespass and the other on a plea of taking stock-animals. The opponent was the same individual in both cases, which are clearly linked, and which appear to reflect attempts to right a quasi-criminal wrong and not to be land-related. The acceptance by the justices of Roger as a guardian and one of his attorney appointments are linked, both being of Roger alone in relation to an assize of *mort d'ancestor*. In a plea of land contemplated by another lone appointment, the opponent of Roger's client was represented by Geoffrey de Stabulo of Newport, a probable professional with five separate appointments at the eyre.

It is unlikely that proceedings did, in fact, ensue in every case, but that the record is now lost. Resolution without litigation is more probable, whether by abandonment or by settlement out of court. In the absence of anything further, it is futile to speculate on what might have been Roger's role (if any) in negotiating terms, but a little more may be taken from three actions that were resolved, apparently rapidly, on reaching court. Two such arose from an 'all pleas' appointment, in Roger's sole name, made by one of Buckinghamshire's lesser magnates, Ralph Pippard which, in the event, involved Roger in eight separate actions. In one of the two, a plea concerning fifteen and a half virgates of land, it is stated that Ralph 'comes by his attorney' and not only does not pursue his claim but also 'withdraws in contempt of court'.[12] The obvious reason that Roger might have withdrawn without licence, and hence compromised his client's claim, is that prior settlement had been negotiated. In the other case, the plaintiff in an assize of *novel disseisin* of commons of pasture did not pursue his claim against Ralph.[13] Given the nature of the writ, Roger could not have represented his client defendant in court but could, of course, have negotiated a settlement on his behalf, perhaps being instrumental in buying off the plaintiff. Just as both of these pleas may have been

[12] Ibid., nos.479, 117.
[13] Ibid., no.234.

resolved by agreement, so may the third, Roger's principal being also the defendant in an assize of *novel disseisin* which was not pursued.[14] Again, it may be speculated that the plaintiff was bought off.

If negotiated settlements are just possibilities in all or any of these three cases, there is no doubt that in four further cases settlement was negotiated. Indeed, there is good reason to regard each of them as being collusive, a means of recording for posterity a transfer or conveyance of land. One such settlement was effected by the enrolment of an agreement made by Ralph Pippard with two men named respectively Gilbert and William.[15] Gilbert claimed from Ralph and William their respective parts of a messuage and half a virgate of land as his right by two separate writs of entry. After reciting the nature of the action, the record states (in translation) that 'Ralph and William come, and they agree'. Following payment by Gilbert of half a mark for licence to agree, the enrolment of the agreement reveals that not only did Gilbert quitclaim in favour of Ralph, as his right, that part of the tenement originally claimed against him, but both Gilbert and William acknowledged that the other part of the tenement was Ralph's right also, and quitclaimed accordingly. In return for the agreement that Ralph had such right and seisin in the whole, Ralph gave to Gilbert and William five silver marks. The arrangement demonstrates an increasingly common device whereby one party, frequently a defendant, with no genuine existing interest in a given property but a wish to acquire it, was brought to court and enabled to purchase it from the other party who wished to dispose of it. Such 'contentious conveyancing', as already touched upon, is to be contrasted with the non-contentious transfer of land by delivery.

[14] Ibid., nos.525, 14.
[15] Ibid., no.192.

Ralph Pippard reached agreement with another opponent also, the arrangement being on this occasion recorded in a chirograph.[16] The entry on the eyre roll recites simply that the plea was one of covenant and that the chirograph was ordered following payment by the other party of twenty shillings for licence to agree. The chirogaph itself, made at Wycombe, shows Ralph to be the querient (plaintiff) and his husband and wife opponents as defendants.[17] It is specifically stated that Ralph appears 'by Roger de Neuweport in his place', and Roger's involvement, as Ralph's attorney, is therefore certain. It is confirmed that a messuage and two virgates of land are the right of Ralph, in whose favour the defendants quitclaim on behalf of themselves and the wife's heirs, in consideration of which they receive twenty marks. Ralph has, with Roger's assistance, purchased a tenement.

The two remaining cases of negotiated agreement, both of which led to chirographs, involved Walter of Newton and Maud his wife who, other than Ralph Pippard, were Roger's busiest clients. They appointed him on an 'all pleas' basis, resulting in five separate matters going to court.[18] In one such, Walter and Maud claimed six acres of land from its tenant but, on her paying half a mark for licence to agree, quitclaimed that land to her in consideration of an enigmatic 'sore sparrowhawk'.[19] In the other case, Walter and Maud claimed six acres of meadow on a writ of entry.[20] Their opponent, the abbot of Thame came, they agreed, and the abbot gave one mark for the necessary licence. In the ensuing chirograph, Walter and Maud remised and quitclaimed in favour of the abbot and his church, for which he paid a consideration of five marks.[21] In neither case was Roger recorded as appearing in place of his clients (although the abbot of Thame was represented by one of his monks), but it is

[16] Ibid., no.201.
[17] *A Calendar of the Feet of Fines for Buckinghamshire*, no.349; CP25(1), 17/48/4.
[18] *The Buckinghamshire Eyre of 1286*, no.680.
[19] Ibid., no.274; *A Calendar of the Feet of Fines for Buckinghamshire*, no.369; CP25(1), 17/49/9 (34).
[20] *The Buckinghamshire Eyre of 1286*, no.273.
[21] *A Calendar of the Feet of Fines for Buckinghamshire*, no.365; CP25(1), 17/49/5 (30).

reasonable to assume his involvement in the negotiations which preceded the formal surrenders of interest and fixed the levels of consideration.

Thus far, we have seen Roger in apparent peace-making mode, presumably doing all that he reasonably could to achieve satisfactory settlements and outcomes. He has also seemingly involved himself in contemporary land conveyancing. As might be expected, most of his workload was land-related, but it is clear that he was something of an all-rounder, apparently servicing all his client's legal needs, including those of a quasi-criminal nature. In one such, an allegation that Ralph Pippard and others unjustly detained stock-animals, the plaintiff opponent defaulted, Ralph being permitted to retain the animals at issue.[22] Whether the opponent voluntarily defaulted, or whether he was paid off or frightened off, is now unknowable. Another client engaged Roger and a co-attorney on an 'all pleas' basis, and in the event proceeded against twenty named individuals on two related actions, firstly of unlawful fishing, theft of fish and 'other outrages' against the peace, and secondly of breaking his weir by force of arms and theft of its constituent timber.[23] On the non-appearance of any of the defendants, both matters were adjourned to Westminster. A trial which led to the peaceable rectification of a quasi-criminal wrong involved the allegation that Ralph Pippard and another had ejected the complainant from custody of an underaged heir 'by force of arms'.[24] The jury found for the complainant, and Ralph was both amerced and assessed to pay damages. While Roger's appearance on Ralph's behalf in that case needs to be presumed, it may be regarded as certain in another in which Ralph, 'through his attorney', claimed nine virgates of land against a defendant, John Giffard who, it was claimed, had unjustly disseised Ralph's uncle of whom Ralph was heir.[25] In the event, Ralph was unable to

[22] *The Buckinghamshire Eyre of 1286*, no.187.
[23] Ibid., nos.608, 242, 398.
[24] Ibid., no.98.
[25] Ibid., no.131.

deny that the land at issue was a small part of a very much larger holding which had some years previously been claimed by the widow of Ralph's uncle by way of dower, and which claim had seemingly been resisted by John Giffard with the assistance of Ralph himself as warrantor.

If Roger's involvement provided no guarantee of a satisfactory outcome in court (an impossibility, one would think, with a client like Ralph Pippard), he did enjoy more success in three other contested sets of proceedings, all of which concerned claims of dower. In one, he was appointed to act for the female defendant who, although unable to resist the widow's claim, was ordered to be compensated by a warrantor following production by her of a charter in her favour by the warrantor's father.[26] The other two cases are related and arise from the appointment of Roger in the alternative to another to act in a plea involving four separate defendants.[27] Proceedings against one of those defendants seemingly did not proceed, and it may be that this was settled out of court. In the first of the two cases that are recorded, Roger's clients, Herbert and Alice of Thedmers, claimed dower from two defendants who attempted unsuccessfully to replace one warrantor with another, Herbert and Alice being granted seisin of the land claimed.[28] In the second case, Herbert and Alice were awarded seisin of a warrantor's land of equal value to that claimed, the record stating that Alice came by her attorney.[29]

Roger's remaining appointments preceded a variety of actions. Some, such as two related claims bought by Walter and Maud of Newton against the abbot of Missenden for 200 acres of heathland and five marks-worth of rents, involved legal argument and factual dispute, and were clearly heavyweight, while others were less so.[30] Others failed because of technical

[26] Ibid., nos.480, 332.
[27] Ibid., no.537.
[28] Ibid., no.128.
[29] Ibid., no.210
[30] Ibid., nos.275, 409.

errors.[31] Yet others reflected genuine uncertainty on the legal position given the complexity of landholding by the 1280s. Although Roger's participation in any or all of the proceedings may be assumed as probable, the total absence of reference to him either by name or anonymously in the official record renders it impossible to be certain or to gauge its extent.

A similar, indeed more acute, difficulty exists in attempting to assess the profile in court of John of Islip, the second busiest professional attorney at the Buckinghamshire eyre with thirteen appointments plus a grant by the justices that he may sue for an underaged litigant. Not once is John's presence in court as an attorney referred to, even anonymously. In four cases, there is no record of proceedings following John's appointment as an attorney, in one of which the prior of Dunstable retained John and another man in the alternative on an 'all pleas' basis, appearing in the absence of any follow up to have been entirely defensive.[32] If any proceedings did arise, they were settled out of court. The same observation may be made in relation to the three remaining appointments in this group, all of which were made in contemplation of a specific plea of land.[33] Just as John, like Roger of Newport, received appointments relating to pleas that may have been settled out of court, so did John also receive appointments relating to tortious behaviour. Unlike with Roger, however, such behaviour featured within the possessory assizes of *mort d'ancestor* and *novel disseisin* rather than within acts of blatant quasi-criminality. The resolution of disputes over competing interests in land is evident in the appointment of John by Thomas and Maud le Leche in two separate pleas of land which were finally adjourned to Westminster, and in his appointment by the parson of Drayton Beauchamp whose dispute with the abbot of Grestein over a claim for arrears of annual rent and damages was finally compromised.[34]

[31] Ibid., nos.230, 11.
[32] Ibid., no.449.
[33] Ibid., nos.538, 773, 690.
[34] Ibid., nos.744, 824, 202.

Although John's track record as an attorney in court is thus hazy in the extreme, an invaluable insight is provided by an account of his appearance as bailiff for fifteen named individuals who, together with a tenant who appeared in person, defended a writ of *novel disseisin*.[35] John was almost certainly not an employed bailiff, and it was relatively common in assizes of *novel disseisin* for lawyers representing defendants, who were still prohibited in the 1280s from being represented by an attorney, to appear for them in the role of bailiff. Indeed, the model writ for the assize envisaged that it may be served upon a defendant's bailiff if the defendant himself could not be found. Most of the men cited as defendants were, no doubt, mere members of the gang who were alleged to have carried out and enforced the disseisin, but two of the key players, Simon of Thorp and Simon of Ellesworth, are also on record as engaging John as their attorney in two separate, unrelated matters.[36] From this, we can be reasonably certain that John's involvement in this case was as a lawyer, representing the absent defendants although unable to commit them.

The case itself revolved around members of the de Scoville family, and entitlement to the manor of Turweston. The complainant was William de Scoville, the younger brother of the principal defendant, Baldwin. Following recorded representations made by John on behalf of Baldwin, Simon of Thorp and all bar one of the remaining defendants (Simon of Ellesworth appearing in person), the jury reached its verdict. They said that an attempt had been made by the brothers' mother (who held one-third of the manor as her dower) to deprive Baldwin, while he was 'in distant parts', both of the reversion in that part and also of his unencumbered and lawful inheritance of the remaining two-thirds of the manor, by fraudulently making a charter of enfeoffment in favour of William. On hearing of such treachery, Baldwin had immediately returned and ejected William from the land before he had the time and

[35] Ibid., no.47.
[36] Ibid., nos.795, 816.

opportunity to establish seisin. The justices approved such action in the particular circumstances and ordered that Baldwin and the other defendants go without day. William took nothing and was amerced for a false claim. This was an extremely heavy case, with a great deal at stake, and it can be reasonably inferred from the record of its proceedings that John's contribution to the nature of the outcome was material.

As is so frequently the case, the precise role played by John is difficult to pin down. Certainly, the official record gives every indication of his leading for the defence, in terms both of organising it and also of speaking for many of the defendants. Fortuitously, there exists in this case an extant law report compiled independently of the official court record.[37] Unlike official records, such reports frequently mention the presence (and name) of any participating serjeant, and there is no such mention in this case. Although we cannot conclude from this that no serjeant was employed, particularly as there is also no mention in the report of John's undoubted presence, the probability is that John not only appeared for fifteen of the sixteen defendants as officially recorded but spoke for them also in open court. Some support for this may lie in the nature of the case, relying as it did on findings of fact by an assize rather than on legal argument, the necessary advocacy being therefore within the capability of a competent non-specialist.

Adam of Shortecumbe and Roger of Batchworth were both busy professional attorneys at the Buckinghamshire eyre with thirteen and nine recorded appointments respectively. As discussed *ante*, their respective legal practices were associated, and it is instructive to consider their respective workloads both in isolation and, where appropriate, together. Five of Adam's appointments did not give rise to any recorded proceedings.[38] Two of those were for

[37] *The Earliest English Law Reports*, ed. P.A. Brand, iv (London, Selden Society, 123, 2007), 86 Bucks.2, pp.332-4.
[38] *The Buckinghamshire Eyre of 1286*, nos.452, 614, 638, 646, 850.

'all pleas', and the remaining three appointments were respectively for pleas of dower, account, and land. As to whether any or all of these three matters may have been settled out of court, and if so, whether this was at least in part due to the involvement of Adam in his role as a lawyer, it may be relevant that the appointments in the pleas of dower and of account were in the alternative to one other (Robert de Havokesherd and Philip de Wyke respectively), and in the plea of land it was in the alternative to two other named attorneys (Philip de Wyke and William de Lalham). As has been discussed, each of Robert and Philip had some connection to Adam, both of Robert's two recorded appointments at the eyre and all three of Philip's recorded appointments being in the alternative to him.[39] Also, one of the 'all pleas' appointments was received in the alternative to Roger of Batchworth, the other in the alternative to an attorney who featured nowhere else at the eyre. Thus, even if Adam was not involved in person in negotiating settlements in these cases, it is probable that a connected co-attorney was. Furthermore, the opponent of Adam's client in the dower case was seemingly represented by John del Brok and Hugh del Brok, professionals both, which may also have facilitated a settlement in that matter.[40]

Another 'all pleas' appointment of both Adam of Shortecumbe and Roger of Batchworth in the alternative was made by Ralph FitzBernard who is also recorded as making a second appointment of Adam, this time in the alternative to Robert of Havokesherd, in respect of several related pleas of land.[41] The ensuing litigation was complex and arose principally from Ralph's claim to two messuages and two virgates of land, a third part of each of which was in the hands of three separate tenants. Ralph's claim of entitlement to the tenements was as his late grandfather's heir following the death, without issue, of the grandfather's original donee. Four separate hearings were necessary to resolve the dispute, which involved queries on the

[39] Ibid., respectively nos.638, 693; 646, 826, 850.
[40] Ibid., no.619.
[41] Ibid., nos.481, 693.

writ, the emergence of a fourth defendant, vouchers to warranty, disputed facts, legal argument, and the production of a charter.[42] Ralph was entirely successful, as he was also in another suit in which different defendants defaulted.[43] While it may be presumed that the necessary advocacy in court would have been undertaken by a serjeant engaged for the purpose, the preparation and investigation that must have both preceded and accompanied developments in court, and attendance to all requisite procedural requirements, surely suggests the involvement on Ralph's behalf of a specialist property lawyer who, by standing in for his client as the case unfolded, would have been well placed to work with his serjeant in securing the desired outcome.

In addition to activity at the eyre, Adam is recorded on at least three occasions as appearing in place of litigants on the making of chirographs. Two are related, Adam appearing in respect of both at Westminster whilst the eyre was in recess following its opening session at Newport Pagnell.[44] In each case, Adam appeared in place of the plaintiff, rents in Middlesex and Buckinghamshire being at issue. The defendants were a married couple, and although right was with the defendant wife, the rents were granted to Adam's client, to hold of the defendants, rendering an annual rose. There is no record of either matter having been litigated at the eyre.

The third chirograph in which Adam featured, however, certainly did arise from proceedings at the Buckinghamshire eyre, and has been touched upon *ante* in the context of Adam's association with Roger of Batchworth.[45] It was made in the spring of 1287 at Westminster, and Adam is recorded as appearing in place of Ymer, abbot of the church of St Mary of Bec Hellouin (in Normandy), as tenant of one messuage and three virgates of land in Bledlow, the

[42] Ibid., in order of hearing, nos.96, 267, 208, 76.
[43] Ibid., no.163.
[44] *A Calendar of the Feet of Fines for Buckinghamshire*, nos.338, 339; CP25(1), 285/23/160; CP25(1), 285/23/161.
[45] *A Calendar of the Feet of Fines for Buckinghamshire*, no.385; CP25(1), 17/50/1.

claimant being Hugh de la Sale. At the eyre, brother William de Sancto Paterno, as general attorney of the abbot of Bec Hellouin, had appointed Roger of Batchworth as his attorney for 'all pleas' in the alternative to one Adam of Aldington who is not recorded as being otherwise involved in proceedings at the eyre.[46] Given the undoubted subsequent involvement of Adam of Shortecumbe, he and Adam of Aldington may be the same man.

Be that as it may, the abbot contested Hugh de la Sale's claim to the tenements at issue.[47] Hugh contended that the abbot did not have entry to the tenements except by an expired lease from Hugh's deceased brother, Henry, to his deceased mother, Christian, and that on expiry the tenements should have reverted to him as Henry's heir. In response, the abbot produced a charter showing that Christian, in her 'pure and free' widowhood, had given the property at issue (excepting sixteen acres) to 'God and the church of the Blessed Mary of Bec in pure and perpetual alms'. The tenements at issue, the abbot added, were at the time held by Christian by hereditary right of the abbey church, and that Hugh, as her heir, was bound to warrant her pious gift. Hugh persisted, his attempt to claw back land alienated by an ancestor by way of pious gift being, at a time of greatly increasing consciousness of the value of land as a commodity, not uncommon.

Finally, the matter was adjourned for judgment at Westminster where it is clear that the dispute was resolved. The agreement enshrined in the ensuing chirograph, at the handing down of which Adam represented the abbot, gave right to the abbot, in favour of whom, his church and successors the tenements were remitted and quitclaimed. They were then granted to Hugh's brother, Alexander, at a service rent of one penny per year and on performance of suit at the abbot's court. In addition, the abbot granted to Alexander an annual payment of forty shillings for life, an unusual but valuable consideration for the quittance in the abbot's

[46] *The Buckinghamshire Eyre of 1286*, no.448, duplicated as 747.
[47] Ibid., no.184.

favour. The role of Adam of Shortcumbe or Roger of Batchworth in resisting Hugh de la Sale's claim at the eyre and the eventual resolution of the dispute can only be guessed at, but it would seem most unlikely that one or other of them would not have appeared in place of the (foreign) abbot or his (foreign) general attorney at the hearing. This is particularly so as the abbot is recorded as presenting himself on the fourth day in a related case 'by his attorney'.[48]

Two other, very weighty, cases involving the abbot of Bec Hellouin were dealt with at the eyre. In one, in which the abbot is stated as coming by his attorney, William Bardolf and Julian his wife claimed from the abbot most of the manor of Bledlow and also the advowson of the church of the manor, as Julian's right and inheritance.[49] The abbot's defence, as in the case involving Hugh de la Sale discussed above, was that an ancestor of Julian had given the manor to the abbey of Bec, his attorney producing a charter from 1198 in support. Legal argument on the admissibility and effect of the charter, which had seemingly been drawn up 'outside the kingdom of England', ensued with both parties repeatedly seeking judgment on issues arising, until ultimately agreement was struck. The Bardolfs paid 40 shillings for licence to agree, by surety of the abbot. In exchange for the Bardolfs acknowledging the tenements to be the right of the abbot and his church, and remitting and quitclaiming accordingly, the abbot acknowledged that he owed them 200 marks sterling and set out a timetable for payment. He had bought out the Bardolfs, and retained the manor.

The second case involving the abbot was again set in Bledlow and has links to those involving Hugh de la Sale and the Bardolfs.[50] The official account suggests that the abbot appeared in person, but this is most improbable. A claim by the parson of the church of

[48] Ibid., no.418.
[49] Ibid., no.177.
[50] Ibid., no.183.

Bledlow from the abbot of two-thirds of the crop of every tenth acre of land in the manor was resisted by a series of increasingly desperate defences ranging from that of a defective writ (allegedly in an 'improper and unheard-of form'), that the suit involving the Bardolfs required to be resolved first, and that the parson was already in receipt of every tenth sheaf by way of tithe and hence the writ was faulty. A partial success for the abbot followed as did, almost inevitably, an agreement whereby the parson paid 100 shillings for a formal grant of two-thirds of the crop remaining at issue. Interestingly, the abbot is stated to have been represented at the ensuing chirograph hearing by William de St Paterno, his monk and general attorney, who may, therefore, have appeared also for him at the earlier substantive hearing.[51]

In addition to the foregoing, each of Adam, John and the two Rogers received further appointments from litigants in respect of whom there are subsequent recorded proceedings which make no mention of the presence of appointed attorneys. Little or nothing is added to the picture above sketched of what professional attorneys actually did in itinerant courts in the 1280s. We do, nonetheless, have a good feel for the diversity of clientele with whom they had to contend and the range of issues with which they had to deal. The needs of disreputable chancers like Ralph Pippard and those of the altogether more principled (although, no doubt, acquisitive) abbot of Bec Hellouin were met, so far as one can tell, with equality of endeavour. Weir-breaking, ejection from custody, and other acts of quasi-criminality on the one hand, and the resolution of genuine tenurial disputes on the other, were equally grist to the mill. But what comes through above all else is an apparent desire on the part of many litigants, and a complementary determination on the part of their lawyerly attorneys, to achieve settlement where possible and on the best terms that could be negotiated. Some settlements have an air of desperation about them, being apparent attempts to salvage

[51] *A Calendar of the Feet of Fines for Buckinghamshire*, no.371; CP25(1), 17/48/20.

something from the wreckage of a speculative claim or a hopeless defence. Many, however, seem almost to have been envisaged from the outset, and indeed the use of the processes of the court as a means of cementing a pre-agreed conveyancing transaction was clearly far from unusual. And so, although the official record is frequently inscrutable as to the part played by appointed attorneys, and we have little choice but to fall back upon the probability that by the 1280s most litigants who had taken the trouble and expense of purchasing the services of a senior professional would surely have utilised him, we can be confident that professional attorneys were collectively an active force about the courts. The reasons that such a situation had come to pass are now discussed.

Part Four:

Supply and Demand

Chapter 18: Critical mass

We can be certain that professional legal attorneyship was an established courtroom activity in eyre proceedings by the 1280s. Independent lawyers, representing paying clients, were operating in numbers. We can be equally certain that this was not the case prior to the 1260s. There are therefore three key questions requiring to be answered. Firstly, why did professional legal attorneys emerge at all? Secondly, why did they emerge when they did, that is, between the 1260s and the 1280s? And thirdly, how did they emerge – what was the mechanism by which their emergence came about?

Answers to these questions are to be sought and formulated on two levels, one of which is beyond the scope of this thesis. On what might be called the macro-level, answers lie within the entire framework of historical development during the course of the thirteenth century. Numerous social, economic and legal factors contributed. The gradual erosion and eventually terminal decline of the Anglo-Norman feudal system of landholding, with its increasingly labyrinthine web of complex and contradictory tenurial arrangements, no doubt provided a context, as also did a growing awareness on the part of tenants of the concept of 'ownership' of land in place of that of 'holding'. More directly, the nature of litigation changed, the courts becoming less, proportionately, a forum for the righting of predatory and quasi-criminal wrongs, and more so for the resolution of genuine legal uncertainties. So also did forms of action change, the petty assizes of *novel disseisin* and *mort d'ancestor* ceasing to dominate proceedings, increasingly giving way to writs of entry, covenant, and sophisticated new devices for the 'contentious conveyancing' of land.

Contemporary legal developments also played their part. The formal authorisation of the use of attorneys in stated circumstances contained within the 1236 Statute of Merton, and the removal by the Provisions of Westminster in 1259 of the requirement that freeholders

residing within a county hosting an eyre attend and remain throughout, would surely have encouraged the use of attorneys. Similarly, the cessation in *circa* 1249 of the long-standing arrangement whereby the Bench at Westminster suspended its sitting during a visitation would have created an opportunity for local lawyers to cut their teeth, thereby impacting upon their professionalisation, many attorneys (and pleaders also) who might otherwise have followed the circuit opting to remain at Westminster.

But just as such general historical processes and contemporary legal developments undoubtedly contributed to the creation of a favourable environment for the emergence of professional attorneys, so also, at a micro-level, did developments within the activity of attorneyship itself reflect an increasing understanding of the desirability of expert assistance and professional representation in court. Evidence for these developments lies within the recorded proceedings of the eyres reviewed over the 70 years that elapsed between 1218 and 1288, and it is with that evidence that this section of the thesis is concerned.

The argument made is that professional legal attorneys emerged at the time that they did as a direct result of three relevant developments, chronologically related, the coalescence of which provided both the rationale and the necessary mechanism. Firstly, the basic activity of attorneyship, which had existed in 'simple', non-professional, form since at least the 1180s and probably for a decade or more beforehand, had expanded by the 1280s from being a tool in the hands of an elite minority of litigants to one which was seen to be of use to a sufficient number of more ordinary folk to enable it to become mainstream. The overall numbers of litigants appointing attorneys to act for them in court and of the attorneys consequently appointed had hence increased sufficiently for the use of attorneys to have reached a critical mass able to accommodate an expert minority capable of specialising and of professionalising. Secondly, there had arisen within the ranks of the litigants who collectively created that critical mass of attorneys a demand for a quality of representation in court that

transcended simple substitution. The authors of that demand sought more than mere competence, requiring a level of service that added value and gave them an advantage over their opponents. They demanded legal representation. Thirdly, in response to that demand, there had emerged to meet it a body of men who were willing and able to supply the level of service demanded, and in so doing drew, to a greater or lesser extent, upon an existing repository of skills necessary for the development of successful legal practice.

The first step in charting the creation of a critical mass of attorneys is to examine the numbers. As discussed *ante*, there was a trend throughout the century towards the appointment by an increasing number of litigants of two or more attorneys, a process that clearly impacted upon the numbers of appointees involved. At the Lincolnshire eyre of 1218-19, 184 appointees resulted from 138 appointments of a single attorney and 23 appointments of two attorneys. At the Buckinghamshire eyre of 1227, at which there were 71 appointments of a single attorney and ten appointments of two, there were 91 appointees overall, followed by the creation of 65 appointees in Surrey in 1235 resulting from 43 appointments of one attorney and eleven of two.

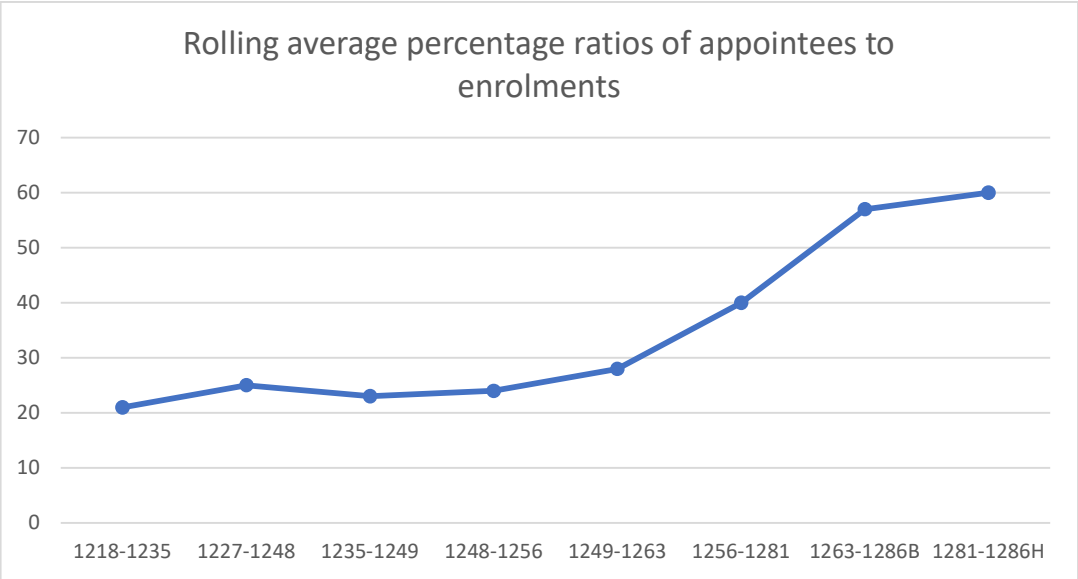
The significance of such bare data is, however, limited by the differentiation in size and duration of each of the eyres concerned. The larger the eyre, the greater the numbers of principals and attorneys would be expected to feature. Therefore, as a means of enabling meaningful comparison and of eliciting trends and patterns, three devices are employed, focusing respectively on appointed attorneys, appointing principals and litigants at large. Firstly, the number of appointees in each case is considered in the context of the amount of civil business transacted at the different eyres, as evidenced (albeit crudely) by the number of enrolments on the principal plea rolls recording the hearing of pleas in respect of which the appointments were made. At the Lincolnshire eyre, for instance, of which plea roll JUST 1/481 contains 912 enrolments devoted to civil pleas and assizes, the resulting ratio of 184

appointees to 912 enrolments equates to one appointee per 4.96 enrolments or, in percentage terms, to 20.17%. In Buckinghamshire, the ratio of 91 appointees and 404 relevant enrolments equates to one appointee per 4.44 enrolments or 22.52%, and in Surrey in 1235, 65 appointees and 310 such enrolments gives a ratio of one appointee per 4.77 enrolments or 20.96%. Taken collectively, the statistics appear to tell us that at each of the three eyres the use of attorneys was broadly similar, with Buckinghamshire being marginally the more heavily populated.

At the Berkshire eyre of 1248, at which a total of 218 appointees resulted from 118 acts of appointment of a single attorney and fifty of two attorneys, the ratio between 218 and the 683 recorded enrolments equates to one appointee per 3.13 enrolments or 31.92%, suggesting a greater use of attorneys than was evident at the earlier eyres. The corresponding figurework for Wiltshire the following year, as brought out by the 103 appointees resulting from 47 appointments of a single attorney and 28 of two, in the context of 565 enrolments is, however, much less at one appointee per 5.48 enrolments, just 18.23%. The resulting inference that the use of attorneys at the Berkshire eyre was much higher than the norm, and that such use in Wiltshire was a little lower, is reinforced by the reversion at the Shropshire eyre to the previous standard. With 49 acts of appointment of one attorney and 25 of two attorneys, 99 appointees were operational in the context of 444 enrolments, a ratio equating to one appointee per 4.48 enrolments, or 22.29%. But at the Surrey eyre of 1263, with 195 appointees (119 appointments of one attorney and 38 of two) and 434 enrolments, a ratio equating to one appointee per 2.22 enrolments, or 44.93%, does indicate a changing culture, a trend confirmed by a corresponding ratio in Derbyshire in 1281 equating to one appointee per 1.83 enrolments, or 54.50%, as brought out by its 218 appointees resulting from 59 appointments of one attorney, 72 of two and five of three, in the context of 400 civil plea enrolments.

At the Buckinghamshire eyre of 1286, as we have seen, there were 241 appointments of one attorney in contemplation of proceedings together with 169 of two, twelve of three and one of four. A further eight acts of appointment were made on the adjournment of cases elsewhere, being respectively of one attorney on six occasions and of two attorneys on two. The resulting total of 629 appointees, in the context of all relevant pleas and assizes being contained within 877 enrolments, produces a ratio equating to one appointee per 1.39 enrolments, or 71.72%. At the subsequent Huntingdonshire eyre, in addition to the 56 appointments made of one attorney in contemplation of proceedings and the 64 of two, four appointments were made on adjournments, two of which were of one attorney and two of two. A ratio of one appointee per 1.80 enrolments, or 55.55%, arises from the 190 appointees appearing within 342 enrolments.

Figure 5



The clarity of the trend is best illustrated by comparison of rolling three-eyre averages of the several percentage ratios for the eyres reviewed. Figure 5, above, refers. The average such

ratio for the first three eyres, those of 1218-19, 1227 and 1235 is 21.21%, and for those of 1227, 1235 and 1248 it is 25.13%. Ensuing averages are 23.70% for 1235-49, 24.14% for 1248-56, and 28.48% for 1249-63. Although some increase is observable at this stage of the cycle, it is with the introduction of data from the Derbyshire eyre of 1281, the average percentage ratio rising to 40.57%, that change becomes most obvious. It rises again to 57.05% for the eyres of Surrey, Derbyshire and Buckinghamshire, culminating in an average ratio of 60.59% for the eyres of Derbyshire, Buckinghamshire and Huntingdonshire in the 1280s. An overall increase by a factor of almost three in the number of attorneys featuring in eyre proceedings is suggested. Furthermore, the increase is smooth and incremental, and mostly attributable to the final twenty or so years.

Just as the numbers of appointees increased significantly, so also did the numbers of different individuals identifiable as attorneys. As we have seen, 151 different men and (occasional) women received appointments at the Lincolnshire eyre of 1218-19, followed by 76 in Buckinghamshire in 1227, 62 in Surrey in 1235, 167 in Berkshire in 1248, 81 in Wiltshire in 1249, 88 in Shropshire in 1256, 157 in Surrey in 1263, and 147 in Derbyshire in 1281. Following the hiatus caused by the Welsh war, attorneys were noticeably more abundant. In each case now cited, the numbers relate to appointments made in contemplation of proceedings, omitting therefore further appointments made on cases being adjourned. In Leicestershire in 1284, 245 different individuals received attorney appointments. At the following Warwickshire eyre, the corresponding figure was 219. In Northamptonshire, 522 different men and women received appointments, as did 372 different individuals at the Buckinghamshire eyre. In Cambridgeshire, 250 different people featured as attorneys, as did 131 at the Huntingdonshire eyre. In Bedfordshire, the appointment of 171 different people was followed by the appointment of 312 different individuals as attorneys at the Gloucestershire eyre. Finally, in Dorset, 169 different people received appointments. In terms

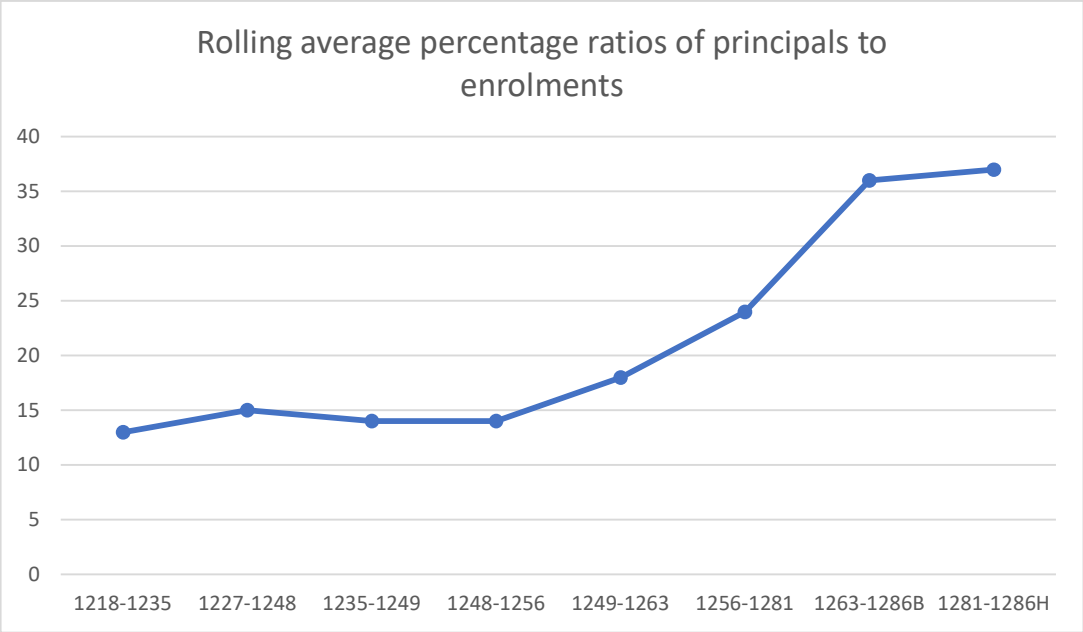
of the sheer number of different attorneys who might be minded to specialise and professionalise, an average of 116 in attendance at each of the eight eyres reviewed between 1218 and 1281 is dwarfed by an average of 265 for the nine leading eyres between 1284 and 1288. Such an increase, by a factor of between two and three, supports the proposition that a critical mass would seem to have been reached.

This proposition is broadly supported by the application of a second device, the focus switching from attorneys to principals. The context is again the amount of civil business transacted at the different eyres as evidenced by the number of enrolments recording the hearing of pleas, within which the number of litigants making appointments in contemplation of proceedings at each eyre is placed. At the Lincolnshire eyre of 1218-19, for example, 112 litigant principals in the context of 912 relevant enrolments equates to one such principal per 8.14 enrolments. This may be expressed in percentage terms as being 12.28%. The corresponding figurework for Buckinghamshire in 1227, based upon there being 57 appointing litigants within the context of 404 enrolments, is the slightly higher ratio of one principal per 7.09 enrolments, or 14.11%. Following returns of one in 7.75 or 12.90% (40:310) in 1235, one in 4.95 or 20.20% (138:683) in 1248, one in 9.91 or 10.09% (57:565) in 1249, and one in 7.05 or 14.19% (63:444) in 1256, a considerable increase is evident. In 1263, the ratio returned is one litigant principal per 3.21 enrolments or 31.11% (135:434), and in 1281 the corresponding figures are one in 3.39 or 29.50% (118:400). At the 1286 Buckinghamshire eyre, the return is one in 2.07 or 48.23% (423:877), and in Huntingdonshire the same year, one in 2.85 or 35.08% (120:342).

As before, comparison of rolling three-eyre averages of the relevant underlying data for the eyres reviewed is illustrative. See Figure 6, below. The three-eyre averages of 13.09% for 1218-35, 15.73% for 1227-48, 14.39% for 1235-49 and of 14.82% for 1248-56 are similar. A modest rise to 18.46% for the eyres of 1249-63 is followed by a further rise to 24.93% for

1256-81, and to 36.28%, for the eyres of Surrey, Derbyshire and Buckinghamshire. The cycle completes with an average ratio of 37.60% for the final three eyres. The numbers of litigants appointing attorneys at successive eyres were low and flat prior to the Surrey eyre of 1263, increasing incrementally thereafter by a factor of almost three, an identical finding to that made on the previous measure.

Figure 6



The third device employed to detect trends and patterns in the intensity of use of attorneys at successive eyres focuses upon the relationship between litigants collectively and those of them who chose to appoint attorneys. The comparator lies in the ratio between, on the one hand, the number of litigants who appointed attorneys in contemplation of proceedings at a given eyre (excluding, therefore, appointments made on adjournment) and, on the other hand, the number of recorded references to named litigants participating in active proceedings in court (excluding, therefore, references to litigants in the likes of attorney appointments, amercements and royal mandates), regardless of whether they are otherwise recorded as

having appointed attorneys. Also excluded from the comparator are defendants in proceedings of *novel disseisin* who were from around 1227 prohibited from being represented by attorneys. Husbands and wives, litigating together, are regarded as being a single party.

The 112 litigants who appointed attorneys in contemplation of proceedings scheduled for hearing at the Lincolnshire eyre of 1218-19 did so in the context of 1,420 recorded appearances in relevant ongoing proceedings by litigants generally. The resulting ratio of 112:1,420, expressed as a percentage, is 7.89%. Nine years later, at the 1227 Buckinghamshire eyre, the 57 litigant principals who made their appointments in contemplation of proceedings were many fewer than in Lincolnshire, but did so in the context of many fewer references to named participating litigants, 765 in number. The resulting ratio of 57:765, expressed in percentage terms as 7.45%, is very similar to that brought out in Lincolnshire. On this measure, the extent to which litigants used attorneys remained much the same, and although we cannot interpret this as meaning that only some 7 or 8% of litigants appointed attorneys at each of the eyres, we can both speculate that such figure-work may be approximately accurate and also surmise that attorney use was certainly low. Even fewer appointments in contemplation of proceedings are recorded at the Surrey eyre of 1235, just 40 in all. But, as with Buckinghamshire eight years earlier, this tally must be viewed in the context of fewer recorded references to named participating litigants, 557 only. The resulting ratio of 40:557 comes in at 7.18%, broadly in line with those of the two earlier eyres, suggesting a continuing constancy of relatively low usage of attorneys by litigants throughout the 1220s and into the 1230s.

At the much larger eyre of Berkshire in 1248, at which 138 litigants are recorded as appointing attorneys in contemplation of proceedings, the number of recorded references within the plea roll to litigants in action is 1,292. Thus, the adopted determinant of the intensity with which litigants employed attorneys at the eyre, the ratio between 138 and

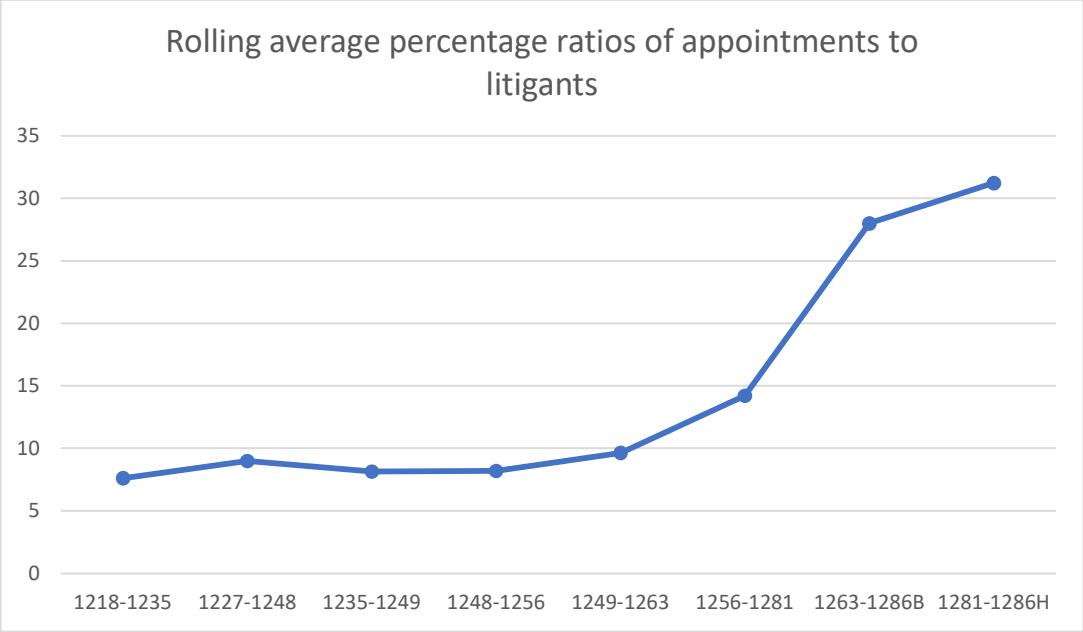
1,292, is brought out at 10.68%, some three percentage points more than the corresponding assessments for each of the earlier eyres. Breaking this data down into comparable ratios for each of local and foreign pleas (and allocating five of the ten appointments made in contemplation of both sorts of plea to each), the ratio for the former is brought out as 10.55% (85 appointments and 806 appearances), and for the latter as 10.90% (53 appointments and 486 appearances). However, the inference that litigants were therefore seemingly no more inclined to appoint attorneys in advance of the hearing of foreign pleas than they were in anticipation of local pleas is likely to be misplaced given the probability that some foreign litigants would have previously appointed attorneys in their home counties or in Chancery with no record appearing on the Berkshire plea roll.

The increase in intensity of use of attorneys by litigants seemingly apparent in Berkshire is not, however, evident at the Wiltshire eyre of 1249. With 57 litigants appointing attorneys in advance of proceedings in the context of 1,034 references to appearances of litigants in court, a percentage ratio of just 5.51%, is produced. This is barely half that of Berkshire and lower even than the corresponding ratios of the 1220s and 1230s, but data from the Shropshire eyre of 1256 suggests a restoration of normality. Within the relevant enrolments are to be found 818 references to litigants as party to proceedings in progress, the 63 appointors of attorneys in contemplation of proceedings prompting a percentage ratio of 7.70 %. As a refinement, 49 appointments were in contemplation of local pleas, in respect of which 638 litigants are recorded as appearing, giving a ratio of 7.68%. With fourteen appointments made in contemplation of foreign pleas and with 180 recorded appearances, the ratio is an almost identical 7.78%. As in Berkshire in 1248, a caveat must be applied to the inference that the use of attorneys was much the same in both sorts of plea, but overall such usage seems to be back in line with the apparent norm for the 1220s and 1230s after the statistical ebb and flow of Wiltshire and Berkshire at the end of the 1240s.

Change was, however, very much in the air. At the Surrey eyre of 1263, just seven years after that in Shropshire, the 135 litigants who appointed attorneys in contemplation of proceedings did so in the context of a recorded 789 references within the plea roll to litigating parties. The resulting percentage ratio of 17.11% suggests a material and significant increase in the intensity of use of attorneys by litigants. Eighteen years on, at the Derbyshire eyre of 1281, the still greater percentage ratio of 19.16% reflects the 616 recorded appearances of named litigants in court in anticipation of which 118 litigants appointed attorneys in contemplation of civil proceedings. Within five years, the intensity of use of attorneys by litigants in eyre had increased yet further. The record of civil proceedings in Buckinghamshire in 1286 contains references to 1,010 appearances by identifiable litigants as party to those proceedings. The ratio between the 423 acts of appointment and recorded appearances in court by litigants is brought out as 41.88%. The corresponding return for Huntingdonshire a few months later is however considerably lower. With the number of references in recorded proceedings to identifiable litigants in court standing at 490 and the number of acts of appointment of attorneys in contemplation of those proceedings being 120, the ratio of intensity of use is brought out at 24.48%. This differential is in line with findings discussed elsewhere that Huntingdonshire, as a county, seems to have been less conducive to the use of attorneys than was Buckinghamshire, and the important point is that both assessments were greater than the corresponding one for Derbyshire five years earlier. A very clear trend is observable.

This trend is again best illustrated by a comparison of rolling three-eyre averages, as per Figure 7, below. By aggregating the total numbers of appointments and of recorded appearances by litigants for successive three-eyre blocks and by calculating the percentage ratio between them in each case, progression can be charted.

Figure 7



At the opening three eyres of Lincolnshire, Buckinghamshire and Surrey, the total number of appointments of attorneys was 209 (respectively 112, 57 and 40), and of recorded appearances by litigants in court 2,742 (1,420, 765 and 557). The ratio is 7.62%. For each successive rolling block, the ratio remains broadly constant at 8.99%, 8.15% and 8.21% before increasing slightly to 9.65% for the eyres of 1249, 1256 and 1263 (based on aggregated totals of 255 and 2,641). For the eyres of 1256, 1263 and 1281, the ratio returned is 14.21%, rising to 27.99% for Surrey, Derbyshire and Buckinghamshire, and finally to 31.23% when the aggregated numbers of appointments (661) and of litigants (2,116) are related for the eyres of Derbyshire, Buckinghamshire and Huntingdonshire in the 1280s. By this measure, it can be seen that there was little change, overall, in the intensity with which litigants appointed attorneys in contemplation of proceedings until data from the Surrey eyre of 1263 is included, from which time an upwards trajectory becomes apparent, gaining momentum with the introduction of data from the eyres of the 1280s. Over the course of the

period under review, a fourfold increase in the intensity with which litigants used attorneys in eyre proceedings is suggested, much of it taking place in the final twenty or so years.

Given that the first two measures of the comparative degrees of attorney use suggested a slightly lower increase in intensity of around threefold, and given also the inherent roughness of the measuring devices employed, we might conclude that for every ten litigants who appointed an attorney in the 1250s, between thirty and forty did so by the 1280s. Such an increase in the degree of usage of attorneys by litigants in eyre proceedings provided, it is argued, a critical mass in the overall numbers of active attorneys which would enable members of a minority, should they be so minded, to specialise and to professionalise.

Two issues arise. One such is whether that critical mass arose from an increased use of simple attorneys, a specialist minority evolving coincidentally or, at least, independently from within their ranks, or whether it arose specifically from an increasing usage of members of that specialist minority. The second issue is whether the critical mass of attorneys was generated or fuelled by all types of litigant equally or whether by members of one or more of the constituent sectors of the community of litigants. The context for addressing those two issues is the premise that although a critical mass was a preliminary necessity for the emergence of a body of professional legal attorneys, it was not the existence of a critical mass that, of itself, caused it, but rather that such an emergence depended upon there being, and was by way of response to, a demand for certain services which members of that body were able and willing to supply. We turn, therefore, to the creation of that demand and to the manner in which it was met.

Chapter 19: Creating a demand

It is self-evident that professional legal attorneys would not have emerged had there not been a demand for their services. It is equally self-evident that such demand must have come from the litigants who, from the 1260s onwards, were collectively responsible for appointing the increasingly large numbers of attorneys who comprised the necessary critical mass. In seeking to identify the nature of the attorney for which the demand had arisen and the precise source of that demand, we now examine more closely identifiable behavioural differences in categories of litigant, both in themselves and over time.

There are four identifiable categories of litigant. One such contains the men and women of the Church, ranging from humble parsons and masters of hospitals to the bishops and deans, abbots and priors and their female counterparts who stood at the head of religious institutions holding and litigating over great swathes of thirteenth-century England. These ecclesiasts have been discussed *ante* in the context of the extent to which appointed attorneys are recorded as actually appearing in court on behalf of absent principals. In that discussion, they were contrasted with secular litigants, a class which itself breaks down into three further categories. One such is comprised of secular men, some of great wealth and status, and others of lesser importance socially, albeit sufficiently well placed to hold land freely. Women, whether wives holding property in their own right and litigating alone, widows, daughters or others unmarried, form a further identifiable category, also comprising both the socially superior and those of lesser standing. Finally, husbands and wives sometimes litigated as one party, both in respect of jointly-held property and also in respect of the wife's property in which the husband's interest was 'by right of wife'. By joining in the proceedings, such a husband was able not only to signify his consent to contemplated litigation but also to control its conduct.

Each category of litigant is dealt with in turn, two broad approaches being adopted. One such goes to the issue of proportionality of use of attorneys as between the categories, and the other to the intensity of such use in each case. As previously discussed, ecclesiasts were well represented at the Lincolnshire eyre of 1218-19. Of the 112 litigants recorded as appointing one or more attorneys in contemplation of proceedings, 33 were ecclesiasts of various descriptions, comprising 29.46% of all who did so. All else being equal, a similar proportionality in the degree to which ecclesiasts subsequently featured as litigants in open court might be expected. As earlier stated, within the enrolments recording civil proceedings at the eyre are 1,420 references to named parties involved in ongoing proceedings in court, excluding defendants in assizes of *novel disseisin*. Of that number, 125 references were to ecclesiasts, representing 8.80% of all litigants. The apparent contrast is stark. Having been responsible for almost three-tenths of attorney appointments made in contemplation of proceedings, ecclesiasts comprised fewer than one-tenth of litigants in court. Given such a relatively modest presence in the courtroom, they were seemingly responsible for a disproportionately high number of attorney appointments.

A similar situation seemingly pertained at the Buckinghamshire eyre of 1227 at which twelve (21.05%) of the 57 litigants who appointed attorneys in contemplation of proceedings were ecclesiasts. In contrast, just 52 (6.80%) of the 765 references to litigants named in the record of proceedings were to ecclesiasts. As in Lincolnshire, the respective proportions differ by a factor of approximately three. In Surrey in 1235, ecclesiasts again appointed attorneys proportionately more than their collective presence in the courtroom as litigants would have suggested probable, albeit to a slightly lesser degree. After making nine (22.50%) of the 40 appointments of attorneys made in contemplation of proceedings, ecclesiasts are recorded as litigants on 51 occasions within a total of 557 (9.16%). The differential narrowed yet more at the Berkshire eyre of 1248, at which 22 of the 138 litigants who appointed attorneys in

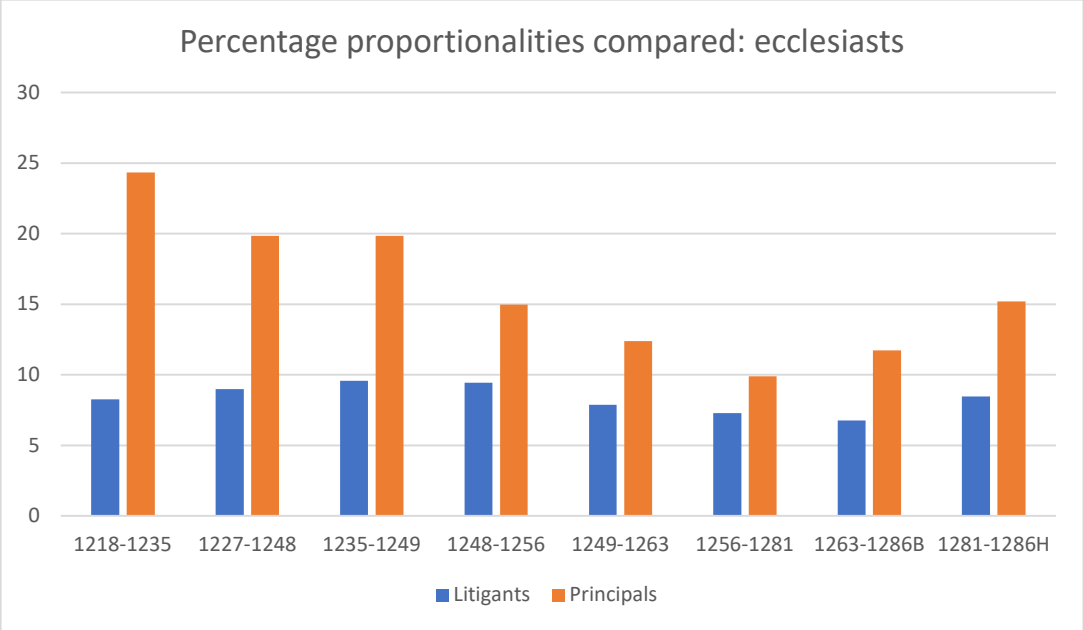
contemplation of proceedings (15.94%) were ecclesiasts, and within the record of which 142 of the 1,292 references to litigants as parties in court (10.99%) were ecclesiasts also. This continuing apparent reduction in the extent to which they proportionately over-appointed attorneys is not, however, evident at the Wiltshire eyre the following year, at which twelve (21.05%) of the 57 litigants who made appointments in contemplation of proceedings were ecclesiasts. Within the 1,034 references to named litigants participating in proceedings, just 88 (8.51%) were ecclesiasts who, therefore, having comprised more than one-fifth of all principals appointing attorneys, subsequently comprised fewer than one-tenth of recorded litigants.

At the Shropshire eyre of 1256, only five (7.94%) of the 63 litigants who appointed attorneys in contemplation of proceedings were ecclesiasts, broadly in line with the 8.80% of the litigants referred to within the plea roll as participating in proceedings who were ecclesiasts, 72 out of 818. Similarly, at the Surrey eyre of 1263, eleven of the 135 litigants who appointed attorneys in contemplation of proceedings were ecclesiasts (an overall proportion of 8.15%), 50 of the 789 subsequent references to litigants in court being to ecclesiasts also (comprising 6.35% of all). Just as in Shropshire eight years earlier, such approximate proportionate parity of appointment and appearance suggests that the use of attorneys by ecclesiasts had come to reflect the amount of litigation in which they were involved.

Some disparity is, however, again observable at the Derbyshire eyre of 1281, albeit less so than at the earlier eyres. Of the 118 appointments of attorneys made in contemplation of proceedings, sixteen (13.56%) were made by ecclesiasts who also accounted for 41 of the 616 references (6.66%) to parties appearing in court. A similar differential is evident at the Buckinghamshire eyre of 1286, at which 66 (13.47%) of the 490 litigants who appointed attorneys in contemplation of proceedings were ecclesiasts, as were seventy-three (7.23%) of the 1,010 litigants referenced as being in court. A slight narrowing is observable at the

subsequent Huntingdonshire eyre where, of the 124 attorney appointments recorded, ecclesiasts made 23 (18.55%), being then referenced as litigants in court on 56 occasions, 11.43% of the total of 490 recorded.

Figure 8



As ever, patterns can best be detected by the use of rolling three-eyre averages, as can the proportionate extent to which ecclesiasts both appeared in court and appointed attorneys best be summarised. See Figure 8, above. Ecclesiasts occupied an approximately constant proportion of the community of litigants throughout the period under review, the rolling averages being 8.25% for the eyres of 1218-35 (that is, the average of 8.80%, 6.80% and 9.16%), 8.98% for those of 1227-48, 9.55% for 1235-49, 9.43% for 1248-56, 7.88% for 1249-63, 7.27% for 1256-81, 6.74% for the eyres of 1263, 1281 and Buckinghamshire in 1286, and 8.44% for the three eyres of 1281 and 1286. The proportionate share of attorney appointments made by ecclesiasts, however, declined steadily over much of the period under review, from an opening high in 1218-35 of 24.33% through 19.83%, 19.83% (again),

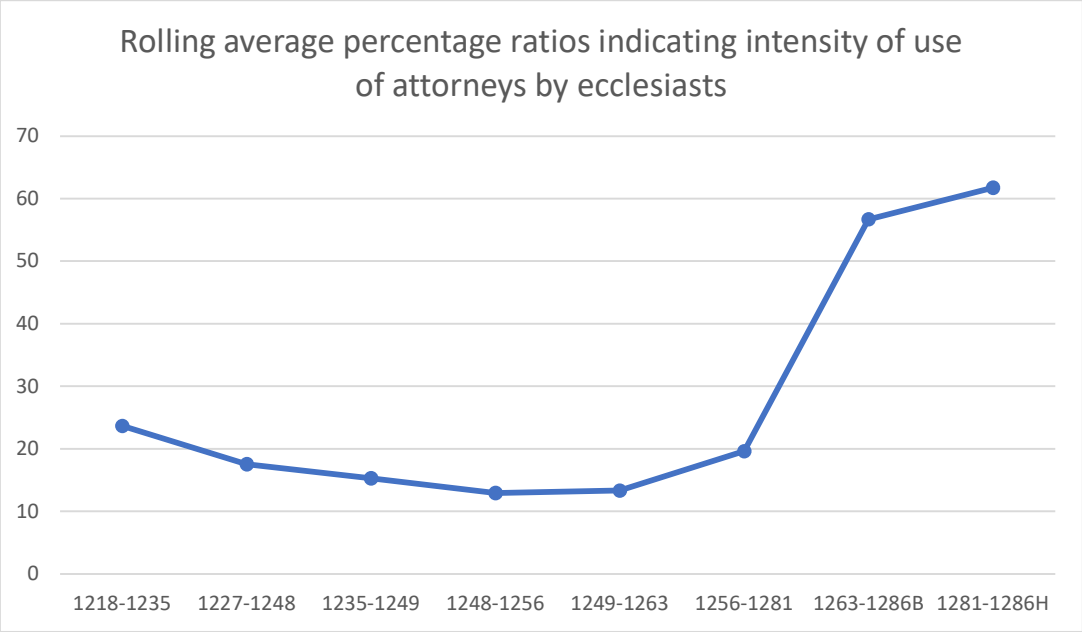
14.97%, 12.38% and 9.88% for 1256-81, before recovering slightly through 11.72% to 15.19% for the eyres of Derbyshire, Buckinghamshire and Huntingdonshire.

At the beginning of the period under review, therefore, ecclesiasts were seemingly over-represented as appointors of attorneys by a factor of three in the context of the extent to which they were collectively present in the courtroom as litigants. As the bare statistics go to proportionalities, it seems reasonable to conclude that they were not only established users of attorneys at that time, but also very much more so than a substantial sector of the secular community who comprised the remainder of the overall body of litigants. By the end of the period, however, their proportionate share of attorney appointments had reduced to barely one-half of its opening size, and the differential between their shares of appointments and appearances had reduced to a factor of approximately two. This must not be taken to indicate that ecclesiasts were necessarily using attorneys any less than had been the case 60 or 70 years earlier (although, as will shortly be seen, that might have been so during the middle decades of the century), but rather that members of one or more of the other categories of litigant had increased their use of attorneys to such an extent that relative proportionalities were affected.

Indeed, the evidence suggests that despite becoming, proportionately, a smaller player in the appointments process within the litigating community, ecclesiasts actually appointed attorneys with a greater overall intensity at the end of the review period than they did at the beginning. By the means of a numerical comparator, it is possible to measure and chart, albeit roughly, the intensity with which ecclesiasts used attorneys over time. The adopted comparator is the ratio, expressed both in actual terms and as a percentage, between the number of attorney appointments made by ecclesiasts in contemplation of proceedings at successive three-eyre blocks, and the number of recorded appearances by ecclesiasts as

litigants in court. The higher the percentage ratio forthcoming in any given case the greater the intensity of use of attorneys is revealed.

Figure 9



The 33 appointments of attorneys by ecclesiasts and the 125 recorded appearances by ecclesiasts in court at the Lincolnshire eyre of 1218-19, when aggregated with the comparable figures of twelve and 52 in Buckinghamshire in 1227 and of nine and 51 in Surrey in 1235, produces a ratio of 54:228. This may be expressed in percentage terms as 23.68%, the opening rolling average. With the gradual incorporation of relevant data from subsequent eyres, sequential rolling averages are calculable, as per Figure 9, above. The aggregated ratio of 43:245 for 1227, 1235 and 1248 Berkshire (where 22 appointments preceded 142 appearances) provides an average of 17.55%; for 1235, 1248 and Wiltshire in 1249 (twelve and 88) the ratio is 43:281 (15.30%); and for 1248, 1249 and Shropshire in 1256 (five and 72) it is 39:302 (12.91%). This proves to be the low spot, as the rolling average rises to 13.33% for 1249, 1256 and Surrey in 1263 (where eleven appointments

preceded 50 appearances), with an aggregate ratio of 28:210; to 19.63% for the eyres of 1256, 1263 and 1281 Derbyshire (sixteen and 41) with an aggregate ratio of 32:163; to 56.71% (93:164) for 1263, 1281 and 1286 Buckinghamshire (66 appointments preceding 73 appearances); and finally to a rolling average of 61.76%, based upon an aggregated ratio of 105:170, for the eyres of Derbyshire, Buckinghamshire and Huntingdonshire (at which eyre 23 ecclesiastical appointments preceded 56 appearances by ecclesiasts).

Although the adopted comparators for gauging, respectively, proportionality and intensity of use are necessarily crude, the smoothness of the resulting patterns strongly suggests their integrity as means of measurement. Were it otherwise, haphazard and meaningless sequencing would surely have been forthcoming. On the measure of the intensity with which ecclesiasts collectively appointed attorneys over the course of some sixty-plus years, the initial steady decline extending into the 1250s echoes the corresponding decline in proportionality noted above, and the two measures taken together may suggest that for a few mid-century decades, reduced proportionality and reduced intensity of use were related. However, although in both cases the decline was arrested, the ensuing modest increase in proportionality which culminated in a much reduced level overall accompanied an increase in the intensity of use of attorneys to a level greater by a factor of between two and three overall and by a factor of between four and five during the final third of the period under review. Although such a pattern of intensity is perhaps surprising, as churchmen and women are the most likely category of litigant to have used attorneys in a constant manner over time, it does suggest that by the 1280s ecclesiasts, despite being squeezed proportionately, were again using attorneys both extensively and intensively and were hence contributing substantially to the observable increase, discussed *ante*, in the overall number of attorneys operating at that time.

As was the case with ecclesiasts, females, whether widows, daughters or married women litigating otherwise than with their husbands, were also appointing attorneys in considerable numbers at the beginning of the review period. Of the 112 appointments recorded in contemplation of proceedings at the Lincolnshire eyre of 1218-19, 35 (31.25%) were made by women in advance of 255 recorded references to female litigants in court, 17.96% of the total of 1,420 references to named parties, excluding defendants in assizes of *novel disseisin*. Although less strikingly than did ecclesiasts, women therefore also apparently appointed attorneys proportionately more than their recorded presence as litigants in court might suggest probable.

Women were again seemingly over-represented as principals at the Buckinghamshire eyre of 1227. Of the 57 litigants who appointed attorneys in contemplation of proceedings at the eyre, fifteen (26.32%) were women, 115 (15.03%) of the 765 references to relevant litigants in civil pleas being to women also. At the Surrey eyre of 1235, women made fifteen of the total of 40 attorney appointments in contemplation of proceedings, a yet higher proportion at 37.50% than was the case at either of the earlier eyres. Being also referenced as a litigating party on 93 occasions (just 16.70% of the overall 557), women not only again appointed attorneys much more than their presence in the courtroom as litigants would suggest likely, but now did so by a factor of more than two. Such a differential was maintained at the 1248 Berkshire eyre of 1248, at which although 34.78% (48 of the 138) litigants who appointed attorneys in contemplation of proceedings were women, only 15.01% (194 of the 1,292) recorded references to litigants as parties in court are so, again indicating female over-representation as appointors of attorneys. Similarly, at the Wiltshire eyre of 1249, where 57 litigants made appointments in contemplation of proceedings, eighteen were women (31.58%), women subsequently making just 19.25% of the recorded appearances of litigants in proceedings, 199 out of 1,034 overall.

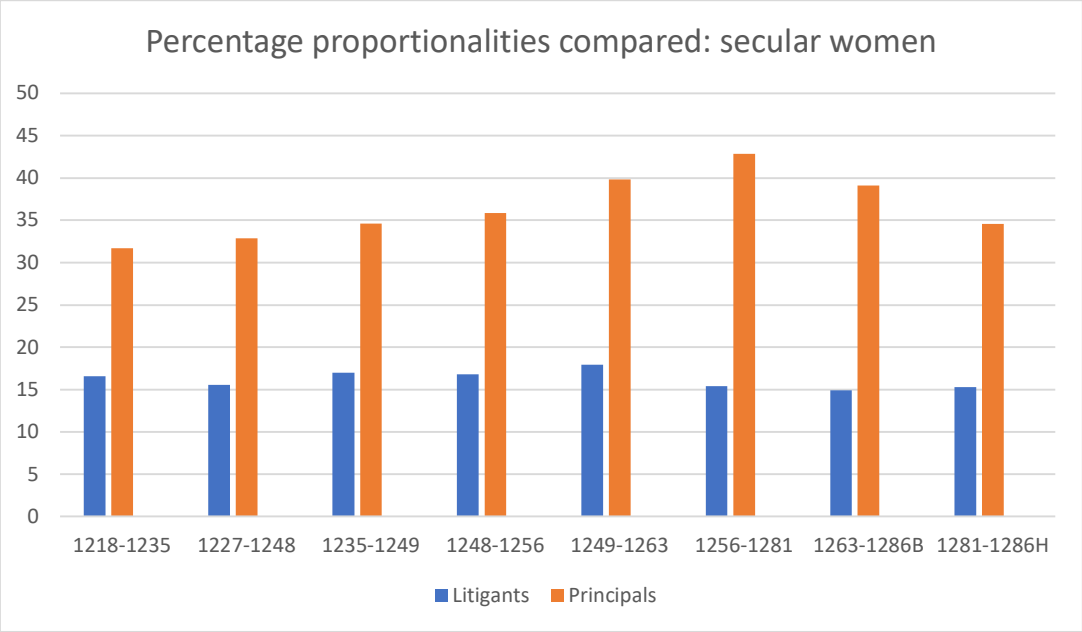
At each of the eyres thus far reviewed, women made a little over or under one-third of all attorney appointments in contemplation of proceedings. At the Shropshire eyre of 1256, that share was 41.27%, 26 of the 63 such appointments being made by females. The 818 separate references within the plea roll to litigants participating in proceedings include 132 references to women (just 16.14%) and hence, once again, women were hugely over-represented in the extent to which they appointed attorneys. This continued to be the case at the Surrey eyre of 1263 at which, of the 135 litigants who appointed attorneys in contemplation of proceedings, 63 were women, representing 46.67% of all appointing litigants. This proportion, approaching one-half of all principals, is striking, particularly as just 18.50% (146) of the 789 references in the plea roll to litigants in courts are to women.

A similar situation pertained at the Derbyshire eyre of 1281 at which 48 (40.68%) of the 118 appointments of attorneys in contemplation of proceedings were made by women. In contrast, of the 616 references to named parties in court, women were named 71 times (just 11.52%). In Buckinghamshire in 1286, 147 of the 490 litigants (30.00%) who appointed attorneys in contemplation of proceedings were women. Although much reduced on the proportions seen in Shropshire, Surrey and Derbyshire, it was more than twice as great as the 14.75% (149) of the 1,010 recorded references to litigants in court which are to women. Finally, prior to making 96 of the 490 recorded appearances in court (19.59%) at the subsequent Huntingdonshire eyre, women made 41 of the total of 124 appointments of attorneys in contemplation of proceedings (33.06%).

Like ecclesiasts, women occupied a broadly constant proportion of all litigants (albeit larger by a factor of two) throughout the period under review. See Figure 10, below. Commencing with a rolling average of 16.56% for the eyres of 1218 (17.96%), 1227 (15.03%) and 1235 (16.70%), and moving through averages of 15.58%, 16.99%, 16.80%, 17.96%, 15.38% and

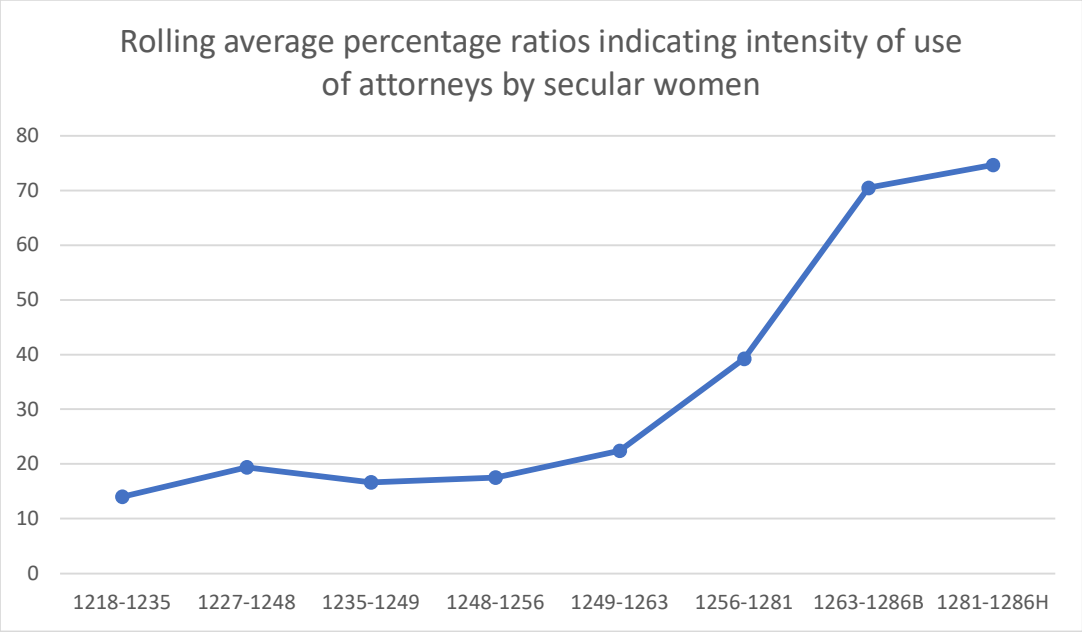
14.92%, the average closes at 15.28% for the three eyres of 1281 and 1286. At the same time, women's proportionate, collective share of attorney appointments rose initially from an

Figure 10



average of 31.69% for the early eyres of 1218-35 to 32.86%, 34.62%, 35.87% and 39.84% before peaking at an average of 42.87% for the eyres of 1256, 1263 and 1281. There is thereafter a noticeable decline in the proportions of attorney appointments made by women, the rolling averages being 39.11% for the eyres of 1263, 1281 and 1286 Buckinghamshire and 34.58% for those of 1281 and both Buckinghamshire and Huntingdonshire in 1286. Thus, women appointed attorneys at both the beginning and the end of the review period proportionately more (by a factor of approximately two) than would reflect their collective presence as litigants, the mid-century spike mirroring the corresponding trough observed above in the case of ecclesiasts. Unlike ecclesiasts whose proportionate share of attorney appointments reduced over time, women's corresponding share was much the same in the 1280s as it had been 60 years before.

Figure 11



But proportionality is one thing, intensity another. As is illustrated by Figure 11 above, the intensity with which women appointed attorneys increased over the review period by a factor of five. Making 35 relevant appointments in Lincolnshire in 1218-19 in advance of 255 appearances, fifteen prior to 115 in Buckinghamshire in 1227 and fifteen in advance of 93 at the Surrey eyre of 1235, the aggregate ratio for female principals at those three eyres is brought out as 65:463 or a rolling average percentage of 14.04%. For 1227, 1235 and 1248 Berkshire (where 48 appointments preceded 194 appearances) the ratio is 78:402 or 19.40%; for 1235, 1248 and 1249 Wiltshire (where eighteen appointments preceded 199 appearances) it is 81:486 or 16.67%; and for 1248, 1249 and 1256 Shropshire (where 26 appointments preceded 132 appointments) it is 92:525 or 17.52%. A steady rise then ensues with an aggregated ratio and rolling average for the eyres of Wiltshire, Shropshire and Surrey in 1263 (at which 63 appointments preceded 146 appearances by female litigants) of 107:477 (22.43%); for Shropshire, Surrey and Derbyshire (48 appointments and 71 appearances) of

137:349 (39.25%); increasing dramatically for Surrey, Derbyshire and Buckinghamshire (at the eyre of which 147 appointments preceded 149 appearances) to a ratio of 258:366 (70.49%); and finally to 236:316 or 74.68% for Derbyshire, Buckinghamshire and Huntingdonshire, where 41 appointments were made prior to 96 recorded appearances. With most of the increase, on the adopted measure, in the intensity with which female litigants used attorneys occurring in the final 25 years, it is clear that, as a category of litigant they, like ecclesiasts, not only made a disproportionately high use of attorneys in the context of their collective presence in the courtroom, but also contributed substantially to the increased use of attorneys overall.

Significantly, they did so preponderantly on the hearing of local pleas. In 1235, for instance, thirteen of their fifteen appointments made in contemplation of proceedings related to local pleas, as did their three recorded appointments on cases being adjourned. The nature of their motivation would not seem, therefore, to have been that of necessity on the hearing of a foreign plea from some faraway place, or even one of convenience, but rather an apparent wish to be represented on the hearing of a plea at which they might have been geographically able to appear in person. Similarly, in Berkshire in 1248, 29 of their 48 appointments related to local pleas, as did sixteen out of eighteen in Wiltshire, 23 out of 26 in Shropshire and 53 out of 63 in Surrey in 1263.

Between them, ecclesiasts and women accounted for around or below 25% of all litigants at the several eyres under review, while at the same time accounting for around or above 50% of all such litigants who troubled to appoint attorneys to represent them in court. This provides context for consideration of the record of men as users of attorneys, firstly in conjunction with their wives and then alone. Of the 112 recorded appointments of attorneys in contemplation of proceedings at the Lincolnshire eyre of 1218-19, only three (2.68%) were made by husbands and wives litigating jointly. A noticeably low use of attorneys by husbands

and wives is therefore evident, its significance compounded by the extent to which they are named parties in ongoing proceedings in court, excluding defendants in assizes of *novel disseisin*. Within the 1,420 references to litigants in the enrolments recording civil pleas are 89 (6.27%) to husbands and wives. Although on an altogether smaller scale, the pattern of proportionate appointment is the reverse of that presented by each of ecclesiasts and women litigating alone; husbands and wives litigating together account for three times as many appearances as litigants, proportionately, as they do as appointors of attorneys, thereby suggesting they showed little inclination for representation by attorney.

A similar pattern is presented by data from the Buckinghamshire eyre of 1227. Of the 57 litigants who appointed attorneys in contemplation of proceedings at that eyre, just one (1.75%) was a husband and wife team. Husbands and wives, however, are named in the record of proceedings, excluding defendants in assizes of *novel disseisin*, on 50 occasions out of a total of 765 (6.54%). Similarly, at the Surrey eyre of 1235, just two (5.00%) of the 40 appointments of attorneys made in contemplation of proceedings were made by husbands and wives together, and yet recorded within the enrolments of civil pleas are 55 references out of a total of 557 litigating parties to husbands and wives litigating jointly (9.87%). At the Berkshire eyre of 1248, eight (5.80%) of the 138 litigants who appointed attorneys in contemplation of proceedings were husbands and wives. They are, however, recorded as appearing in court on 116 of the 1,292 occasions (8.98%) on which litigants are referred to as parties in court.

An awakening of interest in appointing attorneys is suggested by data from the Wiltshire eyre of 1249 at which nine (15.79%) of the 57 litigants who made appointments in contemplation of proceedings were husbands and wives. Not only is this a very considerable proportionate increase on the part of husbands and wives in the appointment of attorneys, up by a factor of three on the corresponding returns for each of the preceding two eyres, but it gains further

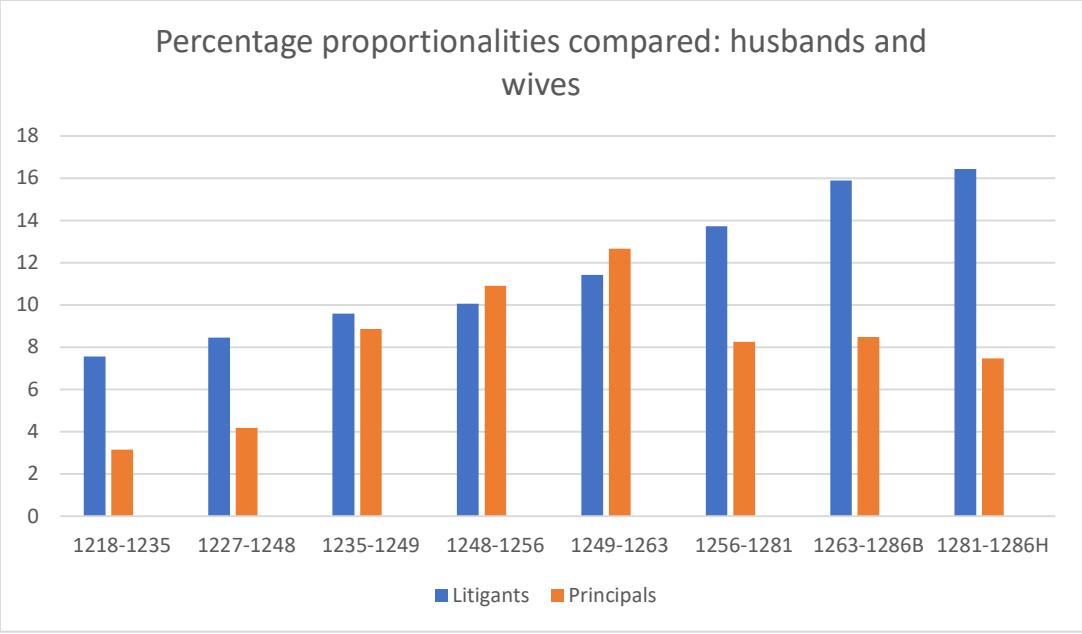
significance when placed in the context of there being 103 references to husbands and wives (9.96%) within the total of 1,034 references to participating litigants at the eyre. Husbands and wives, having under-used attorneys at all of the earlier eyres reviewed, now reversed previous practice.

A slight adjustment is, however, evident at the Shropshire eyre of 1256. Of the 63 litigants who appointed attorneys in contemplation of proceedings, seven were husbands and wives (11.11%). The 818 separate references within the plea roll to litigants participating in proceedings include 92 to husbands and wives (11.25%). The proportionate use of attorneys by husbands and wives therefore reflected their collective proportionate presence in the courtroom. Of the 135 attorney appointments made in contemplation of proceedings at the Surrey eyre of 1263, fifteen (11.11%) were by husbands and wives, exactly the same number proportionately as had been made in 1256. Although not quite so precisely, the proportionate number of husbands and wives recorded as appearing as litigants, 13.05% (103 out of 789), again suggests that husbands and wives, litigating together, were no longer apparently eschewing the use of attorneys but now using them approximately in line with their proportionate presence in the courtroom.

The Derbyshire eyre of 1281 presents, however, a very different picture. Of the 118 appointments of attorneys made in contemplation of proceedings at the eyre, only three (2.54%) were made by husbands and wives litigating jointly. They were, however, cited as parties to proceedings on 104 (16.88%) of the 616 occasions upon which litigants are referred to as being present in court. Quite why so few husbands and wives should have appointed attorneys prior to so many of them litigating is difficult to explain, as is the consequent reversal of the process apparently evident at the earlier eyres. Although a degree of realignment between appointments and appearances is suggested by data from the two eyres of 1286, parity is not restored. Of the 490 litigants who appointed one or more attorneys in

contemplation of proceedings at the Buckinghamshire eyre of 1286, 58 (11.84%) were husbands and wives. In contrast, within the 1,010 recorded references to litigants in court, 179 (17.72%) were husbands and wives. A slightly reduced differential is evident at the Huntingdonshire eyre, at which 124 attorney appointments are recorded, ten of which (8.07%) were made by husbands and wives prior to making 72 appearances as litigants in court, representing 14.69% of the 490 recorded.

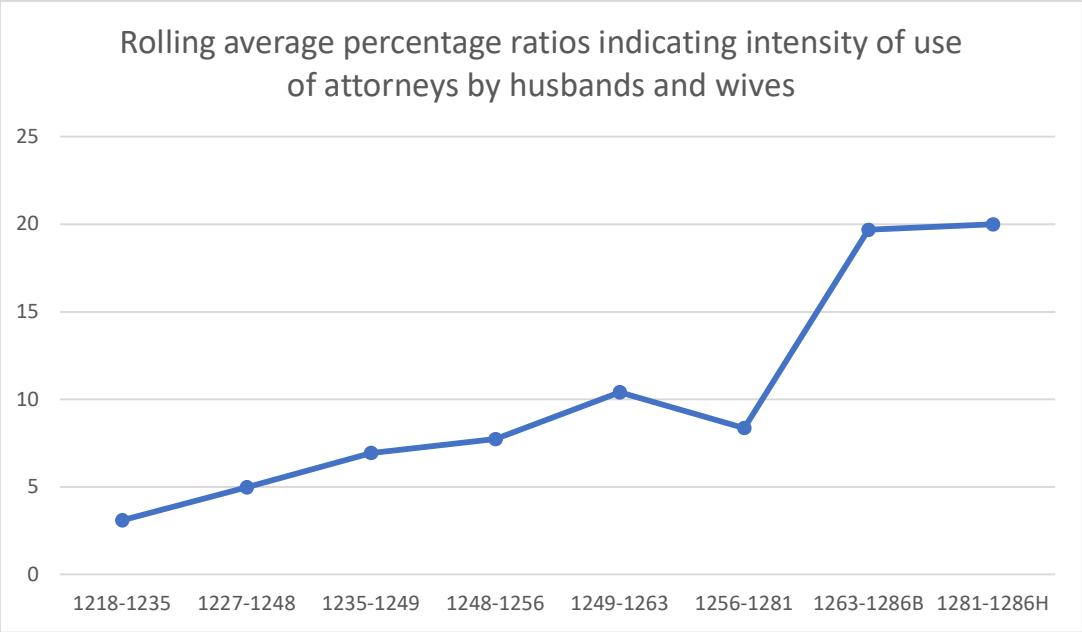
Figure 12



Husbands and wives litigating together hence, at both the beginning and end of the period under review, appointed attorneys proportionately less, by a factor of approaching two, than would have reflected their collective presence as litigants in the courtroom. But, as illustrated in Figure 12, above, unlike ecclesiasts and women, they enjoyed a slow but steady proportional increase in the extent to which they were present in the courtroom as litigants. Their rolling average for 1218-35 was 7.56%, rising through 8.46%, 9.60% and 10.06% to 11.42% for the eyres of 1249-63. Further increases to 13.72% and 15.88% peaked at 16.43%

in the mid-1280s. Such approximate doubling in their collective presence in the courtroom as litigants was accompanied by a similar, but differently structured, increase in the proportionate extent to which they appointed attorneys. The rolling average in this regard rose from just 3.14% for the three opening eyres, through 4.18% to 8.86%, 10.90% and 12.67% for 1249-63 before falling back via 8.25% and 8.49% to settle at 7.48% for 1281-6.

Figure 13



Such a relatively modest increase in proportionality was however accompanied by a spectacular rise in the intensity with which husbands and wives used attorneys. See Figure 13, above. The aggregation of their three attorney appointments in contemplation of proceedings at the Lincolnshire eyre prior to making 89 appearances in open court with those, respectively, of one and 50 in Buckinghamshire in 1227, and two and 55 in Surrey in 1235, produces a numerical ratio of 6:194 or 3.09%. This forms the first rolling percentage for this category of litigant. Subsequent ratios and percentages are 11:221 (4.98%) for 1227, 1235 and 1248 (when eight appointments preceded 116 appearances); 19:274 (6.93%) for 1235,

1248 and 1249 (nine and 103); 24:311 (7.72%) for 1248, 1249 and 1256 (seven appointments prior to 92 appearances); 31:298 (10.40%) for 1249, 1256 and 1263 (fifteen and 103); 25:299 (8.36%) for 1256, 1263 and 1281 (at which eyre just three appointments are recorded as preceding 104 appearances); 76:386 (19.69%) for 1263, 1281 and Buckinghamshire in 1286 (58 appointments prior to 179 appearances) and finally 71:355 (precisely 20.00%) for 1281 and the two eyres of 1286 (ten appointments being made in Huntingdonshire in contemplation of 72 recorded appearances). On this measure, the intensity with which husbands and wives appointed attorneys thus increased by a factor of almost seven over the whole period, doing so most dramatically towards its end. Although relatively insignificant numerically, husbands and wives did therefore contribute to the increase in the overall number of attorneys in circulation by the 1280s.

Which brings us to men litigating alone. Of the 112 recorded attorney appointments in contemplation of proceedings at the Lincolnshire eyre of 1218-19, 41 were made by men (36.61%). Having thus made little more than one-third of all appointments of attorneys in contemplation of proceedings, men appear on the record as litigants on no fewer than 951 occasions, representing 66.97% or two-thirds of the total of 1,420 references within the enrolments recording civil proceedings, excluding defendants in assizes of *novel disseisin*. Men clearly appointed attorneys proportionately very much less than might be warranted by their presence in court. So great is the difference, a collective eschewal of the use of attorneys is strongly suggested.

Although, proportionately, men seemingly appointed attorneys more at the Buckinghamshire eyre of 1227 than had been the case in Lincolnshire, they did so in the context of a greater overall presence rather than in that of any change in attitude. Of the 57 litigants who appointed attorneys in contemplation of proceedings at the eyre, 50.88% or 29, were men. However, the great majority, both numerically (548) and proportionately (71.63%), of the

765 named litigants in civil pleas, excluding defendants in assizes of *novel disseisin*, are men also. Despite, therefore, comprising over seven-tenths of all litigants, men comprised just one-half of principals making appointments in contemplation of proceedings. A similar situation pertained at the Surrey eyre of 1235 at which, of the 40 appointments of attorneys made in contemplation of proceedings, fourteen (35.00%) were made by men. Recorded within the references to 557 litigating parties to proceedings are 358 men, representing 64.27% of all. Although collectively forming almost two-thirds of all litigating parties, men acted as principals in barely one-third of the acts of appointment. There is a clear impression that if men could attend court in person, they did so.

And so it goes on. At the Berkshire eyre of 1248, 138 litigants appointed attorneys in contemplation of proceedings, within the record of which are 1,292 references to litigants as parties in court. Sixty men appointed attorneys, representing 43.48% of all principals, but as their 840 recorded appearances in court represents 65.01% of all litigants, it would appear that, proportionately, men collectively continued to underuse the services of attorneys. That they seemingly preferred to appear in court in person, using attorneys only through necessity or convenience, may be inferred into their collective record in the context of attorneys recorded as appearing in court for absent litigants. Of the 78 such appearances, 36 were made on behalf of men, two on the hearing of local pleas and 34 on the hearing of foreign pleas. Such a startling and almost certainly significant statistic that (metaphorically) speaks volumes on the continuing apparent reluctance of men to use attorneys unless compelled by circumstance, contrasts starkly with the indifference, previously commented on, exhibited by ecclesiasts to the origin of pleas in dictating their use of attorneys; of the 22 appointments made by ecclesiastical litigants in Berkshire, twelve were in anticipation of local pleas and ten in anticipation of foreign pleas.

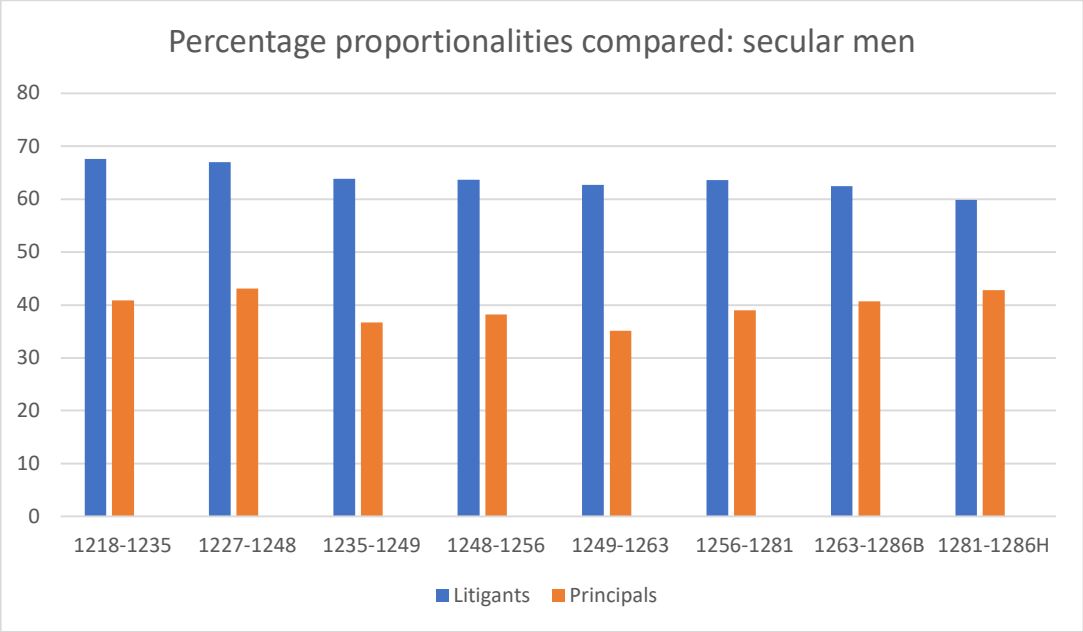
At the Wiltshire eyre of 1249, eighteen (31.58%) of the 57 litigants who appointed attorneys in contemplation of proceedings were men. By way of contrast, 62.28% of all litigants referred to as appearing in court were men (644 out of 1,034), who thus made appointments on fewer occasions, by a factor of two, than their proportionate presence in the courtroom would suggest probable. Interestingly, the reduction in the proportion of principals who were men (down from some 43% in Berkshire) is balanced by the very considerable proportionate increase, noted above, in those who were husbands and wives.

No real change is observable at the Shropshire eyre of 1256 or that of Surrey in 1263. Of the 63 litigants who appointed attorneys in contemplation of proceedings in Shropshire, 25 were men (39.68%), whilst of the 818 separate references within the plea roll to litigants participating in proceedings, 522 were also to men (63.81%). In Surrey, 46 of the 135 litigants who appointed attorneys in contemplation of proceedings were men (34.07% of the overall number), but 62.10% of the named litigants in ongoing proceedings (490 out of 789) were men also. Whilst collectively dominating the body of litigants at the two eyres, they disproportionately disdained the use of attorneys.

And they continued to do so into the 1280s, albeit with a narrowing of the differential between appointments and appearances. Of the 118 appointments of attorneys made in contemplation of proceedings at the Derbyshire eyre of 1281, 51 were made by men, representing 43.22% of all. Of the 616 parties identified as participating litigants, men received 400 mentions, representing 64.94% of the whole. At the Buckinghamshire eyre of 1286, 219 (44.69%) of the 490 litigants who appointed one or more attorneys in contemplation of proceedings were men. At the same time, the proportion of recorded references to litigants in court who were men reduced slightly to 60.30%, being 609 out of 1,010. This squeezing of the differential is noticeable also at the Huntingdonshire eyre of

1286, at which 50 of the 124 appointments were made by men (40.32%), who collectively appeared in court subsequently on 266 of the recorded 490 occasions (54.28%).

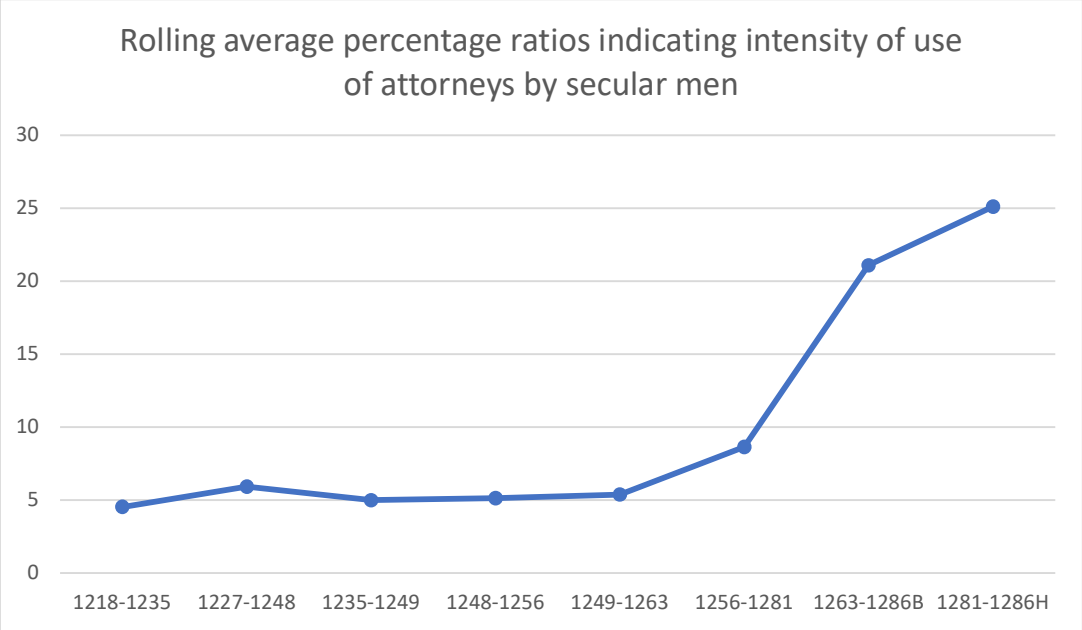
Figure 14



As litigants, men formed much the largest cohort throughout the period under review. See Figure 14, above. At the eyres of 1218-19, 1227 and 1235 men provided, on average, 67.62% of all litigants. Over time, this figure reduced, although for much of the period it was constant, being consecutively for three-eyre blocks 66.97%, 63.85%, 63.70%, 62.73%, 63.61%, 62.44% and finally 59.84% for the three eyres of the 1280s. Given the broad proportionate constancy with which women and ecclesiasts litigated, the observable reduction on the part of men is almost entirely balanced by a corresponding increase in the proportionality with which husbands and wives did so. It was not so much that men litigated any less numerically as the thirteenth century progressed, but rather that they increasingly did so in conjunction with their wives.

Nonetheless, in the context of a declining proportionate presence in the courtroom of men litigating alone, it is significant that their proportionate share of attorney appointments rose, albeit marginally. At an average of 40.83% for the period 1218-35 and at 43.12% for 1227-48, this measure fell slowly through 36.68% and 38.24% to just 35.11% for 1249-63. A recovery to 38.99% for 1256-81, 40.66% for 1263-1286 Buckinghamshire completed at 42.74% for the three eyres of 1281-6. Thus, during the twenty years or so that preceded the eyres of the 1280s, the proportionate use of attorneys on the part of men increased by about seven points.

Figure 15



Such an apparently modest increase is misleading. Only with consideration of numerical intensity, as brought out by aggregating and relating appointments and appearances so as to produce a series of rolling averages, is the full extent of the increase in the use of attorneys by male litigants revealed. Figure 15, above, is illustrative. In 1218, 41 relevant appointments in contemplation of proceedings preceded 951 recorded appearances by men in court. In 1227,

the comparable figures were 29 and 548, and in 1235 fourteen and 358. Respective aggregates for the three eyres are 84 and 1,857, from which a percentage ratio of intensity of use of just 4.52% is forthcoming. This slightly exceeds that of husbands and wives but is very considerably less than those of female litigants and (particularly) ecclesiasts. Subsequent ratios and rolling averages are 103:1746 (5.90%) for the eyres of 1227, 1235 and Berkshire in 1248 (at which men made 60 appointments in contemplation of making 840 appearances); 92:1842 (4.99%) for 1235, 1248 and Wiltshire in 1249 (eighteen and 644); 103:2006 (5.13%) for 1248, 1249 and Shropshire in 1256 (25 appointments and 522 appearances); and 89:1656 (5.37%) for the eyres of Wiltshire, Shropshire and Surrey in 1263 (at which 46 appointments were made by men prior to making 490 appearances in court). Such constancy of low usage of attorneys starts to change with the introduction of data from the Derbyshire eyre of 1281, at which men made 51 appointments in contemplation of appearing in court on 400 occasions, the resulting three-eyre average from 1256, 1263 and 1281 being 8.64%, reflecting a ratio of 122:1412. What follows is dramatic. The rolling average for 1263, 1281 and Buckinghamshire in 1286 (where 219 appointments were made by men before appearing in open court on 609 occasions) is 21.08%, based upon an aggregated ratio of 316:1499, and for Derbyshire, Buckinghamshire and Huntingdonshire (50 appointments and 266 appearances) no less than 25.10% (320:1275).

The pattern described is remarkable. As has been commented on several times, many male litigants opted not to appear by attorney, seemingly having no use for representation otherwise than for reasons of necessity or convenience. When able, they appeared in person. Such a culture is reflected in the flatness of the line of intensity prior to the 1280s, at which point a remarkable surge is evident. Within the space of two decades, the intensity with which men opted to use attorneys increased fivefold. But men were not, of course, alone in this regard. As has been discussed, the intensity with which each of ecclesiasts and women

used attorneys increased over the same period by between four and five times, as did that of husbands and wives by some three times. But what distinguishes the category of men as litigants from the others is its sheer numerical size.

As we have seen, on the measure adopted, almost two-thirds of litigants present at the various eyres were secular men, litigating alone, accounting for around twice as many as did the other three categories combined. Even modest increases in proportionality and intensity therefore involved large numbers of people. At the eight eyres reviewed between 1218-19 and 1281 men aggregated a total of just 284 principals, only sixteen more than the corresponding figure for women, despite being more numerous than women by a factor of approximately four. Indeed, women actually made more appointments, both numerically and proportionately, than did men at three of the eyres reviewed, those of 1235, 1256 and 1263, and almost so in 1281. But thereafter things changed dramatically. An aggregate of 670 male principals is returned for the three eyres of Northamptonshire in 1285 (at which 401 men appointed attorneys, 168 more than did women) and of Buckinghamshire (at which 219 did so, 72 more than women) and of Huntingdonshire (a further 50, nine more than women) in 1286.

Finally, there remains a need to address the issue of why such an upturn in the use of attorneys by members of all four categories of litigant occurred. Did such an upturn simply reflect an increased use of attorneys generally, or can it be shown to be linked to the emergence of professional attorneys? If such a linkage existed, was it serendipitous, one of those things, or was it deliberate, reflecting a demand for the services supplied by expert specialists? And if that is so, did that demand come equally from litigants across the board, or did it originate within the membership of one or more of the categories of litigant concerned? As is now demonstrated, the evidence is clear.

Chapter 20: Meeting the demand

Women, as we have seen, were throughout the 60 or more years that elapsed between the eyre of Lincolnshire in 1218-19 and those of the 1280s both proportionately over-represented as appointors of attorneys and significant contributors to the overall increase in the intensity with which attorneys were used by litigants at large. There is no doubt that they were early drivers of the concept of attorneyship and that they played an important role in the creation of the critical mass of attorneys necessary to promote and sustain a specialist minority. But it does not follow that, in playing that role, they were motivated by a desire to be represented by members of that specialist minority. Indeed, the evidence suggests that for many women, importance lay in the very fact of representation, the quality of that representation being entirely secondary. Furthermore (subject obviously to exceptions) the representative in question was almost invariably male, and frequently appointed simply by virtue of who he was rather than because he possessed special qualities. This is illustrated most clearly by the extent to which wives, litigating alone, appointed their husbands to represent them and, to a lesser degree, to which widows appointed sons, and females generally appointed male relatives and friends.

In addition to the 35 attorney appointments made by women in contemplation of proceedings at the Lincolnshire eyre of 1218-19, they made a further nineteen on the adjournment of cases in which they were involved. Of the consequent total of 54 appointments, fifteen were of husbands by their wives and ten of sons by their mothers. Similarly in Buckinghamshire in 1227, including five appointments made on adjournments, six of the twenty overall appointments made by women were by wives of their respective husbands, as were seven of the eighteen appointments made by women overall, including three made on adjournments, at the 1235 Surrey eyre. Spouses continued to feature prominently at both the Berkshire eyre of 1248, where nineteen of the 48 appointments made by women in contemplation of

proceedings were of husbands by their respective wives, and at the eyre of Wiltshire in 1249, at which five of the eighteen female principals were wives appointing their respective husbands.

Following a slight proportional reduction in Shropshire in 1256 where six of the overall 30 appointments made by women (being 26 in contemplation of proceedings and four on cases being adjourned) were by wives of their respective husbands, the degree of marital appointment intensified. At each of the eyres of Surrey in 1263 (at which, including nine appointments made on adjournments, 27 of the 72 women who appointed attorneys overall were wives appointing their husbands to represent them), and of Derbyshire in 1281 (at which, allowing for six appointments being made on cases being adjourned, were also twenty of the total of 54 female principals), such appointments accounted for some 37% of all. At the eyre of Northamptonshire in 1285, the proportion was 40% (95 of the 233 females appointing attorneys in contemplation of proceedings being wives appointing husbands), the corresponding figures for Buckinghamshire in 1286 being 47% (70 out of 147), and for Huntingdonshire later that year 24% (ten out of 41).

This phenomenon of wives appointing husbands in such large numbers would seem to arise from a cultural mindset. Collectively, they complied with an expectation that such appointments be made. The extent to which the wives concerned were put under pressure to do so, or did so simply as a means of having their husbands signify consent to contemplated litigation, or genuinely wished for marital representation, is impossible to gauge. What would seem to follow is that the wives concerned had, even by the 1280s when the alternative of expert representation existed, either no desire for or no ability to choose such representation; each such wife entrusted her fate to her husband. This proposition may, however, require qualification in one particular, namely that in the event that a wife appointed her husband in

the alternative to a professional attorney, she both fulfilled her cultural obligation and also acquired legal protection, thereby fuelling the demand for professionalised representation.

Just as the usage by wives of husbands can thus be shown to have greatly influenced the proportionality and intensity with which women appointed attorneys over time, so also can the usage by ecclesiasts of men whose descriptions make clear they were themselves in holy orders be shown to have exerted a corresponding influence. But whereas the use of husbands persisted, and indeed intensified, into the professional era and hence detracted from the collective demand by secular women for professional representation, a similar limitation is less apparent in the case of men and women of religion. At the earliest eyres under review, appointments by senior ecclesiasts such as bishops, abbots, priors and deans who stood at the head of religious institutions were frequently of attorneys whose stated religiosity made clear their membership of the institutions in question. At the Lincolnshire eyre of 1218-19, for instance, 22 of the 33 ecclesiastical appointments were of men described as being such as *fratrem*, *clericum*, *monachum*, *cellararium*, *capellanum*, or *canonicum*. Some such appointments were made in the alternative to other men who were also in holy orders or who were seemingly otherwise retained. But this practice would seem to have become diluted as the century progressed. The proportionate number of such appointments was much reduced at the Berkshire eyre of 1248; only eight of the 22 ecclesiastical appointments were of men who were described as being churchmen. Similarly, of the sixteen appointments made by ecclesiasts at the Derbyshire eyre of 1281, just five were of men who were obviously in holy orders. At the Buckinghamshire eyre of 1286, only seventeen of the 66 appointments of attorneys made by ecclesiasts were of such men and, significantly, some of those appointees were named in the alternative to known professionals. This phenomenon is discussed below.

To what extent did members of each of the four categories of litigant respectively appoint possible, probable or certain professional attorneys to act for them? When established, those

extents may be compared with those to which they respectively appointed attorneys at large, so allowing some insight on their underlying motivations and their contributions to the demand for the services of professional practitioners. At the Derbyshire eyre of 1281, the twelve men who received two or more appointments in anticipation of proceedings otherwise than in circumstances precluding professionalism, received between them instructions from 54 parties. Of that number, five were ecclesiasts (9.26%) who, in making 13.56% of all contemplative appointments at the eyre, seemingly therefore under-used professionals despite apparently reducing their time-honoured practice of appointing representatives who were obviously from within the institutions they headed. Interestingly, however, one of those appointments, of Walter of Hockerton by the abbot of Darley, was in the alternative to two men who were clearly in holy orders, perhaps suggesting something of a process in transition. For their part, female litigants, collectively responsible for 40.68% of all attorney appointments made in contemplation of proceedings, used the leading attorneys proportionately rather less in making fifteen of the 54 appointments (27.78%), suggesting that although they undoubtedly drove upwards the numbers of attorneys active in the courts, their motivation was often unconnected to a desire for expert representation. In two cases, however, a wife's husband was first-named in the alternative to a leading attorney, respectively to John of Youlgreave and to William of Pontefract, and a co-attorney of Richard of Marnham was probably the female principal's son. These may be examples of female litigants appointing attorneys both in compliance with cultural expectations and in contemplation of (at least) competent representation.

Whereas ecclesiasts and women litigating alone seemingly used professional attorneys with less proportionality than they did attorneys at large, men did the opposite. Although men litigating jointly with their wives made only two of the 54 appointments of the twelve leading attorneys at the eyre, and the data base is therefore tiny, the resulting 3.70% is marginally in

excess of their proportionate use of attorneys generally (2.54%), suggesting some discernment in favour of professional representation. This proposition is greatly supported by the data relating to men litigating alone. They comprised the majority of the litigants who appointed one of the twelve leading attorneys at the Derbyshire eyre, 32 (59.26%) doing so. As they accounted for only 43.22% of all attorney appointments made in contemplation of proceedings at the eyre, it would seem that men, or at least those who opted to appoint an attorney at all, were seeking more than simple substitution.

This impression is reinforced when we look behind the appointments and consider the numbers of litigants who made those appointments, with particular reference to the leading four attorneys, Richard of Stapleford, Richard Hubert, Richard of Marnham and Hugh of Normanton. Richard of Stapleford's fourteen appointments were made by seventeen litigants, none of whom were husbands and wives. Just one ecclesiast, the abbot of Dale, (5.88%) and three women, two of whom are described as being widows, (17.65%) made appointments, less than one-half in each case of the proportionality with which they appointed attorneys at large. Ten appointments were made by men, in eight cases by one man, in another by two men and in a third instance by three named men, thirteen male principals in all. Of the seventeen principals making the fourteen appointments, 76.47% were thus men, approaching double the proportion who appointed attorneys generally. The aggregated records of Richard Hubert, Richard of Marnham and Hugh of Normanton, who received between them fifteen appointments from sixteen litigants, show they were collectively appointed by eight men (50.00%), five women (31.25%), two husbands and wives (12.50%), and one ecclesiast (6.25%). Thus, although the data base is far too small for any firm conclusions to be drawn, a significant provisional finding is apparent. The leading four attorneys at the eyre collectively received more appointments from men (particularly) and from husbands and wives than were received from either category of litigant, proportionately, by attorneys at large. Of the 33

litigants making their appointments, 21 were men (63.64%), eight were women (24.24%), and two each were, respectively, ecclesiasts and married couples (6.06% each).

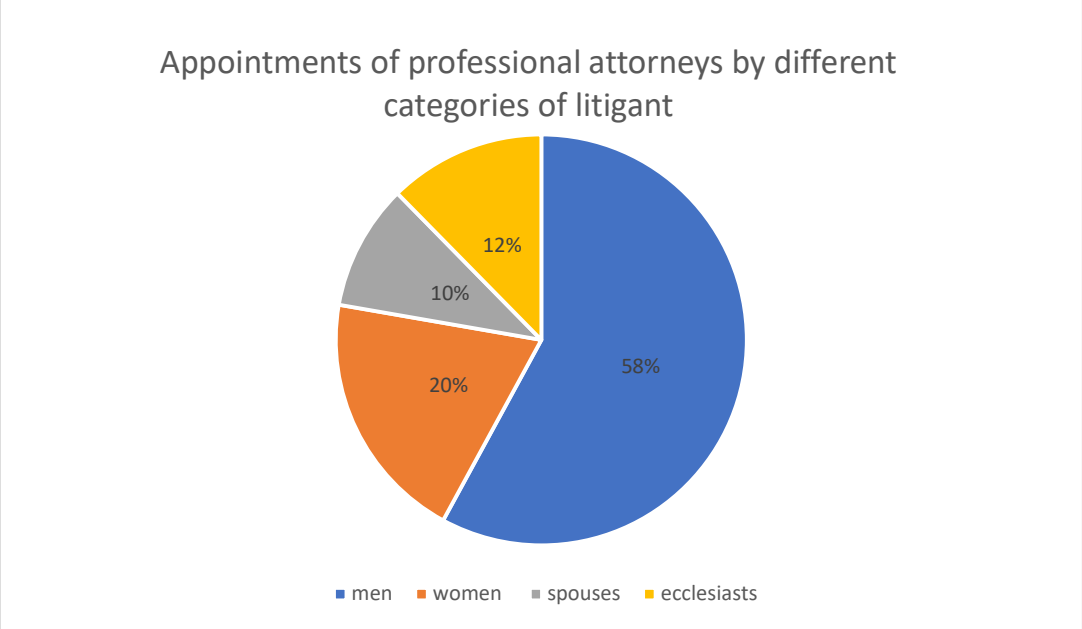
How may this provisional finding be interpreted? It certainly suggests that having collectively eschewed the use of attorneys for decades, choosing to be represented only if their own circumstances made it necessary or convenient, men were now not only appointing attorneys with an increasing intensity, but they were apparently being selective in their choice of representative. Their greater use of attorneys in court appears to be directly linked to the quality of the representation acquired. The most obvious reason for such a link is that it afforded some advantage. A significant number of men had neither tired of appearing in person nor had suddenly come to regard simple substitution as a good idea, but rather had undergone a seismic cultural change of attitude towards the use of attorneys in court, coming to recognise the advantages flowing from expert representation.

But the evidence from the Derbyshire eyre is tentative, based as it is on a relatively small data base and by reference to attorneys for some of whom full-time professionalism was probably still in the future. The evidence from the subsequent, post-Welsh war, eyres is, however, unequivocal. It is calculated that 56 of the attorneys of interest who received five or more appointments at one, at least, of the eyres on the circuit, appeared in so doing at one or more of the eyres of Northamptonshire, Buckinghamshire and Huntingdonshire. Between them, these 56 men received appointments from 535 principals at these eyres and elsewhere on the circuit.

Of that number, 66 were ecclesiasts of various descriptions, making 12.34% of all appointments, approximated to the nearest whole percentage point in Figure 16, below. The average of the proportionate extents to which they appointed attorneys generally at the relevant eyres is the slightly greater 14.06%, similarly approximated in Figure 17, below.

Although not entirely consistent with the Derbyshire evidence, this data does suggest an indifference on the part of ecclesiasts to the availability of external expertise. The inference that ecclesiasts hence contributed little to the process of professionalisation is, however, misleading and is discussed further below.

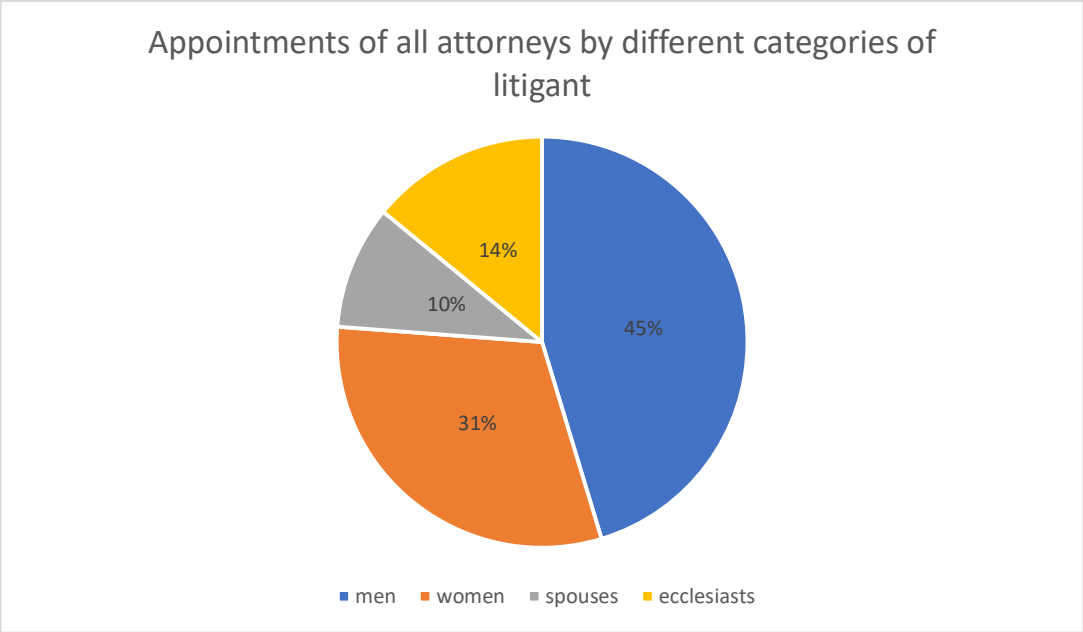
Figure 16



Of the 535 principals who appointed 56 of the leading professionals on the circuit, 106 (19.81%) were female. The average proportionate rate at which women appointed attorneys in contemplation of proceedings at the three eyres was the considerably higher 30.89%. It seems clear, therefore, as is suggested by the evidence from Derbyshire, that although women had, with ecclesiasts, driven during the early and middle decades of the century the expansion in the use of attorneys that was an essential pre-requisite for the emergence of professionalism, their subsequent decline in the proportionate rankings was accompanied by a continuing collective disregard for the benefits of professional representation. Much of this disregard may have been involuntary, many of the female cohort being wives for whom the

appointment of their (non-professional) husbands was *de rigueur*, and others being widows and daughters who felt bound to appoint sons, uncles or other male relatives to protect their interests. Only (or largely) women who were free of any such commitment and at liberty to be discerning in their choice of representative were able to contribute to the overall use of professional attorneys.

Figure 17



Fifty-three (9.91%) of the 535 principals were husbands and wives litigating together. The average of the proportionate extents to which husbands and wives appointed attorneys generally at the three eyres is 9.73%. The similarity of the two figures suggests that the provisional interpretation of data from the Derbyshire eyre requires slight adjustment, and that collectively husbands and wives were indifferent to the distinction between professional practitioners and simple, non-professional, attorneys. No doubt some were more discerning than others but, as a class, they seemingly did little to create or fuel a demand for professional representation.

No fewer than 310 men, representing 57.94% of the whole body of principals, instructed one or more of the 56 selected attorneys of interest to represent him in court proceedings. This greatly exceeds their average at the three eyres of 45.32% for the proportionate rate at which they appointed attorneys generally in contemplation of proceedings, and is hence significant. In choosing their representatives, many male litigants were exercising positive discernment in favour of attorneys who were sufficiently expert to have professionalised. After decades of collective reluctance to appoint attorneys at all, and from as recently as *circa* 1260, men had not only increased their proportionate presence as principals but also, it may be inferred, had done so strategically. It may be surmised that they had come to realise that expert legal representation was a necessity if they were to secure a desirable outcome to litigation in which they were involved. Such representation in court gave them an advantage over an opponent who lacked it, and equality with an opponent who was similarly armed. Dimly in the statistics can be seen an initial tendency on the part of men to appoint attorneys of competence and capability, the best available in the early stages of the process of professionalisation. The process that ensued was symbiotic. As more and more men demanded an increasingly expert service, so was that demand increasingly met by attorneys able and willing to supply the service demanded, so in turn encouraging other male litigants to avail themselves of the increasingly professional service supplied.

The disproportionately high use of professional attorneys by male litigants is illustrated by the appointment records of some who were particularly active on the circuit. Unsurprisingly, those with entirely or largely secular practices received the highest proportion of their appointments from male litigants. Thomas of Oxford, for example, received his eleven appointments in Northamptonshire and Buckinghamshire from, respectively, eight men (almost 73% of all principals), two women and one husband and wife. Robert Russell's 22 appointments (some of which were made by multiple litigants) in Northamptonshire were

received from 22 men (almost 76%), four women, one husband and wife, and two ecclesiasts. Hugh of Kibworth, with eighteen appointments in Leicestershire, Warwickshire and Northamptonshire, acted for eleven men (61%), four women, one husband and wife and two ecclesiasts. Roger of Newport's 31 appointments in Northamptonshire, Buckinghamshire and Bedfordshire were made by twenty men (64%), five women, four husbands and wives and just two ecclesiasts. Stephen of Keysoe's 28 appointments (one of which was by three litigants) in Northamptonshire, Buckinghamshire, Huntingdonshire and Bedfordshire were made by seventeen men (56%), five women, six husbands and wives and two ecclesiasts. Interestingly, in Stephen's case, the good showing of husbands and wives suggests that although married couples were not as discerning collectively as were men, some husbands might have been as keen as men litigating alone to have good quality representation.

Again unsurprisingly, those attorneys whose practices were more balanced as between a secular and ecclesiastical clientele attracted proportionately fewer appointments from male litigants. In such cases, however, men almost invariably remained as the most numerous principals, usually by a considerable margin. Gerard of Byker, for instance, who received twenty appointments in Northamptonshire, Cambridgeshire and Huntingdonshire (some of which were from multiple litigants) did so from eleven men, five husbands and wives and six ecclesiasts. In some cases, the proportionate use of leading professionals by men dropped to parity with their proportionate use of attorneys generally, although in many such cases the sheer number of male principals remains significant. Although seven of John of Islip's 37 appointments in Northamptonshire, Rutland, Buckinghamshire and Huntingdonshire were received from ecclesiasts, seventeen were received from men, nine from women and four from husbands and wives. Similarly, Henry of Staploe's 26 appointments in Buckinghamshire, Cambridgeshire and Huntingdonshire were made by twelve men, five husbands and wives, four women and seven ecclesiasts.

Inevitably, some practices serendipitously attracted fewer men proportionately. The enigmatic John of Goldore's nineteen appointments in Buckinghamshire, Bedfordshire, Gloucestershire and Dorset were received from just eight men (fewer than 35%), six women, four husbands and wives and five ecclesiasts. Indeed, some other leading attorneys, such as Roger of Batchworth who received seven of his nine appointments in Buckinghamshire from churchmen, clearly did little work for secular litigants, whether male, female or married couples. Nonetheless, there is no doubt that by the 1280s, a disproportionately high number of male freeholders were the main users of professional legal attorneys, their suggested rationale being based no longer upon necessity or their own convenience but upon a desire to take advantage of the expertise and courtroom skills offered by their practitioners of choice so as to obtain a desired outcome.

One final issue remains to be addressed. From where did the professional practitioners who supplied the service demanded come? Or, perhaps to put it more precisely, from where did the skills and attributes possessed by such men come? There are, broadly, two possibilities. Men with the necessary legal expertise may have emerged from within the ranks of the increasingly large body of attorneys who were by the 1260s and 1270s operating in the eyre courts, acquiring experience as they did so. Alternatively, they may have been outsiders, already possessed of the required characteristics, who colonised the activity of attorneyship as a tool of their trade, thereby swelling those self-same ranks.

It is unlikely that the great majority of the simple attorneys who appeared on a one-off or occasional basis were either equipped to perform more than the basic duty of substitution or interested in so doing. Members of the remaining minority, however, possessed of necessary levels of competence, common sense and intelligence, could conceivably have learnt 'on the job', thereby acquiring knowledge and experience of the practices, procedures and perils of the courtroom. But, as the process of learning relies upon the existence of a complementary

process which may be loosely described as ‘teaching’, it seems likely that most, perhaps all, of the professional legal attorneys who inhabited the courtrooms of the 1280s had either acquired the necessary skillset in another capacity or elsewhere, or had been influenced by someone who had.

One source of men able and willing to act as legal attorneys lies within the ranks of the specialist advocates, the narrators and pleaders of earlier decades, known by the 1280s as serjeants. The same men can certainly sometimes be seen to be acting, at different times, as attorneys and serjeants. Reference has been made *ante* to Andrew Croc in the context of the 1248 Berkshire eyre. Such fluidity might have been operational on a day-to-day basis or it may have been progressional, young lawyers cutting their teeth as attorneys before becoming full-time serjeants. For any man who tried both activities, settling finally as an attorney, the experience of having appeared as a serjeant would be invaluable. By such means, necessary courtroom skills would thereby have been imported into the fledgling profession.

A second means for such an importation, as touched upon *ante*, was through the clerks and marshals who manned the itinerant courts before which attorneys appeared and who, in the course of performing their duties, accumulated legal knowledge and experience. Court clerks are known to have acted as attorney for (presumably fee-paying) litigants, their continuous presence in court and acquired knowledge of practices and procedures making them well-qualified to provide competent substitution. The plea rolls are littered with references to attorneys described as *clericum*, most of whom received only a single appointment. Some, however, such as Ralph the clerk of Rowell, with an appointment by the bishop of Lincoln in Leicestershire followed by secular appointments in Warwickshire and Northamptonshire, received multiple appointments at successive eyres and could have been court clerks. So also may have been William of Undele, four of whose eight appointments in Northamptonshire were as ‘clerk’. Although, in the majority of such cases, it may be surmised that clerkship

remained the principal occupation of such men and they were never thus professional attorneys, a minority may have exchanged employed clerkship, with its opportunities for occasional, casual attorneyship, for full-time independent practice. Certainly the appointment patterns of such attorneys of interest as John of Goldore and Ralph of Selby, discussed *ante*, are capable of being interpreted as consistent with the sort of itinerant practice which might have been pursued by men used to spending most of their working lives on the road.

Another source of the required level and range of attributes sufficient to support professionalism is to found within the ranks of the stewards and bailiffs who habitually represented their lords in a variety of settings including in the conduct of court proceedings. In so doing, the administrative and financial skills associated with their respective offices could be put to relevant use, particularly when complemented by accumulated experience of court practices and procedures. Although the extent to which such retained men were at liberty to represent litigants other than their masters was, no doubt, in many cases limited to estate tenants and other adherents they did, by bringing their particular skillset to the courtroom, inform and enrich the activity of attorneyship. Whether many of them were able or willing to exchange such relative security for the vagaries of independent practice is difficult to gauge, but there are known examples of such men being or becoming professional attorneys.[1] Indeed, it is from the ranks of such men that those professionals whose practices were entirely or largely secular in nature may have emerged.

A fourth, and in many ways most intriguing, source of the essential ingredients of professional legal attorneyship lay, it is suggested, in the use made of attorneys by ecclesiasts. As has been discussed, in the early decades of the thirteenth century senior

[1] See for example, P.A. Brand, 'Stewards, Bailiffs and the Emerging Legal Profession in Later Thirteenth-Century England' in R. Evans (ed.), *Lordship and Learning: Studies in memory of Trevor Aston* (Woodbridge, 2004), pp.139-53.

churchmen, as *de facto* guardians of vast tracts of medieval England, regularly appointed monastic cellarers and others in holy orders to represent the institutions they headed. The jealousy with which institutional interests were prosecuted and defended ensured that representatives were frequently in action. Although the extent to which the likes of monks and canons were used seems to have declined as the century progressed, the practice had enabled a relatively small sector of the attorney community to acquire and cultivate legal skills denied to the majority. At the heart of such an acquired skillset was literacy, an ability both to read and to write, and a mastery both of Latin and of Anglo-Norman, respectively the written and spoken languages of the law. It may be surmised that the ecclesiastical attorneys of the middle and later decades of the century who were not described as being in holy orders were increasingly specialist, being retained by the institution represented or holding office as steward or bailiff. Although such men were not professionals, lacking both independence and a focus upon attorneyship as a means of earning a living they did, like their secular counterparts, provide a template in court for successful legal practice on the part of others. The fact that, although some ecclesiasts did appoint independent professionals to act for them in the 1280s, they seemingly did so with slightly less intensity than they did with attorneys generally suggests that the churchmen who opted to continue sending such in-house practitioners into court were content with the service provided by them.

And it is, furthermore, observable that on many of the occasions upon which they did appoint professionals, they did so in the alternative to in-house monks or canons. Attention has previously been drawn to this arrangement in the context of joint-name, as opposed to sole-name, appointments, and also in relation to the apparent convention that the name of the professional practitioner almost invariably came after that of the in-house attorney on the enrolment of the appointment. At the Buckinghamshire eyre, for example, Roger of Batchworth was the second-named appointee in a specific plea by the abbot of Missenden in

the alternative to brother Reginald de Chyvele, the abbot's fellow canon. In Leicestershire, three of Robert of Balbegrave's sixteen appointments were received from the abbot of Leicester, in each case as second-named to brother Roger of Barkeby. Similarly, professionals were not infrequently appointed by ecclesiasts in the alternative to men who, although not identified as being in religious orders, possibly were so or who were in any event retained and were not themselves professional attorneys.

The most obvious explanation of any such dual appointment is that the two appointees were expected to fulfil different functions, the in-house retainer handling mundane tasks such as attending to adjournments or seeking a view, leaving the professional to deal with more complex issues such as advising on the writ and making representations in court. Such an arrangement is certainly to be inferred into the numerous appointments made in the secular sector of professionals in the alternative to obvious non-professionals such as the husbands or sons of wives or widows. However, while such a division of duties would clearly have impacted positively on the emergence of professional attorneys in the ecclesiastical sector too, the relationship between churchman and professional may in fact have been more subtle.

It may be surmised that, in addition to having considerable experience of prosecuting and defending the interests of the houses to which they were attached, many of the appointed retainers also possessed deep factual knowledge of institutional tenurial arrangements and other matters relevant to any given dispute in hand. The contribution of any such in-house attorney was likely, at the least, to have been much greater than being simply procedural, and if he possessed also some acquired legal expertise, he may have been able to perform similar duties to the independent professional with whom he was jointly appointed. Indeed, it may not be fanciful to imagine that, in some cases at least, the in-house attorney was capable of providing better all-round representation than could the independent professional, and that the purpose of the dual appointment was to provide competent and sufficient cover for the

retainer should he become double-booked or unwell. At the least, there would be scope for cross-pollination, for the transmission in both directions of relevant skills, the professional learning from the retainer and *vice versa*. A possible example of such an arrangement is in the appointment at the Buckinghamshire eyre by the prior of Luffield of one Richard of Silverstone as first-named to John of Islip. Although Richard did not otherwise feature at that eyre, he was not only undoubtedly the prior's man, but also was sufficiently well regarded by the prior to have been appointed his sole representative (as brother Richard) at the earlier eyre of Northamptonshire on both a specific plea of rent and also for all other pleas. It is feasible that Richard was both a cleric and, in loose terms, a lawyer.

Indeed, the description *clericus* might equally well attach to an ecclesiastical appointee as it did to clerks of the court, and it is highly probable that many of the scores of clerical references in the plea rolls are to churchmen. But, interestingly, the term sometimes attaches to men who were beyond doubt professional practitioners. John of Islip, for example, is referred to in a Northamptonshire appointment, in which his principal was a married woman, as *clericum*. It may be significant that John acted for a number of ecclesiasts, including the prior of Dunstable who appointed him in each of Northamptonshire and Buckinghamshire on an all-pleas basis, on both occasions in the alternative to the same co-attorney, assumed to be the prior's man. Although he may have been described as *clericum* in recognition of his scholastic qualities, it is more probable that he was in minor orders, at liberty to pursue a professional career but perhaps having honed his skills while attached to a religious house.

If it be wondered whether there might have existed prior to the 1260s an independent body of men offering legal services and who opportunistically colonised attorneyship as an element of practice, no supportive evidence has been found. There is, however, support for the proposition that legal attorneyship is linked to the drawing of documentation relating to interests in land, and hence to the process of land transfer now known as conveyancing.

There are frequent references throughout the thirteenth century to ecclesiastical clerks preparing deeds and charters recording institutional acquisitions, alienations and arrangements, and also to secular lords having within their retinues clerks and scribes able to undertake such work. But what about the many thousands of small, illiterate tenants? While there were no doubt those prepared to rely on the customary nature of many tenurial arrangements and the existence of communal knowledge as to who held what from whom, others would surely have felt the same need as did their secular and ecclesiastical superiors to have the reassurance of written proof of right or possession should a dispute arise or a predator strike. To whom might such a man or woman turn for the provision of documentation?

Ecclesiastical clerks can be seen from time to time both apparently drawing deeds and charters and also appearing in court as attorneys. As discussed *ante*, Ralph of Chertsey in Surrey in 1235 and his son, Simon the clerk, in the same county in 1263 are examples, each man having experience as steward and bailiff also. In habitually representing their houses and estates in court and elsewhere, and in also drawing the many deeds and charters recording the tenurial rights and obligations of their masters, they oversaw the sales, purchases, grants and exchanges of real property that underpinned the medieval system of land conveyancing. In the case, particularly, of Simon, whose career seemingly extended beyond the confines of the abbey of Chertsey, he and others like him would have been well placed and well qualified to offer legal assistance to needy landholders anxious to draw upon their accumulated expertise. Given the near monopoly of land as the asset at issue in the great majority of assizes and pleas coming before the courts, and the collusive nature of much litigation in rendering pre-existing or newly agreed tenurial arrangements irrevocable and unassailable, who better to represent litigants in court in the 1280s than the clerical successors of such men and their secular counterparts, expert as they collectively were in the practise of property law?

Conclusion

There is, therefore, a certain symmetry to the manner in which, by reference to thirteenth-century eyre proceedings, professional legal attorneys originated and developed. Just as it can be seen that a coalescence of the three originating traditions of putting in place, attornment and procuration provided attorneyship with its defining characteristics, so was the emergence of a specialist minority of legal practitioners capable of professionalising enabled by the coalescence of influences from a variety of sources.

Simple attorneyship, focused upon its core duty of substitution, was well established by the end of John's reign, although largely the preserve of a litigating elite, and almost entirely confined to bonds of service, sanguinity and trust. Although a very small number of men seemingly offered themselves to allcomers, presumably charging for their services or at least seeking reimbursement for expenses incurred, such men were not professional attorneys, frequently being employed as clerks or acting also in a variety of other roles. The original simplicity of attorneyship was given a lawyerly edge by such men and, with increasing intensity during the reign of Henry III, by the stewards and bailiffs of secular lords and by the monastic appointees of senior ecclesiasts who, by dint of regular appearance in court on behalf of the estates and institutions they represented, were afforded the opportunity of acquiring a depth of experience and legal expertise denied to the great majority of occasional attorneys. Although such men were neither independent nor specialist nor separately remunerated, they did found a tradition that eventually fed into the mix that fuelled professionalisation.

Driven in no small part by female litigants for whom male (and, in the case of married women, marital) representation was a cultural requirement, simple attorneyship became an established activity throughout the landholding classes during the second and third quarters of

the thirteenth century. The numbers of attorneys appearing on behalf of absent litigants increased sufficiently for a critical mass to form. Male litigants, who comprised the majority sector of the litigating community, having traditionally eschewed the use of attorneys in favour of personal appearance, not only embraced attorneyship but did so out of a desire for more than mere substitution. They led the demand for the services of legal representatives in court.

The men who emerged to supply those services and hence meet the demand were legal attorneys. Although by mid-century, a very few men can be dimly discerned acting in such a way as suggests legal practice, it was not until the 1260s that the process comes clearly into view. Practitioners came from a variety of backgrounds, some with the ability to tap into the existing repository of relevant skills vested in habitual attorneys from the monastic, secular and clerical sectors, others already possessed of them. No doubt some men in minor holy orders of an independent bent, and stewards and bailiffs able so to do, answered the call for expert representation. Men of property, knowledgeable in the law relating to land tenure and experienced in transactional negotiation and the intricacies of legal documentation, responded also.

Having formed a clique within the overall community of attorneys, individual members of the professional legal minority operating in the shires carved out for themselves practice areas, some practitioners working only, or largely, in all or part of a single shire, others receiving instructions across county lines. Yet others were seemingly itinerant, following the work and apparently without an operational base. Although the majority seemingly enjoyed sole practice, a few would appear to have associated, apparently thereby forming embryonic partnerships and businesses.

The nature of legal attorneyship provides an explanation for the apparent paradox at its heart. In its basic, simple form, and as it has remained into the modern era, attorneyship is characterised by its lack of detachment. An attorney, as his principal's *alter ego*, is subsumed in law into the principal's very being, and cannot therefore in the performance of his duties stand apart. A lawyer, on the other hand, best serves the interests of his client by being dispassionate and able always to exercise independent judgment in the application of his expertise. In the courtrooms of the later thirteenth century, it was the serjeants who seemingly fulfilled that role. But that apparent paradox is false. The essence of legal attorneyship, as it evolved in the hands of the clerical, secular and monastic forerunners of the professionals of the 1280s, was the management of affairs and causes. And so it was not for professional legal attorneys to act in hot blood, to be adversarial and combative, but rather to be coolly calculating and managerial. They had no need for detachment. The fact that their every act and omission, whether by (dis)avowal or otherwise, committed their clients was no bar to independent thought and the exercise of expert judgment. There was no conflict between their lawyerliness and their attorneyship.

Epilogue

An almost inevitable consequence of undertaking a substantial piece of historical research is that some original questions remain unanswered, new questions present themselves, and fresh lines of enquiry open up. It therefore remains work in progress. The general nature of the present project, dealing as it does with the origins and development of professional legal attorneys over the course of an entire century, required even-handed treatment of relevant issues relating respectively to the early years, the median years, and the later years. Arising out of such an approach is the occasional identification of specific themes that warrant further detailed and focused investigation. Given that professional attorneyship would seem to have come of age in the provinces between the mid-1260s and the early 1280s, one such theme is whether the process of professionalisation was smooth and progressive, as suggested by limited data from the Buckinghamshire eyre of 1272, referred to at the end of Chapter 12, or whether there existed trigger points, either local or national, providing periodic stimuli. Detailed study of the activities of attorneys at, say, half a dozen eyres over the course of the late 1260s and the 1270s would be revealing in this regard. A second theme worthy of enquiry is the extent to which attorneys of interest, particularly those operating in the eyre courts of the 1280s, worked also in the central courts in Westminster and the city of London and whether, in the case of those who did, they confined themselves to work from their home counties or acted more widely. In respect of both such themes, further research beckons.

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