

Medieval English Conveyances (Cambridge Studies in English Legal History)

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This a remarkable book, based on decades of close study of medieval conveyancing documents. The abbreviations list more than 150 cartularies or other charter collections that are cited. Technical as many of the concerns are, the subject provides an ideal bridge between legal and other aspects of history. Kaye provides answers for the type of question that non-legal historians will ask, and the answers are expressed in readily accessible fashion: 'From a conveyancer's point of view the most important questions to be asked, in respect of any medieval transaction, are not only whether it was in accordance with the law, but whether it achieved its object' (p. 26).

The book's thorough chronological coverage really starts c.1180, with some forays as far back as the Anglo-Saxon past (e.g. pp. 1, 7, 237), although not to pre-1066 Normandy. Dealing with the period before c.1180 would have required a rather different form of treatment, on account of the larger proportion of early documents, particularly among those issued by laymen, which probably hide unusual situations. The chronological concentration, mirroring the availability of evidence, makes for a more consistent and satisfying book.

The volume starts with an introduction treating a variety of legal and conveyancing matters, and then moves on to a first exposition of diplomatic in chapter one: 'Common clauses in deeds'. Both chapters should be compulsory reading for all those interested in any aspect of landholding in 12th- to 15th-century England. The remaining chapters are then mostly divided by type of grant: grants in fee; in marriage, limited fee and fee tail; in alms; for life or lives; for terms of years; confirmations; rents; exchanges; surrenders and releases.

Separate chapters deal with 'Women's realty' and 'Villeins and their lands'. Not every type of document is covered, most notably wills being deliberately excluded. In addition, it is document types rather than legal transactions that determine the subjects for exposition; hence there is no extended discussion of the legal estate in property held to uses, because no special type of document was employed for its transfer. (p. 26).

Kaye works by combining the evidence of the conveyancing documents with that of the year books and also of some legal treatises, most notably Bracton (e.g. pp. 13, 17, 134). Legislation, especially *Quia emptores* and *De donis*, are also considered for their effect on conveyancing practice. (see esp. pp. 82–4, 154–63) Groups of extracts from conveyancing documents, rather than full texts, illustrate and support the commentary. Within these extracts full place and personal names are sometimes included, sometimes abbreviated to initials. There is relatively little citation of secondary literature, with occasional exceptions, most notably Pollock and Maitland's *History of English Law*.⁽¹⁾ Historiographical debate is eschewed, for example with the chapter on 'Confirmations' not seeking to engage with the arguments of S. F. C. Milsom; indeed Milsom's *The Legal Framework of English Feudalism* ⁽²⁾ does not appear in the bibliography. The close concentration on primary sources adds to the timelessness of the volume, helping to ensure that it will be of long-lasting value.

The concentration on exposition of conveyancing texts adds to the praiseworthy clarity of the book. The opening of the chapter on 'Grants in marriage, limited fee and fee tail', or of that on 'Confirmations', provide as clear and compressed an introduction to their subject as could be desired. Clarity is enhanced by use of the conveyancers' own language, as in the introduction to the potentially difficult subject of 'Parcels clauses' (p. 31). At the same time, the author's own style is not only clear but also enhanced with dry wit: 'The conflict between the wish of women to manage their own property, and the wish of husbands to prevent them from doing so, led in the end to the formulation of a body of rules which can hardly be described as a juristic masterpiece' (p. 185).

The book will be of immense use to the social historian. For example, statistics given at p. 144 will warn against consideration of conditional gifts solely as a matter of marriage grants. Likewise, land-owners treatment of mill-farmers as bankers is discussed in the context of rents (p. 291). The urban historian will receive help on the subject of the 'flying freehold', that is, the grant in fee of the upper floor of a building (p. 126). At the same time there is much of more specifically legal interest. We see the development of, and problems with, legal devices that use standard documents in a way different from that for which they were designed, as when 'a lessee sometimes sought to protect his term [by securing] from the lessor a charter of feoffment, the intention being that the charter would take effect only if the lessee were evicted or otherwise disturbed in his possession. This practice could be dangerous, unless the deed relating to the fee was handed over to a trustworthy third party to be held as an escrow, because lessees and other persons who got hold of such charters sometimes tried to suppress the true facts and claim absolute fees' (p. 262; note also the unusual arrangement described at p. 326). We also learn of the complexities that conveyancers faced in dealing with the internal logic of land law (e.g. p. 308) and the ways in which the discussions of justices and serjeants affected the working out of legal rules (e.g. p. 316).

Very occasional questions could be raised about exposition or interpretation. In isolated instances the documents in footnotes do not give full coverage for the period mentioned in the text (note p. 150 at n. 72–3). It is right to show that grants 'in fee and alms' are recorded in the 12th and early 13th centuries, but it could be made clearer that these were rare and that in other instances charter draftsmen sought to correct wording that seemed to confuse assumptions about forms of lay and ecclesiastical land-holding (p. 174). Particularly for the period before c. 1150, and to some extent before 1200, the limits of use of writing and of survival of evidence might have been further discussed regarding their effect on conclusions. That we *know* of some early 12th-century gifts only from royal or seigniorial confirmation charters need not signify that a confirmation *had to* be made by charter (p. 2). Apparent changes in the use of fines towards the end of the 12th century could to some degree be the product of the increasing evidence, particularly with the routine production of feet of fines, although here Kaye's argument for change is most likely correct (p. 194). Finally, although the avoidance of entry to debate with secondary literature works to the book's benefit, in a few places it would have been very interesting for Kaye's immense knowledge of the documents to have been

used to confirm or contest historians' arguments that have been widely accepted but not fully proven, for example those of Thorne concerning the development of a requirement for livery of seisin on the land (p. 63).

The book is very well produced. Occasionally the latest editions of texts are not cited; for example, at p. 215 n. 27, the old *Regesta I*, ed. H. W. C. Davis, is cited, together with reference to the editor's comments, but the edition of William I's charters by David Bates is not mentioned. The index is slightly limited; for example, there is no entry for homage; not all the relevant pages appear in the entries for demesne and heriot; and the law-book *Glanvill* appears as 'Glanvill, Ranulf de', in contrast to the entry 'Bracton, treatise.' However, the methodical structuring of the book renders any limitations of the index less significant than they might have been in a less accessible work.

Perhaps fittingly for the type of book, there is no concluding chapter. However, the materials – no doubt intentionally – force the reader to develop arguments and interpretations. There is the use of chirographs to get round the hardened or hardening norms of the developing Common Law. (see e.g. pp. 128, 240) At the same time, there are signs of the limits to the determinacy of that law, including on points relating to conveyancing. (see e.g. p. 216, on the 'practical way' in which courts dealt with charter formulae in relation to warranty obligations) The reader also necessarily considers the causes of litigation, and their relationship to conveyancing practice (see esp. pp. 341–2).

The preface to *Medieval English Conveyances* reminds us that 'it is more than three hundred years since a book dealing exclusively with medieval English conveyances was published' (p. xi). As ever more conveyancing documents become available electronically, it will become ever easier to test and supplement Kaye's analysis. But for those working on such documents, this fitting successor to Madox's *Formulare Anglicanum* will long remain the essential introduction, and the constant, erudite, and enjoyable companion.

Notes

1. Frederick Pollock and Frederic Maitland, *History of English Law Before the Time of Edward I* (2nd ed. Cambridge, 1898). [Back to \(1\)](#)
2. S. F. C. Milsom, *The Legal Framework of English Feudalism* (Cambridge, 1976). [Back to \(2\)](#)

The author wishes to say that 'It is a very generous review, and, accepting the reviewer's criticisms as I do, I don't wish to question it in any way'.

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