

Elizabeth Audley, the Martin estate and a Parliamentary Petition (1366): The Security of Marriage Contracts in Fourteenth-Century England*

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In the fourteenth century, the marriage of an heir to a landed estate was an important event. It involved careful negotiation with the bride's family, and the ensuing results were usually enshrined in a written marriage contract, which included terms relating to inheritance and the granting of property. It is generally assumed that the terms of these contracts were faithfully carried out but a petition brought before Parliament in 1366 raises important questions about the extent to which these obligations were fulfilled. Elizabeth Audley (d. 1400) complained to Parliament that her father-in-law James Audley (d. 1386) had breached the terms of her marriage contract by failing to carry out the measures contained within the agreement. At the heart of the dispute were the important and extensive estates of the Martin family in southwest England, which Audley had recently inherited. Elizabeth Audley's dispute with her father-in-law reveals not only the complex arrangements that surrounded marriage and inheritance in the late medieval period but also the security and effectiveness of marriage agreements.

When two allying families negotiated a marriage settlement, it involved several elements, all or some of which might be detailed in a written document. On the one side there was the bride's portion and what proportion would be paid immediately and what proportion in later instalments, the size of those instalments, and when they were

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due. On the groom's side, the contract would specify the jointure for the couple, either the specific manors which would be settled upon them or less specifically lands to a certain value. In many cases, this was to be arranged in two tranches, one part immediately upon the marriage and another part later. Sometimes the second tranche would be created when the couple reached the age for cohabitation if they were younger at the time of the marriage, or an alternative was the reversion of lands then held by another, usually a widow. In some cases there was also an undertaking by the groom's father to settle his inheritance in tail or a less formal commitment not to alienate any lands.¹

A good example of these kinds of arrangements is provided by the marriage agreement between Edmund, son and heir of Roger Mortimer, to Elizabeth, daughter of Bartholomew de Badlesmere, in 1316. The bride's portion was £2,000 and the jointure was to be lands worth £200 with the reversion of lands worth another £133 on the death of Mortimer's mother. In addition, Mortimer agreed to carry out a settlement of almost the entire inheritance, in possession and reversion, on himself and his right heirs.² In the same year Maud, another of Badlesmere's daughters, was married to Robert, son and heir of Robert Fitzpayn. The portion was £800, the jointure was to be lands worth £200 immediately and lands worth another £200 after the death of Robert the father, and both father and son were bound to hold all the lands of the inheritance without alienating any part and they were to be settled so that they passed to the male issue of Robert and Maud.³ A slightly different arrangement was made in 1373 when Gerard, son and heir apparent of Warin Lord Lisle, married Amy, daughter of Michael de la Pole. Her portion was to be £933 of which 200 marks (£133) would be paid on the wedding day and the rest in 100-mark installments twice-yearly. For his part, Lisle was to settle two

1 The definitive discussion of marriage contracts and their development between the mid-thirteenth and mid-sixteenth centuries is found in Simon Payling, 'The Politics of Family: Late Medieval Marriage Contracts' in R.H. Britnell and A.J. Pollard (eds), *The McFarlane Legacy: Studies in Late Medieval Politics and Society* (Stroud, 1995), pp. 21–48. See also G.A. Holmes, *The Estates of the Higher Nobility in Fourteenth-Century England* (Cambridge, 1957), pp. 43–5; K.B. McFarlane, *The Nobility of Later Medieval England* (Oxford, 1973), pp. 85–7; C. Given-Wilson, *The English Nobility in the Late Middle Ages: The Fourteenth-Century Political Community* (London, 1987), pp. 158–9.

2 Holmes, *Estates of the Higher Nobility*, pp. 43–4.

3 G.E. Cockayne et al., *The Complete Peerage of England, Scotland, Ireland, Great Britain and the United Kingdom*, 14 vols (London, 1910–98) [hereafter GEC], V, p. 454n.

manors, probably representing £100 a year, on the couple and was to carry out a partial settlement of the rest of his estate. Six manors were to be settled on Warin and his male issue, with remainder to his right heirs, and another six, including Kingston Lisle, on Warin and his wife Margaret and their male issue, with remainder to Warin's right heirs. Anne, who was nine the previous February, was to live with Warin until she was fifteen, a period of six years which coincided with the time it would take for her portion to be paid in full, during which time Warin would keep Kislingbury and Draycot Foliat for the expense of her maintenance. If Gerard died during the six years, she was to have the manors immediately and if Anne died (without issue) during the same period, Warin was to repay half her portion, except the first two payments of £200.⁴

Such contracts therefore had important implications and the terms of plenty from the later medieval period survive in one form or another. In many cases this was an indenture upon which the terms of the agreement were written twice on one sheet of parchment and then the two copies divided by an indented line, each party keeping one copy. Indentures were employed in various ways and were designed to ensure the authenticity of each so that, in the event of a dispute in the future, the two versions could be checked against each other by the fit of the two halves. Indentures were not, however, enforceable at common law but the more important of them, such as marriage contracts, were often reinforced by financial bonds which, after the Statutes of Acton Burnell and of Merchants in 1283 and 1285, were enforceable at law. By these bonds one party acknowledged a debt of a specific sum to the other party and this was accompanied by a defeasance by the other party who agreed that, if certain terms were carried out by the first party, the bond would be annulled and cancelled. The terms of marriage contracts are often known only by the defeasances of these bonds. For instance, Fitzpayn was bound in 20,000 marks (£13,333) to Badlesmere, and Pole and Lisle granted each other rents amounting to £133 and £67 a year respectively, as bonds to carry out the contracts. There is substantial evidence in the Lisle archive that the agreed settlements of the Lisle manors were carried out in June 1373 and on 15 February 1379, two weeks after the final payment of the portion, the rents were quitclaimed signalling the successful conclusion of the terms.⁵

4 *Calendar of Close Rolls Preserved in the Public Record Office* (London, 1896–1913) [hereafter CCR], 1369–74, pp. 556–7, 557–8.

5 Bridget Wells-Furby (ed.), *A Catalogue of the Medieval Muniments at Berkeley Castle*, Bristol and Gloucestershire Archaeological Society: Gloucestershire Record Series,

Much has been written, both in general and specific terms, of the importance of marriage to the late medieval nobility and gentry.⁶ Although the terms of marriage contracts are familiar, very little research has been done to establish how effective they were in practice. Extensive family archives, such as that of the Lisles, which include documentary evidence of the settlement of lands subsequent to such contracts are few and far between, although in some cases there is a little evidence in the public records. For instance, by a fine of October 1316 three Fitzpayn manors were settled on the elder Robert's mother for life, with remainder to the elder Robert for life, and then to the younger Robert and Maud and their issue.⁷ Similarly, it is known that Edmund Mortimer was able to recover some of the family lands after his father's forfeiture on the grounds of the 1316 settlement.⁸ It is almost certainly true that the great majority of contracts were carried out faithfully as there would be little motive to do otherwise but it is equally certain that there were exceptions. The difficulty with establishing the frequency of the exceptions, and also the circumstances in which this might occur, lies not only in the lack of material which proves that known contracts were fulfilled, but also in the paucity of evidence concerning when they were not. Dr Simon Payling is currently engaged on an investigation into law suits based on the bonds which often accompanied marriage contracts and this will do much to fill the gap in knowledge.

In the meantime, this article will discuss one such case, the contract entered into in 1341 on the marriage of Nicholas Audley and Elizabeth Beaumont between Nicholas's father James Lord Audley and Elizabeth's widowed mother, Alice Beaumont. This explores how James was able to evade the terms of the contract and why he wished to do so. It also demonstrates the only means open to Elizabeth in her efforts to enforce them in the absence of a bond, which does not appear to have been made, and discusses why it was she alone, without her husband, who attempted to do so. In order to understand the case, it will be necessary to investigate James's landed estate and the family background. In brief, James was born in January 1314 and succeeded to the paternal estate less than three years later when his father died in December

17-18 (2004), A4/2/31 ff. 87d., 88d., 117, 145d. 156d., 166d., 167, 210, 225d, B1/1/7-8, B2/4/1-2, 6/4, B3/5/1-5, B6/1/7-8.

6 For instance, most recently, a discussion of the implications of the marriages made by successive Lords Lovel, Monika Simon 'Of Lands and Ladies: The Marriage Strategies of the Lords Lovells (c. 1200-1487)', *Southern History* 33 (2011), 1-29.

7 GEC, V, p. 454n.

8 Holmes, *Estates of the Higher Nobility*, p. 44.

1316.⁹ The wardship of James's lands passed to Roger Mortimer of Wigmore but Mortimer allowed him to have seisin of them on 25 May 1329 although he was then only fifteen and therefore six years short of full age.¹⁰ James was married to Mortimer's daughter Joan, probably shortly before 13 June 1330.¹¹ James and Joan had two sons, Nicholas and Roger, both born by November 1335, and three daughters, Joan, Margery, and Katherine. Joan was still alive in 1337 but had died by 1345 when James was married to his second wife Isabel. She gave him four sons, James, born by February 1346, Thomas, Oliver, and Roland, as well as a daughter Margery, and probably Blanche.¹² James was a much wealthier man than his father having inherited a moiety of the extensive Martin estate in the south-west on the death of his maternal uncle William Martin in 1326, and the other moiety in 1342 after the death of his childless aunt Eleanor de Columbers, although a third of the estate remained in the hands of Martin's widow until her death in 1359. The Audley-Beaumont marriage contract of 1341 was probably drawn up before James second marriage because, as well as including provision for an immediate jointure in lands of the original Audley patrimony, it included terms for a future jointure in lands of the Martin inheritance after they had reverted to James. Furthermore there was a commitment to settle the entire Martin estate in tail, thus guaranteeing that it would be inherited by Nicholas and that his bride Elizabeth would benefit from it. In 1353 James carried out a series of settlements, supplemented later by others, which violated the terms of this contract as they settled the reversion of nearly all the Martin lands on the king and James's younger sons by his second wife. In 1366 his daughter-in-law Elizabeth petitioned the king in parliament, a well-established route for obtaining justice in cases which were not covered by the common law, and the case was taken up by the council in a series of hearings over the next two years. The settlements were allowed to stand but Elizabeth and Nicholas gained a substantial cash sum in compensation.

9 James was born on 1 or 2 January 1314 not in January 1313, GEC, I, p. 339; *Calendar of Inquisitions Post Mortem* (London, 1904-) [hereafter CIPM] VI, no. 56, VII, no. 699.

10 *Calendar of Fine Rolls Preserved in the Public Record Office* (London, 1911-) [hereafter CFR], 1327-37, p. 20, CCR, 1327-30, pp. 145, 463, 484.

11 *Calendar of Patent Rolls Preserved in the Public Record Office* (London, 1891-) [hereafter CPR], 1327-30, p. 531.

12 Blanche is mentioned only in a fine of 1374: The National Archives [hereafter TNA] CP25/1/195/17 no. 54.

I The Accumulation of the Audley estate

The patrimony of the Audley family, held for a hundred years or so by the early fourteenth century, lay in the north Midlands and the March but James Audley became one of the principal landholders in the south of England after the childless death of his uncle William Martin in 1326. He improved upon his good fortune by the vigorous pursuit of opportunities and aggressive defence of his rights.

The paternal inheritance consisted of Heleigh Castle and the manors of Audley, Betley, Tunstall, Horton, Endon, Chesterton, Alstonefield, Cold Norton, and Tissington (Staffordshire), Red Castle, Marchamley, Kynnersley, Edgmond, Newport, Ford, and Lee Brockhurst (Shropshire) and Newhall, Nantwich, and Smallwood (Cheshire).¹³ It was worth probably between £600 and £800 a year.¹⁴ The Audley lands had been extended southwards through James's grandmother Katherine Giffard who had brought to the estate the manors of Monnington-on-Wye and Dilwyn (Herefordshire) and the Welsh lordship of Llandovery and through her James was to inherit in 1327 and 1338 moieties of the manors of Badgeworth (Gloucestershire) and Broughton Giffard and Ashton Giffard (Wiltshire) after the childless death of John Giffard of Brimsfield in 1322 and his widow in 1338.¹⁵

The Martin inheritance in the south-west was to transform James Audley's landed position. This estate (see appendix) was comprised of numerous manors in Devon, a few in Somerset, and the Welsh lordship of Cemais (Pembrokeshire) and was worth at least as much as the Audley patrimony and possibly more.¹⁶ The valuation made on Martin's death in 1326 amounted to around £815 a year but it was worth up to a third more and did not include some lands which may already have been held by the coheirs.¹⁷ The estates did not all come

13 *CIPM*, III, no. 536, V, no. 62, VI, no. 56, XVI, no. 193–203, 1062–74, XVIII, no. 477–84; *CCR*, 1296–1302, p. 283, 1307–13, p. 27, 1313–8, p. 390.

14 The value of the estate has been estimated on the basis that the lands assigned in dower to Eve, widow of Nicholas's brother Thomas, in 1307 were valued at £138 a year, thus valuing her husband's estate at £414 a year, and allowing for the survival of other widows at that time and previously. Eve died in 1369 but was then holding only Audley and a third of Endon, *CIPM*, XIII, no. 90. James's grandmother Katherine had become a recluse at Ledbury by 1313; she was still alive on 20 March 1325 but dead by 4 June 1327, *CCR*, 1323–7, p. 272; *CFR*, 1327–37, p. 47.

15 *CIPM*, III, no. 544; *CFR*, 1272–1307, p. 421; *CCR*, 1296–1302, p. 255, 1313–8, pp. 421, 657, 1323–7, pp. 19, 272, 1354–60, p. 98.

16 The individual manors are listed in the Table.

17 *CCR*, 1323–7, pp. 482–3. Lands valued at £362 in 1326 were valued at £465 in 1353: *Calendar of Inquisitions Miscellaneous – Chancery – Preserved in the Public Records*

to James at one time, however, as it was divided on Martin's death into three equal portions each valued at £272, one each for the two coheirs, James and his aunt Eleanor de Columbers who was to die in 1342, and a third for his widow Margaret, who was married to Robert de Waterville within weeks of Martin's death but died in 1330; she did not marry again before her death in 1359.¹⁸

It quickly became apparent that James was also likely to inherit the other moiety of the Martin lands as his aunt, Eleanor de Columbers, was childless. By fines of 1328–9 Eleanor's inheritance was settled on herself, her husband Philip and her heirs and James's position as heir presumptive became stronger as time went on.¹⁹ Relations between Philip and Eleanor Columbers and her surviving family were evidently warm as they appear to have arranged the marriage of her niece Alice Audley to Ralph Basset in 1334. In December of that year Philip and Eleanor had licence to settle the reversion of the valuable Martin manor of Tawstock (Devon), said to be worth £100 in 1326 and then held by the widow Margaret, along with Philip's manor of Shaw (Berkshire), on themselves for their lives with remainder to Ralph and Alice and their issue.²⁰

James capitalized on this relationship and Philip's childlessness to acquire the Columbers estate in Somerset for himself and his younger son Roger. In 1337 Philip's manors of Nether Stowey, Puriton, Downend, Stockland Bristol, Grandon, Woolavington, and Honibere (Somerset), and Postling (Kent), were settled on Philip and Eleanor and their male issue, with remainder to James for life and then to his younger son Roger and his issue, and the elder son Nicholas and his

Office (London, 1916–) [hereafter CIM], III, p. 123; CCR, 1349–54, p. 594. The division did not include the manors of St Marychurch and Newton Tracy which were included among the Martin lands settled by the Columbers in 1328 and may have been Eleanor's marriage portion, nor the manor of Marwood and lands in Credition which James held in 1337 and may have been his mother's portion. *Devon Feet of Fines II. 1272–1369*, ed. F.B. Prideaux and H. Tapley-Sopar (Devon and Cornwall Record Society 8 (1939), [hereafter *Devon Fines*] p. 257; *Cornwall Feet of Fines 1195–1377*, ed. J.H. Rowe (Devon and Cornwall Record Society 10 (1914), [hereafter *Cornwall Fines*] pp. 426–7.

18 GEC, VIII, p. 538

19 *Devon Fines*, no. 1210, 1188; *Pedes finium commonly called Feet of fines for the county of Somerset: 1 Edward II to 20 Edward III: AD 1307 to AD 1346*, ed. E. Green, 4 vols, Somerset Record Society 6, 12, 17, 22 (1892–1906) [hereafter *Somerset Fines*], p. 132.

20 CPR, 1334–8, p. 53; P.H. Ditchfield and W. Page (eds), *Victoria History of Berkshire* 4 vols (London, 1906–27), IV, pp. 87–97; GEC, II, p. 3.

heirs.²¹ In return James granted Martin manors then in his possession, valued at a little less than £200 a year in 1326, and the manors of Badgeworth (Gloucestershire) and Broughton Giffard (Wiltshire), to Philip and Eleanor for their lives with remainder to James and Joan and the heirs of James.²² James was prepared to forego immediate income of considerable value for the future benefit of himself and ultimately for his younger son and the arrangement left the whole of the Audley and Martin estates for the elder son while his second son, Roger, was to have a substantial appanage. Roger granted the isolated Kent manor to the earl of Arundel sometime before 1368 and in 1400 the remaining lands in Somerset were said to be worth £109 a year but this is likely to be a serious underestimate.²³ James supplemented his deal with Philip de Columbers by acquiring in 1344 lands, rents, and knights' fees in Devon and Somerset of the Columbers inheritance which were settled in the same way.²⁴

James also protected his landed interests in less peaceful ways. In November 1338 he and his cousin Lestrangle nearly reverted to a private war over the manor of Broughton Giffard (Wiltshire), which they claimed on the death of the widow Margaret Giffard, against Ralph Wylington to whom the king had granted the reversion of the manor. They were all prohibited by the king from assembling men-at-arms intending to meet at Broughton 'in warlike fashion'.²⁵ James and Lestrangle appear to have had right on their side in this case but James's readiness to resort to violence was merely the first sign of what became a lifelong tendency. He was evidently a violent and lawless individual, exceptional even in this violent and lawless century. On 31 May 1344

21 *Somerset Fines*, II, pp. 188, 192–3, 244. Philip had also inherited lands in Kent from his mother Alice, daughter and coheir of Stephen de Penshurst, *GEC*, III, pp. 377–8. The reversion of these lands was settled on Sir John de Pulteney by a fine of 1339 although the transaction had evidently been carried out by 1337, *CCR*, 1337–9, p. 259.

22 *Somerset Fines*, II, p. 244; *Cornwall Fines*, p. 683. Badgeworth and Broughton Giffard were held by Columbers at his death but no fine appears to have survived, *CIPM*, VIII, no. 396.

23 *CPR*, 1367–70, p. 117; *CIPM*, XVIII, no. 481.

24 *Devon Fines*, nos. 1344, 1349; *Somerset Fines*, II, pp. 222–3.

25 *CCR*, 1337–9, p. 573. Audley and Lestrangle managed to establish their title and subsequently held the manor in moieties, as they did Badgeworth and Ashton Giffard. R.B. Pugh, Elizabeth Crittal, and D.A. Crowley, *Victoria History of Wiltshire* (London, 1953–), VII, pp. 51–9. The dispute appears to have been resolved by mutual recognizances between Wylington on one side and James and Lestrangle on the other of 1,000 marks on 14 February 1339 and of £200 on 22 February, *CCR*, 1339–41, pp. 87, 95.

he was pardoned, for a fine of £80, for all trespasses and oppressions he had committed against the king and his people in Somerset since 1330 of which he had been indicted before justices of *oyer et terminer*.²⁶ In 1346 he was given a general pardon on account of his good service in France.²⁷ In 1347 his lands in Cheshire were seized because of his activities against Dieulacres Abbey, despite the Black Prince's explicit orders to desist.²⁸ In July 1348 a king's sergeant-at-arms was appointed to arrest James because, although he had been summoned many times by the king's writ to come with all speed before the king and council at London for some important business affecting the king and realm, he had refused either to attend or to excuse his absence.²⁹ In April 1353 he was required to buy a pardon of the king's suit for all homicides, robberies, felonies, and trespasses in England of which he was indicted or not indicted, and of any consequent outlawries, by a grant to the king of lands in possession and reversion worth 400 marks. In December 1353 he was obliged to buy the Prince's pardon by a fine of 700 marks for felonies and trespasses of which he was indicted in Cheshire.³⁰ In November 1354 he was fined £2,000 for trespasses, extortions, and excesses of which he had been indicted before justices of *oyer et terminer* in Gloucestershire and Somerset.³¹ This was an impressive record and an important clue to James's character.

II The Marriage of the Heir

In 1341, when James Audley came to arrange the marriage of his eldest son and heir Nicholas, he held little more than his own paternal inheritance but had the prospect of inheriting the entire Martin estate on the deaths of Philip and Eleanor de Columbers and of the Martin widow Margaret de Waterville, as well as the Columbers lands which would later pass to his younger son.

The indenture encapsulating the terms of the contract for the marriage of Nicholas to Elizabeth Beaumont was dated at the Beaumont manor

²⁶ CPR, 1343–5, p. 260; CCR 1343–6, p. 312.

²⁷ CPR, 1345–8, p. 489.

²⁸ *The Register of Edward The Black Prince preserved in the Public Record Office*, (London, 1930–) [hereafter *Black Prince's Register*], I, pp. 70, 97, 125, 129.

²⁹ CPR, 1348–50, p. 172.

³⁰ *Black Prince's Register*, III, pp. 137–9.

³¹ CPR, 1354–8, pp. 145–6; CCR, 1354–60, p. 99. On 20 November he was pardoned £1,000 because he had promised 'to bear himself well in future' and he and Nicholas were bound in £1,000 to pay the sum in installments of £100 at six-monthly terms.

of Whitwick (Leicestershire) on 15 October 1341.³² They were both under twelve at the time. Elizabeth's father Henry, Lord Beaumont had died in the previous year and the indenture of the contract was drawn up between James and Elizabeth's mother Alice. The indenture itself has not survived, only the details to which Elizabeth drew attention in 1366, and so Elizabeth's marriage portion is unknown. It is likely to have been a substantial sum given Nicholas's prospects as the heir to two large estates. It may have been allowed for in her father's will, or possibly lands had been set aside in a trust to accumulate cash for the purpose.³³ In return for the portion, Audley made three commitments. First, he was to enfeoff Nicholas and Elizabeth of lands worth 200 marks (£133) in the Audley manors of Monnington-on-Wye and Dilwyn (Herefordshire), and Ford (Shropshire) and, if these were not sufficient, to make up the shortfall from other lands of his Audley inheritance. Secondly, he was to enfeoff them of lands worth another 200 marks (£133) from lands of the Martin inheritance when they reverted to him on the deaths of Philip and Eleanor de Columbers or on the death of the Martin widow Lady Waterville, but if they died within six years then he, James, would retain the land for that period i.e. until 1347. The terms were evidently unclear on whose death would trigger the enfeoffment and this was to be important as Philip and Eleanor de Columbers both died in the following year while Margaret de Waterville lived on until 1359. Thirdly, he would carry out an enfeoffment of the rest of his inheritance, both in possession and in reversion, settling it on himself for life with remainder to his issue, failing which to his right heirs, i.e. in fee tail. This, too, was presumably intended with special reference to the Martin lands as the Audley lands had already been settled in this way in 1330. As has been seen, there was nothing exceptional about these arrangements.

The settlement of the Audley lands in jointure was carried out promptly as on 22 April 1342, at the request of Lady Beaumont, Nicholas and Elizabeth were pardoned for acquiring the manor of Ford from James, in tail.³⁴ Philip de Columbers died in February 1342 and Eleanor in the following December but, by the terms of the indenture,

32 TNA, C54/204 n. 15. Cockayne, however, states that they were married in 1330–1, GEC, I, p. 340.

33 Such an arrangement was made by the earl of Warwick who in 1344 set aside lands in a trust to raise £2,700 for marriage portions for his four daughters, the eldest of whom was to have £1,200, the two next 1,000 marks (£667) each, and the youngest £200, McFarlane, *Nobility of Later Medieval England*, p. 196.

34 CPR, 1340–3, p. 422.

James was not obliged to enfeof the second tranche of the jointure until 1347 and possibly not until after the death of the widow Margaret de Waterville, while no time limit had been placed on the commitment to settle the Martin inheritance in tail.

III The Second Family

Within a few years of Nicholas's marriage and these arrangements being made, James married his second wife, probably between June 1344 and May 1345.³⁵ Their eldest son James was born by February 1346 when James requested a licence to settle three Devon manors of the Martin inheritance held in chief on himself and Isabel with remainders to their son James and his male issue, their own male issue, and his own right heirs.³⁶ Although there is no surviving fine to suggest that this settlement was carried out, it was the first indication that he intended to violate the intention of the 1341 marriage contract that the Martin estate would pass to Nicholas.

This intention was shattered far more comprehensively by settlements carried out by licences of April 1353 and fines of the following October in which the king became involved. On 20 April James received a pardon for all crimes of which he was then indicted or not indicted and granted his manor of Winkleigh (Devon) to the king.³⁷ Three days later an indenture was made between James and the king regarding Winkleigh and the king's permission to carry out a series of enfeoffments.³⁸ Martin manors which had been valued at £195 in 1326 were to be settled on James for his life, with remainder to the king.³⁹ Further Martin manors, valued at £277 in 1326, were to be settled on James and Isabel, with remainder to their son James and his male issue, the male issue of James and Isabel, and finally to the king.⁴⁰ Finally two other Martin manors, valued at £42, were settled on

35 It is not known when Joan Mortimer died but it is unlikely that James had remarried by the time of the contract in 1341 as the terms are likely to have been different (see below). His additional purchases in connection with the Columbers estate by fines of April and June 1344 may suggest that he had not married again at that date.

36 TNA, C143/281/26.

37 CPR, 1350-54, pp. 424-5, 427; CCR, 1349-54, pp. 593-5. He also received an exemption for life from attendance at parliaments and for military service.

38 CCR, 1349-54, p. 594.

39 CPR, 1350-54, pp. 482, 496; CCR, 1354-60, pp. 98, 110-1; *Comwall Fines*, p. 688. The king secured this grant by a bond of £4,000 by James to Bartholomew Burghersh and John Beauchamp of Warwick on 20 April, CCR, 1349-54, p. 593.

40 TNA, CP25/1/288/51 no. 11; CPR, 1350-54, pp. 427, 445; *Devon Fines*, no. 1428.

James and Isabel and their issue, with remainder to the king.⁴¹ These settlements accounted for Martin lands, in possession and reversion, which made up over three-fifths of those extended in 1326 and ensured that the eldest son Nicholas would not inherit these lands under any circumstances.

There is little doubt that it was the arrival of the second family which prompted James Audley to break the agreement made on the marriage of Nicholas in 1341. In the absence of any direct statement, James's attitudes must be the subject of speculation but it may be assumed that he was content with the arrangements made or he would not have made them. As these envisaged the whole of the Audley and Martin estates passing to Nicholas, the younger son Roger already being amply provided for by the acquisition of the Columbers estate, it may also be assumed that he did not, at that date, envisage having any more sons. Perhaps his first wife, Joan Mortimer, was then still alive but incapable of bearing further children.

The second marriage of James Audley is also of some interest because this was his own decision and not one contracted by a father or guardian, as was generally the case with first wives. Isabel's identity is unfortunately unknown.⁴² She does not seem to have brought him any lands, either as an heiress or a widow with a dower portion, as was commonly the case so a wish to add to his estate cannot have been his motive although she may well have brought a cash portion. It may be that, with only two sons, he felt the male succession was insufficiently secure when Joan Mortimer's death released him, or that he wished to have a lady at his side to share the responsibilities of running household and estate, or that it was a political alliance for reasons which are now obscure. Equally, it may be that he fell in love. Whatever his motive, he may have bitterly regretted the commitments he had made in 1341 which tied up all his lands and prevented him from using any of them to provide for the sons which Isabel gave him. There were alternatives. Some of the sons could have been placed in

41 TNA, CP25/1/288/51 no. 12; CPR, 1350-54, p. 481; *Devon Fines*, no. 1426.

42 Isabel is 'said to have been' daughter of Roger Lestrangle of Knockin (d. 1382) but the chronology suggests that this is unlikely. Isabel was born by 1331-2 as she was the mother of her son James by February 1346. Lestrangle was probably born in the mid-1320s as he was said to be aged 22 or 23 at his father's death in 1349 and certainly cannot have been born much before 1316 as his own father was born in 1301. He and Aline, daughter of Edmund Fitzalan, earl of Arundel, were married by 5 August 1338 when his father had licence to settle land on them; it is unlikely, although not impossible, that they had been married long before this. GEC, XII pt. I, p. 354.

the Church and he could have used his newly inflated landed income to buy lands for the others but it was almost certainly frustrating to face this necessity in the knowledge that both the Audley and the Martin estates had been promised to the son of his first marriage, Nicholas. James may well have been influenced by the old feudal idea that he was expected to pass on to his heir the lands he had himself inherited from his father but was at liberty to do what he liked with lands which he himself had acquired.

Second families were not infrequently a problem for heirs when they were disadvantaged by their father's favouritism for the children of a second wife. Among the infamous examples from this period were the first earl of Northumberland's generosity to his sons by his second wife Joan Beaufort, and John, Lord Grey of Wilton's excessive endowment for his son Roger (of Ruthin) by his second wife Maud Basset. Gilbert Pecche (d. 1291) alienated much of his estate to the king but settled the remainder on the sons of his second marriage and even obliged his eldest son by his first marriage to settle two manors on his second wife.⁴³ In the fifteenth century Sir William Mountfort (d. 1452) attempted to disinherit his eldest son and heir Sir Baldwin, by his first wife, in favour of his younger son Edmund by a second.⁴⁴

Less well known cases of excessive endowments for children of later marriages occurred in the Breouse and Berkeley families. The penultimate William de Breouse of Gower (d. 1291) married three times. His eldest son and heir was by his first wife, but he had another, Giles, by his second wife, Agnes de Moeles, and three, Richard, Peter, and William, by his third wife Mary de Roos (d. 1326) who survived him by thirty-five years and was clearly much younger than him. Giles (d. 1305) had his mother's manor of Woodlands, in Horton (Dorset) and Buckingham (Buckinghamshire) by grant of his father, and married the heiress of two manors in Oxfordshire and Berkshire but the sons by Mary de Roos were much more generously treated.⁴⁵ On Mary and her sons were settled Tetbury (Gloucestershire), Manningford Bruce (Wiltshire), Chesworth, Sedgewick, and Bidlington (Sussex), and Bookham and Bramley (Surrey), and they also had her manor of Weaverthorpe (Yorkshire). In 1312 Tetbury, Manningford Bruce,

43 GEC, X, p. 336.

44 *The History of Parliament: The House of Commons, 1386–1421*, ed. John S. Roskell, Linda Clarke and Carole Rawcliffe, 4 vols (Stroud, 1993), III, p. 799.

45 CIPM, III, no. 267, IV, no. 317; CFR, 1272–1307, pp. 355, 356; CCR, 1288–96, p. 435; GEC, II, p. 302.

Chesworth, and Sedgewick were said to be worth over £150 a year.⁴⁶ There remained, of course, Gower and the lordship of Bramber for the eldest son but this was still a substantial endowment for a younger son. A further example is provide by Thomas, Lord Berkeley (d. 1361) who had acquired a number of valuable new manors which were worth as much as £400 a year, around a third of the value of the Berkeley patrimony. All of these new lands were settled on his sons by his second wife, Katherine de Clevedon.⁴⁷ These settlements disadvantaged his eldest son by giving the second family priority in succession and also deprived him of lands which he might otherwise have inherited; they were uncommonly lavish endowments for younger sons.

James Audley was guilty not only of this type of over-generous endowment for younger sons but also of a further and deliberate diminution of the primary heir's inheritance. The Audley patrimony had been settled upon his own first marriage in 1330 when he had granted all the lands of his paternal inheritance except those held by the widow Eve to the king, who regranted them to James and Joan and their issue with remainder to the right heirs of James.⁴⁸ This may have been altered as in November 1335, a mere eight months after he had proved his age, he obtained a licence to settle three Shropshire manors, and the reversion of another held by the widow Eve, on himself for life, with remainder to his sons Nicholas and Roger in fee tail, and his own right heirs.⁴⁹ There is no evidence that this was actually carried out but it is significant that, apart from including the reversion of one manor, the only important change from the 1330 settlement was that it deprived Joan of her life interest in the manors. Whether it was put into effect or not, the patrimony remained entailed and Nicholas remained the heir apparent but nevertheless James appears to have alienated the Cheshire manors and the manors of Tissington and Kynnersley as they

46 Wells-Furby, *Catalogue*, pp. 702–4. Richard having died without issue in 1295, the heir was Peter who died in 1312 leaving a 10-year-old son and heir Thomas who succeeded to Chesworth, Sedgewick, Bookham, Bramley, and Weaverthorpe on Mary's death in 1326.

47 Bridget Wells-Furby, *The Berkeley Estate 1281-1417: its Economy and Development*, Bristol and Gloucestershire Archaeological Society: Bristol and Gloucestershire Monographs 1 (2012).

48 CPR, 1327–30, p. 531. Two days earlier James had been bound to Mortimer in 10,000 marks and it is likely that this bond had been employed, as such bonds commonly were, as a guarantee of the settlement. CCR, 1330–33, p. 142.

49 CIPM, VII, no. 699; CPR, 1334–8, p. 181.

do not appear in Audley hands after 1360.⁵⁰ There thus appears to have been some animosity towards the first family as well as a favouritism for the second family.⁵¹ The favouritism may have been generated simply by the fact that Isabel was James's own choice of wife while Joan had been imposed upon him when he was sixteen, but why he should have so disliked his eldest son as to alienate parts of the patrimony is unclear. He certainly had no reason for resentment against Joan's father Roger who allowed him to have seisin of his lands so early.

The circumstances are confused further by an incident in August 1352 when Nicholas Audley, his brother Roger, and others assaulted their father's castles at Heleigh and Red Castle, hunted in the parks, drove off 500 sheep from Red Castle, stole his goods, and assaulted his servants. Not content to deal with this dispute domestically, James complained to the king and a commission of *oyer et terminer* was issued.⁵² The raids may have been the result of a quarrel between James and his sons which, exacerbated by the raids, provoked their father to make the 1353 settlements. It is more likely, however, that they were a reaction to the knowledge that he intended to make such settlements, given that this had been signalled earlier by the 1346 licence. It is also highly interesting that Nicholas and Roger were accompanied on this raid by Sir John de Haukeston and Sir Humphrey Trumwyn who were two of their father's most highly valued retainers.⁵³ Their support suggests that James's favouritism for his second family had divided his household and at least two of his retainers had chosen to side with the sons, an indication perhaps that they felt James's intentions to be unjust.

The Audley case is complicated by the king's interest in the Martin lands. It seems clear that the direct grant of Winkleigh was made in

50 *Black Prince's Register*, III, p. 388. Tissington was alienated in 1357, *Collections for a History of Staffordshire*, First Series, 12 (1891), 150.

51 James's will of 1385 exhibits no rancour as he left Nicholas £100, a dozen silver vessels, and all his body armour, and to his only surviving daughter Margaret Hillary £10, although he also left to his grandson Fulk Fitzwarin, and to Fulk's uncle Philip, all the rest of his plate and armour. By this time, however, all his sons by Isabel were dead. N.H. Nicolas, *Testamenta Vetusta: being Illustrations from Wills, of Manners, Customs, as well as of the Descents and Possessions of many Distinguished Families*, 2 vols (London, 1826), I, pp. 117–8.

52 CPR, 1350–54, p. 337. Another commission was issued on 17 September which named no-one individually but accused only 'evildoers', CPR, 1350–54, p. 341.

53 Both Haukeston and Trumwyn were serving with James in France in 1346, James had granted his manor of Nymet Tracy to Haukeston for life by December 1343 and Trumwyn held West Lydford for life by 1353; both manors had been valued at around £25 a year in 1326. CPR, 1343–5, p. 138, 1345–8, p. 489, 1350–54, pp. 429, 444.

exchange for the pardon and it is likely that the reversionary interests were part of the same agreement. Whether the king was aware or not that these settlements violated the marriage contract of 1341 is inevitably unknown. Superficially, there is no reason why the monarch should have known of the private arrangements of one of his wealthy tenants-in-chief but there is a remote possibility that he did know of the contract and his reversionary interest was the price paid by James for the king's collusion in his wish to settle these lands on his second family.⁵⁴

In July 1359 the Martin widow, Margaret de Waterville, finally died and James came into possession of her lands, excluding Tawstock which reverted to his nephew Ralph Basset. The clause of the marriage contract by which James agreed to settle the Martin inheritance in fee tail had been broken in 1353 but this was the final opportunity for James to create the jointure in lands worth 200 marks (£133) for Nicholas and Elizabeth. Margaret's death, however, far from triggering this settlement, was merely the signal for another round of settlements on Isabel and her children. By a fine of April 1360 most of the manors were settled on James and Isabel and their younger sons Thomas, Roland, and Oliver in successive tail male with remainder to their own issue before James's right heirs.⁵⁵ In 1359 and 1360 James had licences to make life grants of two other small manors, with reversion to himself and Isabel and their issue, and in 1360 licence to settle another on himself and Isabel and their issue but there are no fines to suggest that these settlements were carried out.⁵⁶ Apart from these, which had been valued at only £12, there remained of the Martin estate only the lordship of Cemais, two other small manors, and a few other insignificant holdings. In May 1363 James had licence to settle the lordship of Cemais on himself and Isabel and their heirs.⁵⁷

There is little doubt that these settlements constituted favouritism for the second family. A judicious extraction of a few manors from the Martin estate to provide a livelihood for younger sons, while some were settled on Nicholas and Elizabeth, leaving the remainder to be inherited by them in due course may well have been acceptable but

54 The king intended the Audley lands to be used for the endowment of the Abbey of St. Mary Graces, C. Given-Wilson 'Richard II and His Grandfather's Will', *English Historical Review*, 93 (1978), 320-37.

55 TNA, CP25/1/288/46 no. 578; CPR 1358-61, p. 427; *Somerset Fines*, III, p. 186; *Collections for a History of Staffordshire*, First Series, II (1890), 190; CIPM, XVI, no. 203; CFR, 1383-91, p. 142; CIPM, XVI, no. 203.

56 CPR, 1358-61, pp. 270, 427.

57 CPR, 1361-4, p. 331. It was vacated because not acted upon.

James intended something far different. He was, in effect, treating the Martin estate as an entirely separate inheritance for his second family, the bulk of which, excluding the portion which would pass to the king after his own death, would pass to the eldest of Isabel's sons with small portions settled on his younger brothers and the whole tied up so that it would remain in that family. The fact that, if that second family failed, the king would then benefit to a greater extent than the heir Nicholas, was an added aggravation. If it had not been for the 1341 marriage contract James would have been able to carry out his intention with impunity but he had reckoned without his daughter-in-law Elizabeth Beaumont who was not prepared meekly to accept this drastic reduction of her own prospects.

IV The Case

It may have been the 1363 licence for the settlement of Cemais that was the spark which prompted Elizabeth to bring her petition before parliament on 4 May 1366. The petition itself does not seem to have survived but a very detailed account of the subsequent proceedings before the council was recorded on the Close Roll of which the calendar gives a full and thorough version.⁵⁸

It is of particular note that it was Elizabeth alone who finally tried to force James to carry out the terms of the marriage settlement. This suggests that Nicholas was reluctant to do so although the possible reasons remain obscure. Elizabeth's lone stand, and the fact that she chose to petition parliament rather than go to common law, may be linked. Although it would have been possible to claim damages against James under common law Elizabeth was apparently trying to achieve more than this and to enforce the terms of the contract. The more important factor, however, in view of the absence of Nicholas, was probably that in a case at common law she would not have been able to act without her husband. The petition therefore offered her two advantages over the law. It was commonly employed to rectify 'injustices which could not be readily resolved through common law process' and through it the king offered 'arbitration . . . in cases which could not be resolved because of shortcomings and limitations of common law procedure'. Parliament acted as 'a clearing house for all cases that could not be handled anywhere else' and as 'a court for the resolution of

⁵⁸ TNA, C54/204 m. 15; CCR, 1364-8, pp. 237-9, 344-5, 388.

private grievances'.⁵⁹ Nevertheless, even though it 'stood outside the boundaries of common-law procedure and therefore did not impose any of the restrictions that applied in the ordinary royal law courts', its role was 'not to subvert or undermine common-law process, but to supplement it'.⁶⁰ This is reflected in the fact that, although married women could bring petitions in their own name as Elizabeth did, this was comparatively rare. There were many more petitions presented by husbands on behalf of their wives and sole women petitioners were usually widows.⁶¹ In this respect, petitions mirrored the practice of common law. 'To have allowed married women to petition in their own right over property which, in any other legal context, was considered to be in the possession of their husband risked fundamentally destabilizing the legal framework'.⁶² Elizabeth's case was somewhat different to the more normal complaints of disseisin or claims to land in a variety of circumstances but it is still remarkable that she brought the petition on her own. She was clearly a formidable woman, prepared to take her case to the highest court in the land without the overt support of her husband, although he could presumably have prevented her if he had wished. She appeared herself at each of the council hearings, in contrast to James who sent attorneys to the two most important, and the only hearing at which it is clear that Nicholas was with her was that when they jointly acknowledged receipt of the compensation from James.

She complained that, despite frequent requests to do so, James had not settled on Elizabeth and Nicholas the 200 marks (£133) of land from the Martin estate in jointure and would make no assurance of the residue of his inheritance as agreed in the indenture. Moreover, she had not even had the full jointure of 200 marks (£133) which was supposed to have been settled on her and Nicholas directly in 1341 as Monnington, Dilwyn, and Ford were worth only £120 a year, and of this James had reserved to himself £20 a year so, in effect, they had only £100 a year instead of the stipulated £133. The council's initial standpoint was that the indenture should be enforced and it ordered James to carry out the terms under penalty of a fine of £6,000. The question of the rent reserved from the first tranche of the indenture was quickly resolved but the other two points were more intractable because of the settlements which had already been made on the king and the

59 Gwilym Dodd *Justice and Grace: Private Petitioning and the English Parliament in the Late Middle Ages* (Oxford, 2007), pp. 2, 11, 239, 241.

60 *Ibid.*, pp. 205, 214.

61 *Ibid.*, p. 212.

62 *Ibid.*, p. 214–5.

second family. The settlement of the 'residue' of the inheritance, i.e. the Martin lands, was a lost cause but the council did oblige James to compensate Elizabeth and Nicholas for the second tranche of the jointure with a capital sum and another sum for the income which they had not received since the death of Margaret de Waterville in 1359, the latest date at which it could have been created under the terms of the indenture. Reaching this point required seven hearings the last of which occurred in January 1368, nearly two years after her petition.

James was summoned to appear before the council at the first hearing in the Star Chamber on 15 May and there met Elizabeth who showed the much abused indenture but he pleaded for more time as he was not then 'fully advised' to answer the grievances. The second hearing was on 25 June and on this occasion James was represented by attorneys acting under his appointment but with the proviso that the earl of Arundel was present and assented to the council's order. As Arundel was not present the attorneys refused to answer but the council ordered James to carry out all the agreements regarding the jointure by Michaelmas on pain of a fine of £6,000 and was to pay damages to Nicholas and Elizabeth as compensation for not having done so in the first place. If he could no longer do so as specified in the indenture then he was to substitute other lands of the same value. A decision on the other damages requested by Elizabeth was postponed until 13 October when Elizabeth would make her claim.

On 13 October James and Elizabeth both came in person. James had not carried out the settlements as he had been ordered but another agreement was made. Nicholas and Elizabeth were to continue to hold the Herefordshire lands but would receive the arrears of the reserved rent of £20, and James would undertake not to alienate any of his lands except in circumstances which he would be required to justify before the chancellor, the duke of Lancaster, and the earl of Arundel. Finally, James and Isabel and their sons James and Thomas would, by the following 16 May, secure to Nicholas and Elizabeth an estate in lands of the Martin inheritance to the value of £120 a year and James would pay them 1,000 marks in damages.⁶³

James failed to carry out this agreement, too, and at the hearing on 16 May 1367 explained that he was unable to do so because all the lands of the Martin inheritance had been settled. Elizabeth retorted that all these settlements had been made since the 1341 indenture and

63 It is a curious feature that in these negotiations 200 marks is usually considered equivalent to £120 instead of £133.

in violation of it. She again demanded execution of the judgement but then consented, at James's request and out of respect for the council, to attempt another agreement with him. At the next hearing, on 20 June 1367, James was again represented by his attorneys who had full authority to negotiate on James's behalf but no agreement could be reached as the attorneys refused to make her an estate in any of the entailed lands.

Consequently Elizabeth requested that she and Nicholas should receive a sum of money equal to the value of the jointure in 200 marks (£133) of land which they should have received, with damages for withholding it since 1347, and a further sum for damages and her costs in the suit. She and Nicholas were awarded 2,000 marks (£1,333) in capital compensation for the lands worth 200 marks (£133) with a further 1,600 marks (£1,067) for withholding it for the eight years since the death of the Martin widow Margaret de Waterville in 1359 but the question of whether the enfeoffment should have been made in 1347 and Elizabeth's costs was left for further discussion. There was a sixth hearing on 13 October 1367 when nothing was achieved then and a seventh on 25 January 1368 when Elizabeth, accompanied by Nicholas, acknowledged that James had paid them the 3,600 marks and James was released from his penalty of £6,000 except insofar as some of the issues remained unresolved.⁶⁴ Elizabeth then asked that a decision be made on the outstanding issues but these do not appear to have been resolved despite four further hearings.⁶⁵

In awarding Elizabeth 2,000 marks in compensation for land worth 200 marks, the council evidently considered that land could still be bought at this late date at ten years' purchase but this is unlikely. There were, however, subsequent arrangements. Edgmond (Shropshire), previously held by Nicholas for life only, was settled by James on Nicholas and Elizabeth and their issue by a licence of March 1369.⁶⁶ The Welsh lordship of Llandovery was also settled in the same way, probably around 12 May 1368.⁶⁷ The manor of Lee Brockhurst (Shropshire) was

64 James paid 1,000 marks on 15 July 1367, and the final 1,300 marks on 27 January 1368. CCR, 1364–8, pp. 388, 460.

65 A hearing was appointed for 18 June but on this day the council did not meet because plague was raging and all pleas were postponed until 6 October when Elizabeth requested a postponement as she did at a further hearing on 25 January 1369 when it was postponed to 22 April.

66 CPR, 1358–61, p. 39, 1367–70, p. 222. There is no surviving fine but the manor was held in jointure with Elizabeth at Nicholas's death. CIPM, XVI, p. 1065.

67 CPR, 1367–70, pp. 111, 222.

not held by James at his death but held by Nicholas in fee tail and may also have been granted to him by his father. These were Audley lands but Nicholas and Elizabeth were also able to obtain the lordship of Cemais from the Martin estate and the licence for settlement on Nicholas and Elizabeth and the heirs of Nicholas was given on 16 June 1374.⁶⁸ The small Martin holdings of Kilmington and Nymet St. George also passed to Nicholas and Elizabeth.⁶⁹ Nevertheless, the second family's possession of the bulk of the Martin estate was finalized in 1370, by which time it was evidently apparent that James's nephew Ralph Basset would have no issue, when the reversion of Tawstock was settled on Thomas, Roland, and James in successive tail general.⁷⁰

Elizabeth's petition, with the full support of the council, had achieved a great deal. James had wriggled and turned but was eventually obliged to pay her a considerable sum in cash in lieu of the jointure she should have received and in compensation for the missing eight years' of income. It had, however, proved impossible to force James to carry out precisely the terms of the indenture. The case provides an interesting indication of the council's powers in equitable jurisdiction and its limitations. It appears to have accepted James's excuse that he could no longer carry out the terms because the lands had been settled elsewhere. Thus the subsequent settlements were allowed to take priority over the earlier marriage contract and the council thereby tacitly condoned the breach of faith, highlighting the weaknesses of the private indenture.

It is possible that the strength of James's case lay in the fact that the settlements had all been formalized in fines, given that the granting and proclamation of a fine barred any claim to the property by an outsider who had not put in a claim when the fine was proclaimed until a statute of 1360 removed this ability.⁷¹ Nevertheless, there are numerous examples of successive settlements of the same land which allow the possibility that, even though the Martin lands had been settled in 1353 and 1360, these could have been superseded. On Basset's death in 1390 the manor of Tawstock passed to Nicholas under the 1334 settlement as the right heir of Eleanor de Columbers but subsequent investigations established that this had been superseded by the 1370 settlement on

68 CPR, 1370-4, p. 454. On 15 June Nicholas bound Fulk Corbet and David Hannere each in £40 to bring to him and Elizabeth at Monning all the muniments relating to Cemais, including the grant to James and Isabel. CCR, 1374-7, pp. 79-80. Isabel was dead by 15 May 1374, CPR, 1370-4, p. 450.

69 TNA, CP25/1/195/17 no. 54.

70 TNA, CP25/1/44/60 no. 381.

71 None of the 1353 fines have an endorsement recording a claim by Nicholas.

his half-brothers. In this case, it may be claimed, the later fine took precedence over the earlier one because the heir was more specific. The same might also be said of the Martin manors of Bovey Tracey, Nymet Tracey, Winkleigh, North Lew, Crediton, Little Totnes, Marwood, Blagdon, and West Lydford which had all been settled in 1337 on Philip and Eleanor de Columbers for their lives with remainder to James and Joan and the right heirs of James, i.e. his eldest son Nicholas in the first instance, but were all resettled again in 1353 and 1360.

This process of the later resettlement of lands which had been initially granted elsewhere was not confined to the Audley-Martin inheritance. A more specific case is that of Elizabeth de Berkeley, daughter and coheir of John de Berkeley of Arlingham (d. 1320). She was married first to James de Wilton and by him had children James and Joan. In 1345 her lands were settled on her and James and their issue but by 1355 she had remarried to Walter de Thornhill and her lands were settled again on herself and Walter and their issue, with reversion to her Wilton children, and they remained in the Thornhill family.⁷² This seems to show that a subsequent settlement could take precedence over a former one, even when the remainders were equally specific. The question of whether James was legally able to re-settle the Martin lands in 1367 remains obscure.

V The Security of Marriage Contracts

Known cases of breach of marriage contracts are remarkable for their paucity. The lack of any previous comment on such breaches and the general assumption that they were faithfully carried out is sufficient evidence of this but in these circumstances it is the exceptions which are particularly interesting. It is for this reason, that the petition brought by Elizabeth Audley against her father-in-law over the implementation of her marriage contract is particularly important.

⁷² TNA, CP25/1/199/24 no. 42, 77/66 no. 252; CIPM, VI, no. 264, XII, no. 1116, XIV, no. 10; *Inquisitions and Assessments relating to Feudal Aids, with other Analogous Documents Preserved in the Public Record Office AD 1284...* (London, 1899-), IV, pp. 354, 359; *Somerset Fines*, III, p. 183. Elizabeth Boteler, heir of the Wem estate, settled her inheritance on herself and her first husband and their issue in 1370 and 1379 but then again in 1398 on herself and her third husband and their issue, with remainder to her right heirs, *Collections for a History of Staffordshire*, First Series, 11 (1890), pp. 191, 205, 206, 209. There was no issue of the third marriage so the lands passed to her issue by her first marriage and the point of which settlement would have priority was never tested.

The Audley case introduces several aspects which will be of wider application, chief among them being the surprising weakness of arrangements which were of such importance to landholding families but which were not protected by common law. James Audley was able to break the terms of the 1341 contract and could not be forced to reinstate them, despite the evident determination of the council to support Elizabeth's case which resulted in her receiving the considerable cash compensation. James was severely penalised for his intentions but Elizabeth did not receive her jointure in the Martin lands and the Martin estate did not descend to her husband as had been agreed. This weakness could be, and often was, countermanded by an accompanying bond, payable if the terms were not carried out. These were often in large sums which were powerful incentives. It may be significant that there is no evidence of any such bond having been made to guarantee the 1341 Audley contract, although this does not necessarily mean that none was made. Their effectiveness also relied on them being enforced if necessary. Even if there was no bond, the bride's family might be expected to keep an eye on her interests and to act if required on her behalf in an unofficial and possibly violent manner and the lack of close family of the bride was another possible factor in the Audley case. Elizabeth's father had died before the marriage, her brother died the following year leaving an infant heir, and her mother had also died in 1349. It is noticeable, too, that Audley's alteration of the terms of his own 1330 marriage settlement in 1335, almost as soon as he was of full age, occurred after the execution of Joan Mortimer's father in 1330 and the death of her brother in 1331 leaving a three-year-old son.⁷³ In other families, there also seem to have been similar measures taken. For example, Robert Fitzpayn altered earlier arrangements after the death of his son in 1322 left Maud Badlesmere as his childless widow. The reversion of three Fitzpayn manors had been settled on the young couple in 1316 but in 1324 two of these manors with many others were settled again on the elder Robert and his second wife and their male issue with other remainders.⁷⁴ Maud's father had been executed in 1322 leaving her brother as a minor.⁷⁵

Other factors in the Audley case were more specific to James Audley himself, namely his second marriage and the arrival of the second family, and his quite extraordinary lawlessness. His long record of

⁷³ GEC, VIII, p. 442.

⁷⁴ GEC, V, p. 452. Another settlement of 1327/8, however, included the reversion of the manor of Worth which was held for life by Maud in dower.

⁷⁵ GEC, V, pp. 452–3, 454n.

violence and the succession of large financial penalties he incurred are remarkable and the same attitude is displayed in his cavalier disregard for the sanctity of settlements which had already been made. This had been demonstrated, long before the arrival of the second family, in November 1335 when he obtained a licence to resettle Audley lands which had been settled on himself and Joan on their marriage in 1330.⁷⁶ With this background, his willingness to violate the terms of an indenture comes as no surprise. Favouritism for the children of a later wife was not uncommon although in James's case, as in many others, the reasons remain obscure. As there is no obvious financial or political motive for his second marriage, it is permissible to speculate that he married Isabel for love and that this was the reason for his generosity to her children and his willingness to ignore commitments given earlier. His alienation of part of the Audley patrimony may indicate that this was reinforced by a dislike of his eldest son.

Marriage contracts were therefore vulnerable but it is not necessarily the case that they were frequently breached. It is likely that their best protection lay in the unlikelihood of fathers wishing to ignore, evade, or change them. The use of bonds indicates that, wisely, the family and friends of brides did not necessarily rely on this and Dr Payling's work will reveal in what circumstances they were employed. The seriousness with which the council treated James Audley's breach of faith, and perhaps the unusual care taken to record the council proceedings in the case in the detailed record on the close roll, is probably evidence of its rarity and the general weight of opinion against such breaches. By and large, fathers would have no reason to wish to alter the terms of marriage contracts and the evidence is heavily in favour of the terms usually being carried out as stipulated. It is unlikely that the combination of circumstances behind the Audley case occurred very frequently, i.e. no bond, no close male relatives of the bride, a compelling reason for breaking the contract, and the recklessness to disregard norms of behaviour. Nevertheless, the case is important in revealing that the terms of marriage contracts might be breached and could not be enforced, although James was obliged to pay a heavy financial penalty. The final point of interest about the case is that it was Elizabeth who took action and that, even though she and her husband Nicholas might have brought the petition jointly, it was she alone who did so and apparently appeared before all the council hearings unaccompanied by him. The reason for this remains obscure

⁷⁶ CIPM, VII, no. 699; CPR, 1334–8, p. 181.

but it is clear that, despite James's apparently unpleasant character, Elizabeth was a worthy opponent, willing and able to stand up for her rights before the highest tribunal in the land, with or without the support of her husband.

Appendix

Figure 2: The Manors of the Martin estate

Manor	Value 1326	Division 1326	Settlements	Heir 1386
DEVON				
Winkleigh	£20 11. 7½	Audley	1353 king	(King 1353)
Bovy Tracy	£51 7. 9	Audley	1353 James/king	King
Holsworthy	£30 15. 6½	Columbers	1353 James/king	King
Langacre	£23 3. 4	Widow	1353 James/king	King
North Lew	£3 2. 0.	Audley	1353 James/king	King
Tackbeare	£0 21. 8	Audley	1353 James/king	King
Barnstaple	£26 11. 7¾	Columbers	1353 James and Isabel/ James/king	King
Combe Martin	£36 18. 3¼	Columbers	1353 James and Isabel/ James/king	King
Dartington	£55 17. 7½	Widow	1353 James and Isabel/ James/king	King
Fremington	£129 16. 3¼	Columbers	1353 James and Isabel/ James/king	King
South Molton	£28 2. 10¼	Columbers	1353 James and Isabel/ James/king	King
Torrington	£7 1. 9½	Audley		
Wotton	£2 3. 6	Widow		
Totnes, Little	£7 13. 9	Audley		Fitzwarin
Holne	£19 0. 9½	Columbers	1353 James and Isabel/ issue	Fitzwarin
Nymet Tracy	£23 3. 10½	Audley	1353 James and Isabel/ issue	Fitzwarin
Bear Charter Barton			1360 James and Isabel/ Thomas/issue	Fitzwarin
Ilfracombe	£5 17. 0	Widow	1360 James and Isabel/ Thomas/issue	Fitzwarin
Marwood	1337		1360 James and Isabel/ Thomas/issue	Fitzwarin
Warkleigh	£20 11. 2½	Audley	1360 James and Isabel/ Thomas/issue	Fitzwarin
Woolrington			1360 James and Isabel/ Thomas/issue	Fitzwarin
Up Exe	£11 7. 6	Widow	1360 James and Isabel/ Roland, etc	Fitzwarin
Kingston	£57 13. 2	Widow	? James and Isabel/ Oliver, etc	Fitzwarin
St Marychurch	1328		1360 James and Isabel/ Oliver, etc	Fitzwarin

Manor	Value 1326	Division 1326	Settlements	Heir 1386
Shillingford	£0 9. 2	Widow	1360 James and Isabel/ Oliver, etc	Fitzwarin
Tawstock	£100 3. 9	Widow	1370 rev to Thomas, Roland, James, succ	Fitzwarin
Exeter	£0 12. 9	Columbers		Nicholas
Kilminster	£1 19. 8	Audley		Nicholas
Newton by Barnstaple	1328			Nicholas
Nymet St. George	£3 2. 4	Audley		Nicholas
Raddon, West	£10 6. 8	Audley		Nicholas
SOMERSET				
Blagdon	£35 2. 4¾	Audley	1353 James/king	King
Lydford, West	£25 7. 2½	Audley	1353 James/king	King
Staunton	£5 10. 9¾	Audley	1353 James/king	King
Pill	£15 14. 1	Widow	1360 James and Isabel/ Roland, etc	Fitzwarin
WALES				
Cemais	£52 15. 8	Audley		Nicholas