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School of English
University of Leeds
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Biblical and Medieval Covenant in the York Old Testament Plays

Olga Horner

For theologians, the concept of covenant is seen as the underlying cohesive principle of the Bible as a whole, and 'the basic assumption of the biblical documents seems to be that Israel stands in a peculiar relationship to YHVH his God'.¹ This relationship is signified in the Bible by the Hebrew word *berit* ('covenant', also 'treaty', 'alliance'), usually translated in the Greek Septuagint as *diathēkē* ('disposition by will', 'testament'). St Augustine uses *testamentum* as the equivalent of *diathēkē*, but with the meaning of 'covenant', giving the titles of the Old and New Testaments the interchangeable meaning of Old and New Covenants.² In the *Vulgate*, *diathēkē* is translated indiscriminately as *fædus* ('treaty', 'compact', 'law') or *pactum* ('agreement', 'contract') and Jerome's choice of words conveys both the medieval and biblical sense of 'covenant' as a legally binding undertaking or pledge.

Because of its control over so many aspects of commercial and personal affairs, in the past and into the twenty-first century, historians of English law assign the same importance to medieval covenant and contract within the English legal system, as theologians do to covenants in the Bible.³ Old Testament covenants are made between states or their representatives, kings and their subjects, and above all between God and man, and although medieval covenants cannot be on the same global scale, they are fundamentally like those in the Bible. Biblical and medieval covenants both consist of a binding promise or obligation, usually a mutual promise between two or more parties, to do or refrain from doing certain acts, and the qualifying conditions or requirements for an agreement are essentially the same. In the Bible, a mutual promise is confirmed by oath,⁴ or by some kind of ritual such as a solemn meal or sacrifice, and the promise may be accompanied by a sign or token as a reminder to the parties of their obligation.⁵ In medieval law a promise might also be sworn, and an equally significant act demanded in order to bind a bargain: often a ceremonial handclasp formally effected in the presence of witnesses or later, a written document as material

proof of the promise.⁶

Naturally, a covenant between God and man could not arise until man had been created (Genesis 1. 27). It follows that the biblical story of the Creation to the end of the fifth day cannot have any covenant content, nor can the first two York plays: *The Creation, and the Fall of Lucifer* and *The Creation to the Fifth Day*, and the first opportunity for a covenant should be after God creates Adam and Eve. *Berit* ('covenant') is not in fact found in the Bible until God speaks to Noah after the flood recedes (Genesis 9:9), but theologians are prepared to admit a less restrictive identification of a covenant. In any situation where God's words and His actions towards man can be interpreted as 'a kind of contract between God and the people, through which the people earned God's friendship and protection by their keeping of the law', the concept of covenant is said to exist without the word being used.⁷

The gift of Paradise to Adam appears to meet the requirements of this definition, especially as a biblical covenant can be a unilateral, rather than a mutual, promise. It might be a permanent, unconditional, and unalterable divine gift of God which does not bind man in any way, or its antithesis: a covenant demanding obedience without any prior obligation or promise by God, but with calamitous results for the disobedient – as in the case of Adam. When God puts Adam into the Garden of Eden *ut operaretur et custodiret illum* ('to dress and keep it') (Genesis 2. 15), He gives Adam dominion over all living things (Genesis 1. 28), albeit with an imposed condition. The actions and words of God qualify as a unilateral covenant despite the absence of *berit* from the text.

This is where biblical and medieval covenants diverge. In theory, English medieval law does not recognise a unilateral promise as a legally binding transaction, and there is no exchange of conversation between God and Adam capable of converting the gift of Paradise into a mutual promise. Adam has no choice in the matter when God places him in the Garden of Eden, and his agreement to the prohibition of the fruit of the tree is neither demanded nor given. But in English law as far back as Anglo-Saxon times, a grant or gift of land 'included within itself both the idea of conveyance [transfer] and the idea of contract', and always required a counter-gift or counter-performance by the grantee to form a binding covenant.⁸

Transforming the first and all-encompassing land deal in the Bible into a medieval covenant seems to have been the aim of the playwright(s) of the York plays: *The Creation of Adam and Eve* and *Adam and Eve in Eden*, by adding the necessary reciprocal actions and promises to the account in Genesis 1. 26-29 and 2. 15-17: 21-22. To achieve this, liberties are taken with the biblical source of the plays, including the telescoping of the two Genesis versions of the Creation of Adam and Eve,

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inventing dialogue, and adapting the events in Genesis to allow Eve's participation in the gift of Paradise. There also appears to be a particular doctrinal agenda with the insistence on the love and worship of God in return for the 'lordship' of Paradise. This changes the dynamics of the relationship between God, and Adam and Eve, into one of an interactive, personal, and promissory nature – a mutual promise – which does not exist in the original Genesis story.

In *The Creation of Adam and Eve*, when Adam acknowledges that he and Eve were made by God's will, he asks what they should do and where they should live. God explains to them both:

Deus For þis skyl made I 3ow þis day,
 My name to worschip ay-whare;
 Louys me, forþi, and louys me ay
 For my makyng, I axke no mare. 65-68

In return for love and worship, Adam is presented with the Garden of Eden:

Deus Lordschipe in erthe þan graunt I þe.
 All thyng to serue þe þat I haue wrought. 71-72

Adam agrees wholeheartedly for both himself and Eve to do the required services of love and worship for the gift:

Adam A, lorde, sene we sall do no thyng
 But louffe þe for þi gret gudnesse,
We sall ay bay to þi bidding
 And fulfyll it, both more and less. 77-80

The biblical unilateral promise in Genesis 2. 15-25 has been re-written as a medieval mutual agreement for a legally binding grant of land, using the common device of a legal fiction (the medieval equivalent of virtual reality?). The principle of *quid pro quo* in a medieval covenant (a counter-gift or counter-performance required in exchange for land) could be satisfied or evaded by providing a nominal counter-gift or service. In English land law it might be a valueless trifle such as a peppercorn rent. In the York plays, it is the counter-performance of love, not of any monetary worth but asked for by God in return for Paradise. Both these unequal forms of *quid pro quo* would count as 'consideration' to convert a unilateral pledge or undertaking into a

legally acceptable mutual promise.⁹ Eve follows Adam's promise by saying: 'His syng sene he has on vs sett/Beforne all othir thyng certayne,' (81-82). With 'syng' meaning 'token; proof; earnest; evidence; pledge', is she referring to the act which often accompanied a medieval covenant, to remind the parties of their obligations?

In Genesis 2. 22, Eve is only created after Adam is put in charge of the Garden. In *The Creation of Adam and Eve*, she is made immediately after Adam (as in Genesis 1. 27), so that she is present at the dealings between God and Adam and enters into Paradise with him. Adam speaks for her, and through him she confirms her agreement: 'Hym for to loue we sall nocht lett/And worschip hym with myght and mayne' (83-84) in accordance with the medieval law relating to contracts made by married women. Influenced by the canonist's view that woman was created for man and bound to obey him (originating in Genesis), husband and wife were viewed as *animae duae in carne una* ('two minds in one body') for certain activities within the scope of English common law, and the legal existence of a woman was suspended during marriage or at least incorporated into that of her husband.¹⁰ With some exceptions, a married woman could not enter into a contract and her husband was held responsible for her contractual actions and answered for them in court.

The Fullers' play of *Adam and Eve in Eden* is both a continuation and partial repetition of the preceding play, although with a different legal slant. The text recapitulates the services required for the gift of Paradise and the willing acceptance of them by Adam and Eve, but in a re-ordering of the Genesis events, God prohibits the fruit of the tree of knowledge to both Adam and Eve. In English law, civil liability was enforced against husband and wife jointly if the wife committed a wrong in respect of real property, trespass to the person, and perhaps trespass to goods,¹¹ (such as taking the forbidden fruit). This makes their joint ejection from Paradise legally acceptable and harmonises the Old Testament with the medieval law governing the status of a married woman.

Adam and Eve in Eden also presents a more involved and surprising set of circumstances from the previous play with regard to the gift of Paradise. In this play Eve is acknowledged as an equal partner in the lordship of the land, and the rights and duties flowing from the joint lordship:

Deus Adam and Eve, this is the place
 That I haue graunte you of my grace
 To haue your wonnyng in,

1-3

God tells husband and wife:

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Deus All your wyll here shall ye haue.
Lykyng for to eate or sayff
Fyshe, fewle or fee;

11-13

and that: 'All other creatours also theretyll/Your suggettes shall they bee'. (15-16) He then makes the gift: 'Lordeship in erthe here graunte I the' (18), in almost the identical words of line 71 of the previous play. Eve is specifically required to agree to the terms of service: 'Looke that ye bothe saue and sett/Erbes and treys; for nothyng lett,' (24-25), and to 'Love my name with good entent' (50). She also gives her own undertaking directly to God not to eat the forbidden fruit: 'Thys frute full styll shall hyng,/Lorde, that thowe hays forbyd'. (78-79). God confirms both their agreements to the prohibition: 'Looke that ye doe as ye haue sayd,' (80), and explains, apparently only to Adam, why the fruit is banned:

Deus Luke nother thowe nor Eve thy wyf
Lay ye no handes theretyll.
For-why it is knowyng
Bothe of good and yll.

84-87

The terms of the dramatic covenant have been clearly set out: land and power in exchange for love, obedience, and caring for the land – a tenurial service comparable to 'looking after the lord's wood'.¹² The promise has been ratified by man and wife, and in civil law, the future punishment of Adam for the wrongful act initially committed by his wife will be justified.

Paradise is granted to both husband and wife in a manner entirely consistent with the provisions of the common law: 'If an estate is conveyed to the husband and wife they take as tenants by entreties – both own the whole'.¹³ Unlike the previous play, Adam and Eve jointly and severally agree to abide by the condition of the grant, and are equally at fault for breaking the promise. Tenancy by entirety was known at least by the mid-fourteenth century, although commoner in the fifteenth. Whether or not this suggests a later date of composition for *Adam and Eve in Eden* and/or a different playwright for *The Creation of Adam and Eve*, the evidence of the texts suggests that both plays have changed the implied or assumed unilateral biblical covenant into an explicit medieval transfer of land for which service must be done. The two following plays: *The Fall of Man* and *The Expulsion from Eden*, show the consequences of failing in that service – ejection from the land.

The original Anglo-Saxon rules for acquiring land – gift and counter-gift or

counter-performance – did not alter after the Norman Conquest, but the circumstances of the transaction changed drastically. Instead of independent Anglo-Saxon kings, princes, and overlords of separate territories, a conquering king had taken possession of the whole country as its sole landowner. Consequently, under Norman rule and thereafter, all transfers of land were controlled by the Crown, and all land was held by tenure, mediately or immediately of the king,¹⁴ – a microcosm of the circumstances surrounding the creation of Paradise and its occupation by Adam and Eve.

All tenures implied service of some sort, because the English feudal structure was founded on a personal relationship between lord and vassal, and tenants who held immediately of the Crown performed services of a personal nature for the king.¹⁵ Between a mesne lord and his tenant there were more mundane reciprocal duties. In both cases, protection by the lord entailed service by the tenant, and benefits were granted by the lord only as long as the service was faithfully performed. But where the tenant failed to observe the obligations of his tenure, or was unfaithful to his lord, he committed a fundamental breach of faith and 'he could be disciplined, even to the extent of losing his status and thus his land'.¹⁶ Does this not sound like the reworked story of Adam in the York plays?

Think of Adam as a tenant-in-chief; a lord in possession of and holding land directly of his paramount lord, God. Adam is the sole lord in *The Creation of Adam and Eve*, whereas lordship is shared in *Adam and Eve in Eden*, but the conditions of lordship are the same. In the play, God devolves to Adam the rights, privileges, and control of a feudal lord: 'Lordship in erthe here graunte I the' (18), and in return He requires husband and wife to 'Love my name with good entent,/And harken to my commaundement' (50-51). When Adam and Eve are disobedient and unfaithful in their promised services they lose the land, as they would have done in England from the Norman Conquest onwards. Instead of being lords over their 'sujettes', they lost their status, were turned out of Paradise, and became villeins tied to the land by labour: 'In erthe þan shalle ye swete and swynke,/And trauayle for youre food.' (*The Fall of Man* 161-62).

In the patriarchal societies of post-Conquest England and the post-Creation world of the two York plays, when a lord gave the land to a tenant and his heirs – which God was doing when He told Adam and Eve to go forth and multiply – a lord's superior rights over the land could always be revived if a tenant did not have heirs or if he was outlawed or convicted of felony. The lands of a tenant committing treason were forfeited to the king, a felon's lands escheated to his lord.¹⁷ Whether under English law Adam would be a traitor by challenging God's authority and power by eating of the tree of knowledge, or a felon for illegally taking the fruit, is immaterial. Adam held

immediately of his paramount lord, so in either case Paradise would be forfeited to God.

In both plays there are echoes of the ceremony of homage and the sworn oath of fealty, by which a tenant became his lord's man. Homage, called the most honourable and humble service of reverence a free tenant could make to his lord ('*le plus honourable service, et plus humble service de reuerence, un franktenant puit faire a son Seignieur*') was also a legal bond,¹⁸ the relationship between lord and tenant being a contractual one:

quo quis tenetur & astringitur ad warrantizandum, defendendum, & adquietandum tenetem suum in seysina sua versus omnes, per certum servitum in donatione nominatum & expressum, & etiam vice versa quo tenens reobligatur & astringitur ad fidem domino suo servandum et servitium debitum faciendum.

['by which one is bound and constrained to warrant, defend, and acquit his tenant in his seisin [possession of the land] against all persons for a service certain, described, and expressed in the gift, and also, conversely, whereby the tenant is bound and constrained in return to keep faith to his lord and perform the service due.']¹⁹

Bracton's definition of the medieval law governing lord and tenant fairly describes God's intention to support Adam's possession of Paradise only as far as Adam and Eve remain faithful in their care of the land, their love, and the honouring of their promises not to eat the forbidden fruit.

The ceremony of homage was known and its form was much the same all over Europe.²⁰ In England the words and actions to confirm the bond were laid down by statute.²¹ The tenant would be ungirt with his head uncovered, kneeling before his lord, *tenens manus suas utrasque ponere inter manus utrasque domini sui* ('holding out his hands and putting them together between the hands of the lord') – an essential symbolic act of subjection. The tenant would then say: *Devenio homo vester, de tenemento quod de vobis teneo* ('I become your man in respect of the tenement I hold of you'), promising to his lord *fidem vobis portabo de vita & membris & terreno honore* ('I will bear faith to you of life and limb and earthly honour').²²

According to Littleton, writing soon after the mid-fifteenth century, a woman could not do homage because a single woman cannot say to her lord that she will be his woman; she can only say that to a man when she marries, and when married, can say it only to her husband.²³ However, exceptions can always be found to rules of

law, and in one case of a man and wife doing homage together in 1341, the husband speaks for both in a ceremony resonant of *Adam and Eve in Eden*. John Leuknor and Elizabeth his wife did homage to their lord, W. Thorp, for land which he himself held of a superior lord. Putting their hands jointly between the hands of their lord, the husband swore the oath:

Nous vous ferromus homage & foy vous porterons, pur les tenements que nous teignomus de A., vostre conusor, que a vous ad graunt nostre services en B. et C. & auters villes &c encounter tous gents, salue la foy que nous deuons a nostre seignior le Roy & a ses heires & a nostre auters Seigniors.

[‘We do homage to you, and bear faith to you for the lands which we hold of A your cognisour (overlord) who has granted to you our services in B and C and other villis & etc., against all people, saving the faith we owe to the King and his heirs and to our other lords.’]²⁴

And both kissed him, and then they did fealty, the husband saying the words and both kissed the book.²⁵

The act of homage and the words used in the oath of fealty: to bear faith to the lord *de vita & membris, corpore & catallis & terreno honore* (‘in life and limb, in body, goods, and earthly honour’,²⁶ have nothing to do with the Genesis description of Adam’s introduction to Paradise. They do reflect the dialogue in the play texts when Adam is given lordship on earth in return for love and obedience, and the actions of the homage ceremony could invest the presentation of Paradise to Adam and Eve in the play with a recognisable solemn ritual. Unfortunately there is no support in English iconography for showing the dramatic Adam and Eve in a comparable act of reverence to that of homage.²⁷ Artists chose biblical subjects and events for doctrinal illustrations or prefigurations, with the Creation of Eve a more popular subject than the Creation of Adam, probably because the representation of her being drawn from the side of Adam is associated with the idea of the Church issuing from the wounded side of Christ on the Cross. On purely aesthetic grounds, Eve’s Creation is more visually exciting than the image of Adam being formed from the dust of the earth, unless of course the artist has the genius of Michelangelo, whose early sixteenth-century version of *God Creating Adam* epitomises the Divine energy of the act of Creation. His *Creation of Eve*, also in the Sistine Chapel, is equally individual,

showing her in true homage posture, kneeling with her hands together gazing up to God. Since the homage ceremony was much the same throughout Europe, Michelangelo may well have had the pictorial representation of homage in mind. It is also the position of prayer, used on the Continent before it was adopted in England, and known as a Frankish custom, and believed to 'have been derived from a Teutonic feudal ceremony since it was known as a judicial form of homage long before it was adopted as a devotional attitude'.²⁸

Looking for literary comparisons, it is clear that the style and content of the Creation plays in the other extant mystery cycles have little in common with the York plays. Lines 81-128 of the Chester *Creation and Fall* are generally scripturally faithful to Genesis 1. 26-31 and 2. 7-9, 15-25, including Adam's marital comments, and with no apparent authorial bias. In the N-Town *Creation* there is a very brief scene (lines 97-143) consisting of a monologue by God summarising Genesis 1. 26-31, 2. 1-3. One line from 2. 23: *Hoc nunc os ex ossibus meis, et caro de carne mea* (This is now bone of my bones and flesh of my flesh') is inserted into the text out of the biblical order, spoken by God not Adam, and changed in the play to 'fflesche of thi fflesche, and bon of thi bone'. Some novel horticultural details are added to the text: 'pepyr, pyan, and swete lycorys, . . . appel and pere and gentyl rys', and God repeats the warning about the fruit of the tree twice more. God takes Adam to Paradise, and Adam and Eve offer their thanks to God (who is not present) at the beginning of the next play: *The Fall of Man*. In context, the Creation passages in N-Town and in Chester seem to be dramatically less important than the preceding fall of Lucifer and the succeeding Temptation and Fall of man scenes (presumably also dealt with in the missing twelve pages of Towneley). The Towneley *Creation* (lines 162-249) is more selective of the biblical material than the Chester play, with an emphasis on the pleasures of Paradise (177-79). Again, there is no exchange of dialogue between God and Adam and Eve; He forbids the tree of life to them both, with death as the punishment for disobedience (203) and then leads them into Paradise, and a Cherub is introduced into the cast who repeats the warning about the tree of life (225).

But unlike the other two cycles, Towneley's Creation episode does have some resemblances to the York plays: Adam and Eve are given joint dominion on earth: 'Ye both to gouerne that here is' (189), and only the Towneley play requires love in return for Paradise, although it is the Cherub (not God) who instructs Adam to 'luf my lord in all thi thocht' (213). God tells Adam: 'This I make thi wonnyng playce . . . and I seasse the therin' (180, 182). 'Seisin', the possession of land and the basis of the entire system of medieval land law, was acquired by a tenant when he did homage to the lord (see the description of the legal bond of homage, above). If the Towneley playwright

was thinking in terms of a legally valid gift of land, he would know that the parties had to make a physical entry on to the land (as they do in the play, according to the script), with appropriate words expressing the extent of the interest in the land and the services to be rendered (such as are spoken by God and the Cherub in lines 189 and 203).²⁹

The mid-twelfth century religious drama *Le Mystère d'Adam*,³⁰ actually pre-empted some of the plot and thematic innovations of *The Creation of Adam and Eve* and *Adam and Eve in Eden* with its references to homage and lordship, although in a different format – the dramatic action and dialogues of *Le Mystère d'Adam* are interwoven with the lessons and responses of the season of Septuagesima. Apart from the instructions for married life in lines 23-24 and 33-38, that part of the *Le Mystère d'Adam* text which reproduces Genesis 2. 15-22 is remarkably similar to the content of the two York plays. In the Anglo-Norman drama, Eve is created before the gift of Paradise is made; God speaks to both Adam and Eve and tells them *De tote terre avez la seignorie . . . seiet vers mei leal* ('You have lordship over all the earth . . . be loyal to me') (61, 68); God requires Adam to *Tun seignor aime e si od lui le tien* ('Love your lord and hold to him') (70); and Adam acknowledges *En tei servir metrai ma volente./Tu es mi sires, jo sui ta creature* ('I have set my intention on serving you. You are my lord, I am your created thing') (76-77). God then entrusts the land to Adam, outlining the tenurial service required from him and the reciprocal benefits: whoever lives in Paradise will have the friendship of God in return for maintaining and guarding it: . . . *serra mis amis./Jol tei comand por maindre e por garder* (84-85). Following the stage direction *Tunc mittet eos in paradisum* ('Then He leads them into Paradise'), God tells Adam and Eve to go inside: *Dedenz vus met* (86) – to take seisin of the garden.

Seignorie in line 61 above (seignory in English law) had a specific feudal meaning, it comprised the services and other profits due to a tenant from the land held of his superior lord. Adam has the services of *D'oisels, de bestes e d'altre manantie* ('birds, beasts and all created things') (62) from the land created by God. Treating God's gift of Paradise to Adam as an exchange of land in return for love and service is hardly a surprising theme for *Le Mystère d'Adam*. The social condition of feudal tenure, with its inherent contractual system of lordship, homage, and reciprocal service, was already known to the Normans and thoroughly exploited by them in England after the Conquest.

Perhaps the author of the *Cursor Mundi*, a contemporary literary source for some of the York plays, also thought of the granting of Paradise to Adam in terms of a feudal gift of land. The phrase: 'He gaf it him, als in heritage', describes the

admission of an acknowledged heir to the tenancy of land. The mutually agreed condition of tenure: 'to hald it wel vnbroken/be forbot þat was be-tuix þam spoken' ('... the commandment that was agreed between them') was not to use the tree of life to acquire more knowledge.³¹ And when Adam and Eve are put out of Paradise for breaking the agreement, the reason is expressed in the legal language of civil law: 'Ye trespassid at the tre of lyfe';³² damage or use of property which has been explicitly excluded by the lord from the tenancy (trespass) being a good and sufficient reason for forfeiting the land.

The language and conditions attached to covenants of land do not feature at all in the texts of the remaining Old Testament plays of the York Cycle, even when they are a vital part of the biblical stories. The first mention of covenant in the Bible, after the flood recedes, is when God tells Noah: *Ecce ego statuam pactum meum vobiscum, et cum semine vestro post vos* ('Behold I establish my covenant with you, and with your seed after you,'). Subsequently God repeatedly refers to the rainbow as the symbol of His covenant to Noah and his descendants,³³ and it is reasonable to assume that the word 'covenant' would be essential to the text of *The Flood*. It is not there. In the play, Noah quotes the beginning of God's promise in Genesis 9. 13 never to drown the earth again, telling his sons he well remembers when God said:

Noe *'Arcum meum ponam in nudibus'*
 He sette his bowe clerly to kenne
 As a tokenyng bytwene hym and vs, . . .
 With wattir wolde he neuere wast yt þen.

283-85, 288

The words of the biblical verse following *nudibus* are: *et erit signum fæderis inter me et inter terram* ('and it will be a sign of the covenant between me and the earth'), but the sentence is not fully translated in line 285 of *The Flood*. The word *fæderis* ('covenant') is conspicuously disregarded, although reference to the sign or token accompanying a biblical promise (as in line 81 of *The Creation of Adam and Eve*, 'His syng sene he has on vs sett') is retained. Noah says: 'þus has God most of myght/Sette his senge full clere' (289-90), and his son confirms that God:

II Filius Has sette his syne þus in certayne
 Than may we wytte þis worldis empire
 Shall euermore laste . . .

296-98

Although the text accurately describes the sign as a reminder to God that He will never again flood the earth, it is not quite the same as saying that the rainbow is the sign of God's everlasting covenant with mankind from Noah to Doomsday. This is odd if the audiences of the mystery cycle were meant to recognise the rainbow as a linking symbol of God's promise when it later appears in the Mercers' pageant of *The Last Judgment* ('A cloud & ij peces of Rainbow of tymber').³⁴ As a potent traditional icon of the Last Judgment, the rainbow was also ever present for York citizens in the Great East Window of York Minster, so it is disconcerting to find that the play of *The Flood* carefully disassociates the rainbow from its function as the sign of the validation of God's promise to mankind. In contrast to the plays, the *Cursor Mundi* does make the connection between covenant, rainbow, and the Last Judgment. Explaining that there will be no more flood when the rainbow is seen, the poet writes:

A couenand neu ic hight to þe
þou sal fra now mi rainbow see . . . 1975-76

but . . .

If man misdos on oþer wise
O þam sal i ta my iustice,
Als sal be at þe dai of ire,
Wen I sal com and deme mit fire. 1979-82

The York play of *Abraham and Isaac* like *The Flood*, also ignores the covenant content of the original account, possibly because it focuses almost exclusively on the single episode of the sacrifice of Isaac. The rest of Abraham's lengthy and action-packed life is dealt with cursorily, condensed into 64 lines of a selective and garbled summary of Genesis 15.5 to 17.19. In this preamble to the main dramatic action, the theatrical Abraham rephrases God's various biblical promises: to make of Abram a great nation, to give all the land of Canaan that Abram could see, to ensure that Abram will have an heir and that his seed will be like the stars, to confirm to Sarah the birth of Isaac, and to establish a future covenant with Isaac. All these pledges, specifically called 'covenants' in the Bible, become ordinary statements or commands in the play: 'He saide my seede shulde be multiplyed/Lyke to the gravell of þe see' (15-16), 'And [He] bad I shulde be circumcicyd/To fulfille þe lawe' (19-20), and 'Oure God nedes tythynges tyll vs talde . . . Tille haue a sone we shulde be balde' (43, 45).

In view of the number and diversity of the covenantal promises made by God to Abraham, and their cruciality to Old Testament history, it seems deliberately perverse to dispense entirely with the word 'covenant' in *Abraham and Isaac*.³⁵ Even a strict adherence to a dramatic plan selecting 'only those Old Testament episodes which to the medieval mind typified and prefigured' the leading facts of salvation,³⁶ would not necessarily prohibit using 'covenant' in the scripts of *The Flood* and *Abraham and Isaac*, especially since they have biblical authority. Was there a deliberate exclusion policy in place against the use of the word in these plays, or, assuming that the *Adam and Eve* plays were written by other hands, did their playwright(s) uniquely have a particular purpose to do with loyalty, covenants, and possession of land?

To be effective, the dramatic manipulation of a biblical story to reflect the knowledge and concerns of the spectators requires them to recognise and understand what the playwright is doing, and inevitably raises questions. Can the composition or revision dates of a particular play be matched with contemporary events or conditions, taking into account the considerable period of time during which the mystery cycle was performed? Is it possible to say how long feudal tenure and the incidents of service persisted, since none of the customs, practices, or laws discussed here can be allocated a certain and finite span of time within the course of English history, or in the common and canon legal systems? Were they applicable or even generally known for a span of three centuries or so to the inhabitants of the powerful and largely independent city of York? Were any of the citizens ever feudal tenants of a lord doing homage for tenure? And what was the attitude of the ecclesiastical authorities to a popularised version of the Adam and Eve story?

The answers may have to be speculative, or at best deductive, but not where the involvement of the Church in the secular matter of the plays was concerned. Apart from jurisdiction over all crimes and offences committed by clerics of any rank, ecclesiastical courts in every diocese claimed authority over a wide range of social activities that now belong to, or need the legal confirmation of, a secular government. They would include marriage and its termination, legitimacy, all types of sexual conduct, wills (except for land), burial of the dead, and tithes, (used for relief of the poor among other things). The Church also took an active role in employment and financial affairs on moral grounds, bringing pressure to bear on commercial enterprises to set just prices and regulate excess profits. Usury was discouraged and attempts made to improve labour conditions.³⁷ And, in relation to the content of the reconstructed biblical stories in the York plays, the Church was conspicuously active in the province of covenant.

The ecclesiastical courts expected to enforce all promises made by oath or

'pledge of faith' because any man pledging his faith was pawning his Christianity. Jurisdiction was claimed over all causes of broken oath or broken faith (*fidei laesio*) in any promise, covenant, or action of debt,³⁸ although the rights of the Church were frequently disputed by the common law judges. In 1164, the *Constitutions of Clarendon* declared that the king's justices, not the bishops, should decide what matters were for the king's courts and which not, and expressly forbade the ecclesiastical courts to entertain pleas of debt where there had been no lesion of faith. Two centuries later territorial incursions were an ongoing cause of friction. In 1373 the commons in Parliament petitioned the king, complaining that: *les Courtz Cristiens encrochent a eaux plusours pointz & articles prejudiciels al Corone & Courtz de Roi . . . Plee de Dette, ov un addition q'est appelle Fide-lesion . . . dont eaux n'ont power de trier ne terminer* ('the courts Christian are encroching to themselves many issues and matters prejudicial to the Crown and the king's courts . . . [including] the Plea of Debt without an added element which is called breach of faith, . . . of which they do not have the power to try and determine').³⁹ Another two centuries on, cases about debts owed by one person to another were still being heard by church courts. In a somewhat dubious breach of faith case in 1454, (*in causa lesionis fidei*), a witness was produced by the plaintiff to support his claim for 2 shillings owed by the defendant. The witness was asked whether the defendant had pledged her faith (*presterit fidem*) to pay the debt, and he answered that he thought so because, *videbat manus ipsorum junctas* ('he saw their hands joined')⁴⁰ – the ceremonial handclasp signifying faith-pledge which binds a bargain, used from Roman times onward. The persistent intervention of the Church in covenants which were claimed to be based on pledges of faith made it necessary once again for all the judges in the Exchequer Chamber to formally restate the rule that *lesio fidei* could not be made the means to give the church courts general jurisdiction over contracts.⁴¹

Medieval covenants in general played as large a part in the economic and business life of ordinary citizens (especially in a centre of commerce such as York) as the modern law of contract does in the twenty-first century. The significance of the grant of land and the reciprocal services demanded from Adam and Eve would be understood perfectly by the original audiences. Their familiarity with courts staffed by ecclesiastical lawyers administering the canon law of the Church in matters which would now be exclusively the concern of common law, also meant that there was nothing necessarily strange in the mixture of religion and medieval law in the plays. York citizens at the time would in fact see a certain significance in the phrase: 'The fooles that faith is fallen fra' (*The Expulsion*, 18) not apparent to modern audiences. After Adam and Eve have been expelled from Paradise, the Angel warns the audience:

'Take tente to me nowe, or ye ga' (19). This is surely a reminder to the spectators not to break their promises or covenants, or they would be guilty of the same breach of faith which deprived Adam and Eve of Paradise.

The disjunction between official policy directives and what actually happens in real life (as evidenced by the history of covenant), probably applies equally to the duration of the concept and practice of homage and lordship. 'Legal rules, which run counter to the prevalent ideas of the age, must be rigidly applied before they bring about a reform of those prevalent ideas,' implying that old customs continue to be observed in spite of legislation to the contrary. The disorder of the fifteenth century, caused by the maintenance of liveried retainers by great lords in order to enforce their own interests, was a distorted survival of 'the political ideas which underlay the old conception of homage which still lived on', despite the statutes passed in the fourteenth and fifteenth centuries to contain the evils of maintenance. No precise date can be set for when the observance of homage finally lapsed, and the oath of fealty 'might [still] be exacted at the present day' from a free tenant.⁴² Manorial courts are recording cases throughout the fifteenth century where lawful inheritance was disputed or needed to be proved by *qui . . . tenuit per fidelitatem et servicium*, (who held by fealty and service') and the agreement reached or judgment given usually ends with *Et fecit fidelitatem* ('And he/she did fealty').⁴³ For less humble tenants, the identification of the lawful heir of a man who held land directly of the Crown was a matter for the king's escheator. In 1453, an enquiry after the death of William Fitz Hugh, knight, listed the various messuages, land etc., held in parts of Yorkshire of the king in socage, 'to wit, by service of rendering a rose yearly to the king, for all services' (the negligible *quid pro quo* for a grant of land). Verifying that Henry was the son and heir male of William, the king's escheator (*in loco Regis*) took the fealty of the said Henry and caused him to have seisin of all his father's estates and property.⁴⁴ Later, in 1485, the escheator for the county of York was ordered to take the fealty of Ralph Nevyll knight earl of Westmorland [heir of the late earl] and cause him to have full seisin of all the lands held of the king in chief, and for 40s the king 'respited his homage until Christmas next.'⁴⁵ Clearly it would be in the king's interests for the protection of the realm to preserve the duties of homage and fealty to the Crown. Instead of an archaic system belonging to an undeveloped social structure, the fact remains that the 'notion of tenure, though it no longer affects the ownership of land, has been the foundation of the law of real property for nine centuries',⁴⁶ and even into the twenty-first century vestigial reminders of the monarch as paramount lord survive. The estate of a citizen who dies intestate and without traceable heirs still passes to the Crown, and some offices of state held by tenure of serjeanty or by grant of the king remain hereditary.

For example the present Earl Marshal of England, the duke of Norfolk, is a descendant of Thomas Mowbray, the first duke of Norfolk, awarded the office of earl Marshal in 1386, to him and his heirs lawful in perpetuity.

Which brings us back to the status of the members of the original York audiences and their knowledge or ignorance of homage and lordship. York was an ancient borough; its citizens held their property by burgage tenure, with the right to transfer it by payment with none of the incidents of service attached to feudal tenure. The burgesses had a fair amount of autonomy in judicial, monetary, and mercantile affairs with their rights authorised by successive charters, either guaranteeing or expanding their powers and privileges. King John's charter of 1199 confirms even earlier charters to the citizens of *omnes libertates, et leges, et consuetudines suas; et nominatam Gildam suam mercarium* ('all their liberties, laws and customs, and namely their gild of merchants'). Judicial rights and powers for the mayor and bailiffs to have cognisance of all pleas of trespass, covenants, and contracts within the city or suburbs were confirmed in Henry III's charter of 1256. Citizens were allowed to answer 'of any land or tenement within the liberty of the city, or of any trespass' in their own guildhall instead of before the justices of assize, and after Richard II's charter of 1396 appointed two sheriffs and separated York from the county of York, the city became a county by itself, with all the independent legal, political, and administrative powers provided thereby.⁴⁷

On the other hand, York citizens could hardly be ignorant of the meaning of feudal tenure. The city was surrounded by large estates, and many citizens must have had relatives who were feudal tenants, or might have migrated themselves from those estates to live in York. Country landowners were also landlords of property within the city, while the burgesses themselves were landlords of tenant farmers. By charter, the city had been granted the wapentake of Ainsty (an agricultural area outside the city) to farm (rent out). It was sublet to a bailiff, 'who used his subjects so vilely that they talked of selling their tenements and leaving the county,'⁴⁸ but the burgesses would have to deal with the conditions of tenure and the complaints and dissatisfaction of the tenants. There were also enough marriages between the daughters of wealthy but socially aspiring city merchants, and members of the landed gentry to spread information about the system of tenurial land holdings.⁴⁹

Moreover, all the apparent freedom and power of a borough and its inhabitants tends to obscure the fact that every citizen who held land by burgage tenure was a tenant in chief of the king. With no mesne lord between the king and the York burgesses, one could say that in legal terms York was the equivalent of Paradise, and every burgess was Adam, holding his land directly of his paramount lord, the king, (or

in Adam's case, God). As to Adam's crime, whether felony or treason (and attempted usurpation of God's powers was surely treason), the outcome was the same as for a York citizen. The lands of a felon which elsewhere escheated to a feudal lord, escheated to the king in the case of a tenant in chief; the lands of a traitor always had been forfeited to the king, and would go on being so until 1870.⁵⁰

If the Adam and Eve plays existed in their present form in the years immediately after 1405, the disastrous consequences of Adam's disobedience would have a very personal effect on York citizens. When Archbishop Scrope and his confederates: the earl Marshal, Lord Bardolf, and Sir William Plumpton, supported by many North Yorkshire knights and prelates, led a York-based conspiracy against Henry IV, it was a treasonable act by all those who took part. Retribution was swift and ruthless. The ringleaders lost their heads, and everyone connected with the uprising, however tangentially, forfeited their lands and possessions to the king. On 31 May 1405, the mayor of York as escheator was ordered 'to take into the king's hands all goods of Richard, archbishop of York, and all others who have risen in insurrection'. The day before Archbishop Scrope was executed, an order was made to several of the Northern sheriffs, including those of York and the city of York, to proclaim that 'no-one under forfeiture of all he can forfeit' should forcibly enter forfeited lands or those belonging to the king's 'faithful lieges or deprive them of their goods'.⁵¹ Those who had been executed were beyond being affected by the forfeiture of their possessions or by this order, but any rebel left alive lost his land, dwelling and all his private property. Barred from attempting to recover them, he became destitute and an outcast.

In a short period during August 1405, the Patent Rolls list the vast estates, important offices, and lands throughout England belonging to all ranks of society, which were forfeited to the king by the rebels, and describe how the various offices and estates were parcelled out to the king's supporters as rewards. They included grants for life to Sir Henry Lescrope 'of all manors and lordships of Thriske and Hovyngham, co. York with all lands, rents, franchises, services and other things pertaining to them late of Thomas late earl Marshal and forfeited to the king on account of his rebellion'. The disgraced earl Marshal, later restored to favour, was the ancestor of the present holder of the office, the duke of Norfolk and in another reversal of fortune, lands acquired by Sir Henry Lescrope were in turn forfeited by him in 1417 to Henry V and then granted to the grandfather of the Henry Fitzhugh mentioned above, who succeeded to them in 1453.

Other grants of interest to York citizens went to the king's sergeant of the armoury of 'all lands late of William de Bowes within the city of York in the king's hands by the forfeiture of Ranulph del See', and to one of the king's esquires, who

received 'all the lands and rents which John de Kenley had in Copergate within the city of York . . . forfeited to the king because the said John and his sons rode in insurrection against the king's majesty with the archbishop of York and the earl Marshal . . .'.⁵² Earlier than that, in June, conditional grants were made to Thomas Emley citizen and tailor of York, of a messuage in Botham . . . late of Robert Wheldale, and to two of the king's servants of the office of porter of the hospital of St Leonard of York (held by John Astleby) of all profits and commodities pertaining to the offices, 'if [they] should pertain to the king on account of the rebellion of the latter'.⁵³ These actions by the king, and the threat of dispossession and penury were guaranteed to frighten the York burgesses into submission and lead to a reappraisal by them of where their loyalty and proper allegiance lay.

Once the main rebels had been punished and the York citizens brought face to face with the stark reality of the king's power over his land and his subjects, the king could afford to be magnanimous. On August 24th, he ordered 'Pardon to all the king's lieges, clerks and laymen, of the city, suburbs and precincts of York or residing or staying in the same between 1 May last and 1 August for all treasons, insurrections, rebellions, contempts, trespasses and felonies committed by them between those dates, and grant to them all their lands, reversions and goods forfeited on that account and at present in the king's hands . . .'.⁵⁴ The effects of the rebellion would not be forgotten quickly, and the punishment for breaking the bond of homage and faith owed to the supreme lord of all York long remembered by the citizens, especially if they were reminded annually by the contemporary dramatic parable of the story of Adam and Eve and their loss of Paradise.

NOTES

All line references to plays in the mystery cycles are to the following editions: *The York Plays*, ed. by Richard Beadle (London: Edward Arnold, 1982), *The Chester Plays* re-ed. by Dr. Herman Deimling (*EETS ES LXII*, 1892; repr. 1926, 1959, 1968), *Ludus Coventriae* [N-Town], ed. by James Orchard Halliwell (London: The Shakespeare Society, 1841), *The Towneley Plays*, re-ed. by George England, notes and introduction by Alfred W. Pollard (*EETS ES LXXI*, 1897 reprinted 1907, 1925).

¹ Jakob Jocz, *The Covenant* (Grand Rapids, Michigan: William B. Eerdmans, 1968), p. 9.

² St Augustine discusses how to understand the scriptures of the two covenants, the old and the new (*duorum testamentorum, uetris et noui*) in the story of Abraham, and St Paul's interpretation of the mothers of Abraham's two sons (Galatians 4. 22-24): *haec enim sunt duo testamento* ('here in fact are the two covenants'). St Augustine *De Civitate Dei contra Paganos*, ed. by J.E.C. Welldon, 2 vols (London: SPCK, 1924), II, Book 15, chap. 2. Welldon (p. 131, n. 2, 2) believes that 'covenant', not 'testament' is the proper meaning of *diathēkē*.

³ "Contract" in the Year Book period [the thirteenth, fourteenth, and fifteenth centuries] denoted a sale or loan which transferred property or guaranteed a debt. It was a *real* rather than a *consensual* contract. "Covenant" was a legally binding agreement, often within the jurisdiction of canon law. Eventually covenant fell entirely within the common law system and its obligations were transferred to become the present-day legally binding agreements of modern contract law. The word substituted for the older concept of "covenant" was then "undertaking" or *assumptio*. J.H. Baker, *An Introduction to English Legal History*, 2nd edn (London: Butterworths, 1979), pp. 263-64. In modern English law, a covenant can be unilateral, established by the promise of one party, without the agreement of the benefitting party.

⁴ See Genesis 21. 23-31 for the story of Abimelech and Abraham.

⁵ *Encyclopaedia Judaica*, 16 vols (Jerusalem: Keter, 1971), V, pp. 1012-22.

⁶ Sir Frederick Pollock and Frederic William Maitland, *The History of English Law*, 2nd edn, 2 vols (Cambridge: University Press, 1898), II, pp. 188-89, 192.

⁷ Dennis J. McCarthy, *Old Testament Covenant* (Oxford: Basil Blackwell, 1973), p. 2.

⁸ *Anglo-Saxon Wills*, ed. by Dorothy Whitelock (Cambridge: University Press, 1930), pp. xix, xx.

⁹ Pollock and Maitland, II, pp. 212-14.

¹⁰ William Blackstone, *Commentaries on the Laws of England*, Facsimile of the first edition of 1765-1769, 4 vols (Chicago: University of Chicago Press, 1979), I, p. 432.

¹¹ Sir William Searle Holdsworth, *A History of English Law*, 17 vols (London: Methuen, Sweet and Maxwell, 1922-66), III (1923), pp. 531-32.

¹² Pollock and Maitland, I, p. 238.

¹³ Holdsworth, III, p. 526.

¹⁴ Sir Edward Coke, *The First Part of the Institutes of England* (London, J. More, 1639), p. 1.

¹⁵ Tenants in chief of the king who owed grand serjeanty to him might carry his banner or lance, or lead his army, or be his marshal, or fill other high offices of the kingdom. By the end of the fifteenth century they had all become honourable services, some of which are hereditary and still exist. (Pollock and Maitland I, p. 283).

¹⁶ A.W.B. Simpson, *A History of the Land Law*, 2nd edn (Oxford, Clarendon Press, 1986), p. 2.

¹⁷ Pollock and Maitland, I, p. 351.

¹⁸ Sir Edward Coke, *The Third Part of the Institutes of the Laws of England* (London: D. Pakeman and W. Lee, 1628; repr. New York & London: Garland Publishing, 1979), p. 13. Coke died 1634.

¹⁹ *Henrici de Bracton de Legibus et Consuetudinibus Angliae*, ed. by Sir Travers Twiss, 6 vols (London: Longman, 1878-83) I, (1878), p. 614. Bracton died 1268.

²⁰ Pollock and Maitland I, p. 297.

²¹ *Modus faciendi Homagium & Fidelitatem* (Temp. incert.) inserted into all printed copies of 17 Edward II. See *The Statutes of the Realm* (London: Dawsons, 1810; repr. 1963), I, p. 227.

²² *Henrici de Bracton*, I, p. 632.

²³ Sir Thomas Littleton, *Les Tenures de M. Littleton* (Thomas Wright, London, 1604), section 87. Littleton died 1481.

²⁴ Littleton, sec. 91 (in rather peculiar French).

²⁵ The ceremony is described in Littleton, sec. 85.

²⁶ *Henrici de Bracton*, I, p. 632.

²⁷ A window in Malvern Priory shows Abraham kneeling with hands raised to God, who is leaning out of Heaven with His hands extended. (M.D. Anderson, *The Imagery of British Churches* (London: John Murray, 1955), p. 81.) Such an image does reproduce the posture of homage.

²⁸ Dom Louis Gougaud, *Devotional and Ascetic Practices in the Middle Ages* (London: Burns Oates & Washbourne, 1927), pp. 26-28.

²⁹ The complicated subject of seisin is dealt with in Pollock and Maitland, II, pp. 29-

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80, 83-90 (livery of seisin), 103-06, *passim*.

³⁰ *Le Mystère d'Adam*, ed. by Paul Studer (Manchester: University Press, 1928).

³¹ *Cursor Mundi*, ed. by Richard Morris, EETS OS 57 (1874), reprinted 1961, lines 609, 611-12.

³² *Cursor Mundi*, line 941 (Trinity and Fairfax mss only).

³³ Apart from promissory covenants where the word is not actually used, the following are quotations from the story of Noah: *Ponamque fœdus meum tecum* ('But I will set in place my covenant with you'), *Ecce ego statuam pactum meum vobiscum* ('Behold I establish my covenant with you'), *Statuam pactum meum vobiscum* ('I establish my pact with you'), *Hoc erit signum fœderis* ('This is the token of the covenant') [referring to the rainbow] (Genesis 6.18: 9. 9, 11, 12, and see 9. 15, 16, 17 which also refer to the rainbow as the everlasting covenant).

³⁴ Inventory dated 1433 in *Records of Early English Drama: York*, ed. by Alexandra F. Johnston and Margaret Rogerson, 2 vols (Toronto: University of Toronto Press, 1979), I, p. 55.

³⁵ God's dealings with Abraham (name changed from Abram by God in Genesis 17. 5) also include promissory covenants which do not use the words *foedus* or *pactum*; among the explicit confirmatory covenants are: *pepigit Dominus fœdus cum Abram* ('the Lord made a covenant with Abram'), *Ponamque foedus meum inter me et te* ('And I will make my covenant between me and you'), *constituam pactum meum illi in foedus sempiternum* ('I will establish my pact with him for an everlasting covenant') (Genesis 15. 18: 17. 2, 19, and also see 17. 4, 7, 9, 21, 27).

For an analysis of the preamble and its relation to *A Middle English Metrical Paraphrase of the Old Testament*, see Richard Beadle, 'The Origins of Abraham's Preamble in the York Play of *Abraham and Isaac*', in *The Yearbook of English Studies* vol. 11 (1981), 178-87.

³⁶ *Everyman and Medieval Miracle Plays*, ed. by A.C. Cawley (London: J. M. Dent & Sons, 1956; reprinted with revisions 1974, last reprinted 1976), p. ix.

³⁷ James A. Brundage, *Medieval Canon Law* (London: Longman, 1995), pp. 70-76.

³⁸ Pollock and Maitland, II, pp. 197-205.

³⁹ *Rotuli Parliamentorum*, 6 vols (1783) II, pp. 319:22.

⁴⁰ Eileen A. Gooder, *Latin for Local History*, 2nd edn (London: Longman, 1978), pp. 90-91.

⁴¹ *Year Book 21-39 Henry VI* (London: 1679, repr. Abingdon, England: Professional Books, 1981), De Termino Pasche, pl. 11.

⁴² Quotations in this paragraph are from Holdsworth, III, pp. 54-56 (written at the beginning of the twentieth century). Theoretically, the different types of tenure and all their incidents lasted until 1660, (Holdsworth, III, p. 73).

⁴³ *Select Cases in Manorial Courts 1250-1550*, ed. by L.R. Poos and Lloyd Bonfield, vol. 114 (London: Selden Society, 1998) Cases 163 (1405), 202 (1408), 166 (1438) *passim*.

⁴⁴ *Calendar of the Fine Rolls Henry VI 1452-146*, vol. xix (London: HMSO, 1939) pp. 23-25, 42.

⁴⁵ *Calendar of the Fine Rolls Edward IV, Edward V, Richard III, 1471-1485*, vol. xxi (London: HMSO, 1961), p. 306.

⁴⁶ Baker, p. 194.

⁴⁷ Francis Drake, *Eboracum, the History and Antiquities of the City of York*, 2 vols (York: T. Wilson and R. Spence, 1788), I, pp. 268, 270, 272.

⁴⁸ Pollock and Maitland, I, p. 652.

⁴⁹ For examples of marriages between merchant and gentry families see Pamela M. King, 'Corpus Christi Plays and the "Bolton Hours" 1: Tastes in Lay Piety and Patronage in Fifteenth-Century York', in *Medieval English Theatre* 18 (1996), 51, 53.

⁵⁰ 33, 34 Victoria c. 23.

⁵¹ *Calendar of the Patent Rolls Henry IV 1405-1408*, 4 vols (London: HMSO, 1907), III, p. 66.

⁵² *Calendar of the Patent Rolls*, III, p. 38.

⁵³ *Calendar of the Patent Rolls*, III, pp. 19, 20.

⁵⁴ *Calendar of the Patent Rolls*, III, p. 40.