CONTRACT AND TRUST IN FIFTEENTH-CENTURY CHURCH COURTS

Hannah Robb

Abstract: This chapter looks at the relationship between the ecclesiastical courts and the customs of credit in fifteenth-century England. It suggests that the church courts in particular shaped the language and performative ritual used at the point of contracting credit. Though court records and household inventories suggest that written instruments were used when contracting credit, ecclesiastical jurisdiction over credits sworn on oath in the later medieval period placed greater emphasis on the declarations and performance of trust than the written record as a form of proof. The commutation of the oath from the sacred to the profane, marked by the rise of oral credit contracts in the secular courts of the sixteenth and seventeenth centuries, highlights the significance of ecclesiastical jurisdiction in shaping credit contracts and the emergence of a language of faith that continued to underpin contracts.

Keywords: credit, law, custom, oaths, courts.

Introduction

The record of credit in late medieval England is multifaceted. We have in the fifteenth century evidence of sealed instruments, written contracts, and private household account books coexisting with, and often enforced by, oral agreements, sworn oaths, and physical and customary displays of concord and friendliness to confirm an exchange. The primary source from which the interplay between the written and oral contract can be discerned is itself a product of the shifting rela-

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tionship between the written and spoken contract. Courts in late medieval England increasingly favoured written and material forms of proof.[1] Cases of disputed land ownership recorded in manorial court rolls increasingly favoured charters and deeds as primary forms of proof, taking precedence over the collective memory of the community.[2] By the close of the fourteenth century, evidence from manorial courts suggests that the court roll itself was consulted as a form of proof, a witness to the original contract of sale. The same cannot be said, however, in pleas of debt. Manor courts were rarely used as a means to record credit. Instead, the testimony of witnesses appears to have been the most popular recourse for the expediency of justice.[3] The courts of the later medieval period were driving the ways in which credit and sales were conducted and the evidence collected by the parties at the point of exchange. Ecclesiastical courts of the fifteenth century, under the plea of breach of faith, placed emphasis on the words spoken on oath in a promise to adhere to a contract. Unlike manorial court rolls, we have detailed depositions from the church courts that recall oral agreements and the use of written contracts. They reconstruct credit agreements couched in a language of trust, honesty, and truth inherent to the Christian practice of oath-taking. The church courts of the fifteenth century supported the oral credit economy and in placing emphasis on witness testimony and the words spoken that bound creditor and debtor, shaped the culture of credit.

The depositions of the consistory court of York reveal the details of credit agreements. The consistory court was held at York Minster and heard cases originating from within York and on appeal from the wider prebendal courts of which there were over one hundred operating in fifteenth-century Yorkshire. The depositions are found in the cause papers held at the Borthwick Institute of York, with each "cause" holding all documents pertaining to the case including interrogatories, depositions, appeals, and outcomes. Instances relating to credit and debt appear under pleas of breach of faith, defamation, and testamentary. Though few in number, they describe the writing and signing of contracts, the speaking of oaths, and terms of repayment. The testimonies not only reflect the integration of legalistic concepts in the language used by witnesses to frame their account at court but also the infiltration of the language of the court in credit agreements and the ways in which trust and obligation were conceptualised and used in practice. The narratives of debt litigation provide more than a reconstruction of a single credit agreement and instead present a discourse of debt that considered trust,

1 Schofield 2012, 79–81.
2 Beckerman 1992, 221–222.
3 Schofield 2012, 80.

reputation, and ideals of Christian neighbourliness.[4] Recent historiography on the concept of trust has highlighted the significance of the language of truth and honesty in defining social organisations and hierarchies in late medieval society. Ian Forrest's study on the role of "trustworthy men" in local church administration has traced the role of trust in medieval society and the development of a discourse of trust, troth, faith, and trustworthiness in the church records that identified men of good reputation, defining communities in late medieval England. The term "faith" embodied all of its secular and religious meanings. It was applied to contracts, promises, securities, and oaths as well as belief in God.[5] Most significantly, in pleas of debt brought before the church courts it indicated an "ethic of constancy in behaviour and belief that derived from the legal sense of equity".[6] There is then a particularly Christian notion of faith invoked in the promises made on oath when buying and selling on credit that was repeated in the language used in litigation. The "good", "honest", and "trustworthy men" who promised on their "good faith" to repay a debt identified themselves as part of that trusted network of Christians bound by their collective relationship to God. Tyler Lange's study on the role of excommunication in pleas of debt in later medieval France explores the extent of ecclesiastical jurisdiction and argues excommunication was a successful deterrent to the breaking of contracts in part because it threatened exclusion from wider society; "the sacramental community was also an economic entity".[7] At the fore of these debates lies the relationship between the courts and social and economic institutions. There appears a long-standing trope that the close of the fifteenth century witnessed a significant transition from faith in individuals to faith in institutions to enforce the terms of contract. This was echoed in a move from oral to written contracts and the greater circulation of credit with the exchange of credit instruments. The works of Muldrew and Wrightson identify the secular courts of early modern England as an institution that increasingly came to impose social ideals of neighbourliness in response to an ever increasingly complex and commercialised web of interdependency. Faith was no longer held in the contracting individuals, bound by a belief in God and a desire to maintain Christian harmony and sociability, but in the power of institutions to legally enforce promises.[8] The fifteenth century thus stands at an apex as legal institutions shifted and the power of the church to act as an adjudicating authority in economic matters was increasingly challenged.

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4 For a discussion of the preconstruction of witness testimony, see Johnson 2014.
5 Forrest 2018, 28–29.
6 Forrest 2018, 31.
7 Lange 2016, 278.
8 Craig Muldrew 1996; Wrightson 2002.

This chapter first explores the evidence for written accounts of credit using court records, probate inventories, and household accounts. It looks at the materiality of credit contracts and the ways in which written proof of credit was used in the legal process. The second part of this chapter looks to the oral customs surrounding the contract. It suggests that legal custom informed the language used in oath-making in credit contracts and deferred sales. The evidence is drawn from the depositions of the ecclesiastical courts in the archbishopric of York and the act books of the lower ecclesiastical courts in the Yorkshire region. Within these papers, deponents describe a culture of oral credit that was shaped by the legal customs of the church court. The language used to describe the binding nature of the oral promise and the symbolism of ritual associated with oath-taking highlights the significance of the church as both a formal institution enforcing the terms of agreement and as a social institution regulating the morality of the marketplace. In doing so, this chapter explores the relationship between the law, legal formulae, and practice in the credit economy of the fifteenth century.

Evidence for a Record of Written Credit

Written contracts, bonds, and sealed instruments were routine in mercantile trade. The extent to which there was a written record of credit that facilitated day-to-day trade is, however, less clear. Though there were notaries operating within York, the role was limited.[9] Court records suggest they presided over contracts, recorded the instalments of repayments, and drafted summons to court yet no separate archive for the recording of credit was maintained as was common across mainland Europe where notarial guilds grew in number in the late medieval period.[10] Two cases cite payments having been made with the public notary resident at York Minster and summons to court appear to have been displayed within this public office.[11] There clearly existed a desire to record credit and it would appear that competing authorities held jurisdiction over such matters. Of-

9 Though no separate notarial archive was maintained in York, studies cataloguing the various notarial signatures across a range of documents show notaries were present and played a significant role in the verification of private documents and court proceedings. See Purvis 1957.

10 Hardman 2014; Ogilvie, Küpker, and Maegraith 2012.

11 CP. F. 251, John Wyntryngham v. John Huett, 03/02/1469–28/04/1470, Borthwick Institute of York (from here on in "Borthwick"), CP. F. 274, testamentary and debt, Gilbert Lacey and Percival Amyas v. John Lacey, 1489, Borthwick.

ficers for the Wapentake appear to have acted in a notarial capacity and are recorded as having witnessed agreements and repayments in a rural village in the Harthill Wapentake, East of York.[12] The courts of York Minster also appear to have performed the role of a register when credit was agreed. The Chapter Act Book and Deed Register of York Minster functioned as a register of bonds for the city of York from the mid fourteenth century, functioning alongside the secular courts of the merchant statute staple and the mayor's court, suggesting not only that the court was acting as a written record of credit but was part of a wider system of written obligations in later medieval York.[13]

The surviving probate inventories of York suggest that written accounts were being kept by some households. The extent of the debts listed in the inventories suggests a written record was available to the elected appraisers and executors. Debts owed to the deceased were often described in detail. Thomas Gryssop, a chapman in York, was owed 13 *s.* 4 *d.* by a pledge of three spoons, three basins, and three jars.[14] Thomas Brystall and John Stolys owed £ 36 for herring to Robert Schylbotyll.[15] Objects that facilitated accounting in the home appear fairly frequently throughout the inventories. Both Robert Talkan, a girdler in York, and William Ledale, a chaplain also residing in York, were recorded as owning counters, and the inventory of Geoffrey Couper listed a reckoning board in the aula.[16] In the inventory of Thomas Crake, a gentleman in Beverley, the debts owed were not listed in the inventory but rather it was recorded that the names and debts were to be found in "a bill in the custody of the executors".[17] Two probate inventories make specific reference to formal accounts. The appraisers of the skinner Roger Burton valued his shop and store room in York and listed "receipts" as a separate category in the inventory which detailed a mixture of agreements. John Kirkeby had numerous pledges amounting to £ 3 13 *s.* 4 *d.,* the Duke of Northumberland had paid in part for ten books, and Walter Luket, also a skinner, appears to have borrowed a number of tools for his trade including iron andirons, lime, and a

12 CP. F 210, Thomas Harrison v. John Papedy, 03/07/1465–14/10/1465, Borthwick.

13 Chapter Act Book and Deed Register 1343–1368, from f. 71 Jan 1349/50, York Minster Library, H1/2.

14 "Gryssop, Thomas, York, Chapman, 1446 [BIHR, Dean and Chapter of York, Original Wills, 1383–1499]", Stell 1999, 569.

15 "Schylbotyll, Robert, Scarborough, 1409 [BIHR, Cause Papers, folio 69]", Stell 1999, 526.

16 "Talkan, Robert, York, Girdler, 1415 [BIHR, Dean and Chapter of York, Original Wills, 1383–1499]", Stell 1999, 524; "Ledale, William, York, Chaplain, 1438 [BIHR, Exchequer Wills, 15th century", Stell 1999, 556; "Couper, Geoffrey and idonea, York, 1402 [YML, Probate Jurisdiction, Inventories, L1 (17)24]", Stell 1999, 507.

17 "Crake, Thomas, Beverley, Gentleman, 1488 [YML, Probate Jurisdiction, Inventories, L1(17)28]", Stell 1999, 660.

pair of bellows.[18] In the inventory of John Carter, a tailor operating in York, the debts collected were taken from "the book of debts".[19] John Carter was operating a large business. He had two workshops listed in his inventory, one for western cloth and one for southern cloth, with a shop attached in which he kept the tools of his trade; shaping boards, trestles, shears, and pressing irons and shelves on which he displayed his cloth. A note from the appraisers states that the executors refused to allow the book of debts to be appraised within the inventory. The total debts outstanding listed from the book of debts totalled £17 3 *s.* 0.5 *d.,* more than the stock in each of his individual workshops.[20] The accounts appear to have been a valuable commodity for the business and were held onto by the family after the death of Roger Burton.

Written records of credit and debt seemed to have been prevalent and written instruments are listed in those debts outstanding. Pledges and bonds appear across the inventories of York Minster. But this evidence is static. We have no real sense of how those bonds or pledges listed in the inventories were contracted, where they were subsequently stored or how often they were consulted. Written contracts are also found in the details of the depositions in the cause papers of the Consistory Court. What we learn from the depositions is the ways in which contracts were agreed and the circumstances in which they were signed. We can also glimpse the material significance of the written contract as depositions describe how they were handled and utilised as a form of proof where debts were contested.

A dispute over an unpaid debt of £5 6 *s.* 11 *d.* listed in the will and inventory of James Fawcett and contested by Richard Newman, executor of the will of John Simpson, and Richard Fawcett, James Fawcett's son and executor, holds two additional documents that detail the debts and accounts of the deceased James Fawcett. Richard Fawcett appears to have produced two additional documents proving that the debt owed by his father was, in fact, held in outstanding credit agreements. It would appear that James Fawcett had purchased grain in large sums from John Simpson to sell on in smaller portions. The inventory of business debts points to a series of smaller sales to individuals who appear to have formed part of the kinship group of James Fawcett. Thomas Ellyson appears three times in the accounts purchasing grain from James Fawcett. His brother, John Ellyson, who was a priest, witnessed the will of James Fawcett and was left 6 marks 6 *s.*

18 "Burton, Roger De, York, Skinner, 1428 [BIHR, Dean and Chapter of York, Original Wills, 1383–1499]", Stell 1999, 550.

19 "Carter, John, York, Tailor, 1485 [YML, Probate Jurisdiction, Inventories, L1(17)6]", Stell 1999, 650–651.

20 "Carter, John", Stell 1999, 650–651.

8 *d.* to "pray and syng for hym".[21] He was also entrusted, along with John and Roger Knoll, whose brother Thomas Knoll owed money on outstanding accounts, to value the goods of James Fawcett in the inventory. The debts listed as "incomplete" in the account amount to the £5 6 *s.* 11 *d.* listed as an outstanding debt in the will of John Simpson. In providing the accounts at court, Richard Fawcett was attesting to the fact that the debts were owed by other members of the business network and not directly by his father. The debts were chased for a long period of time. The executor of the will of John Simpson appears before the bishop's court in 1517 pursuing unpaid debts from the will and inventory of James Fawcett. The will of James Fawcett is included with the cause papers and is dated 24 April 1511 and was publicly proved just two weeks later in May. Richard Fawcett was found not guilty and was absolved of the accusation and Richard Newman was left to pay the legal fees and expenses. The accounts appear to have been successful in absolving Richard Fawcett of the obligation. Though we cannot know whether the obligation to pay the outstanding debts passed to those individuals who owed the money to James Fawcett, the accounts presented at court offered tantamount proof that the debt owed was part of a longer chain of credit agreements and Richard Fawcett was not liable to pay.[22]

In a plea of debt and defamation brought by William Barton against John Partryngton in 1434, Barton sought to defend his reputation after Partryngton accused him of reneging on the terms of a credit agreement. William Barton and John Partryngton had entered a written bond, witnessed before a group of jurors. The exchange was sealed with a surety valued at £3 13 *s.* 4 *d.* which was safely stored in a box along with the bond and held in the custody of John Partryngton and his wife.[23] The deal was undone when Partryngton publicly accused Barton of breaking the terms of their contract; seizing the box containing the surety and bond from Partryngton's wife. The objects exchanged represented the promise of both parties to be bound by the terms of their agreement, and signalled the concord between creditor and debtor as Partryngton's wife was entrusted with the surety. When this bond was undone, it was the objects that were forcibly seized. Yet it was not the written obligation that was presented as proof at court. Instead, the plea of defamation and debt challenged the denigration of the good character of Barton who was accused of stealing the surety. Witnesses gave depositions attesting to the binding oaths sworn by Barton and Partyngton and the damage inflicted on Barton's good character when the accusation of theft was made. Despite

21 CP. G. 85, Richard Newman v Richard Fawcett, 1508–1517, Borthwick.
22 CP. G. 85, Newman v Fawcett, 1508–1517, Borthwick.
23 CP. F. 332, William Barton v. John Partryngton, 06/10/1434–02/12/1434, Borthwick.

the signing of the bond, the credit contract was bound by oath and regulated by a desire to maintain a good reputation.[24]

In a plea of breach of faith between Thomas Harrison and John Papedy in 1465, the depositions reveal the significance of written documents in the credit agreement. The two men signed a written obligation agreeing to a loan to be repaid in three instalments. When the payments were not forthcoming, a written reminder, described in the deposition as a "demand for monetary fines", was issued to Papedy, recalling the original agreement. The reminder was countersigned by those who had been witness to the original credit agreement. When this was ignored, two of Papedy's horses were seized to the value of the loan. The written word held an important role in the credit contract. Yet the depositions suggest that it was not the contract itself, the "abstraction" of the agreement from the physical exchange to a written document, but the ritual surrounding the agreement that marked its binding nature.[25] Papedy swore on oath "to firmly oblige himself to the said Thomas Harrison" and agreed "to fulfil the promise based on trust to repay" the 12 *s.*[26] The deal was struck as John Papedy offered his "faithful right hand to the said Thomas Harrison" and swore on his "good faith and character" before this group of "faithful and worthy people" to repay the 12 *s.*[27] The spoken word was legally binding and the memories of the witnesses recalling the oath legitimated the contract. At no point does the contract appear to have been produced as evidence in the case. The dates for payment were seemingly structured around the local calendar with 3 *s.* 4 *d.* due at the feast of Raspaldingmore, named after the local village. The credit agreement was firmly embedded in the rhythms of the local communal calendar and engraved in the memories of fairs and feasts. Though the dispute between Newman and Fawcett suggests that written proof could be presented at court, it appears to have been rare in the fifteenth century. In the case of Newman and Fawcett, the documents attached to the cause were held alongside the testimonies of witnesses who considered not just the obligation to repay but the onus upon the executors to perform their role truthfully and honestly as sworn on oath. The church courts were a popular forum for petty credit disputes in the fifteenth century in part because witness testimony was tantamount. The legal custom of the church courts took what was

24 Robb 2018.

25 MacNeil 2006, 323.

26 "Et ad promissas solutoes fid[el]it[er] admiplenda idem Johannes Papedy de visu et audita istius jurati ut dicit fide sua media et praestita in manus dicti Thome Herryson firmite se astrinxit et jurato suo vallauit", CP. F. 210, Harrison v. Papedy, Borthwick.

27 "praefatus Johannes Papedy fidem suam in manum dexteram dicti Thome Herryson", CP. F. 210 Harrison v. Papedy, Borthwick.

commonly held and believed to be the truth as proof.[28] The emphasis on witness testimony shaped the custom of the oath in credit transactions and the materiality of the contract.

Truth, Trust, and Honesty; Oral Contracts in the Church Courts

Church courts held jurisdiction over those contracts predicated on trust and made binding by a promise or oath. Calling on God in the bargaining process to attest to the truth of the contracting parties and the trustworthiness of their promises invoked the "theory of the sanctity and irrevocability of promises".[29] Legal tracts of the twelfth century described the promise as sacred. The *Decretum* stated that to break a promise was to be more feared than to break a vow.[30] The extent of the influence of ecclesiastical law over those promises accompanied by an oath is to be found in the emergence of cases of *assumpsit* in English secular law. The same defining features of the oath that appeared in pleas of breach of faith in the church courts went on to define the basis of the contract in the plea of *assumpsit* in the courts of the King's Bench in the sixteenth and seventeenth centuries. The action of *assumpsit* was predicated on a notion of trespass on the case, the defendant having *"assumspit fideliter promisit"* "assumed and faithfully promised" to perform an act or exchange in sale.[31] The language of faith central to the Christian oath was transposed from the plea of breach of faith to *assumpsit.* Oath-taking in credit agreements did not decline but instead was adopted by the secular courts. The process of the transition of the oath from the sacred to the profane can be traced in the decline of pleas of breach of faith in the church courts and the rise of *assumpsit* in the secular courts.[32] Richard M. Wunderli has suggested that changes in civic litigation allowing for plaintiffs to pursue oral contracts in the secular courts in the early modern period diverted cases of breach of faith from the church courts in London and into the city courts. By the close of the fifteenth century, cases of breach of faith had virtually disappeared from the commissary court records in London, a trend paralleled in Lichfield, Hereford, Chichester, and Exeter.[33]

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28 Helmholz 2004.
29 Hogg 2011, 78.
30 Cited by Hogg 2011, 80.
31 Ibbetson 1999, 131.
32 Spurr 2001.
33 Wunderli 1981, 104.

The language of trust, truth, and faith defined the oral contract in both ecclesiastical and secular courts. The "good", "honest", and "trustworthy men" who promised on their "good faith" to repay a debt identified themselves as part of the Christian community.[34] In the case of Harrison and Papedy, the "faithful promise" based on trust had been made "in the presence of friends".[35] In a plea of breach of faith, the defendant Richard Reade had made a "faithful and public pledge" to promise the delivery of grain to the attorney Thomas Williamson, "to honestly fulfil the deed".[36] In 1449, Robert Laton had been brought to the consistory court for failure to repay a debt owed in an instance of deferred sale. The agreement had been made as Laton had bought goods on deferred payment from John Skathelok to the value of £13 4 *d.* which he was unable to satisfy when the goods were delivered. The agreement was made in the hall of Robert Laton's home. Robert had made himself "faithfully committed to that sum [...] by his hand to lay a pledge for the money of John".[37] At the church in Ripon, William Myreschewe apprehended Jacob Ketton in the knave of the church, near the font, where he queried an outstanding payment. Jacob Ketton "gave his faith" to William in the church to pay 3 s by the feast of Saint Michael Archangel, witnessed by William Forsett. Sealed by a spoken oath, the promise was made in the knave without formal written documentation.[38] The credit described in the cause papers was based on oral agreements. It was couched in a language of trust, and contracts were confirmed by ritual and custom in a culture of oath-taking. In 1440, Elizabeth Radwell, widow of William Radwell, pursued Robert Tippling for failure to make payments for a horse purchased from her husband prior to his death for £17.[39] The payment was said to have been divided into three sums and paid in instalments. Those witness to the original agreement described how they watched through the shop window

34 Fontaine 2014, 60.

35 "ac neguit retinet in praesenti in anime suo grave periculum [damage] que Thome dampnum non [damage] et gravaemen", CP. F. 210, Harrison v. Papedy, Borthwick.

36 "predictus dictus Ricardu Reade se fide sua media pleges et fideuissorem fuisse quod prefatus quarter grana omnia et singula fuisset dicte Thome Wright ad temporis et locus predictus saluo et secure per dictus Thoma Williamson", CP. F. 266 Thomas Wright v. Richard Reade, 27/07/1484, Borthwick.

37 "quo termino tunc ibidem per dicte Johanem concesso ibidem Robertus manu sua le.ata pro misit per fides sua solide dicte Johani predicte summam xiij solidinis iiij denaris", CP. F. 216 John Skathelok v. Robert Laton, 05/02/1449–17/11/1450, Borthwick.

38 "dicit quod interfuit quando Jacobus Ketton de Ripon de prebuit fidem Willelmo Myreschewe, in navi ecclesiae, prope fontem, quod solverert et iijs. in festo Sancti Michaelis Archangeli ex tunc prox sequent"', William Myreschew v. Jacob Ketton, 8 July, 1460, Acts of the Chapter, Ripon, 91–92.

39 "p[re]dicte Robertis tu[n]c ib[ide]m ut di[ci]t manu le nata p[er] fide[s] suam se astrinxit obligauit", CP. F. 217, Elizabeth Radwell v. Robert Tippling, 1440, Borthwick.

of John Walker. Though they did not hear at the time the words spoken, they were later informed by witnesses who had heard Robert Tippling promise "by his good faith" to make the payments and that he had "faithfully observed" the first instalments.[40] The witnesses were able to attest to having seen the rituals of exchange, but their testimony to the words spoken was derived from what was common knowledge from trusted sources within the community. Repeated and conferred to memory, the words spoken conformed to the language and ritual of the Christian oath.

The intent behind the oath and the words spoken were as important as the ritual. In 1496, Richard Rawson accused Thomas Vicars of failing to make a payment, having allegedly promised to pay for grain that his wife had purchased on credit. The case was presented at court under perjury legislation as Thomas Vicars stood accused of having deliberately misled Richard Rawson and made a false promise.[41] The initial agreement of sale was conducted in the home of Thomas Vicars in the village of Strensall, north of the city of York. Richard Rawson agreed to sell to the wife of Thomas Vicars fifteen quarters of malt for the price of 26 *s.* 8 *d.* before a group of free jurymen, which included the vicar of Strensall and William Brannisby. Amongst the witnesses recalled at court was William Brannisby's wife. Thomas Vicars was to pay 12 *d.* in advance of the delivery of the malt, and his wife the 26 s and 8 d upon receipt of the goods. However, William Jackson, witness to the exchange, claims Thomas Vicars and his wife made false and counterfeit promises. According to Jackson, when Richard Rawson queried Thomas Vicars' commitment as he "have yet none obligation", Vicars responded "By my feith ye shall be content and paid the said money at the fest of pentecost next to come or I shall lay my land in pledge for the money".[42] Vicars' wife also offered similarly vague promises, "this malt must thorow my hande and I shal besis me to see ye be content".[43] Unlike those cases above brought before the judge under a "breach of faith", there is no mention of accompanying gestures declaring a binding oath. Focus is instead placed on the intent behind the promise to pay and whether the agreement was conducted honestly and in good faith. As such, the dispute focuses on the language of the promise. Contrary to the deposition provided by William Jackson in which Vicars was accused of offering false and counterfeit promises, the prosecution proctor asserts that Vicars had in those words firmly promised to pay for the malt on behalf of his wife. The promises made by Vicars and his wife were guaranteed only by their good character and it is the intent behind their

40 CP. F. 217, Radwell v. Tippling, 1440, Borthwick.
41 DC. CP. 1496/2 Richard Rawson v. Thomas Vicars, Borthwick.
42 DC. CP. 1496/2 Rawson v. Vicars, Borthwick.
43 DC. CP. 1496/2 Rawson v. Vicars, Borthwick.

promises which they appear to be defending when they were accused of deceiving Richard Rawson in the sale.

Summons to court echoed the orality of the contract and enforced the reputation mechanism that regulated the credit economy. Read aloud in the marketplace or before the congregation, displayed in civic and ecclesiastical buildings alike, they punctuated the visual and auditory landscape of the market. John Huett of Marr appeared before the consistory court of York having been impeached in his home for the alleged failure to pay a deferred rent. Witnesses recalled that prior to the arrest, the summons to court had been displayed in "a certain hall of the court chaplain to the ecclesiastical court of Presholme, circulated around Presholme and produced in the house and dwelling of Richard of York Castle".[44] The legal documents of the court infiltrated daily life. Summons were delivered to the defendant before two witnesses or publicly declared in the parish church. These documents of the early stages of the plea, their written word as well as their physical impression on the scape of the church and civic buildings could lead to an out-of-court settlement between two parties from the threat of legal action alone. At the lower ecclesiastical court of Ripon in Yorkshire, 23 per cent of those cases recorded never proceeded beyond citation, and a further 27 per cent were settled by a licence of concord.[45] The figures seem to reflect a wider trend for out-of-court settlement in cases of debt litigation. A significant proportion of debt litigation heard before the court at Newmarket Suffolk was settled out of court. Over 35 per cent was settled through request for licence of concord whereby both parties sought private reconciliation. A further 23 per cent of debt litigation disappeared from the records after a defendant had appeared with no outcome listed and over 13 per cent disappeared following the initial plea at court.[46]

Trust, as noted by Forrest, did not exist outside institutions.[47] The church courts held limited authority to exact a repayment. Unable to seize assets and land, the authority of the church lay in its ability to lean on social institutions. Arbitration was a popular form of mediation in the church court. The process, both when ordered within the court and when settled outside the court, solidified the notion of "trustworthy men" as those elected arbitrators who embodied the authority of the judge. Mediation invoked a language of neighbourliness that instilled trust in a collective of faithful individuals and enforced more widely the notion of a body of Christian believers as part of one social and economic entity. The cases in the deposition books speak only of instances where arbitration had collapsed, but it

44 CP. F. 251, Wyntryngham v. Huett, Borthwick.
45 Fowler 1875, Acts of the Chapter, Ripon, 1452–1506.
46 Davis 2012, 356.
47 Forrest 2018, 53–62.

is clear that being a good neighbour and of good faith was of paramount importance. Arbitration in pleas of debt contributed to a language of harmony. In a plea of breach of faith in the church court of Ripon in 1453, Thomas Hebwyn brought a plea of breach of faith against Thomas Hardwyck for 2 *s.* When Hardwyck failed to attend a hearing in the church court, the plaintiff Hebwyn submitted a petition to court. After Hardwyck and Hebwyn consulted friends, a day for arbitration, described in the record as an agreement of hope, was reached.[48] Providing fair and friendly mediation was central to the success of arbitration. In a plea of breach of faith appealed at York Minster, doubt was cast over the intentions of one neighbour elected as mediator. The original credit agreement had been overseen by the local vicar William Brannisby who had acted as a "friendly mediator" to an exchange of malt between Thomas Vicars and Richard Rawson.[49] When Vicars failed to make the payment, William Brannisby was called upon to act as a mediator in a case of arbitration to end hostilities between the two until a future date when it was agreed payment would be made, obliging them both under pain of punishment. The arbitration presided over by the vicar Brannisby was also witnessed by William Jackson. During the process of appeal, the proctor acting on behalf of Vicars submitted an exception to the witnesses and their statements, stating that of the two men summoned before the court having been witness to the agreement and acting in the process of arbitration, one provided "friendly mediation" between the two parties whilst one was "not of good faith" to have been called as witness. In the deposition, Jackson was referred to as an enemy, *hostis,* of Thomas Vicar's and his wife.[50] The proctor went on to state that "he holds no moderate faith in that party to act as witness" and called for Vicars to be absolved. The church court drew on the social institutions in late medieval society when it ordered parties to arbitration, but the practice of out-of-court settlement was an integral branch of the formal institution of the legal process. In a plea of breach of faith brought before the prebendal court at Ripon, the litigants were ordered to subject themselves to "obey and yield to arbitration" concerning "all manner of actions, quarrels, debts, and demands [...] and disturbances".[51] Though the Church courts leaned on social institutions to deliver outcomes in debt litigation, the process of mediation was no less formal or coercive than the judgements delivered in court.

The sharing of wine and the breaking of bread, as described in the case between Harrison and Papedy, or the holding out of the "right and faithful hand"

48 "Thomas Hebwyn v Thomas Hardwyck, November 1453", Acts of the Chapter, Ripon, 25.
49 DC. CP. 1496/2 Rawson v. Vicars, Borthwick.
50 DC. CP. 1496/2 Rawson v. Vicars, Borthwick.
51 'Thomas Swwtyng v Katherine Smyth, 1468', Acts of the Chapter, Ripon, 132.

of John Huett to swear a "promise on his name", all acted as a performative contract.[52] Expressing concretely the abstractions which lay beneath the exchange, "they both evidenced and brought about the creation of the new relationship, and frequently imparted a sacral character to it, and they served to reveal conceptual connections between apparently dissimilar institutions."[53] The physical rituals associated with gift exchange served to solidify credit agreements. The remnants of the rituals of feasting and pledging bear credence to the transition of the physical exchange of property, in the likes of the earlier medieval symbolic exchanges of turf in the livery of seisin or the Germanic tradition of the exchanging of twigs, to the public display of ritual which drew those bearing witness into the transaction themselves.[54] These gestures no longer conveyed the exchange itself, but publicly attested to the imposition of future obligations on one or both parties.

Conclusion: Performing Trust

The increasing use of written contracts in credit represented the abstraction of the exchange, from a performative ritual to an impersonal exchange.[55] It distanced the creditor and debtor and simultaneously introduced a material object of the written obligation that could be exchanged in itself. According to Jack Goody, it reflected the shifting nature of the relationship between creditor and debtor from kin-based relationships in a society with a shared communal knowledge of credits and reputations to an economic exchange between anonymous actors.[56] It also, however, coincided with a shift in legal preferences. The ecclesiastical courts, once a popular forum for petty debt litigation under the guise of breach of faith, witnessed a dramatic decline in business in the sixteenth century. In the secular prerogative courts of equity and requests in the sixteenth and seventeenth centuries, disputes over unpaid debts rose and were increasingly centred around the use of a written bond or sealed instrument. Once the debt was repaid, the written bond was required to be physically cancelled by the creditor, either marked and crossed out, to indicate the debt had been repaid, marked, and returned to the debtor to make a complete contract or destroyed. As such, the written obligation

52 CP. F. 210, Harrison v. Papedy, Borthwick, CP. F. 251, Wyntryngham v. Huett, Borthwick.
53 Ibbetson 1992, 4–5.
54 Ibbetson 1999, 4–5; Ibbetson 1992, 7.
55 MacNeil 2006, 323.
56 Goody 1986, 144–148.

held greater sway and was more closely guarded by creditor and debtor alike as vital proof if needed in court.[57]

Oral contracts were the norm in fifteenth-century England, in part, because it was the testimony of witnesses that were the most widely accepted and authoritative form of proof at court. Performing the ritual of the oath was commonplace because it permitted the hearing of the case under the guise of breach of faith in a church court thereby increasing the legal routes open to the creditor in a legally pluralistic society. Though a promise was made on faith and declared to be truthful and honest, both creditor and debtor looked ahead to the possibility of legal action, inciting the language that might grant greater recourse to legal restitution. The legal code of church courts in medieval England had developed to support the oral contract. The courts prioritised the testimony of witnesses over written evidence and in doing so cultivated a language of trust and fealty that characterised the solemnity of the oath and underpinned the oral contract. There was no clear shift from an oral credit economy to a written one, indeed historiography on early modern credit networks has done much to assert the continued importance of oral agreements for the maintenance of market exchange in the sixteenth and seventeenth centuries. The co-existence of both oral and written agreements in the fifteenth century was the most effective means of creating a communal knowledge of the economic activities of the community.[58] The written contract gained its importance by its materiality; where it was signed, who viewed it, and how it was handled in a process of ritual and custom around the speaking of oaths. Parallels are to be drawn in the ways in which written court documents gained authority. Summons to court were circulated, delivered to defendants, read aloud to their neighbours, displayed in civic halls, or read from the pulpit; their legitimacy derived from the mark they made in the auditory landscape of medieval society. There was no clear ascendancy of written evidence either at court or in the credit economy, rather custom ascribed an almost sacral meaning to a written document whose validity as a form of proof was derived from its performance and basis in a collective memory.

57 Stretton 2013, 194.
58 Forrest 2018, 345.

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