

Joseph Biancalana. *The Fee Tail and the Common Recovery in Medieval England, 1176–1502*. (Cambridge Studies in English Legal History.) New York: Cambridge University Press. 2001, Pp. xix, 498. \$100.00. ISBN 0-521-80646-1.

This book is one of the most impressive works on English land law to have appeared in recent decades. The research behind it, including careful reading of hundreds of manuscript plea rolls, must have taken years. More than simply time, however, this project required an acute legal mind, as its subject, medieval property law, is the most technical and most difficult part of the common law. Among the book's many contributions are a new explanation for the shift from maritagium to jointure, a nuanced tracing of the evolution of the fee tail from limited to perpetual duration, more precise dating of the first common recoveries, an elucidation of the double voucher procedure, and quantitative analysis of the use of fee tails and common recoveries.

The fee tail limited inheritance of land to direct descendants of the first party holding the fee tail. After some debate, the fee tail also came to include a restriction on alienation; that is, those holding land in fee tail (tenants in tail) were forbidden to sell or transfer the land to others. Some tenants in tail naturally chafed at these restrictions. Clever lawyers and sympathetic court officials therefore developed the "common recovery" to end an entail. This procedure exploited numerous legal technicalities too complicated to explain fully here, including a sham lawsuit by the grantee against the grantor, a voucher by the grantor of a

landless warrantor who then intentionally defaulted, a default judgment for the grantee against the grantor, and another default judgment for the grantor against the warrantor. The procedure thus exemplifies, depending on one's perspective, either the ingenuity of the common law or its excessive technicality and reliance on fictions.

The six chapters in the book are closely related essays. Four chapters are pure legal history, while two address broader social concerns, albeit primarily from legal sources. The more legal chapters address the development of the fee tail and common recovery. The first chapter discusses fee tails from the late twelfth century through 1285. It shows that, during most of this period, a tenant in tail could alienate the property if he had a child who survived him, but that this understanding was upset by a 1281 case that held that a tenant could alienate if he had a child, even if the child predeceased him. This case provoked the statute *De Donis*, which Biancalana argues aimed primarily to restore the pre-1281 state of affairs. Chapter 2 then shows how *De Donis* was interpreted (or misinterpreted) to bar alienations, whether or not the tenant had children and no matter how many generations had passed since the creation of the fee tail. Biancalana argues that the expansive understanding of *De Donis* emerged gradually and that the perpetual restraint on alienation was not accepted doctrine until the 1420s. Chapter 4 discusses a variety of technical devices that could be used to bar enforcement of entails before the development of the common recovery. These methods, however, each had deficiencies which rendered them inapplicable or impractical in many circumstances. Chapter 5 traces the origin and development of the common recovery, including its important double voucher variant. Notably, Biancalana shows that the common recovery emerged around 1440, less than two decades after entails became perpetual.

The other two chapters address the use of and attitudes towards entails and common recoveries. Chapter 3 argues that entails were probably used most often as a part of marriage settlements in which the groom's father gave land to the bride and groom in joint fee tail, known as jointure. Chapter 6 shows that the common recovery was used primarily for two purposes—to sell land made inalienable by the fee tail and to “resettle” it, that is to keep it within the family, but direct it to family members who were otherwise excluded by the entail. It also argues that use of the common recovery to bar entails was generally accepted. Biancalana's evidence regarding social attitudes towards the common recovery is very slender—primarily traditional legal sources supplemented by will collections and the Stonor letters and papers. Perhaps no other evidence exists. Or perhaps other historians, exploring different sources, will be able to shed additional light on this topic.

The book is tightly argued and, given its technical subject matter, clearly written. Nevertheless, it will be tough reading for anyone not already steeped in the minutiae of medieval English property law. The author presumes that the reader already knows a fair amount about formedon writs, the role of warrantors, and similar subjects. Given the author's ambition to address social as well as legal questions, the failure to assist the more general reader is unfortunate. The book could also have benefitted from additional proof reading. Key words are occasionally omitted or confused. See, for examples, p. 2, ten lines up from the bottom, where the word “not” is missing, and p. 320, eleventh line, where grantor and grantee are interchanged.

These faults, however, are relatively minor and do not detract from the important contribution made by this book.