



Warranty, Litigation, and Compensation

Abstract This chapter examines warranty in practice. It presents an overview of what alienees expected their warrantors to do for them in the event of an outside challenge, discussing warranty commitments both within court and outside of court. The chapter presents the rich case material from the region to provide a composite picture of expectations and areas of debate about warranty. The chapter then discusses what happens when a warrantor failed to discharge his or her commitments. Here I examine the various claims to compensation that an alienee might make, and likewise present the case material that illustrates how such claims worked in practice. I draw particular attention to cases in which one party sought redress from a warrantor for properties seized or lost in warfare. The overall conclusion of the chapter is that warranty throughout our period was a recognised feature of court practice, and the ability to summon a warrantor to one's defence amounted to a sort of procedural right available to defendants during our period.

Keywords Lawsuits • disputes • warfare • *guerra* • compensation • exchanges • excambium • procedure

Thus far, we have examined the diplomatic of warranty clauses and what charters reveal about the practices associated with the giving of warranty. While diplomatic formulas and the circumstantial details recorded in charters gives us good reason to identify major continuities in warranty's history, the diplomatic nevertheless represents only an ideal: what alienors, alienees, and the scribes who wrote their charters thought the world *ought* to be. If diplomatic formulas provide a good impression of expectations, it is necessary to see how such expectations translated into practice, both in and out of formal court settings, in order to fully understand how warranty worked during the central Middle Ages. In this chapter, we shall look at what happened when an individual sought to make good the commitments a warrantor had made, and what happened if the warrantor could not successfully discharge his or her obligations to the alienee.

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Promises of warranty typically stated that would-be warrantors would discharge their duties 'to the best of their ability' (*pro posse suo*), a characteristically expansive yet ambiguous phrase whose precise meaning no doubt generated much debate between alienors and alienees.¹ Fortunately, much of our evidence allows us to get below the level of generalities. Thus, alienees seem ordinarily to have expected that their warrantors would support them in court. From the earliest surviving clauses, the association between warranty obligations and formal legal settings is clear. Consider two early clauses, both dating from between 1038 and 1055: in the first, an alienor told the monks of Saint-Aubin that 'should anyone arise to challenge the things which he abandoned', then 'he will warrant them and undergo proof [for them] in court [*curte*]'; in the second, another warrantor

¹For examples, see: *FON*, no. 892 (1150 × 99); 'Livre blanc', fos. 37r–37rbis (1100 × 1110); 'La Roë', fos. 60r–v (1149 × 53/4) and 81r–v (1149 × 70); *RA*, no. 130 (1110 × 1115); *SJT*, nos. 139 (1207) and 183 (1222); *TV*, nos. 174 (1060 × 64), 603 (1190), and 638 (1202). The phrase also appears in eleventh-century Norman warranty clauses, for which see Tabuteau, *Transfers of Property*, p. 196. Equally, alienors might commit themselves to the support of their alienation 'in as much as they were able' (*in quantum potuerit*, or variant): see here, *Assé*, no. 9 (1125); *MMA*, p. 36 (c.1070); *MV*, no. 118 (1060 × 66); *Noyers*, no. 409 (c.1115); *SAA*, nos. 288 (1060 × 87), 632 (1107), and 655 (1097); *SVM*, no. 65 (1093 × 1103).

committed himself to defend the same monks *in curia*.² Similar promises of defence or warranty specifically in court recur throughout the period covered. Raoul de Beaugency, in 1092, thus promised to acquit his gift to Marmoutier ‘in any court, according to justice’; in 1111, a quitclaimant to Cormery affirmed that he would resist any claimant against the monks ‘in both secular and ecclesiastical judgment’; between 1156 and 1162, Maurice de Craon warranted the canons of La Roë, offering his aid and defence either in his own court, or that of the bishop of Angers; or in 1226, Guillaume *Ropenon* warranted the monks of La Trinité de Vendôme ‘both within judgment and outwith judgment’.³ The curial orientation of warranty, while unsurprising, is important because it loosely structured how contemporaries understood the scope as well as the limits of what warranty entailed. As we shall later see, however, there was sometimes debate between alienors and alienees about where precisely such boundaries lay.

Warranty procedures ordinarily began with the summoning or vouching of a warrantor. A charter from 1099, for instance, records an adjournment to a dispute between Gaudin de Malicorne and the canons of Saint-Laud d’Angers because the judges had decided that Gaudin ‘ought to have as his witness and defender’ Robert the Burgundian, from whom he said that he had the contested property in fief (*in feodo*).⁴ This charter opens a rare window onto proceedings *in medias res*, as opposed to the more usual retrospective accounts supplied by such documents, and it suggests that summoning a warrantor was a basic procedural right for a defendant. Some cases, moreover, make clear that the warrantor was *not* already present during the legal proceedings to which he was summoned, meaning that, like the Saint-Laud charter, warranty procedures must often

² SAA, no. 104: *si quis surrexerit ad calumpniandum ea quae guirpivit... ipse guarendet et probet in curte, at que heredes sui post eum*; and SAA, no. 940: *ipse defenderet in curia contra omnes homines*.

³ MD, no. 60: *promittens se illa nobis adquietaturum ab omnibus hominibus in omni curia, secundum justiciam*; Cormery, no. 54: *paratus ero et saeculari et ecclesiastico iudicio omnimodis resistere cuilibet calumpnioso*; ‘La Roë’, fo. 82v–83r: *hoc eis concessi quod illis qui justo iudicio curie meae vel curie Andegavensis episcopi aliis respondere vellent defensionem meam et auxilium preberem*; TV, no. 670: *et tam in iudicio quam extra iudicium*.

⁴ SL, no. 20: *in quo dijudicatum est placito a supradicto comite et reliquis baronibus qui presentes aderant quod Gaudinus cum de quo dicebat se terram habere in feodo, Robertum videlicet Burgundionem, in curia comiti [sic] Andegavorum et episcopi testem et defensorem terre que Angularia dicitur deberet habere*.

have resulted in delays.⁵ And there is at least one case suggesting that a defendant, when vouching a warrantor, ought to give a pledge. Thus, between 1060 and 1081, Vivien du Lude had purchased vineyards from a serf (*servus*) of Saint-Aubin without the abbey's consent, whereupon the monks promptly reclaimed them: Vivien pledged (*guagiavit*) his warrantor at a fixed court-date (*ad terminum*), though the warrantor defaulted when the term arrived.⁶ Given that Vivien's act of pledging was expressed with the same verb used when individuals gave pledges to pay fines, we are likely here dealing with some form of material and/or pecuniary pledge whereby a defendant secured an adjournment.⁷ Yet the charters on the whole provide scant detail concerning the practicalities of summoning a warrantor, with basic questions such as how long an adjournment did warranty buy for the defendant left unanswered.⁸

Several cases demonstrate someone who had been vouched to warrant arriving at a *curia* or *placitum* only to deny any such obligation. Thus, between 1096 and 1110, for example, one Maffredus claimed a *prévôté* from Saint-Pierre de la Cour, alleging that Norman Riboul had given it to him as his inheritance (*ut hereditatem*); in the *curia* of Élias, count of Maine, Maffredus 'vouched' Norman to come to his defence, who then 'wholly denied that he had given that fief and inheritance to Maffredus'.⁹

⁵ See, for example, *SPC*, no. 13 (1096 × 1110) in which a defendant's warrantor was 'vouched' (*advocatus*); *SJH*, no. 33 (1205), in which the court-holder (the bishop of Angers) summoned the defendant's warrantor; or *SVM*, no. 252 (1070 × 80) in which the abbot of Saint-Vincent du Mans, after an adverse claim against his abbey's property, proceeded to lead his 'warrantor' and *auctor* from Tours to Le Mans, and won the contested property 'by the authority of that warranty' (*per guarantagii ipsius auctoritatem*).

⁶ *SAA*, no. 362: *et proinde guarentum suum id est venditorem ad terminum ipse Vivianus guagiavit ... termino ver adveniente, Vivianus presto non fuit nec guarentum suum habuit.*

⁷ Note also *Cout.AM*, § 100 which states that the defendant should provide pledges in order to summon a warrantor.

⁸ The adjournment to Gaudin de Malicorne's case, recorded in the Saint-Laud charter, was dated to 13 April, with the next session scheduled for 3 June, at the Angevin comital court in Baugé, giving a delay of fifty-two days. The question of adjournments is closely related to the periodicity of courts throughout our period, a question that is too complex to enter into discussion about here. Suffice to say, we have references to regularly meeting assises in Anjou from the 1230s at the latest; *BB*, part II, vol. 2, pp. 117–20 discusses the evidence. Compare *Beaumanoir*, cap. 34, § 1046, which states that an adjournment to produce a warrantor should be no longer than a year and a day, unless the individual summoned as a warrantor should live in a distant land.

⁹ *SPC*, no. 13: *Normannus a Maffredo ut hereditatem ab eo sibi datam defenderet advocatus est, qui et feodum et hereditatem sibi dedisse penitus negavit.*

Although in this case nothing is said about how Norman made his denial, other cases allow us to tease out what may have been typical in such instances.¹⁰ In 1128, for example, Hugh, the lord of Amboise, laid claim to customs in the land of Marmoutier on the grounds that he had these from the fief (*de fevo*) of the count (or countess) of Anjou.¹¹ Count Fulk V then said ‘in a clear and glorious voice’ that Hugh did not in any way have these customs from the comital fief; Hugh then lost the case since he refused to undertake proof or further argue his case.¹² The degree of formality beneath Fulk V’s declaration, and whether it represented the performance of warranty obligations in court, is difficult to tease out. Hugh’s reluctance to pursue his case further means that Fulk’s degree of commitment to Marmoutier’s defence was not really put to the test, since all that seems to have been required here was an assertion on the monks’ behalf. When powerful figures such as the count of Anjou said something in a court to contradict the claims of a follower, then this must have represented a real test of resolve for that follower, many of whom, for whatever reason, may have been reluctant to launch formal proceedings against their superiors. At any rate, Hugh d’Amboise’s case suggests that it ordinarily fell to the individual who vouched a warrantor to establish, perhaps by proof, the obligations of the warrantor if this latter denied them. Confirmation of this comes from a 1062 case. A lord who had authorised and promised to acquit Marmoutier’s acquisition repeatedly denied having earlier promised to acquit them when the property was made the subject of a challenge by his brother-in-law; only when the monks arranged a judicial duel against their warrantor did he recognise his earlier commitments.¹³

¹⁰For other statements to the effect that the would-be warrantor simply ‘denied’ having given property to someone, see ‘La Roë’, fo. 76r–v (1149 × 70), where a claimant alleged to have purchased property from one Hilarius, who then denied this: *quod dicebat se emisse de Ylario Forre, Hylarius hoc negabat*.

¹¹Paris, Bibliothèque nationale de France, Collection Touraine-Anjou, vol. 4, nos. 1500 and 1501, which provide variant readings of *de fevo comitis* or *de fevo comitissae*.

¹²Ibid.: *Tum comes visus aliquantulum indignari libera excelsaque voce dixit quod has consuetudines quas ut saepius dictum est in terra Beati Martini exigebat de fevo suo idem Hugo prorsus non habebat*. See also RA, no. 185 (c.1147) for another Angevin case where Nivard de Rochefort claimed rights through the count, only to be told by Count Geoffrey le Bel, ‘You have no right in that wood, because I have no right in that wood’ (*ergo nichil juris est tibi in bosco illo, quia nullum jus habeo in bosco illo*).

¹³M. Manc., I, pp. 341–2: *Cum ergo contra istam calumniationem sepedictus monachus promissam Guillelmi exposceret adquietationem et ille se promissae negaret, bellum contra eum de hoc adbramitum est et ita quandoque quod fecerat recognovit....*

Less clear is the role charters themselves played in the establishment of a warrantor's obligations. I have found no evidence from western France in which a court inspected a charter to determine whether or not an individual summoned to warrant had earlier made such an agreement and included it in his charter.¹⁴ Comparative evidence suggests that by the thirteenth century, at least, establishing warranty obligations by charter would not have been out of the question. There is late evidence provided from the *Parlement* in Paris that royal warranty, at least, could be established by the production of a charter. In Pentecost term at the *Parlement* in 1270, for example, Guiotus de *Lainville* asked the king (Louis IX) to warrant him when Richard *Bellenguel* claimed land from him. Guiotus alleged that King Philip (Augustus) had given this land to his predecessors on account of service, and produced a charter in support of his case; the *arrêt* continued to state that the king would warrant and would take up the lawsuit himself.¹⁵

Yet, consider on the other hand a 1274 charter from the *officialité* of Chartres. This records a case between one Henry de *Morgues* and the abbey of Marmoutier, in which Henry stated that he had sold the monks only (*tantummodo*) his own share of a revenue which came from his inheritance, and which he said was confirmed by another charter from this same *officialité*.¹⁶ The monks' response was telling: they stated that 'more had been done, and less had been written in that charter', and that in addition to selling his share, Henry had also confirmed the entirety of this toll, whose other parts the monks had bought from his maternal aunt (*matertera*), promising also that he would warrant the entire revenue 'against

¹⁴There is one suggestive example from the 1060s in which Guy de Vaucouleurs promised in his quitclaim to the monks of Saint-Florent that he would warrant 'the things which have been named in the letters which he has and which we have' (*ea quae in litteris quas inde habet et nos habemus denominata erant*): 'Livre noir', fo. 55r-v. The example implies that warranty obligations could be linked specifically to the charter conveying them, but the Saint-Florent charter just cited is nevertheless exceptional, and it is difficult to draw conclusions about the use of charters to establish warranty obligations in court on the basis of this transactional document.

¹⁵*Olim*, p. 810.

¹⁶MD, no. 276: *Henricus dicebat et asserbat se vendidisse tantummodo campipartem quam ipse habebat, moventem ex hereditate sua ... pro viginti libris Turonensibus, prout in quadam littera sigillo nostro sigillata super hoc confecta dicebatur contineri.*

everyone, even against his own brothers and sisters'.¹⁷ The *officialis* then coordinated arbiters who carefully examined witnesses, under oath, over the extent of the promises that Henry had earlier made. From this, the decision was that Henry had indeed promised to warrant the monks against all, 'even against his brothers and sisters'.¹⁸ Here we have an inquest seeking to determine the key fact of what exactly a warrantor had promised verbally, especially since, as the monks of Marmoutier put it, more was done than had been written in the initial charter recording the sale. Although much remains unclear concerning this particular case, its wider lesson for our present purposes emerges forcefully: whatever probative value the charter might have had in establishing so-and-so's warranty commitments, there was still considerable scope for debate as to the extent of those commitments for which alternative, non-written evidence might be required. Not only does this story encapsulate the difficulties of capturing in writing all of the potential nuances of the verbal commitments underlying warranty, but it also highlights the continued relevance of the oaths, *fides*, and other physical and spoken acts discussed in the preceding sections, because the establishment of a reluctant warrantor's obligations might rest on whether or not individuals could remember the content of these earlier acts.

Once they accepted their commitments, whether willingly or after proof, warrantors were typically expected to provide an account and response to a *calumnia* on behalf of their alienees should their transactions be challenged by a third party. Numerous warranty clauses thus express the warrantor's commitments in verbs meaning 'to plead' (*placitare*), 'to deraign' (*disrationare* or *rationare*), 'to provide an account' (*denarrare*),

¹⁷ Ibid.: *quod in dicta venditione plus fuerat actum et in dicta littera minus scriptum, quia dicti religiosi dicebant et asseriebant quod cum ipsi emissent a matertera dicti Henrici et Guerino de Tellau armigero et Huelvisa, ejus sorore, illud quod ipsi habebant in quadam campiparte ... dictus Henricus asserens ad se pertinere totum residuum dictae campipartis, eisdem religiosi vendiderat totum residuum dictae campipartis, et totum illius residuum promiserat se garantizaturum et defensurum dictis religiosi contra omnes, ac etiam fratres et sorores ejusdem Henrici.*

¹⁸ Ibid.: *dicti arbitri dixerint in hunc modum videlicet quod cum ipsi de premissis inquisissent veritatem et invenissent per testes legitimos receptos juratos et ab ipsis super premissis diligenter examinatuos quod dictus Henricus totum residuum dictae campipartis dictis religiosi vendiderat et eisdem religiosi promiserat se contra omnes garantizaturum ac etiam contra fratres et sorores dicti Henrici.*

or simply ‘to testify’ (*testificari*).¹⁹ Equally, the often close conceptual relationship between warranty and witnessing further reinforces the emphasis on testimony.²⁰ In 1107/8, for instance, Païen de Mondoubleau promised the monks of Marmoutier that he would be their *auctor*, *defensor*, and *legalis testis*.²¹ Our extant case material, not unexpectedly, furnishes some good examples of warrantors turning up to court to give an account or respond to a challenge on behalf of their alienee. A case from c.1105 between one Raoul and the monks of Noyers over a mill that had been given to the abbey by Rannulf Berard, for instance, saw the monks bring their ‘witness’ and ‘defender’ to a *placitum*: there, Rannulf explained (*narravit*) that he had given the contested mill to Noyers, and that his lord from whom he held the mill, and who was also present at the *placitum*, would confirm his account.²² Or, in a case that gathered before the *curia* of Fulk V, count of Anjou (r. 1109–1129/31), between Thibaud de Rillé and the abbey of Fontevraud, the nuns produced Jean de Blaison, the original donor of the contested property, who provided a ‘response’ (*responsum*) to Thibaud’s claim (*clamor*). On the basis of Jean’s response, Fulk V’s barons judged in favour of Fontevraud.²³

Sometimes warrantors would go beyond the provision of testimony, and agree to undertake additional judicial proofs. Arnoul de *Brisco*, for example, promised the monks of Saint-Florent de Saumur in c.1058 that

¹⁹ See: SVM, no. 19 (c.1090) for *placitare*; SL, no. 49 (1150) and SVM, no. 576 (1098) for *disrationare* and *rationare*; SAA, no. 96 (c.1100) for *denarrare*; and Tiron, no. 289 (c.1146) for *testificari*. Such language is mirrored in the case material: see MMA, p. 55 (1108) for a warrantor who warranted the monks of Marmoutier in the following terms: *praesente eam nobis diratiocinari paratus esset*.

²⁰ Recall here one of the etymological senses underlying OF *g(u)arantir*: namely ‘to affirm the truth of something’; see above, p. 21.

²¹ MD, no. 72, and note the use of the term *auctor*; see also TV, no. 603 (1190) where two brothers agreed to be *defensores* and *testes* for the monks of La Trinité de Vendôme; and Tiron, no. 195 (c.1135) for a warrantor committing himself and his successors to be *legales testes* and *veraces defensores* for the monks of Tiron.

²² Noyers, no. 329 (c.1105): *abbas et monachi adhibuerunt testem et defensorem Rannulfum Berardum qui in eodem placito ita se molendinum donasse narravit*. The charter continues to recount Rannulf’s testimony in stylised ‘direct speech’. For a similar example of a warrantor’s testimony in ‘direct speech’, see also SAA, no. 364 (1067 × 91) and discussion of this case in Stephen D. White, ‘Inheritances and Legal Arguments in Western France, 1050–1150’, *Traditio* 43 (1987), pp. 55–103, esp. pp. 71–3.

²³ FON, no. 432 (1115 × 29): *Audito igitur clamore Theobaudi et responso Joannis diffinitum est iudicio baronum ut ecclesia Fontis [Ebraudi] supradictam terram quietam in perpetuum possideret*.

he would defend his gift to them ‘in any proof’ (*in omni lege*); while in 1104, at *placitum* presided over by Adèle, countess of Blois, the monks of Marmoutier came with their ‘warrantor’ (*guarentus*), who stated that he was prepared ‘to undertake whatever proof would be decided’ by the court.²⁴ References to warrantors defending or acquitting contested alienations ‘by judgment’, moreover, may very well allude to judicial proof, given the polysemic quality to the word *judicium*.²⁵ While statements such as ‘Aubrey acquitted [such-and-such a property] for us by a right judgment’, or ‘William warranted [contested property] by judgment’ for the monks of Saint-Florent remain difficult to interpret, there is nevertheless a high probability that they refer to judicial proofs.²⁶ Underlying these various mentions of proof and/or judgment, contemporaries had in mind two forms of proof in particular: oaths and judicial battles. One warrantor in the later 1060s, for example, ‘suppressed’ a challenge to his earlier sale to Marmoutier and acquitted the monks by affirming his readiness to carry proof on the monks’ behalf, ‘even to undertake a battle’.²⁷ Similarly, Vivien Ragoth made a promise to the monks of Saint-Serge that he would

²⁴ ‘Livre noir’, fos. 103v–104r: *si quis hoc inquietare quoquomodo voluerit, defendatur ei in omni lege*; MB, no. 118 (1104): *paratum probare quomodocumque ibi iudicaretur ... guarentus noster ... quod predictum est probare paratus esset*.

²⁵ See here the stimulating discussion in Robert Jacob, *La grâce des juges. L’institution judiciaire et le sacré en Occident* (Paris, 2015), pp. 201–47.

²⁶ SSE, I, no. 260 (c.1100): *acquietavit nobis Albericus recto iudicio*; and ‘Livre blanc’, fo. 77r (1070 × 1118) for: *...et Guillelmus per iudicium guarentavit eam Johanni contra Hugonem*.

²⁷ MV, no. 92 (1066 × 71): *quam ipse Gauscelinus repressit et acquietavit asserens terram illam juris esse sancti Martini, et ad hoc probandum etiam pugnam facere paratus*. See also RA, no. 310 (1060 × 67) in which one Andefroy warranted his sister’s earlier gift to Le Ronceray by telling the claimant that he was prepared to wage a battle (*bellum*) against him; and in FON, no. 572 (1117 × 24), Bishop William I of Poitiers (r. 1117–24) decided that the abbey of Charroux should wage a duel (*duellum*) against Fontevraud’s warrantor should they wish to pursue their challenges against the nuns. See also the Marmoutier example cited above, p. 65, for another reference to a duel that was not performed, and SAA, no. 404 (1082 × 93) for a case in which a would-be warrantor offered to submit to the unilateral ordeal of the hot iron, though this was not in the end performed. In none of the cases involving warranty examined in this study was an ordeal or duel actually carried out. Proposing an ordeal as a form of brinksmanship was a recognised legal strategy during this period, on which see Stephen D. White, ‘Proposing the Ordeal and Avoiding It: Strategy and Power in Western French Litigation, 1050–1110’, in *Cultures of Power: Lordship, Status, and Process in Twelfth-Century Europe*, ed. Thomas Bisson (Philadelphia, 1995), pp. 89–123. Note too the remarks in Lemesle, *Conflits et justice au Moyen Âge*, pp. 157–89.

defend them 'by swearing an oath and even, if necessary, by fighting a battle'.²⁸

Yet statements that so-and-so 'even' (*etiam*) offered or promised to undertake a judicial duel on behalf of his alienee equally suggest that there was room for debate about whether a warrantor's obligations ordinarily included a commitment to wage a battle. By the time the *Coutumes* were written, a judicial battle was the standard proof that warrantors (or their proxies) would undertake in cases involving chattel warranty.²⁹ Yet the *Coutumes* also explicitly differentiates warranty from the waging of battle when discussing the age of majority: thus at fifteen years old, an *homme coutumier* can 'carry warranty' (*porter garantie*), but need not wage a duel until he reaches twenty-one years of age.³⁰ While this clause may refer to the special allowances made for youth, it may equally hint at a possible conceptual differentiation between the general ideas of warranty as responding to a claim on the one hand, and, on the other, the circumstances in which a litigant would be required to wage a judicial battle. Implicit in all of this is the distinction familiar from later French customary law between simple warranty and formal warranty mentioned earlier. In simple warranty, the warrantor's role was to support the defendant's case, often with testimony; in formal warranty the warrantor took the place of the defendant, and thus took over the case. The distinction between 'formal' and 'simple' warranty touches on the degree of personal risk undertaken by any given warrantor.

We have one case, dating from shortly before 1064, which casts into relief the relationship between oath-taking and other forms of proof. Guy de Laval had given the monks of Marmoutier lands near Laval in order to build a *bourg*, but the monks of Saint-Pierre de Couture claimed this land on the grounds that (1) it was the patrimony of their church of Auvers,

²⁸ SSE, I, no. 6 (1082 × 93): *jurando videlicet ac etiam si necesse esset pugnando*. See also TV, no. 485 (c.1139) in which a quitclaimant made a promise to La Trinité de Vendôme in the following terms: *juravit ergo super reliquias ... nonquam se deinceps pro terra eadem calumpniam facturos sed pro posse suo contra omnes homines illam nobis expugnaturus*; the verb *expugnare* here may mean the waging of a judicial battle.

²⁹ *Cout.AM*, § 100: 'si doit la justice tenir la chose en sa main, et puet bien juger des II une bataille par eux II ou par II autres, si chescun se voulet changer, et si le serement à celi qui se fet garantissor'.

³⁰ *Cout.AM*, § 152: 'Home coustumier a aage quant il passe XV anz de avoir sa terre, et de servir ses signors, et de porter garantise: mes il n'a pas aage de soi combastre davant XXI an passé se il ne vouloit' (= *Cout.TA*, § 125).

and (2) that Guy had given the contested lands to the monk Guérin on the condition that it remain part of Auvers' patrimony.³¹ At the ensuing *placitum* at Laval, Guy offered his account (*narravit*): he had indeed given the land to Guérin, but on the agreement that Guérin would construct a monastery there and serve as its abbot, and ensure that the church of Auvers, and anything else he could acquire there, would form the patrimony of that new monastery, rather than of Saint-Pierre de la Couture. The judges decided that Guy should prove his account with an oath and by unilateral ordeal. Guy thus agreed to take on each proof, and he even delivered a serf named Sevald to be secluded in preparation for the ordeal. But despite his agreement, Guy nevertheless objected that it was improper to perform an ordeal over this matter, and his oath alone should suffice.³² These objections seem to have caused some confusion for all parties involved, and the case was repeatedly delayed and adjourned over debates about the appropriate forms of proof it required; only in 1064 did it receive a definitive sentence by William, duke of Normandy, who decided that an ordeal would be unjust, and Guy need only swear an oath.³³

Even reduced to the highly schematic manner in which I have presented it, the case between Marmoutier and La Couture offers several clues for us. First, it illustrates well the differentiation between oath-taking and other forms of proof in the context of warranty. Although one suspects that Guy's apparent bristling at the prospect of ordeal owed much to his own status as a leading political figure in Maine, and his self-confident view that his word alone should carry sufficient weight, the case does at least point towards a likely ambiguity in how far warrantors were expected to commit to any given case. Beneath the generic statements to defend an alienation *pro posse* may very well have lain differing expectations about just how all-encompassing such a promise was. Equally, however, the Marmoutier and La Couture case also points towards what might have

³¹ *M. Manc.*, I, pp. 345–8; see also Tabuteau, *Transfers of Property*, p. 201 for brief mention of this case.

³² *M. Manc.*, I, p. 346: *asserens tamen non esse justum de hac portare iudicium nisi solum fieri iusjurandum*. The issue, from Guy's perspective, seems to have been that his status as a major castellan lord meant that his word alone should have been sufficient.

³³ *Ibid.*, pp. 347–8: *et iudicavit tam ipse quam curia sua quod de hac re iudicium portari justum non erat sed tantummodo jurare debebat Guido quod rem illam quae in calumnia erat numquam Guarino dederit ita ut esset acclinis ecclesie de Alvers, nec monachis de Cultura, quando dedit eis ecclesiam de Alvers, praesertim cum Guarinus ille numquam fuerit monachus Sancti Petri de Cultura, sed Sancti Karileffi*.

been a more common practice on the part of warrantors: one of their responsibilities might have been to supply a proband (for ordeals) or a champion (for battles) on behalf of the alienee. In a comparative example from Normandy, for instance, Waleran de Meulan and his son Robert helped settle a dispute between the abbey of Préaux and William de Campigny, in which Robert promised that he would be the monks' *defensor* 'through one of his knights' should William cause them any subsequent trouble.³⁴ The implication here would seem to be that Robert's commitment of defence foresaw that he would find a champion to wage a duel on the monks' behalf, if necessary. How common such an arrangement was remains impossible to know—although the Guy de Laval example provides a parallel—but it does at least demonstrate one way in which some warrantors could balance expansive warranty commitments whilst also minimising personal (and physical) risk.³⁵

Regardless, the expectations that alienees had of their warrantors were not confined solely to the *curia* or *placitum*, just as disputing was not limited to formal legal proceedings. Some of our material thus hints at the range of extra-curial commitments that a warrantor might be expected to undertake. Occasionally, warranty clauses frame these commitments in the negative—that is, the warrantor excludes them from any potential action she/he would take. In 1072, for example, Thibaud promised the monks of Marmoutier that he would aid and acquit them howsoever he was able, 'except in the giving of money, or the waging of a *guerra*'.³⁶ Similarly, in 1113 a quitclaimant promised the monks of Saint-Aubin his protection and defence, 'except for the payment of money'.³⁷ Exemptions like these

³⁴ *Le cartulaire de l'abbaye bénédictine de Saint-Pierre-de-Préaux (1034–1227)*, ed. Dominique Rouet (Paris, 2005), no. B23: *si aliquo modo prefatus Willelmus de hac re contra ecclesiam Pratellensem aut heres ejus vellent aliquid mali agere, ipse Robertus per aliquem militum suorum esset defensor*. I am grateful to John Hudson for this example.

³⁵ Compare Artem, no. 3532 (1106) in which Raoul Achard confirms to Marmoutier their acquisition of a tithe that one of Raoul's tenants had given them, without Raoul's consent: two men whom Raoul had brought with him then promised the monks that they would 'testify' on Marmoutier's behalf should the need arise. Whilst not an example of bearing proof per se, the charter offers a possible parallel insofar as a lord ensures that two of his associates will discharge the actual performance of warranty obligations.

³⁶ MV, no. 11: *si aliunde calumnia de illis rebus nobis insurgat, ipse adjuvabit nos acquietare calumniam illam, omnibus modis quibus poterit, excepto per pecuniam dando et per guerram faciendo*.

³⁷ SAA, no. 430: *deinceps adversarios pro posse suo tutaret et defenderet excepta datione pecunie sue*.

naturally invite the question of whether the warrantor's promise ordinarily embraced such actions. Yet we also have statements from thirteenth-century clauses that so-and-so would warrant 'in trial and out of trial', or 'in judgment and out of judgment'. Such sentiments, combined as well with promises to defend a transaction as completely as possible (i.e., *pro posse*), certainly point towards an expansive notion of warranty that could include considerable extra-curial commitment.³⁸

When a cautious warrantor like Thibaud, mentioned above, explicitly precluded payments from his commitments, he likely had in mind a number of possibilities. From the case material it is clear that warrantors sometimes provided payments to third-party claimants, effectively buying out an adversary's challenge on behalf of their alienee. Between 1149 and 1170, for instance, Tison de Craon warranted his early alienation to La Roë when it became the object of a challenge by giving the claimant a bushel (*setier*) of oats.³⁹ Though Tison's payment was in kind, rather than coin, the underlying logic that a warrantor might be expected to produce payments to outside claimants remains the same. Other types of payment warrantors might be expected to make could take the form of 'gifts' to grease the judicial wheels in an effort to expedite the movement of a case through court. And equally, the warrantor might assume responsibility for any payments or gifts made to probands or champions, especially if, as suggested earlier, one of the warrantor's commitments was to arrange for such individuals to support their alienee's case if needed. Unfortunately the evidence remains elusive and only suggestive when it comes to the diverse forms of payment a warrantor might make in fulfilling warranty obligations: nevertheless, it is not unreasonable to conclude that warrantors could be expected to bear the expenses arising from a wide panoply of the costs associated with getting justice.

The evidence for warrantors and the business of *guerra*, or warfare, in contrast, provides more detail. Against Thibaud's exclusion of waging a *guerra*, consider a promise made by Geoffrey to the canons of Saint-Julien

³⁸ See, for example, *Tiron*, no. 387 (1263/4) and no. 390 (1265/6); *TV*, no. 670 (1226) (also quoted above, p. 65). Such clauses, however, seem to refer as much to the warrantor's commitment to reimburse any costs or expenses the alienee might incur within or outwith court as they do to more general obligations to provide curial and extra-curial defence.

³⁹ 'La Roë', fo. 52v; see also *SVM*, no. 163 (end of eleventh century) for another example in which claimant receives a setier of oats, possibly at the hand of his brother who warranted the monks; though in this case the payment in kind may equally have been made by the monks.

of Le Mans between 1067 and 1070, stating that in the event of a challenge, 'he would wage as great a *guerra* as he could' on the canons' behalf.⁴⁰ That a warrantor could indeed wage what amounted to a *guerra* on an alienee's behalf is confirmed in the case material. Thus in a case that also dates from between 1067 and 1070, Renaud de Montreuil-Bellay was asked to warrant the monks of Saint-Florent de Saumur against challenges brought against them by his cousin (also named Renaud); the uncle was, however, unable to compel his nephew 'by force' (*vi*), so gave the claimant some property in exchange for the contested land.⁴¹ The key for us is the charter's allusion to force: while much is left to the imagination as to what *vis* here involved, that some form of forceful action on the part of the warrantor was implied seems clear. A case dating from between 1082 and 1089/95 describes what such actions might entail. The recently widowed Adenor de Jarzé, for example, defended her family's patronage to the abbey of Saint-Aubin in Angers by leading a group of armed men to confront some claimants to the monk's property: this action resulted in a fracas in which several of Adenor's men were left wounded, with some even slain.⁴² How frequently warrantors were drawn into violent conflict in their efforts to defend and maintain their alienations remains of course impossible to know. Yet it is important to recognise that defending alienations risked the potential for such violence.

Of particular concern in this regard, at least for alienees, seems to have been the varied forms of 'direct action' or *saisie privée*, as historians have sometimes called them, whereby property claims might be made by seizing chattels or resources directly from contested lands.⁴³ In pursuing a

⁴⁰ *Lib. Alb.*, no. 112: *Si quando aliqua calumnia surrexerit in eam, etsi de ea jus ab aliquo factum fuerit, ipse faciat talem guerram qualem poterit, et canonici excommunicationem.*

⁴¹ 'Livre noir', fo. 107r-v: *Postquam ergo illum et monachos diu multumque super hoc fatigavit et injuriavit Rainaldus videns quia non poterat eum vi cogere ... dedit ei in escamium de sua terra.* Exchanges will be discussed below. See also, 'Livre noir', fo. 56r (c.1100) for a warrantor who 'distrained' (*distrinxit*) a claimant upon the monks' property in his efforts to protect them.

⁴² SAA, no. 270; see also below, pp. 100–101 for additional comment on this case.

⁴³ See Paul Collinet, *Études sur la saisie privée. Introduction, droit romain (legisactio per pignoris captionem), chartes et coutumes du nord de la France* (Paris, 1893); on this point in particular, see Stephen D. White, 'The "Feudal Revolution": Comment', *P&P*, 152 (1996), pp. 205–22; Chris Wickham, *Courts and Conflict in Twelfth-Century Tuscany* (Oxford, 2003), esp. pp. 278–9, 282–4; Geoffrey Koziol, *The Peace of God* (Leeds, 2018), p. 68; the discussion on distraint in England, found in Hudson, *Land, Law, and Lordship*, pp. 22–51, offers instructive parallels here.

claim on vineyards, one would cut grapes; in claiming arable, one would seize the harvest, and so on. Interpreting such practices—both for historians and for people in the central Middle Ages—is far from straightforward, however. In some instances, the seizure of resources must have looked a lot like the raids or razzias of ‘feudal’ warfare; in other instances, the *saisie privée* may have been more a form of self-help whereby a claimant sought to establish his or her seisin; and in others still, these practices may have actually been processes of distraint exercised by court-holders in order to compel attendance at court and/or the performance of services. There was no doubt considerable overlap between the preceding interpretations, and indeed, how any particular action was viewed depended as much on the status of the individual doing it, against whom it was done, and the perspective of the observer.⁴⁴ Nevertheless, charters from the eleventh and earlier twelfth centuries in particular yield abundant evidence of these practices, though they continued to be practised in the thirteenth century and later.⁴⁵ Concerns over the *saisie privée* may well account for promises in which the warrantor agreed to defend an alienee from ‘violence’ (*violencia*), ‘disturbance’ (*inquietudo*), against all ‘invaders’ (*invasores*), or against any harm (*injuria*).⁴⁶ While there may undoubtedly be an element of rhetorical flourish in the use of such language, it is also worth

⁴⁴ See the observations on these points, and on the attempts by eleventh- and twelfth-century courts to construct one particular interpretation, the arguments in M.W. McHaffie, ‘Law and Violence in Eleventh-Century France’, *P&P*, 238, no. 1 (2018), pp. 3–41.

⁴⁵ Daniel Lord Smail, *Legal Plunder: Households and Debt Collection in Late Medieval Europe* (Cambridge, MA, 2016) provides a fine study of the later uses of direct seizure from the archives of Marseille and Lucca; see also Justine Firnhaber-Baker, *Violence and the State in Languedoc, 1250–1400* (Cambridge, 2014); and note Howard Kaminsky, ‘The Noble Feud in the Later Middle Ages’, *P&P*, 177 (2002), pp. 55–83.

⁴⁶ Examples in which warrantors protected alienees against violence can be found in: *MD*, no. 206 (1200); *MV*, no. 5 (1050 × 66); *SAA*, no. 571 (1191 × 1220); *TV*, no. 656 (1214). Protection against ‘disturbance’ is found in: *MP*, no. 64 (1194), which is a warranty given lest anyone *inquietare aut molestiam sive fatigationem aliquam inferre* to Marmoutier; *MV*, nos. 8 (1037 × 70) as the verb *inquietari*, and 107 (before 1060) and 170 (1064 × 77) as *ab omni inquietudine consuetudinum*; *RA*, no. 71 (1142); *SSE*, I, no. 323 (1096). For clauses directed against all *invasores*, see, for example: *SSE*, II, [102] no. 223 (c.1112); *SVM*, no. 182 (1076) as *contra omnes perfides homines et malignos invasores*; *Tiron*, no. 117 (1129). And for references to harm, see: *Artem*, no. 3465 (before 1100); *RA*, no. 355 (1120); *SL*, no. 36 (1125). Note too *MB*, no. 159 (1139); *M. Manc.*, II, pp. 297–9 (1124); *Noyers*, no. 332 (c.1105); *SAA*, no. 372 (1082 × 1106), all of which protect against anyone wishing to do harm (*nocere*) against their alienees.

being mindful of the literal sense of these words.⁴⁷ Set against the *saisie privée*, an *invasio* may be little more than when someone exercised ‘direct action’ by physically entering an alienee’s property in order to take resources from it, and against whom an alienee might well seek the protection of a warrantor. Since warranty amounted to a commitment to defend an alienation from any challenge (*calumnia*), it was equally a promise to defend that alienation from any manner by which a *calumnia* might be made. We see here, again, the obvious parallels warranty has with practices of commendation through which an individual or community offered payments or a cut of the produce of his or her (or its) property in return for a lord’s protection against any who would do them harm, as noted earlier.⁴⁸ Most alienees likely shared the expectations of the monks of Tiron, who in 1203 and in return for a payment of 12*li.*, obtained the warranty of their alienor’s lord: his warranty was valid ‘in peace and in war’, though in 1203 foremost in the minds of the monks of Tiron and their warrantor, Gervais II de Châteauneuf-en-Thymerais, may have been the war between the Capetian and Angevin kings for control over much of western and northern France.⁴⁹

* * *

Not all warrantors were successful in defending their alienations from outside challenges. A third party with a stronger claim to right—to *ius*—in a property sometimes obtained the contested property from the original alienee, despite the warrantor’s best efforts to defeat the challenger’s claims in court or to persuade a claimant to abandon his or her

⁴⁷ Consider here *Noyers*, no. 267 (c.1098). Arraud de Nouâtre seized land that Aimery de la Faye had given to the abbey; the charter described this action in the following terms: *habebat invasionem quam nos sazimentum vulgo dicimus*. The *sazimentum* here, clearly evocative of OF *saisine*, serves as a helpful reminder that charters often translate concepts from the vernacular to Latin in ways that may, unintentionally, distort the tone and meaning of particular words. Note here the warnings in Dirk Heirbaut, ‘The Dangers of Using Latin Texts for the Study of Customary Law: The Example of Flemish Feudal Law during the High Middle Ages’, in Benham, McHaffie, and Vogt (eds.), *Law and Language*, pp. 165–95.

⁴⁸ See above, p. 30. Note, more broadly, Pierre Duparc, ‘La commendise ou commende personnelle’, *BEC*, 119 (1961), pp. 50–112; and idem, ‘Le tènement’, *RHDFE*, 40 (1962), pp. 43–63; Hyams, ‘Warranty and Good Lordship’, esp. pp. 447–53.

⁴⁹ *Tiron*, no. 343: *et concessimus ita pure et absolute quod nichil nobis nec heredibus nostris reclamabimus nec reclamare poterimus, sed predictam elemosinam tam in pace quam in guerra garantizare tenebimus contra omnes pro XII^o libris andegavensibus*.

challenges.⁵⁰ In such circumstances, however, the ousted alienee could ordinarily seek some form of compensation from his or her erstwhile warrantor. Warranty clauses from early on might include provisions outlining what compensation the alienee would be entitled to if the need were to arise. Yet the extant provisions for compensation, along with the relevant case material, illustrates some degree of variability over how the business of compensation was settled in practice. Here we can provide an outline of the main types of compensation to which alienees might have been entitled, and some of the debates to which expectations for compensation gave rise.

In general, compensation could take one of three forms—though each of these need not be viewed as mutually exclusive. The first broad category of compensation, and in many respects also the simplest, was the unsuccessful warrantor's return of any monetary payments she/he had received during the original alienation. Such provisions typically appeared in the context of sales, for which some of the earliest examples of compensatory arrangements survive. Thus in 1051, David, a priest, sold to the monks of Saint-Florent a part of his mill and promised that if he was unable to acquit that mill of challenges, then 'he would return the price that he had accepted from us [the monks] without any complaint'.⁵¹ Yet such arrangements were not limited to sales. For instance, between 1076 and 1096, a quitclaimant was given 30s. by the monks of Saint-Florent, on the condition that he would be their '*adjutor* and *defensor* against all challengers wherever right should be judged', but he gave the monks, in turn, eight personal sureties (*fidejussores*) that he would return the 30s. to them should he be unable to acquit them from any such challenge.⁵² The

⁵⁰The documentation is frustratingly vague in such examples, which partly reflects the ecclesiastical provenance of our sources, whose authors were more interested in recording the exchange that they received than the unsuccessful actions undertaken by a warrantor.

⁵¹'Livre noir', fos. 54v–55r: *ut si undecumque talis calumnia in eodem molendino contra nos insurgeret unde illum nobis liberare et absolvere non potuisset, precium a nobis acceptam absque ulla contradictione nobis restituisset*. For similar examples concerning the return of the sale price, see: 'Livre noir', fo. 134r (c.1050); SSE, I, no. 146 (1074), though this latter is a hybrid gift-sale transaction, on which see Bruno Lemesle, 'Les querelles avaient-elles une vocation sociale? Le cas des transferts fonciers en Anjou au XIe siècle', *Le Moyen Âge*, 115 (2009), pp. 337–64, at pp. 340–51.

⁵²'Livre noir', fos. 71v–72r: *dederunt mihi tali conventionem triginta solidos ut contra calumniatores ubicumque rectum fuerit iudicatum adjutor et defensor fuisssem. Ex hac convenientia dedi octo fidejussores quatinus si de omnibus calumniis non possum acquietare triginta solidos monachis reddere*.

monetary payments given to alienors during quitclaims and donations were therefore sometimes conditional upon the warrantor successfully performing his or her obligations.⁵³ A similar logic might also be applied to the transfer of fiefs. Between 1140 and 1156, for example, the monks of Saint-Julien de Tours granted a fief (*feveium*) to one Giraud in return for 25s. on the condition that if they failed to defend him, then the abbot and monks would return to Giraud ‘everything he gave for the concession of that fief’.⁵⁴

The second general category of compensation was the exchange (*excambium*). Typical here were promises that the warrantor would provide a ‘sufficient’, ‘rightful’, or, most commonly, an ‘equivalent’ exchange.⁵⁵ For example, in 1060 one Frodo made a gift to the monks of La Trinité de Vendôme, promising them an exchange of equal value should his warranty fail; or, in 1233, William d’Audrieu promised these same monks that if he could not acquit his gift to them, then he would give an exchange matched ‘value to value’ from within his own fief.⁵⁶ Sometimes, would-be warrantors specified in advance the properties from which an exchange would be made, such as in 1063 when Geoffrey *Papa*

⁵³For further examples, see: *CMLC*, no. 140 (1247); ‘Livre blanc’, fo. 59r–v (1096); *Noyers*, nos. 260 (c.1098), 246 (c.1096), 405 (c.1115), and 515 (c.1139); *RA*, no. 351 (c.1115); *SAA*, no. 318 (1099); *SSE*, I, no. 6 (1082 × 93); *SSE*, II, [72] no. 125 (c.1100 × 33); *TV*, no. 261 (1077). Note also, though, *Artem*, no. 1406 (1093), where a donor promised the monks of Bourgueil that he would repay a 40s. counter-gift he had accepted for as along as the donated property remained under challenge: once freed, however, the 40s. would be returned to him by the monks.

⁵⁴*SJT*, no. 91: *Si vero aliquis in eodem feveio reclamare voluerit adversus omnes homines et mulieres abbas et monachi erunt illi ajutores et defensores et si abbas et monachi feveium superius nominatum defendere ei non potuerint abbas et monachi reddent Geraudo Rebotel omnia quecunque pro concessione ejusdem fevei dedit*. Compare here *CN*, no. 123 (n.d.), in which the canons of the chapter of Saint-Maurice in Angers granted an inheritance to a deceased tenant’s bastard son in return for a 100s. relief payment, but did so on the condition that if ‘a nearer heir’ should turn up with better title to the property, then the bastard son will lose it and will not be able to reclaim his relief payment.

⁵⁵For ‘sufficient’ (*sufficiens*), see *FON*, no. 265 (1115 × 49); for ‘rightful’ (*rectum*), see *SAA*, no. 155 (1160); and for ‘equivalent’ (*equivalens*, *valens*, etc.), see: *CMLC*, no. 164 (1251); *MP*, no. 11 (c.1067); *RA*, no. 158 (1170); *SAA*, nos. 96 (c.1100) and 101 (1082 × 1106); *SSE*, II, [23] no. 315 (1082 × 93); *SVM*, nos. 576 (1098) and 777 (1080 × 1102); *Tiron*, nos. 193 (1135), 365 (1236), 373 (1243), and 376 (1250); *TV*, no. 699 (1236).

⁵⁶*TV*, no. 134: *aut ipse dominus Frodo ... ut redderetur agerent, aut alterius terre tantumdem valentis commutationem nobis impertirent*; and *TV*, no. 688: *Et ego predictus Willclmus et heredes mei tenemur predictam terram predictae abbacie adquietare in omnibus rebus, vel excambiare valorem ad valorem in nostro proprio feodo*.

Bovem told the monks of Marmoutier that if he could not warrant his gift, then their exchange would come from his land of *Gurguenaldo*.⁵⁷ Ordinarily though not always, the commitments of the warrantor were framed in such a way that it was the ousted alienee who would receive the exchange—or at least a claim to receive the *excambium*. Some third parties might genuinely have had a greater right to the contested property than the warrantor's preferred alienee, and however firm the alienor's will in this regard, outside claimants sometimes demonstrated a superior right to title.⁵⁸ The basis of an outside claimant's greater right tends to be alluded to only obliquely within the surviving case material; typical though may have been claims that the contested property was the claimant's inheritance or that there was some impediment to the original alienation, such as the alienor was of unfree status and hence unable to alienate without his lord's consent.⁵⁹

But, occasionally the promise to warrant was a commitment to provide the exchange to any outside claimant, thereby aiming to ensure the original alienee's security. Thus, between 1060 and 1067 Adam, son of Robert de Château-du-Loir, relinquished his claims upon a church to the monks of Saint-Aubin, and promised them that 'if anyone can demonstrate right

⁵⁷ *MMA*, p. 29: *ut si qua unquam in his calumnia surrexerit a qua nobis illos acquitare non possit, excambium eorum reddat nobis in terra de Gurguenaldo*; see also *RA*, no. 207 (1115) where the nuns of Le Ronceray were promised the land of *Sarcois* as their exchange, 'which was better by far' (*longe melior erat*); *SAA*, no. 60 (1082 × 1106) where two particularly good arpents of vineyard were singled out as the potential exchange; and *SVM*, no. 115 (1067 × 80) in which an alienor named a specific church that would be given in exchange to the monks of Saint-Vincent du Mans if he failed to warrant the church that he had given them.

⁵⁸ Similar observations, important in evaluating the degree of seigniorial control over property, have been made for England: see Hudson, *Land, Law, and Lordship*, pp. 56–7. The point here may be juxtaposed to the view found in Milsom, *Legal Framework*, wherein the wishes of the lord/alienor overrode any claim a third-party might have had. How far an alienee was ordinarily considered the alienor's tenant in western France (i.e., did alienation of property necessarily imply lordship over property) remains open to debate, however, and may mark an important point of contrast to England.

⁵⁹ See, for example, *SAA*, no. 362 (1060 × 81), in which John de Luché sold vineyards to Vivien du Lude, but the monks of Saint-Aubin challenged these because John was a *servus* of the abbey and had made this sale without the authorisation of the monks, 'from whose fief' the vineyards came (*de quorum fœvo*). Vivien's warrantor defaulted at the court-day which had been arranged for the case: Vivien accepted and held a life interest in these vineyards from the monks, but eventually abandoned them completely to the monks for 14*li*. Though this latter remains a somewhat unusual case, it illustrates the impediment that an alienor's status might create to the stability of an alienation.

[*rectum*] in that church in my own *curia*, then I shall acquit [*adquietabo*] that church for the monks by giving to him [the claimant] an agreed upon exchange'.⁶⁰ Whether the particularities of transferring a church—when such transactions might involve the transfer of revenues and altar dues, the right to present a priest for appointment, the physical building, or any combination of the preceding—contributed to the explicit promise that the challenger would receive the exchange, rather than the original alienee, remains difficult to tell.⁶¹ In any event, the extant case material provides ample evidence of warrantors providing third-party claimants, rather than their original alienees, with exchanges. To take just two examples: between 1081 and 1102, Renaud de Craon had given the canons of La Roë a tithe which was then claimed by the canons of Saint-Nicolas; to settle the dispute, Renaud thus gave Saint-Nicolas an exchange (*commertium*), leaving the canons of La Roë in control of the originally contested tithe.⁶² Or, in 1062, Eudes de Bor sold a half manse to the monks of Marmoutier for 20s., but Geoffrey, son of Crispin, challenged this property because he held it in fief from Eudes; Geoffrey was then promised an exchange for that fief, whence he abandoned his claims upon it, and the monks remained in possession of the half manse.⁶³

The arresting emphasis upon equivalency of value in the treatment of exchanges raises several important questions: what was an equivalent value and how was it assessed; and what happened if the unsuccessful warrantor lacked the means to provide an equivalent exchange? Occasionally, the

⁶⁰ SAA, no. 328: *quod si quis ecclesiam ... reclamans, in curia mea rectum in ea monstrare potuerit, scambium conveniens pro ea illi dando, ecclesiam illis adquietabo.*

⁶¹ The particular church that was given to Saint-Aubin had, the monks alleged, been taken from them 'violently' by Fulk Nerra, count of Anjou (r. 987–1040) and given to Hamelin de Château-du-Loir, but was then restored to the abbey by Gervais de Château-du-Loir (Hamelin's son); Adam, the quitclaimant in this example, was Gervais' nephew, and had refused to authorise the restoration of this church to Saint-Aubin. For the monks, then, the desire to ensure that any subsequent challenge would not result in their loss of this specific church may partially be explained by the history behind this particular property.

⁶² 'La Roë', fo. 5r–v. For similar cases, see, for example, MD, no. 67 (1101); MMA, pp. 37–8 (c.1080); *M. Manc.*, I, pp. 340–1 (1062); SAA, no. 92 (1080 × 1120). Note also 'Livre blanc', fo. 77r (1070 × 1118) in which a warrantor provided a third-party claimant with his *concambium*, while Jean, a monk of Saint-Florent, also promised the claimant 60s. in coin and in various (unspecified) items valued at 1d. each.

⁶³ *M. Manc.*, I, pp. 340–1: *Hic autem Gauffredus tenebat eam in fevum de supradicto Odone; sed promittente illo excambionem se pro ea sibi esse daturum, ita illam integre perpetu-que guerpivit.*

nature of the alienated objects would have made such questions easy to answer: thus in 1059, Guismand donated a serf (*collibertus*) to the monks of La Trinité de Vendôme, and agreed that their exchange would be ‘another serf of equal strength’.⁶⁴ Likewise, when the alienation being warranted was itself an exchange of two or more properties, the failure of either party to warrant the other successfully would usually result in the nullification of the original exchange: that is, the properties reverted to their original owners.⁶⁵ Often, though, warrantors might find themselves unable to exchange like for like, and thus an *excambium* following an initial donation in vineyards, for instance, might take the form of revenues instead, as opposed to other vineyards.⁶⁶ Warrantors therefore might provide for a range of options through which their compensatory liability could be performed. In c.1123, for instance, Eudes sold a tithe and some land to the monks of Cormery for 55s., on the condition that if he could not warrant it, the monks could have his house with its garden, or he would pay 100s. to them.⁶⁷ By the thirteenth century, the inclusion of the *obligatio bonorum* in warranty clauses theoretically made of the entirety of the alienor’s substance a creditor’s feast. Behind the *obligatio* was the expectation that the alienee would effectively take assets adding up to the total value of the property that the alienor had failed to warrant.

Agricultural properties rarely lent themselves to easy comparisons, however, especially since the measure of their value rested so heavily upon their economic productivity. There was no guarantee that two arpents of vineyard here would produce the same volume of grapes as two arpents over there. Thus the *excambium* may often have followed an inspection and/or quasi-expert valuation of either the contested property and/or its proposed replacement. Between 1155 and c.1164, for instance, Guy de Laval gave the monks of Marmoutier an entire parish, but reserved the

⁶⁴ TV, no. 132: *alterum collibertum tante possibilitatis*.

⁶⁵ See, for example, *Noyers*, no. 479 (1134); *SAA*, no. 667 (1082 × 1106); *Tiron*, no. 48 (c.1121).

⁶⁶ See *SSE*, II, [36], no. 330 (c.1100) for such an example.

⁶⁷ *Cormery*, no. 58: *tali pacto ut si postea insurrexerit in nos aliqua calumnia parentelae suae, vel alicujus partis, quam acquittare non possit nobis, teneamus tamdiu domum suam et caeteras res suas, donec acquittet nobis eam, aut centum solidos reddat*; Eudes was identified as a *cliens* of Cormery, so the hypothetical seizure of his property might have been a lordly prerogative, and the payment of 100s. worked as a sort of relief to redeem his property from his lord. For instances where a warrantor would lose properties that he held in fief or in benefice from an ecclesiastical alienee if he failed to warrant successfully, see: *Cormery*, no. 54 (1111); *MB*, no. 67 (1094); and *MD*, no. 201 (1192).

future right to build a millpond in their land: in such an event, Guy would provide the monks with an exchange of as much land as he had occupied, following the ‘counsel and consideration of the lawful men of the nearby *bourg*’.⁶⁸ Or consider a case dating from between 1056 and 1082: Teheld sold land to the monks of Saint-Serge, but was unable to acquit it from an ensuing challenge, whereupon ‘it was judged’ that he give the monks land of equal value. Since he refused to do this for some time, the matter came before the judgment of Robert de Vitre and Garnier, Teheld’s own lord, who decided that the monks and Teheld set out to the land in question, with ‘lawful men’ (*boni homines*). There, however much value these *boni homines* saw in that land, Teheld ought to give the same to the abbey. But because Teheld was unable to provide more land, he ended up giving the monks a tithe instead.⁶⁹

The final broad category of compensation that an alienee might expect took the form of the recompense for any losses incurred as a result of a challenge. In 1070, for example, Geoffrey de Turne promised the monks of Marmoutier that if anyone should bring a challenge (*calumniam*) or inflict loss or damage (*damnum*) upon lands that Geoffrey was quitclaiming to them, then he would acquit that challenge and make up said losses.⁷⁰ Charters, however, seldom gloss what individuals might have meant with a term like ‘loss’ or ‘damage’. From the 1120s, evidence from the abbey of Tiron suggests that loss was comprised of any expenses an alienee might incur in driving back a challenge. One such example, admittedly somewhat atypical because the charter concerns a loan, saw the loanees promise that if the monks to whom they had given their property in pledge were required to spend anything ‘in pacifying challenges’, then the loanees, rather than the monks themselves, would be responsible for the

⁶⁸ *M. Manc.*, I, pp. 364–6: *in terra monachorum stagnum edificare contigerit, quantum refluxio stagni mei de terra monachorum occupaverit, tantum ad consilium et deliberationem legitimorum hominum prope burgum suum monachis excambiabo.*

⁶⁹ *SSE*, I, no. 26: *pro terram autem quam prius dominus Andreas emerat iudicatum est ut tantundem terre valentem redderet Teheldus monachis quod per longus tempus noluit facere. Tandem ad hoc ventum est per iudicamentum domni Roberti de Vitriaco et Warnerii senioris Teheldi ut super terram monachi et Teheldus cum aliis bonis hominibus irent et ipsa terra quantum valeret viderent, ut tantum Teheldus redderet monachis quantum illa terra valeret. Quod cum non posset facere reddidit haec pro ipsa terra ... suam partem decime.*

⁷⁰ *MV*, no. 53: *quod si quis inferat nobis calumniam aut damnum pro sua parte ipse acquietabit nobis calumniam et damnum restituet.* See also *MD*, no. 152 (1096), in which a warrantor promised to restore ‘whatever loss’ might befall Marmoutier if he could not warrant his quitclaim (*quicquid damni restaureret*).

payment of costs incurred in driving back challenges.⁷¹ And from the 1240s at the latest, warrantors committed to restore ‘losses’ alongside the alienee’s ‘costs’ and ‘expenses’. In 1247 Herbert de la Guerche promised the canons of La Madeleine de Châteaudun to reimburse them of all ‘damages and losses and costs’ (*dampna, deperdita et costamenta*)—along with the 50*li.* counter-gift he had accepted for his ‘gift’—that they might incur because of a challenge.⁷² Thus by the mid-thirteenth century, compensation for loss seems to have entailed court costs and legal fees, any loss of revenue from the contested land, expenses to rebuild any damaged resources on the property, and so on.

While some of these various costs undoubtedly weighed more heavily upon the minds of thirteenth-century warrantors and alienees than they did upon their earlier counterparts, we should not overstate the degree of rupture that the formulas from the 1240s onwards might imply. The provisions within the *Coutumes* for chattel warranty state only that the party which lost a judicial battle owed the victor the costs incurred for the battle, the fees owed to the ‘pleaders’ who were present on the day of the battle, and a 60*s.* fine to the court-holder—all of which have earlier parallels.⁷³ Many thirteenth-century costs must have had in mind the fees paid by a litigant towards lawyers and advocates, and the counsel and documentation that such figures might provide—an obvious reflection of the increasing professionalisation of law. But such fees need to be set alongside

⁷¹ *Tiron*, no. 86 (c.1127): *Sciendum etiam quod si de sepedictis terris aliqua calumpnia orta fuerit, pro quibus pacificandis monachis necesse fuerit aliqua expendere, nostrum erit totum eis restaurare*; see also *Tiron*, no. 117 (1129) for the following: *...garantabunt terram contra omnes calumpniatores, atque omnia dampna restauranda promittente*.

⁷² *CLMC*, no. 140: *Si vero contingeret quod absit quod dicti canonici super dicta ele[mosina] ab aliquo vel ab aliquibus molestarentur et dicti canonici occasione dicte molestacionis, dampna et deperdita et costamenta inde incurr[erent, de] dampnis et deperditis et costamentis abbati ... verbo simplici sine alterius honore probacionis, crederetur et dictis canonicis dampna et deperdita et costamenta et quinquaginta libras dunensis monete quas dicti canonici michi dederunt et solverunt occasione elemosine supradicte ego et heredes mei integraliter reddere teneremur*.

⁷³ *Cout.AM*, § 100; the ‘pleaders’ appear in Beaumonts-Beaupré’s edition as ‘correors’, while in Viollet’s edition (= *Cout.TA*, § 84) the reading given is ‘conteors’, which I have preferred here. The word is related to the *conte* that litigants and/or their advocates made in a court; the ‘conteors’ likely have parallels in earlier Latin terms such as *placitatores* that are occasionally found in charters. For this latter term, see, for example, *MD*, no. 156 (1097/8) in which the monks of Marmoutier refer to their *placitatores* in a *curia* gathered by Adela, countess of Blois, at Châteaudun; and *Noyers*, no. 381 (c.1111) for the statement that the monks of Noyers will procure *placitatores* if necessary to defend a gift of land that was made to them.

the various payments made to champions and/or probands, or 'gifts' to judges and/or court-holders for which we have evidence from the eleventh century, and which may often have formed an element in alienees' general expectations of their warrantors' obligations. Likewise, damages and/or loss of revenue was as great a concern (and risk) during the earlier period as it was in the thirteenth century. Throughout the period under consideration in this study, the use of force remained a valid way of staking property claims against contested property, like when the monks of Saint-Serge sought out their warrantor because his brother broke their plough on the contested property, likely in an attempt to press his claim to property that had been alienated by his brother (i.e., the warrantor).⁷⁴ Part of what the warrantor was promising, then, was protection from such actions and, presumably, the commitment to reimburse any losses if that protection failed. Finally, the more explicit references to damages, costs, and expenses from the 1240s were focused mainly on removing the burden of proof from the alienee in establishing his/her claim to such compensation. Often, the alienee was allowed to state the monetary value 'by speech alone' or 'by oath', and, crucially, 'without any other proof'. For example, in 1263/4, one warrantor promised that 'if for default of warranty or defence they [the monks of Tiron] should suffer any losses or expenses, either within or outwith the trial, we [the donors] are held to restore to them completely on the oath of their procurator, with the oath of one monk of Tiron, without [any] other proof'.⁷⁵ The concern here was less about getting the alienee his compensation, and more about doing so without the delays caused by a formal trial.

Among the more pressing issues that must have weighed heavily upon peoples' minds were the circumstances in which one could legitimately claim compensation or an exchange: in other words, what counted as a loss for which an individual could turn towards his or her warrantor? The 1437 *contumier* that was organised according to the rubrics of the *Code* began its discussion of warranty with a definition of the Roman term 'eviction', which referred to situations where a third-party established superior

⁷⁴ SSE, II, [53] no. 350 (1082 × 1102).

⁷⁵ Tiron, no. 387: *si pro defectu garantizationis vel defensionis dampna deperdita sustinerent vel expensas in placito vel extra placitum facerent, ad sacramentum procuratoris eorumdem, cum sacramento cujusdam monachi de Tyronio, premissa tenemur eisdem plenarie restaurare sine alia probatione*. For similar commitments, see also: *Lib. Alb.*, nos. 402 (1270), 677 (1239/40), and 696 (1242/3); *M. Manc.*, II, pp. 184–6 (c.1274?).

title *in court* and by a judgment.⁷⁶ Neither the earlier *coutumiers* nor the charter material were so explicit—though the general orientation towards formal legal settings that we have observed across our evidence may suggest that contemporaries generally thought that the typical form of eviction would be a judgment in court. Regardless, the requirement in the 1246 *Coutumes* in the context of chattel warranty that a person vouched to warrant a disputed object should first see that object presumably barred any subsequent claim for compensation that the original defendant might bring if this viewing did not take place.⁷⁷ Other thirteenth-century *coutumiers* note that if a defendant (in land cases) can name and vouch a warrantor, then he or she should do so and not proceed with the case himself/herself, because otherwise he/she would lose any subsequent claim for compensation or an exchange from his or her warrantor.⁷⁸ Whether a similar situation prevailed in western France during this period is uncertain on the basis of the extant evidence.

Our evidence does, however, illuminate one area that seems to have stimulated considerable debate over when and in what circumstances a lord owed compensation to a follower: the seizure of property as a consequence of territorial warfare. Consider a story found in the 1155 *Gesta Ambaziensium dominorum*, a chronicle of the lords of Amboise. Gelduin de Saumur, a *fidelis* of Odo II, the count of Blois, had been driven out of Saumur following Fulk Nerra's conquest of Saumur in 1026. Odo thus offered Gelduin properties in return for the lands that he had lost to Fulk Nerra in service to his lord, and, after much debate, Gelduin and Odo eventually agreed that the castle of Chaumont would serve as Gelduin's exchange.⁷⁹ If the *Gesta* presents a highly idealised vision of good lordship, the case material, in contrast, underscores how difficult it could be in practice for followers and/or tenants who had been ousted in conflicts

⁷⁶ 'Coustumes d'Anjou et du Maine intitullées selon les rubriques de Code', BB, part VIII, § 1180: 'Eviction est forclusion et deboutement par sentence de juge d'aucune chose achac-tée ou à autre juste tiltre eue et possidée à l'instance et requeste d'autrui'.

⁷⁷ *Cout.AM*, § 100; cf. above, p. 18.

⁷⁸ *Beaumanoir*, cap. 34 § 1011.

⁷⁹ *Gesta Ambaziensium dominorum*, eds. L. Halphen and R. Poupardin, in *Chroniques des comtes d'Anjou et des seigneurs d'Amboise* (Paris, 1913), p. 81: *Denique, dum Blesi moraretur, cum multa in Briam et in Campaniam pro terra sua perdita Gelduino offeret, ut animosus armisque strenuus, omnia illa que sibi offerebantur pro nihilo reputans—nolebat enim ab in-icorum suorum, qui sibi terram abstulerant, vicinitate longe fieri—petivit Calvimontem, inter Blesim et Ambazie castrum situm, sibi dari.*

involving their lords to obtain their exchange. In 1061 or 1062, for instance, Geoffrey, son of Berard, reclaimed land from Saint-Florent de Saumur: his father had held this land from the abbey in return for an annual rent, but he had lost this land in 1026 in the wake of a ‘great transformation of inhabitants’ in the Saumurois as a part of the same events that had driven Gelduin from the city.⁸⁰ At the *placitum* presided over by Geoffrey III, count of Anjou, and Abbot Sigo de Saint-Florent, it was judged that, ‘in accordance with custom’, neither the count nor the abbot need answer to the son of Berard over this matter, ‘because otherwise, it would be necessary to return other properties of this sort to their former possessors, which, as had been decided, could not reasonably be done’.⁸¹ The decision stated, as a matter of custom, that men like Geoffrey, son of Berard effectively had to lump their losses (or those of their predecessors), and had no claim for compensation from their erstwhile lords.⁸²

Alternatively, sometimes it was the lord who seems to have had little choice but to provide an exchange, often despite his or her reluctance. Shortly after 1046, for example, Hubert, son of Hubald, brought a claim against La Trinité de Vendôme for the church and land of Pins.⁸³ These properties had been held by Gautier the ‘Young’, a liegeman (*lidgius homo*) of Salomon de Lavardin. But during the ‘first’ war (*guerra*) between the Angevin Geoffrey Martel and Gervaise de Château-du-Loir (also the bishop of Le Mans), which took place in 1038/9, Gautier abandoned his lord Salomon, who was supporting Martel, and went instead to Gervaise’s

⁸⁰ ‘Livre noir’, fos. 108v–109r: *erga ipsius loci habitatores mutatio magna facta fuit*. The narrative detailing the capture of Saumur can be followed in Louis Halphen, *Le comté d’Anjou au XIe siècle* (Paris, 1906), pp. 38–54; and Bernard Bachrach, *Fulk Nerra: the Neo-Roman Consul, 987–1040* (Berkeley, 1993), pp. 180–3.

⁸¹ ‘Livre noir’, fos. 108v–109r: *Habito vero iudicio, approbatum fuit, quod si comes et abbas vellent, nunquam ei de hac re secundum consuetudinem responderent. Alioquin alias res huius modi ad priores possessores necesse esset redire, quod sancitum fuerat rationabiliter fieri non posse*.

⁸² Geoffrey, son of Berard would nevertheless go on to receive a 4*li.* payment from the abbot, and the benefit of the abbey’s prayers, as part of a settlement: he had further alleged that Geoffrey Martel had promised to help him reacquire these lands. A full discussion of this case can be found in M.W. McHaffie, ‘Courts and Rule-Making in Eleventh-Century Western France’, in *Vengeance, Violence, Emotions and Law in the Middle Ages*, ed. Kate Gilbert and Stephen D. White (Brill, 2018), pp. 103–29; note also André Gouron, ‘Aurore de la coutume’, in his *Droit et coutume en France aux XIIe et XIIIe siècles*. Variorum Collected Studies Series (Aldershot, 1993), no. XX, pp. 181–7 at p. 182 for brief comment on this case.

⁸³ TV, no. 64.

side.⁸⁴ For this disloyalty, his fief was ‘openly forfeit’ (*plane forsfactum*) and returned to Salomon. The church and land of Pins were eventually sold by Salomon’s daughter and son-in-law to Agnes, Martel’s wife, so that she in turn could endow La Trinité with these properties.⁸⁵ Hubert’s claim upon these same properties was based upon his marriage to the daughter of Gautier the ‘Young’. In bringing his claim, Hubert acknowledged that like Gautier, he had sided with Gervaise du Mans during the first *guerra* but had returned to Geoffrey Martel’s side when the second *guerra* between the two rivals broke out. Hubert thus alleged that Martel, in return for his support against Gervaise, had promised to return the church and land of Pins to Hubert and his wife. At the ensuing judgment over this matter, Geoffrey Martel demonstrated ‘with manifest proofs’ (*apertis probationibus*) that he had made no such promise to Hubert, and instead had only promised to give Hubert other properties of the same value; crucially, these alternative lands were ‘not as an exchange for these properties [i.e. Pins] in which he was unable to have any right through the gift of Gautier, who had forfeited them, but because he [Martel] wanted to summon Hubert to his aid’.⁸⁶

The conflict between Geoffrey Martel and Gervaise de Château-du-Loir also provides the backdrop for another rich case concerning the business of exchange. After he fractured his hip, Martel made peace to conclude the first *guerra* with Gervaise, and was ‘compelled’ (*coactus*) to give Gervaise the fiefs (*casamenta*) of some of his men, including those of Nihard de Montoire. Although Nihard had given his assurances to Martel that he would not acquiesce to Gervaise’s demands, Gervaise nevertheless had secretly promised to give Nihard an addition to his fief in return for his agreement. When the time came for Gervaise to demand Nihard’s

⁸⁴ On the conflicts between Gervaise and Geoffrey Martel, see Bruno Lemesle, *La société aristocratique dans le Haut-Maine (XIe–XIIe siècles)* (Rennes, 1999), pp. 27–32; Guillot, *Le comte d’Anjou*, I, pp. 54–5, 64–7.

⁸⁵ These events are recounted in *TV*, nos. 62 and 63 (1046), which are variant accounts that differ primarily in their language. Note Barthélemy, *La société*, pp. 618–20 for comment, especially on the early reference to *ligesse*.

⁸⁶ *TV*, no. 64: *Habitu est de hoc iudicamentum apud Vindocinum publice, in presentia comitis Gosfridi. Qui apertis probationibus demonstravit quod de terra illa et ecclesia nullam omnino promissionem Huberto fecisset, sed de aliis rebus suis aliquid quod tantundem valeret se ei promississe non negavit; non pro concambio huius rei, in qua nullum rectum habere poterat, per donum Gauterii qui eam forsfecerat, sed quia eum ad auxilium suum recovare vellet.* Barthélemy, *La société*, pp. 658, n. 59 and 666 mentions this case briefly, but does not comment on the *concambium* or exchange, and the principles upon which it rests.

land, Geoffrey Martel replied, 'It will be so, if Nihard gives his assent', apparently secure in the 'earlier promise of his *fidelis*'. But Nihard did agree, and thus abandoned Martel. When hostilities resumed between Martel and Gervaise, the Angevin count sought to bring Nihard back into his service: but the 'deceitful' Nihard complained that he had suffered loss (*damnum suum*) following the loss of his land when Martel had given it to Gervaise, whence Martel was 'compelled' (*compulsus*) to give Nihard his exchange (*concombium*).⁸⁷ While power dynamics and the relative strength of all parties concerned were undoubtedly a factor in this case (and the one before it), Nihard's exchange shows something of the seriousness attached to expectations of compensation. The *excambium* (or *concombium*) in particular looks to have been something that lords owed to their men, especially if such a man were to lose his property in the lord's service. And this obligation could prove very difficult for lords to wriggle out of, as Geoffrey Martel discovered.

Considering en masse the provisions made for compensation and material redress, one is struck by their range and diversity. Warrantors might give compensation in the form of pecuniary payments, exchanges of like for like, or the right to collect revenues that they were owed. There is even a charter from the Chartrain in which a serf, who had recently been 'restored' to his 'liberty', along with any progeny he might have, by the monks of Saint-Père de Chartres, made a gift to these same monks which he promised to defend for them, but on the condition that if he was unable to do so, he would then return to a state of servitude (*in servitute*).⁸⁸ This diversity seems to reflect a fundamental tension between, on the one hand, the basic principle that the individual who failed to defend something that she/he had given or sold ought to provide the alienee with some form of compensation; and on the other hand, the actual capacity of

⁸⁷ TV, no. 68 (1047): *Mox ob comite ignaro facti benefitium Nihardi cum ceteris donis quesivit. 'Esto', inquit comes, 'si Nihardus assenserit', securus scilicet ex anteriore promissione sui fidelis. Tunc adhibitus Nihardus et interrogatus: 'Faveo', ait ... Iterum post tempus per instabilitatem episcopi resumpta est inter eosdem inimitia ... Sed Nihardus fallax illico conqueri damnum suum de amisione illius terre quam sibi dedisset episcopus. Intelligens comes fraudlentiam viri et suspitosam habens perfidiam, rurus compulsus est dare ei comcombium pro ipsa terra....*

⁸⁸ *Cartulaire de l'abbaye de Saint-Père de Chartres*, vol. 2, ed. B. Guérard (Paris, 1840), no. 68 (pp. 457–8) (1130 × 50): *promittens se contra omnes homines eandem terram nobis defensorum; tali lege, ut, si eam nobis quietare non posset, in servitute ecclesie nostre, sicut ante fuerat, ipsemet rediret.*

any individual to provide adequate compensation, which must have varied widely, depending on personal circumstances and the availability of landed or other wealth on the part of the individual concerned. The relationship between warranty obligations and the material wealth of individual warrantors requires further research. But suffice it to say, there is a world of difference between a large-scale aristocratic landholder promising his or her alienees an *excambium* equivalent in value to the alienated properties, and the land- and/or cash-strapped small-holder for whom the providing of compensation, if necessary, must have caused considerable anxiety. To what extent contemporaries viewed these disparate forms of compensation as existing along a spectrum, or if there was a trend towards preferring a particular type of compensation—such as the *excambium*—is very difficult to tell, though merits further investigation.

Whatever form that compensation might have taken, the vital question for historians—and no doubt for contemporaries too—was whether the alienee's right to redress or an *excambium* was automatically implied in the alienor's promise of acquittal, defence, or warranty. The evidence from western France, on the whole, suggests that the alienee who had received something from somebody also acquired a claim for compensation or a replacement property if someone else established superior title to the transferred property or object.⁸⁹ A charter from before 1040, for instance, records that Geoffrey Martel (before he became count of Anjou) received the church of Mazé from his father, Fulk Nerra, on the condition that he not alienate it, but rather keep it in his demesne (*dominicam*). Martel then, 'not daring to make a donation [of the church], on account of the agreement with his father', granted it (*concessit*) to a man, also named Geoffrey, who could collect the fruits from that church 'until it pleased him [Martel] to resume control of it, and without the giving of an exchange [to Geoffrey, the alienee]'.⁹⁰ But when Fulk Nerra learned of this grant, he thought that the church had been given in fief, and thus

⁸⁹ I emphasise that the alienee acquired a *claim* to receive compensation or an *excambium*, admitting that in practice the evicted alienee might have faced considerable difficulty in making good that claim. Yet the vicissitudes of lived social life need not vitiate the strength and significance of the underlying principle.

⁹⁰ TV, no. 44: *Ille eam Gosfredo juveni suo Malramni fratri donare non audens, propter conventionem patris, fructus ejus ad tempus illum capere concessit, donec sibi eam resumere placeret sine redditione comcambii.*

took over control himself.⁹¹ The example, valuable because it concerns a lay-to-lay transaction, speaks to the sorts of expectations normally at play when alienating property. The alienor, in this case at least, apparently felt the need to stipulate that his grant did *not* carry with it the right to an *excambium*; since, moreover, this particular transaction was explicitly differentiated from the gift of a fief (*fevum*), it seems likely that gifts of fiefs, at the least, ordinarily *did* imply a right to an exchange if the alienee were to be ousted from that fief.

In broad brushstrokes, the alienee's claim to receive compensation or an *excambium* seems clear, and the alienee likely acquired this claim as soon as she/he received the alienated property. Situations in which monies or services were exchanged for property could only have served to strengthen the principle of compensation. It is possible, even, that some of the pecuniary counter-gifts that were offered to alienors when making donations to religious houses, for instance, helped to register a transactional dimension to the donation in which the donee *also* received a claim for compensation if they suffered any loss concerning their newly acquired property.⁹² Equally, the association between promises of acquittal, defence, or warranty with the practice of naming and giving personal sureties—one of whose principal purposes, as suggested above, was to share in the liabilities that the alienor took on when making a property transaction—further suggests that the provisions for compensation and/or material redress were a common and expected feature of transferring property.⁹³ The clarity of these general principles of compensation should not, conversely, make us lose sight of the considerable grey areas in how such principles worked in practice. Differences in (or different perceptions of) the type of transaction, for example, had important implications for the alienee's title, and there was no doubt extensive room for debate over whether any given transfer of property amounted to a gift 'in fief', a gift 'in alms', a sale, etc.

⁹¹ TV, no. 44: *ubi Fulco comes subintellexit donatam a filio in fevum putans, assumpsit eam tanquam prorsus obfrustatam convenientiam ablaturus.*

⁹² Note the arguments here in Jean Yver, *Les contrats dans le très ancien droit normand (XIe–XIIIe siècles)* (Domfront, 1926), esp. 39–41; and Stephen Weinberger, 'Les contredons en Poitou et en Provence au XIe siècle: ce qu'il en coûte de faire des affaires', *Provence historique*, no. 210 (2002), pp. 483–96. Compare too the Italian *launegild*, on which see Chris Wickham, 'Compulsory Gift Exchange in Lombard Italy, 650–1150', in *The Languages of Gift in the Early Middle Ages* (Cambridge, 2010), ed. Wendy Davies and Paul Fouracre (Cambridge, 2010), pp. 193–216, with further references.

⁹³ Compare above, pp. 58–60.

Yet it does seem that the onus for restricting what rights were included in a transfer of property rested with alienors like Geoffrey Martel. The alienee, unless otherwise told so, likely received, bought, or otherwise obtained property secure in the expectation that she/he *should* receive compensation if driven out from that same property.

* * *

The main conclusion of this chapter is that warranty was a recognised feature of court practice throughout our period. Litigants summoned their warrantors to defend them, and they also pursued claims for compensation in the various *curiae* and *placita* of the region when warranty failed. Complexity entered the picture with questions about the circumstances in which an ousted alienee could claim compensation. We have seen some of the more detailed debates in the case material centre chiefly on the *excambium*. Even those cases in which an individual disavowed any obligation to warrant might have been linked to concerns over the secondary claims for an *excambium* or other form of compensation to which the alienee might then be entitled if the primary obligation were acknowledged. The establishment in court of warranty obligations—either of defence or compensation—ultimately depended on the logic of various probative procedures, whether ordeal, judicial battle, witness testimony, or charter. And here individuals could engage in all the forms of brinkmanship and social pressure they could imagine in order to weasel in and out of their commitments. But the vagaries of human behaviour as manifest in legal practice should not occlude a more fundamental observation: warranty seems to have been recognised as a basic procedural right available to litigants. As a court told Gaudin de Malicorne in 1099, he ‘*ought* to have his defender present’.⁹⁴

⁹⁴ *SL*, no. 20 and above, p. 65.

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