ing into their hands.[71] Subject to estate taxes,[72] Jews were permitted to inherit property and loans. Richard I's charter,[73] granted in 1190, confirmed these rights. John affirmed the early charters in 1201, extending their coverage to all Jews and adding the right to hold "mortgages."[74]

Under John's charter, a Jew was free "quietly to sell his gage where it be certain that he has held it for a full year and a day."[75] The charter further clarified that in suits between Jews and Christians, litigation rights were explicit and, in some cases, advantageous to the Jews. The "bare oath" on the Torah of a Jewish defendant sufficed to rebut a charge against him by a Christian plaintiff unaccompanied by witnesses;[76] a Christian defendant similarly situated might be required to "wage his law" with compurgators.[77] A suit against a Jewish defendant was tried by a jury of his "peers."[78] And although a Jewish plaintiff could use a writ to substitute for a required witness, a Christian plaintiff could not.[79] Trials involving Jews and Christians could be held only in the King's courts,[80] while jurisdiction of disputes between Jews remained with the Jewish courts.[81]

But the Jews had fewer rights in themselves and in their possessions than did

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71. 4 S. BARON, *supra* note 3, at 78. The right to possess land was not equal to the right to hold a freehold estate, which would have evoked the full range of feudal obligations between lord and tenant. *See* D. WALKER, *supra* note 17, at 497 (defining freehold). Jews were traditionally excluded from freehold tenure. C. ROTH, HISTORY OF THE JEWS IN ENGLAND 107 (1941); *cf.* H.G. RICHARDSON, *supra* note 11, at 84 (Jews held in fee so rarely that no rule against the practice was needed or established). The request by several Jews to hold land in fee and the actual attempt by one to do so led, in 1271, to a royal mandate denying them the privilege. C. ROTH, *supra*, at 65-66. *See infra* note 161 (discussing mandate of 1271).

72. *See supra* note 66 (describing taxes levied on Jewish estates).

73. For a translation of the charter, see J. JACOBS, *supra* note 70, at 134-37.

74. W. PARKES, THE JEW IN THE MEDIEVAL COMMUNITY 168-70 (1938). The author suggests that the Jews succeeded the monastic houses as moneylenders when the Church declared such activity by Christians to be usurious. *Id.*

75. Carte Libertatum Concessarum et Confirmaturum Jedeis Anglie Anno Regni Regis Johannis Secundo (Charters of Liberties Granted and Confirmed to the Jews of England in the Second Year of the Reign of King John) [A.D. 1201] [hereinafter Charter of King John] para. 7 *printed in* J.M. RIGG, *supra* note 13, at 1-2. The Charter of Richard I had similarly provided: "[T]he aforesaid Jews may sell their pledges without trouble after it is certified that they have held them a year and a day. . . ." J. JACOBS, *supra* note 70, at 136. Compare the time period provided for in *Leviticus* 25:29 (one year must pass before house taken as debt security may be sold).

The rights available to Jews in England contrasted sharply with medieval French tradition. A capitulary of Charlemagne forbade Jews to take the property of the Church or any Christian in pledge for a debt. The penalty was confiscation of the Jew's property and loss of his right hand. Louis the Pious later granted charters to certain Jews permitting free contract rights for sale and exchange of property. S. KATZ, THE JEWS IN THE VISIGOTHIC AND FRANKISH KINGDOMS OF SPAIN AND GAUL 92-93 (1937 & photo. reprint 1970).

76. Charter of King John, *supra* note 75, para. 5. *See also* J.M. RIGG, *supra* note 13, at xii (construing charter).

77. J.M. RIGG, *supra* note 13, at xii. Under the most common 12th-century procedure, the court did not decide facts but allocated the "proof" to one of the parties. 2 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 602-03. The selected party could prove his case by battle, ordeal, or compurgation. *Id.* at 602. In compurgation, the party swore an oath that he was innocent and produced a fixed number of compurgators, or "oath-helpers," who swore that his oath was true. T.F.T. PLUCKNETT, A CONCISE HISTORY OF THE COMMON LAW 109 (2d ed. 1936).

78. Charter of King John, *supra* note 75, para. 2. *But see* 1 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 473 (Jew might have case heard by jury, *half* of whom were Jews).

79. Charter of King John, *supra* note 75, para. 2; J.M. RIGG, *supra* note 13, at xii.

80. Charter of King John, *supra* note 75, para. 8; 1 W. HOLDSWORTH, HISTORY OF ENGLISH LAW 46 (5th ed. 1931).

81. Charter of King John, *supra* note 75, para. 12. In his famous dispute with Henry II, Thomas à

the least vassal to the King. The underlying reality was that the Jews were no more than the embodiment of the King's accounts receivable. Jews were subject to periodic tallage and tithing when the King required them to turn over money that was held, ultimately, on his behalf.[82] The King preserved the Jews and their investments as representing his own financial future.

The royal charters, in effect, permitted the Jews usufruct of money[83] much as their Christian neighbors were permitted use of the land. At the King's pleasure, they could derive a livelihood by lending money at interest. Because Jews could lend money at interest, they were available to finance excursions to continental Europe and on Crusade.[84] In addition to the extraordinary fiscal demands of the Crusades, the nobles still owed knight service. Taxpaying began to replace personal service in the practice of "scutage"—money assessed from landowners in lieu of knight fees.[85] For this too, the Jews' assets were liquid, and available for a fee.

It was convenient to the realm to have a source of credit. It was further convenient that the profits from the loan arrangements, forbidden to Christians, be available to the King via his Jews. And it was to the King's advantage to enforce the contracts of credit made by the Jews.

III. THE JEWISH PRESENCE IN THE DEVELOPING LAW OF COMMERCE

A. IN THE KING'S COURT

The most striking development in English law during the twelfth century was the expansion of the royal courts. Under Henry II, the King's court assumed an increasing share of litigation that previously had been heard only by local courts.[86] This was done through the issuance of royal writs, originally executory commands to the sheriff, but, with time, increasingly representing a formal summons initiating action in the royal courts.[87] Glanvill's treatise, written at the close of the reign of Henry II,[88] is in part a form book of writs instructing the proper method of litigation and procedure. The categories of

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Becket pointed to the Jews' internal juridical independence as an argument for a separate autonomous clergy. 4 S. BARON, *supra* note 3, at 277.

82. 10 S. BARON, *supra* note 3, at 96-99. The Saladin Tithe of 1188, to finance the Third Crusade, demanded that the Jews turn over 60,000 pounds, one-fourth of the value of their entire property in the country. 4 S. BARON, *supra* note 3, at 81.

83. The King forbore from his absolute rights in the Jews' possessions, permitting continued investment to accrue profits for his later use. G.M. TREVELYAN, *supra* note 2, at 251.

84. E. JENKS, *supra* note 12, at 40.

85. 1 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 271-74.

86. R.C. VAN CAENEGEM, ROYAL WRITS IN ENGLAND FROM THE CONQUEST TO GLANVILL 349-51 (1959).

87. *Id.* at 195-97.

88. Glanvill's treatise is believed to have been written between November 29, 1187 and July 6, 1189. GLANVILL, *supra* note 68, at xxx-xxxi. The man whose name the treatise bears, Ranulf Glanvill, was appointed Henry II's chief justiciar in 1180. 1 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 163. After Henry's death in 1189, Glanvill accompanied the new King, Richard I, on Crusade and died in Acre in 1190. *Id.* The authorship of the treatise is unknown but has been attributed to at least three men: Glanvill; Hubert Walter, who became chief justiciar in 1193; and, Geoffrey fitz Peter, the sheriff of Northampton. GLANVILL, *supra* note 68, at xxxi-xxxiii. It is equally likely that the book is the work of an unknown clerk of the King's court. *Id.* at xxxiii.

writs reflect the precise boundaries of the then recognized forms of action.[89]

Among the writs developed during this formative period was the writ of debt.[90] Initially, litigants most commonly used the writ to collect loans of money.[91] Because the Jews were the predominant moneylenders,[92] they would have been the predominant users of the early writ. But the Jews were not merely the unintended beneficiaries of a fortuitous royal innovation. Taken together, the coincident circumstances of the Jews' relation to the King, the then unique form of relief afforded them by their shetars, and certain peculiarities in the wording of the early writs all suggest that the Jews contributed in heretofore unexplained ways to the development of the early writ of debt.

In accord with their traditional practice, when the Jews lent money, they did so under written credit agreements documented in the traditional form of the shetars.[93] Because of his relation to the Jews, the King had manifold interests in enforcing these shetars. And, because "what the Jews held, they held for the King,"[94] what the Jews lost through litigation or to an evasive debtor was lost to the King. Nor were these losses small: the Jews accumulated immense wealth through their moneylending and the King's Exchequer relied heavily on the Jews as an important source of tax revenues.[95] And the King had an even more immediate stake in the revenues from court costs. When the debtor refused to pay, the King enforced the Jewish contracts through his royal court, at a cost of one-tenth to one-sixth of the sum at issue.[96] Yet, despite the royal interest, the questions posed by litigation of the shetar were not questions that English practice was designed to solve.

When a Jew sought to enforce a shetar, he asked alternative forms of relief: payment of the money owed or award of the land and chattels securing the debt.[97] But this request apparently was an aberration from English practice of the early twelfth century.[98] A Jew's request tracked the terms of his unique contract: only a Jewish creditor of a defaulting debtor would be forced to seek either money or security, because only his alien procedure left the debtor in possession of the land pledged to secure the debt.[99]

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89. *See* GLANVILL, *supra* note 68, Book X, ch. 7, at 122 (writ of gage); *id.* Book XII, chs. 3-5, at 150-51 (writs of mort d'ancestor).

90. R.C. VAN CAENEGEM, *supra* note 86, at 254-56.

91. 2 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 207.

92. *See* 1 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 473 (Jews had monopoly in lending money at interest).

93. *See generally* M.D. DAVIS, *supra* note 42 (reproducing portions of credit agreements between English debtors and Jewish creditors); STARRS & CHARTERS, *supra* note 42 (reproducing Hebrew and Latin portions of credit agreements between English debtors and Jewish creditors).

94. *See supra* text accompanying note 65 (quoting Bracton).

95. *See* H.G. RICHARDSON, *supra* note 11, at 161-75 (discussing heavy taxation of Jews under Kings Henry II, Richard I, and John).

96. *See* 10 S. BARON, *supra* note 3, at 94 (court fee during King John's reign one tenth of debt); R.C. VAN CAENEGAM, *supra* note 86, at 258 (court fees at end of Henry II's reign average one-sixth of debt; during 10th year of John's reign, one-seventh).

97. *See supra* text accompanying notes 36-37 (describing creditor's remedies under shetar).

98. The explicit categorization of actions as real or personal did not arise in English law until Bracton's time. *See* Williams, *The Terms Real and Personal in English Law*, 4 L.Q.R. 394, 398-400 (1888) (Bracton classifies actions; Glanvill does not). *See also* 2 H. DE BRACTON, DE LEGIBUS ET CONSUETUDINIBUS ANGLIAE 290-91 (G.E. Woodbine ed. & S.E. Thorne trans. 1968) (first division of actions).

99. *See* 2 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 123 (Jewish creditor frequently not in

It appears likely that, at that time, a Christian litigant asked for only a single remedy, either a thing or money. A Christian creditor took and kept possession of the land until the debt was satisfied.[100] In case of default, therefore, his suit would be for money only.[101] If the debtor wrongfully put him out of possession of the land securing the debt, English practice barred the Christian creditor from bringing an assize of novel disseisin to recover the land: the English system relegated him to a suit only for the underlying debt.[102] Conversely, the debtor regained the possessory rights to his property once the underlying debt was satisfied. If the creditor refused to return the security, the debtor's suit would be limited to return of the pledged property.[103] A Jewish creditor was apparently the only person in the realm who would seek execution on a significant personal obligation by either transfer of a thing or payment of a sum.

A Jewish creditor's ability to ask two forms of relief gave him more than the obvious advantage over a Christian creditor. Important procedural privileges inhered in the option of getting real relief for a personal obligation. The conventional litigant, suing on a personal obligation and seeking only money, could not get judgment if the defendant did not appear in court.[104] In contrast, any litigant seeking an award of land would be awarded judgment if the defendant had been absent, without excuse, after three successive summonses.[105] After the defendant's third unexcused absence, the land was "seized into the King's hand" for fifteen days and then adjudged to the plaintiff.[106] Consequently, only a litigant demanding land was assured complete relief regardless of a defendant's attempts to evade the court's power. Other litigants could gain access to defendants' property only through successful attempts to secure defendants' presence through distraint of chattels and lands.[107] This disparate justice dissatisfied Bracton, who proposed that the courts grant relief to claimants of personal obligations who were faced with a defaulting defendant by the distraint and award of the defendant's property.[108] But because this solution

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possession of land securing debt); 1 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 469 (Jewish credit arrangement novel and alien institution to English because Jewish creditor did not take possession of land securing debt).

100. GLANVILL, *supra* note 68, Book X, ch. 8, at 122-24; 2 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 120.

101. *See* GLANVILL, *supra* note 68, Book X, ch. 7, at 122 (writ for summoning debtor to redeem gage).

102. *Id.* Book X, ch. 11, at 126; *see* 2 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 121 ("the creditor is really entitled to . . . the debt, not the land. If he comes into court he must come to ask judgment for that to which he is entitled").

The assize of novel disseisin was a possessory action for land. Through summary process in the King's court, a freeholder recently ousted from land could recover possession by showing prior occupation without the formality of testing legal title. *See* 2 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 47-52 (describing assize).

103. GLANVILL, *supra* note 68, Book X, ch. 9, 10, at 125 (writ for summoning creditor to restore gage, and different replies of creditor in court).

104. 2 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 594; Williams, *supra* note 98, at 401.

105. GLANVILL, *supra* note 68, Book I, ch. 7, at 5-6; 2 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 592-93; Williams, *supra* note 98, at 400-01.

106. GLANVILL, *supra* note 68, Book I, ch. 7, at 5-6. This was the procedure under a writ of right for land. *See id.* Book I, ch. 6, at 5 (exemplar of writ initiating action). The procedure for novel disseisin was similar. Williams, *supra* note 98, at 401.

107. Williams, *supra* note 98, at 401.

108. 2 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 594-95.

was not generally adopted until 1832,[109] a Jewish creditor's avenues of enforcement remained unique in medieval England, enabling him to pursue his claim to judgment even though the defendant did not appear to answer the writ.

The Jews asked for a remedy that the English system was unaccustomed to offering. This challenge was met by the King, who himself commanded enforcement of the terms of the shetar. The King first manifested his interest in a command to pay in the form of a writ *praecipe*,[110] which if disregarded, conferred jurisdiction on the King's court.[111] By the shetar's terms, the debtor had the choice of paying the debt or relinquishing the property which secured the obligation. To enforce this choice, the King's command would have had to reflect the divergent remedies: money or property.[112] Eventually, this form of writ *praecipe* evolved into the writ of debt.[113]

The King's intervention on behalf of his Jewish moneylenders may explain and in turn have produced some anomalous terminology in the early development of the writ of debt. The wording of the writ evidences the intrusion of land interests into personal litigation. In the writ, as exemplified in Glanvill, the King ordered the Sheriff to "[o]rder N. to give back justly and without delay to R. a hundred marks which he owes . . . and of which . . . he *deforces him* unjustly."[114] Professor van Caenegem observes that this wording closely

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109. *Id.* at 595.

110. *See* R.C. VAN CAENEGEM, *supra* note 86, at 254 (writ *praecipe* for money originated in Henry I's with commands to Jews' debtors to pay). The writ *praecipe* was a summary order from the King to his sheriff to command someone to do something (here, to pay money owed) prior to judicial determination of the rights of the parties. *Id.* at 234-35. From a purely executive order, the writ developed into a form which initiated judicial process in the King's court. *Id. See generally id.* at 234-35 (discussing development of writs *praecipe*).

Evidence of the issuance of these writs is in the Pipe Roll for the 31st year of the reign of Henry I (1130-31). The Pipe Rolls were the annual balance sheets of the Exchequer, recording the accounts rendered by those responsible for royal revenues, principally the sheriffs. J. JACOBS, *supra* note 70, at 303-04. Because a Jew had to pay the King for the privilege of a writ *praecipe*, a record of the transaction was entered on the Pipe Rolls. Among the entries involving Jews for 1130-31 are the following:

> Rubi Gotsce and other Jews to whom earl Ranulf was indebted, owe 10 Marks of gold for that the king might help them to recover their debts against the earl.
> Abraham and Deuslesalt, Jews, render account of one mark of gold that they might recover their debts against Osbert de Leicester.

Id. at 14-15 (translated from the abbreviated Latin in which the Pipe Rolls were written). Twelfth-century Pipe Rolls also survive for the years 1155 to 1200. *Id.* at 305. Joseph Jacobs has collected and translated many of the entries involving Jews in these Pipe Rolls. *See generally id.* at 44-221 (interspersing select entries from Pipe Rolls from 1155 to 1206).

111. *Id.* at 234.

112. *Cf.* H.G. RICHARDSON, *supra* note 11, at 112-13 (Pipe Rolls indicate most actions in which Jews were plaintiffs were for recovery of money lent or mortgaged land).

113. R.C. VAN CAENEGEM, *supra* note 86, at 254.

114. GLANVILL, *supra* note 68, Book X, ch. 2, at 116-17 (emphasis added). The writ of debt in Glanvill's original Latin read:

> Rex uicecomiti salutem. Precipe N. quod iuste et sine dilatione reddat R. centum marcas quas ei debet ut dicit, et unde queritur quod ipse ei iniuste deforciat. Et nisi fecerit, sumone eum per bonos sumonitores quod sit coram me uel iusticiis meis apud Westmonasterium a clauso Pascha in quindecim dies, ostensurus quare non fecerit. Et habeas ibi summonitores et hoc breue. Teste etc.

Id. This translated in English:

> The king to the sheriff, greeting. Order N. to give back justly and without delay to R. a hundred marks which he owes him, so he says, and of which he complains that he deforces

resembles that of the classic *praecipe* for land.[115] Specifically, the writ of debt adopted the words "unjustly deforces" (*unde . . . ei iniuste deforciat*)[116] from the *praecipe*.[117] To "deforce" is to wrongfully withhold possession of land from one who is lawfully entitled to it.[118] The impropriety of the transplanted terminology, therefore, lies in the sense of the wrong conveyed by the words, "unjustly deforces," which calls for an immediate remedy for an egregious interference with land tenure. But the underlying complaint was default on a debt. Thus the terms of the writ appear to ask for inappropriate relief. Noting the apparent confusion,[119] van Caenegem indicates that Jews were the principal beneficiaries of the early writ.[120]

The "misuse" of the words "unjustly deforces" in the early writs conveys more than just the verbal conservatism of the early common law. Use of the term implies an underlying land obligation securing a certain sum, which strongly suggests the existence of an arrangement like the Jewish shetar. Here, however, the King himself compelled payment in money or in land to be made by the debtor found in breach of a private agreement. The term "deforce," then, communicates the Jew's ability to circumvent the procedural limitations of personal actions.

R.L. Henry has suggested, alternatively, that the writ used "deforce" to connote a breach of the King's peace: as an empty incantation with the single purpose of lending substance to a claim of the King's jurisdiction.[121] The King did not customarily intervene in private disputes.[122] The purported fiction was

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> him unjustly. And if he does not do it, summon him by good summoners that he be before me or my justices at Westminster a fortnight after the octave of Easter to show why he has not done it. And have there with you the summoners and this writ. Witness: N. At M.

R.C. VAN CAENEGEM, *supra* note 86, at 437.

115. R.C. VAN CAENEGEM, *supra* note 86, at 254; *see also* 2 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 173 (writ of debt as given by Glanvill closely similar to writ of right for land known as the *Praecipe in capite*).

116. Approximately: "of which [he] unjustly deforces him." *See supra* note 114 for complete text of writ.

117. R.C. VAN CAENEGEM, *supra* note 86, at 254; 2 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 204.

118. *See* D. WALKER, *supra* note 17, at 347 (defining deforcement).

119. *See* R.C. VAN CAENEGEM, *supra* note 86, at 254 ("unjustly deforces" was "inappropriate in a personal action for debt, although appropriate enough in a real action for tenure"). Others have also noted the peculiar wording of the writ. *See* R.L. HENRY, CONTRACTS IN THE LOCAL COURTS OF MEDIEVAL ENGLAND 15 (1926) ("[a] person who does not pay his debt may be said to detain something which does not belong to him, but he can hardly be said to 'deforce'"); 2 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 204-05 (noting peculiarity and explaining it: "The bold crudity of archaic thought equates the repayment of an equivalent sum of money to the restitution of specific land or goods"); A.W.B. SIMPSON, A HISTORY OF THE COMMON LAW OF CONTRACT, THE RISE OF THE ACTION OF ASSUMPSIT 55-56 (1975) (noting peculiarity and concluding: "The use of the word *deforciat* may look slightly curious in a debt writ, but again its use in all probability is not significant").

120. R.C. VAN CAENEGEM, *supra* note 86, at 437.

121. R.L. HENRY, *supra* note 119, at 16. Henry first notes the anomaly posed by the formal declaration in debt litigation in the seignorial courts. There, the plaintiff's claim that the defendant "detains and deforces" the amount of the debt sometimes was supplemented by "against the peace of the lord." *Id.* at 15. Henry theorizes that the local formula mimicked those used in the King's court, because the local lords, like the King, wanted to usurp the traditional jurisdiction of the hundred and county courts. *Id.* at 16.

122. *See* GLANVILL, *supra* note 68, Book X, ch. 8, at 124 ("[i]t is not the custom for the court of the lord king to protect or warrant private agreements of this kind concerning the giving or receiving of things as a gage, or other such agreements, whether made out of court or in courts other than that of the lord king; it follows that, if such agreements are not kept, the court of the lord king will not concern

that withholding payment on a debt breached the King's peace. Henry argues that the formalism was dropped once the action was well-established and the fiction no longer necessary.[123]

But the invocation of the King's peace has another explanation, derived from the unique relationship between the King and his Jews. Because the early actions at debt were principally on behalf of Jews, and because Jews claimed their rights in the King's name, all obligations owed to them were ultimately owed to him.[124] Withholding a debt owed, even indirectly, to the King is a breach of the King's peace that requires no legal fiction. If the price of the writ was paid, the King's courts were ready to stand behind a Jewish creditor's complaint in debt. To enforce the debt was to restore peace to a small part of the realm.

Use of the term "deforce" symbolizes the courts' interference with rights in land. Used to imply "breach of the peace," it invokes the image of the King's wrath. The otherwise puzzling formalism signaled an institutional conflict: in the courts of feudal England, land tenure had been distinct from personal rights in law. Jews were asking the courts to award land—to compel transfer of property to satisfy a personal obligation—before final judgment.[125] Because the King was, in effect, the real party in interest, the interference with land tenure was done with his consent and support. Lacking the King's hand, the action would have been impossible. Only the King's interest in enforcing Jewish creditors' remedies could make possible this invasion of land beyond the limits of relief in personal actions.

The traditional Jewish procedure governing lien-accompanied debt was an innovation in feudal society. The embryonic legal system lacked the terminology to describe a private judicial proceeding for money that jeopardized possession of land. From this came the hybrid use of the term "deforce." "Deforce" disappeared from the King's court shortly after the time of Glanvill,[126] approximately the time when Jewish litigation had been removed to the newly established Exchequer of the Jews.[127] In the seignorial courts, the term fell into disuse by 1291,[128] one year after the expulsion of the Jews from England. Though this may be adventitious, the decline of the phrase and its underlying Royal obligation coincides with the decline of the Jews in England. When the King's Jew was no longer the creditor, default on a debt no longer implicated the interest of the Royal treasury.

B. THE EXCHEQUER OF THE JEWS

At no time during their two-century presence in England were the Jews perceived as more than a necessary evil: a source of capital. The Jews, welcomed

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itself with them, and is therefore not bound to pronounce upon the rights or privileges of the several prior or subsequent creditors").

123. R.L. HENRY, *supra* note 119, at 16.

124. *See supra* text accompanying notes 64-65 (Jews held property ultimately for King).

125. *See* H.G. RICHARDSON, *supra* note 11, at 84-98 (explaining method by which Jews who had been awarded land liquidated their interest in it).

126. 2 F. POLLOCK & F.W. MAITLAND, *supra* note 3, at 173.

127. *See infra* notes 129-48 and accompanying text (discussing Exchequer of the Jews).

128. R.L. HENRY, *supra* note 119, at 15.

as moneylenders, were despised as creditors. So long as the King enforced the Jews' debt instruments, the best way to avoid obligation was to attack the Jewish community, destroying people and records. Sporadic incidents culminated in riots against the Jews during the Coronation of Richard I in 1189 and in the Massacre at York in 1190.[129] Beseiged by the mob, hundreds of the York Jews chose death over baptism. The warriors, joining religious hatred to their economic motivation, were quick to destroy the deposits of shetars held within the Jewish community. At York, the riot was instigated by Richard Malebysse, a nobleman deeply indebted to the Jews. After 500 Jews died in the Citadel, Malebysse led the mob to the Cathedral, where they destroyed the debt records, which had been held for safety in the Chapter House. When the smoke cleared, both creditor and debt had been eradicated.[130]

Following his return from the Crusades and release from captivity,[131] Richard I was displeased by the attacks on his Jewish moneylenders. Because duplicates did not exist for many of the documents destroyed, the King was unable to collect debts that would otherwise have escheated to him. He was concerned with preserving a record of debts owed to ensure their payment. By 1200, this concern prompted the establishment of Archae (Registry of Bonds) and of the Exchequer of the Jews.[132]

Archae were established in all towns with sizeable Jewish populations. The registries consisted of Chirograph Chests and four Chirographers—two Christians and two Jews—and their clerks.[133] The Chirograph procedures were strongly reminiscent of traditional Jewish practice.[134] All bonds were to be formalized in the presence of the official witnesses, and immediately duplicated.[135] The original and duplicate were usually written on the same skin and were divided by an irregular cut, producing corresponding tallies.[136] The Archa retained the duplicate, which was called the *pes* or "foot" of the bond, while the creditor retained the original, with the debtor's seal affixed.[137] When the debtor satisfied the debt, the creditor gave the debtor a deed of acquittance.[138] The debtor could then prove satisfaction of the debt only by deliver-

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129. J.M. RIGG, *supra* note 13, at xvii-xviii.

130. *Id.*; H. MARGOLIS & G. MARX, A HISTORY OF THE JEWISH PEOPLE 384-88 (1965 reprint). M.D. Davis' collection of shetars includes one recording substantial debts owed by Richard Malebysse. ("out of the great debt which he owes to my master Aaron, and for which I gave him this writing.") In the Hebrew versions of the documents, his name is translated into the Hebrew for "evil beast" (khayah raah), the literal translation of the Norman surname. M.D. DAVIS, *supra* note 42, at 288. This translation was a playful, though prophetic, pun by the creditor. The Hebrew phrase is used in the Book of Genesis by Jacob's sons to describe the animal they falsely claim has devoured their brother Joseph. *Genesis* 37:33. This biblical passage would have been read in synagogues the same week this shetar was written. M.D. DAVIS, *supra* note 42, at 288.

131. The government assessed the Jews 5,000 marks of the 100,000 mark ransom for the release of Richard I. 4 S. BARON, *supra* note 3, at 81-82.

132. J.M. RIGG, *supra* note 13, at xviii-xix; 1 W. HOLDSWORTH, *supra* note 80, at 45-46.

133. J.M. RIGG, *supra* note 13, at xviii-xix. Chirograph, literally "handwriting," was the term used for the written documents.

134. *See supra* notes 34-40 and accompanying text (describing documentary procedure of shetar).

135. J.M. RIGG, *supra* note 13, at xix.

136. *See generally* STARRS AND CHARTERS, *supra* note 42 (photographic plates of bonds, showing irregular cut).

137. J.M. RIGG, *supra* note 13, at xix.

138. *Id.* The acquittance frequently was written on the back of the original bond of debt. 1 STARRS AND CHARTERS, *supra* note 42, at xiv-xv.