CHAPTER EIGHT

FORFEITING THE MARRIAGE PORTION:
PUNISHING FEMALE ADULTERY IN THE SECULAR
COURTS OF ENGLAND AND ITALY*

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Introduction

In early fourteenth century London, a criminal court indicted the cleric Richard Mareschal on the charge that Richard had abducted the wife of the capper Stephen de Hereford and stolen Stephen’s goods, and this was done against the king’s peace.1 The record of Richard’s indictment clarifies, however, that this was no forced kidnapping. Instead, Richard was prosecuted for taking part in an illicit sexual liaison conducted within Stephen’s home, with Stephen’s wife, and with the wife’s consent. According to the jurors, as soon as Stephen had left London for the Winchester fair, Richard

went to his house to commit adultery with his wife, as was formerly his wont, and Stephen’s neighbours and friends, inferring this, immediately came to the house and sought Richard everywhere in the house to hinder him in his adultery but did not find him. At length the wife by direction of one of the neighbours and friends opened a chest closed with iron in the house and found Richard in it.

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1 London, The National Archives: Public Record Office (hereafter cited as TNA: PRO) JUST 3 39/1 m.9. Hereford’s wife is unnamed in the source. This case is translated in Ralph B. Pugh, ed., Calendar of London Trailbaston Trials under Commissions of 1305 and 1306 (London, 1975), no. 159.
Richard’s love affair with Stephen’s wife was the subject of rumour and disapproval within the local community, to the extent that Stephen’s neighbours intervened and found Richard in this compromising position. Perhaps members of the community were particularly hostile to the illicit relationship because of Richard’s clerical status, although the sources do not reveal whether Richard was in major or minor orders. Stephen’s wife, seemingly worried that her neighbours would report her activities to her husband upon his return from Winchester and fearing the consequences, abandoned her husband’s house in London. Despite the wife’s consent to the adulterous sex, and despite her self-propelled departure from her husband’s home, presentment jurors accused Richard of the criminal abduction of Stephen’s wife.

Whether the publica fama from the scandal resulted in ecclesiastical charges of adultery against either Richard or Stephen’s wife is unknown, because no corresponding church court records survive, but the secular court appeared content to hear a matter of adultery. Richard was charged with abduction because that was the prosecutable offence, but the story narrated by the jurors who tried Richard clarifies that Stephen’s wife was not seized against her will. Yet Richard was acquitted, not because Stephen’s wife consented—the wife’s consent to departure was irrelevant—but because he had played no role in her voluntary departure. After being caught nearly in flagrante delicto, Richard went to Waltham, outside London, but the jurors did not know whence the wife departed after she withdrew from her husband’s household. They did not suspect that she ran off with her lover. Richard’s ultimate fate is unknown, but we are told that Stephen eventually took his wife back, thus, “a long time after Stephen’s return from the fair the wife impleaded Stephen before the official to be reconciled to her, and Stephen by ecclesiastical coercion was so reconciled.”

As this chapter will make clear, the phrase “by ecclesiastical coercion” echoes Roman legal traditions and continental legislation, and thus challenges frequently made claims about the exceptionality of England’s common law.

The prosecution of Richard Mareschal for the abduction of Stephen de Hereford’s wife is just one of the 768 abduction allegations uncovered in my research into medieval English kidnapping, and admittedly it provides more details about the background and outcome of the case.

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2 TNA: PRO, JUST 3 39/1 m.9. Italics added for emphasis.