

Lord Campbell is here imputing lawyership on the score of terms far less technical than many which occur in a multitude of non-Shakespearean plays of the period. When such expressions as "warrant" and "witness" and "fee simple" are seriously asserted to come from a head "full of recondite terms," it seems necessary to explain that "warrant" was long before Shakespeare's day a term in constant non-legal use (as in the colloquial phrase, "I'll warrant you"); that the word occurs many hundreds of times, alike in the literal and in the metaphorical sense, in non-Shakespearean plays; and that "witness" was in the same case, being habitually used in theological speech and in the common phrase "God is my witness," to say nothing of plays. If the use of such terms is proof of legal knowledge on the playwright's part, then such knowledge is clearly possessed by Webster, who in *APPIUS AND VIRGINIA* has :

Show'd him his hand a witness 'gainst himself. (iii, 1.)

By what command ?

By warrant of these men. (*ib.*)

By warrant of our favour. (iii, 2.)

*Clown.* . . . Though she have borrow'd no money, yet she is enter'd into bonds ; and though you may think her a woman not sufficient, yet 'tis very like her bond will be taken.

*First Servant.* . . . What witness have they ?

*Clown.* Witness these fountains. . . . The Lord Appius hath committed her to ward. His warrant is out for her. (iv, 1.)

Here's witness; most sufficient witness. (iv, 2.)

So we must infer a legal training on the playwright's part when, in Dekker's *SHOEMAKER'S HOLIDAY* (iv, 4), Rose says to her lover :

Rose is thine own. To witness I speak truth,  
Where thou appoint'st the place I'll meet with thee ;

as also when her father uses the same phrase in the next scene ; again in Heywood's *WOMAN KILLED WITH KINDNESS* (iv, 3) when Mistress Frankford says to her lover,



“ You plead custom ” ; again in *THE WITCH OF EDMONTON* (by Dekker, Rowley, and Ford) when Winnifred (i, 2) speaks of her lover’s promise

That never any change of love should cancel  
The bonds in which we are to either bound  
Of lasting truth ;

and yet again when Massinger, in *THE FATAL DOWRY*, makes Beaumelle (iii, 1) speak of “ sufficient warrant ” in love-making, and Romont (*ib.*) deliver the line “ Will warrant and give privilege to his counsels ” ; to say nothing of a judge’s “ You had not warrant for it ” (v, *end*). In the same play, as it happens, Romont says “ Bear witness ” (iii, *near end*) ; Beaumelle says “ To witness my repentance ” (iv, 3) ; and Charalois, “ I ask him for a witness ” (iv, 2). All three are non-legal characters, one a woman. Again in *A NEW WAY TO PAY OLD DEBTS* (iv, 2) we have Margaret’s lines :

My vows, in that high office register’d,  
Are faithful witnesses.

So, on Lord Campbell’s principle, Massinger must have been giving reckless rein to his legal knowledge.

Ben Jonson is similarly certificated, for in *EVERY MAN IN HIS HUMOUR* (i, 1) we have :

You are his elder brother, and that title  
Both gives and warrants your authority.

And though Justice Clement there talks of warrants by professional right, the lay folk in the play say “ I warrant you ” without scruple ; while Bobadill pleads that he had a “ warrant of the peace served ” on him ; and Matthew intimates that “ we determine to make our amends by law,” and asks “ the favour to procure a warrant.” “ Warrants,” in fact, swarm through the play. Which clearly proves that Jonson must have been an attorney’s clerk ! And between “ warrant ” and “ witness ” every other Elizabethan dramatist would be in the same list. )

As to the “ fee simple ” passage, we have first to put



N. the queries : (1) Was Shakespeare, or was he not, aiming at a realistic effect in the play before us ? (2) Is it not one of the most realistic of all he has written ? (3) Would he then be likely to put in the mouth of one of his " merry wives " language which to his audience would seem utterly out of character, and fit only for an attorney ? To answer in the affirmative is at once to accuse the playwright of utterly bad art, and to ignore the testimony of the great mass of Elizabethan literature, summed up in Mr. Hubert Hall's generalization that " every man in these days was up to a certain point his own lawyer ; that is, he was well versed in all the technical forms and procedure." <sup>1</sup> But let us waive authority, here as elsewhere, and note decisive data. Out of a score of parallels to such phrases as " fee simple " and " fine and recovery " in other dramatists and writers, it may here suffice to note (1) in Lilly's MOTHER BOMBIE (i, 2) :

A good evidence to prove the fee simple of your daughter's folly ;

(2) in the old dialogue or quasi-interlude; Roye's REDE ME AND BE NOT WROTTE (1528), one speaker's description of the friars as

Fre cobby holders of hell  
And fe fermers of purgatory,

Whittingham's rep. p. 72 ;

and (3) Thomas Nashe's second prefatory epistle to his STRANGE NEWS OF THE INTERCEPTING CERTAIN LETTERS (1592), where Gabriel Harvey is told that he is " here indited for an encroacher upon the fee simple of the Latin." Are we to pronounce all three writers lawyers ?

3. In MEASURE FOR MEASURE (i, 2) when Mrs. Overdone laments that places such as hers are to be put down; Pompey says : " Fear not you, good counsellors lack no clients." <sup>2</sup> Whereupon Lord Chancellor Campbell writes :

<sup>1</sup> *Society in the Elizabethan Age*, by Hubert Hall, of H.M. Public Record Office, 2nd ed. 1887, p. 141.

<sup>2</sup> It may be worth noting that the word " client " occurs only



“ This comparison is not very flattering to the bar, *but it seems to show a familiarity with both the professions alluded to.*” Upon these principles, what would his lordship not have made of the remark of Justiniano in WESTWARD HO (ii, 1) : “ Like country attorneys, we are to shuffle up many matters in a forenoon ” ? Dekker and Webster, surely, *must* have been country attorneys ! And what depths of legal experience must he not have divined behind the suggestion of Webster and Rowley, in A CURE FOR A CUCKOLD (iv, 3), that “ long vacations may make lawyers hungry ” ! Or behind Jonson’s lines :

Or if thou hadst rather to the Strand down to fall,  
’Gainst the lawyers dabbled from Westminster hall,  
And mark how they cling with their clients together,  
Like ivy to oak, so velvet to leather.

*The Devil is an Ass*, i, 1.

Or in Dekker’s passage about

the shaving of poor clients, especially by the attorneys’ clerks of your courts, and that’s done by writing their bills of costs upon cheverel.

*Seven Deadly Sins of London*, ed. Arber, c. 6, p. 40.

Or in the page on lawyers in Stubbes’ ANATOMIE OF ABUSES.<sup>1</sup> But we waste illustration over a contention which belongs to the plane of farce.

The only other items offered from MEASURE FOR MEASURE are (1) Elbow’s clownism, “ I’ll have mine action of battery on thee ” (ii, 1) ; (2) the ironical reply of Escalus suggesting an action for slander for a box on the ear ; and (3) Escalus’ phrases : “ my brother Angelo,” “ my brother,” “ my brother justice ” (iii, 2). This, says the Lord Chancellor, “ is so like the manner in which one English judge designates and talks of another that it *countenances the supposition* that Shakespeare *may* often, as an attorney’s clerk, have been in the presence thrice in all Shakespeare’s plays, an odd fact if he were so obsessed by lawyer-reminiscences as the legalists allege.

<sup>1</sup> Collier’s Rep. p. 116.



of English judges"—as ten thousand laymen had been. After this, there is an air of great self-restraint about the suggestion that there is a "tinge" of legal terminology in Isabella's speech to Angelo on the theme that

All the souls that were, were forfeit once.

4. "Fine and recovery" occurs again in the COMEDY OF ERRORS (ii, 2); and this time we are told that the puns extracted from the terms "*show the author to be very familiar with some of the most abstruse proceedings in English jurisprudence.*" The same deep knowledge is doubtless to be credited to Nashe, who writes of "suing the least action of recovery" and "a writ of *Ejectione firma.*"<sup>1</sup> And as "fine and recovery" is not ostensibly a more abstruse conception than "livery and seisin," which is mentioned by both Jonson and Webster, we are once more led to extend to them the diploma of attorneyship so liberally bestowed on Shakespeare. "Fine," as it happens, is a common figure in the drama of Shakespeare's day. Bellafront in Dekker's HONEST WHORE (Part II, iv, 1) speaks of

an easy fine,

For which, me thought, I leased away my soul.

From Mall, in Porter's TWO ANGRY WOMEN OF ABINGTON (iii, 2), we have :

Francis, my love's lease I do let to thee

Date of my life and time : what say'st thou to me ?

The ent'ring, fine, or income thou must pay.

There is nothing more technical in the COMEDY OF ERRORS.

5. In the last-named play (iv, 2) we have the line :

One that before the judgment carries poor souls to hell,  
and the phrase, "'rested on the case," upon which the Lord Chancellor declares that "there we have a most circumstantial and graphic account of an English arrest on *mesne process*" ("before the judgment") "in an action *on the case.*" It seems necessary to explain that

<sup>1</sup> *The Praise of the Red Herring*, Works, iii, 157.



Dromio's "before the judgment" has reference to the theological "last day"; and to suggest that the whole effect of the latter part of the passage quoted turns upon the naturalness of a serving-man's fumbling with two legal tags, as serving-men and others constantly do throughout the bulk of Elizabethan drama. What would Lord Campbell have made, once more, of Mistress Honey-suckle's speech in WESTWARD HO (ii, 1) :

You have few citizens speak well of their wives behind their backs ; but to their faces they'll cog worse and be more suppliant than clients that sue *in forma paper*.

Dyce, who could not have dreamt of what a Lord Chief Justice could attain to by the light of a comprehensive ignorance of Elizabethan drama outside Shakespeare, has upon this the note : " Our early dramatists have a pleasure in making their characters miscall terms of law," citing a similar instance from Rowley's WHEN YOU SEE ME YOU KNOW ME. Perhaps we may leave the point at that. ) N.

6. Rosalind's gibe in AS YOU LIKE IT (i, 2) : " Be it known unto all men by these presents," is cited for the purpose of suggesting that it was " introduced in order to show contempt for Nashe's criticism." To this theorem is devoted a page of space. If we reply that Nashe's criticism, as aforesaid, applies to Kyd, Lord Campbell's successors will probably rejoin that on that view the phrase under notice must be held to stand for the dramatist's tendency to talk law under any circumstances. It may therefore be worth while to ask whether the same theory is required to explain the passage in CYNTHIA'S REVELS in which Jonson makes Amorphus read the " bill " beginning, " Be it known to all that profess courtship, by these presents " : and again, whether it is further required to explain the citation of

*Sciunt praesentes et futuri*  
 Witeth and Witnesseth  
 That wonieth upon this erthe,



in THE VISION OF PIERS PLOWMAN (ed. Wright, 1030-32) ; or the phrase *Noverint universi* in Chapman's MAY-DAY (ii, 1) ?

7. It is considerably admitted that the words "testament" and "bankrupt," in Jaques' speech (ii, 1), "might be used by any man of observation" ; but it is claimed that in Act iii, 1, "a deep technical knowledge of law is displayed." The sole proof is the single phrase :

Make an extent<sup>1</sup> upon his house and lands.

To this demonstration is added the assurance that in HENRY VIII (III, ii, 340) "we have an *equally accurate statement* of the omnivorous nature of a writ of *Præmunire*." As usual, there is nothing in the matter special to Shakespeare, who, as it happens, uses the word *Præmunire* only once in all his plays. "Extent" occurs in the pre-Shakespearean play SELIMUS, ascribed to Greene (Sc. 1, l. 21) :

Though on all the world we make extent ;

and in Greene's tract THE DEFENCE OF CONEY-CATCHING :

They have you in suit, and I doubt not will ere long have some extent against your lands.<sup>2</sup>

Greene, as we shall see, has many legal phrases not found in Shakespeare, and though no lawyer, uses them in a more lawyerlike fashion.

The meaning of a *Præmunire*, again, was presumably quite well known to Philip Stubbes, who in his ANATOMIE OF ABUSES warns all men that he who supports stage-plays "must needs incur the damage of *premunire*" ;<sup>3</sup> as it was to Foxe the martyrologist,<sup>4</sup> and to Thomas Nashe, who in PIERCE PENNILESSE'S SUPPLICATION TO

<sup>1</sup> This word occurs in *Titus Andronicus*, where Lord Campbell had not noticed it.

<sup>2</sup> Greene's *Works*, ed. Grosart, xi, 56.

<sup>3</sup> *i.e.* of damnation. *Anatomie of Abuses*, 1583, Collier's Rep. p. 140.

<sup>4</sup> *Acts and Monuments*, Cattley's ed. 1841, i, 25.



THE DIVELL<sup>1</sup> suggests to that potentate that he might "make extent upon the souls of a number of uncharitable cormorants" who have "incurred the danger of a *Præmunire* with meddling with matters that properly concern your own person." Again, in CHRIST'S TEARES OVER JERUSALEM<sup>2</sup> there is the phrase, "O pride, of all heaven-relapsing præmunires the most fearful"; and yet again in THE UNFORTUNATE TRAVELLER:

lamenting my Jewish *Præmunire* that body and goods I should light into the hands of such a cursed generation.<sup>3</sup>

In the same tale we again have "to extend upon," meaning "to make extent upon"; and in Massinger's plays the phrase occurs repeatedly:

There lives a foolish creature  
Called an under-sheriff, who, being well paid, will serve  
An extent on lords or lowns' lands.

*The City Madam*, v, 2.

When

This manor is extended to my use :  
You'll speak in a humbler key.

*A New Way to Pay Old Debts*. v, near middle.

The meaning of "extent" and the nature of a writ of *Præmunire* were in fact matters of common knowledge in Elizabethan days, and had been so long before her reign. In the BEGGAR'S PETITION AGAINST POPERY, presented to Henry VIII in 1538, it is remarked that "Had not Richard Hunne commenced an action of *præmunire* against a priest, he had yet been alive, and no heretick at all, but an honest man."<sup>4</sup> The procedure of "extent" was at least equally familiar, and both terms were certainly understood by the writers who so often allude to them. If Lord Campbell had found in Shakespeare the lines:

If I were a justice, besides the trouble,  
I might, or out of wilfulness or error,

<sup>1</sup> Nashe's *Works*, ed. McKerrow, i, 165.

<sup>2</sup> Ed. cited, ii, 80.

<sup>3</sup> Ed. cited, ii, 305.

<sup>4</sup> Rep. in Harl. Misc. ed. 1808, i, 222, also p. 224.



Run myself finely into a præmunire,  
And so become a prey to the informer—

spoken by Sir Giles Overreach in Massinger's *A NEW WAY TO PAY OLD DEBTS* (ii, 1), or the phrase "That's a shrewd præmunire," in the same playwright's *THE OLD LAW* (v, near end); or Jonson's lines

Lest what I have done to them, and against law,  
Be a præmunire,

(*The Staple of News*, v, 2, end);

he would not have hesitated to pronounce that they showed a practical knowledge of the operation of the kind of writ in question. Yet no biographer has ever hinted that either Massinger or Jonson was a lawyer.

8. The phrase of Rosalind in *AS YOU LIKE IT* (iii, 2) about lawyers "sleeping between term and term" is formally produced as showing that Shakespeare "*was well acquainted with lawyers themselves and the vicissitudes of their lives*"! With what zest, then, would his lordship have cited, if he could, the saying of Sanitonella in Webster's *THE DEVIL'S LAW CASE*, that "no proctor in the term-time be tolerated to go to the tavern above six times i' the forenoon!" Must not Webster have been a lawyer?

9. Concerning Rosalind's jest in *AS YOU LIKE IT* (iv, 1), "die by attorney," we learn that Shakespeare gives us the true legal meaning of the word 'attorney,' viz. *representative* or *deputy*." It will perhaps be equally edifying to mention that Ben Jonson exhibits the same recondite learning in *THE ALCHEMIST* (ii, 1):

*Face*. You'll meet the captain's worship?

*Surly*. Sir, I will—But by attorney;

and again in *CYNTHIA'S REVELS* (v, 3, Palinode), in the phrase "making love by attorney." And Webster and Dekker, once more, jointly lay themselves open to suspicion of deep legal knowledge when they make Mistress Tenterhook say in *WESTWARD HO* (iii, 1):



When they owe money in the city once, they *deal with their lawyers by attorney*, follow the court, though the court do them not the grace to allow them their diet.

10. Finally, it is explained that Shakespeare again evinces *his* love for legal phraseology and imagery "by making Rosalind say, 'Well, Time is the old Justice that examines all such offenders, and let Time try.'" By the same test, it must have been a writer steeped in legal experience who made Hammon in *THE SHOEMAKER'S HOLIDAY* (iv, 1) woo Jane with the demand :

Say judge, what is they sentence, life or death ?  
Mercy or cruelty lies in thy breath.

So that Dekker must have been a lawyer, unless, indeed, he has unconsciously revealed his avocation in the phrase, "that lean tawny-faced tobacconist Death, that turns all into smoke" (*OLD FORTUNATUS?* i, 1). If he were not a tobacconist, he must needs have been a lawyer, since he makes the Duke in *THE HONEST WHORE* (Part I, i, 1) tell Hippolito :

For why, Death's hand hath sued a strict divorce  
'Twixt her and thee.

Apparently the Lord Chief Justice would see a passion for legal phraseology in a modern allusion to "the bar of public opinion," to say nothing of the saw, "Time tries all," or "Time and truth try all," as Porter has it in *THE TWO ANGRY WOMEN OF ABINGTON* (iv, 3). In point of fact the learned judge sees legal preoccupation in *II. TROILUS AND CRESSIDA*, (iv, 5) :

That old common arbitrator, Time.

By parity of reasoning, Nashe was a lawyer, inasmuch as he wrote "Let Antiquity be Arbiter";<sup>1</sup> and again: "Judge the world, judge the highest courts of appeal from the miscarried world's judgment, Oxford and Cambridge, wherein I have trespassed . . .";<sup>2</sup> and yet again

<sup>1</sup> *Anatomie of Absurdity* : Works, ed. McKerrow, i, 16.

<sup>2</sup> *Four Letters Confuted*, vol. cited, p. 302.



when he tells his antagonist, "All is ink cast away : : you recover no costs and no charges." By the same reasoning, too, it was a lawyer who described the sun as "indifferent arbiter between the night and the day" in the first sentence of Sir Philip Sidney's *ARCADIA*; and another who spoke of "Nature's Sergeant (that is Order)" in the *FAERIE QUEENE* (B. VII, c. vii, 4). And what shall we say of the Reverend Philip Stubbes, who writes of "the high justice-of-the-peace, Christ Jesus"?<sup>1</sup>

12. Dealing with Dogberry and Verges in *MUCH ADO ABOUT NOTHING*; the Lord Chancellor concludes that "the dramatist seems himself to have been well acquainted with the terms and distinctions of our criminal code, or he could not have rendered the blunders of the parish officers so absurd and laughable"—absurd and laughable, that is, to an audience who in the terms of the argument *could not appreciate the absurdity*, being themselves devoid of the alleged "profound legal knowledge" of the dramatist. Thus can a judge reason. His further remark that in the line

Keep your fellows' counsel and your own,

"Dogberry uses the very words of the oath administered by the Judge's marshal to the grand jury at the present day," needs no comment. Does it require a lay mind to realise that the words must then have been known to myriads of laymen?

13. On the speech of Don Adriano in *LOVE'S LABOUR'S LOST* (i, 1) beginning "Then for the place where," and ending "a man of good repute, carriage, bearing and estimation," we have this pronouncement: "The gifted Shakespeare might perhaps have been capable, by intuition, (!) of thus imitating the conveyancer's jargon; but no ordinary man could have hit it off so exactly, without having *engrossed* in an attorney's office."

When therefore Puntarvole in Ben Jonson's *EVERY*

<sup>1</sup> *Anatomie of Abuses*, 1583, Collier's Rep. p. 171.



MAN OUT OF HIS HUMOUR (iv. 4) begs the notary to draw the indentures, and gives directions, we know what to think. There are scores of lines such as these :

That, after the receipt of his money, he shall neither in his own person nor any other, either by direct or indirect means, as magic, witchcraft, or other exotic arts, attempt, practise or complot anything to the prejudice of me, my dog or my cat ; neither shall I use the help of any such sorceries or enchantments, as unctions to make our skins impenetrable, or travel invisible by virtue of a powder, or a ring, or to hang any three-forked chains about my dog's neck, secretly conveyed into his collar ; but that all be performed sincerely, without fraud or imposture.

Clearly, Ben must have "*engrossed* in an attorney's office," unless, indeed, Bacon wrote Ben's plays as well as Shakespeare's, as not a few Baconians aver.

14. This, be it observed, is the sole example cited from that which passes for Shakespeare's earliest comedy; in which, if ever, the proclivity of the "attorney's clerk" to legal phraseology on his own account should have asserted itself. And from a comedy which is perhaps as early, and in any case is among the three or four earliest, Lord Campbell is again able to cite only one instance of legal phraseology :

According to our law  
*Immediately provided in that case.*  
*Midsummer Night's Dream, 1, 1.*

On this Steevens had long ago observed, citing the attorney-clerk's tradition, that "the line before us has an undoubted smack of legal commonplace. Poetry disclaims it." That is to say, the young poet was so much of an attorney's clerk as to obtrude his office reminiscences where poetry would have been more appropriate. As it happens, the whole speech of Egeus in which the line occurs is prosaic ; and once more the question arises whether the dramatist is or is not making one of his characters speak out of character. Lord Campbell, never asking the question, naïvely confesses that "the prosaic formula runs : 'In such case made and



provided.' ” Then the attorney's clerk is not true to his office reminiscences. But his lordship explains that the precise formula “ would not have stood in the verse ”—as if Shakespeare could not have made one line end with “ in such case ” and the next begin, “ Made and provided ” ! And Mr. Grant White, carried away by Lord Campbell's simple prosodical argument, writes of Egeus' speech that “ He pleads the statute ; and the words run off his tongue in heroic verse as if he were reading them from a paper.” <sup>1</sup>

The process of self-confusion has here become curiously interesting. Lord Campbell admits the legal phrase to be laxly used, but pleads the trammels of the verse : Mr. White argues that the words run “ in heroic verse, as if he were reading them from a paper ”—when the whole speech of Egeus is in the same sort of verse, and any line might equally be said to run as if read from a paper. The simple fact is that the dramatist has put in the mouth of a lay citizen one of those more or less loosely used legal tags which are to be found in almost every play of the Elizabethan and Jacobean era. In an argument which undertakes to prove “ profound legal knowledge,” this rag of evidence is thus manipulated with a solemnity that transcends burlesque. If Shakespeare's legal knowledge is to be thus proved, what diploma can be refused to the authors of such lines as these :

How ! strike a justice of peace ! 'tis petty treason

*Edwardi quinto* : but that you are my friend,

I would commit you without bail or mainprize.

Massinger, *A New Way to Pay Old Debts*, iii, 2.

Nor bond, nor bill, nor bare acknowledgment.

*Id.* v, i.

We may put off a commission : you shall find it

*Henrici decimo quarto*.

*Id.* i, 3.

Well, if you'll save me harmless, and put me under *covert barn* (= *baron*), I am content to please you.

Dekker, *The Honest Whore*, Part I, iii, 2.

<sup>1</sup> Memoir of Shakespeare in 1865 ed. of *Works*, i, p. xlvi.



Citizens' sons and heirs are free of the house by their father's copy.  
 Dekker, *The Honest Whore*, v, 2.

Return your *habeas corpus* : here's a *certiorari* for your *precedendo*.  
 Peele, *Edward I*, ed. Dyce, p. 382

They'll make a solemn deed of gift of themselves, you shall see.  
 Jonson, *Cynthia's Revels*, i, 1.

15. In *THE MERCHANT OF VENICE* (i. 3 ; ii. 8), we are assured, "Antonio's bond to Shylock is prepared and talked about according to all the forms observed in an English attorney's office. The distinction between a 'single bill' and a 'bond with a condition' is clearly referred to ; *and punctual payment* is expressed in the technical phrase, 'Let good Antonio *keep his day*.'" By which token Dekker and Webster were probably attorneys' clerks, because they make Monopoly in *WESTWARD HO* (i. 2), when told that he has forfeited his bond, reply "I'll pay him fore's day" ; and again, in Dekker's *THE HONEST WHORE* (I. 2) Fustigo protests : "By this hand, I'll discharge at my day."

Heywood's legal experience must be even greater, for he is thus technical at least four times—thrice in one play :

Like debtors, such as would not break their day.

*The English Traveller*, iii, 1.

Broke our day. *Ib.* iii, 2.

Break his day. *Ib.*

I'll hold my day.

*A Woman Killed with Kindness*, i, 1.

Yet again, Dekker in his tract *THE SEVEN DEADLY SINS OF LONDON* (1606), says of his first type-character, "the politic bankrupt," that "he will be sure to keep his days of payment more truly than lawyers keep their terms" ; and Jonson in *THE ALCHEMIST* (iii, 2) has : "take the start of bonds broke but one day." And, yet again, Nashe in *PIERCE PENILESS* says of Gabriel Harvey's astrological brother that "his astronomy broke his day with his creditors." (*Works*, i, 196-97.)



Sooth to say, the phrase had been current among the laity in the time of Langland, who (*PIERS PLOWMAN*, 2961 sq.) makes Coveteise tell how he seized the manor of a borrower "if he his day breke." And it would seem to have been no less familiar in the time of Caxton, since in the *MORTE DARTHUR* we read "How that Sir Palomides kept his day for to have foughten" (Title of c. 88 of B. x). These trade secrets will out, somehow! Sir John Fortescue avows, about 1475, that the King's creditors "defame his highness off mys-governance, and defaute of kepyng of days" (*GOVERNANCE OF ENGLAND*, ch. v). Even the preachers knew about it. Roger Hutchinson in a sermon (c. 1550) mentions that "the defendant's office is, when he is summoned or cited, to appear at his day" (*Second Sermon OF OPPRESSION, &c.*; Parker Soc. ed. of Works, p. 332).

In *THE MERCHANT OF VENICE* however, "it appears further," by iii, 2, "that Antonio has been arrested on *mesne process*." The action for a pound of flesh, then, is dramatised by an English attorney's clerk (if not by Bacon) in the light of his professional knowledge; and we are further told: "Antonio is made to confess that Shylock is entitled to the pound of flesh according to the plain meaning of the bond and condition, and the rigid *strictness of the common law of England* :

*Salvino*. I am sure the Duke  
Will never grant this forfeiture to hold.

*Antonio*. The Duke cannot deny the course of law.

"All this has a strong odour of Westminster Hall." Since the Duke, as represented by Portia, after putting other "English" arguments *does* disallow the forfeiture as a criminal device, two contradictory views are thus alike homologated by the Lord Chief Justice as "strict English law." And it would appear to follow that the Italian novelists from whom the tale is derived had the same "profound legal training" as shines forth in the drama.



The trial, further, is "duly conducted according to the strict forms of legal procedure." That is to say, it was in the strict fashion of Westminster Hall (1) to let the Duke of Venice (who later announces that (2) he is going to "dismiss the court" failing the arrival of Bellario of Padua, "a learned doctor" whom he has "sent for to determine this"); begin (3) to abuse the plaintiff to the defendant before the case has been stated on either side. Portia is described (4) as "the Podestà or judge called in to act under the authority of the Doge" (which she is not), so that Bellario would on that theory take the same status. (5) Nevertheless the proceedings begin as aforesaid in Bellario's absence. The Podestà theory, by the way, is illuminated by the fact that at the close of the proceedings the Duke (6) exhorts Antonio to reward Portia, *i.e.* the judge.

The business having been started by the Duke as aforesaid, (7) Shylock delivers in reply a psychological essay, and (8) Bassanio intervenes with invective in the capacity of a friend of the defendant, who (9) in turn conveys his opinion of the plaintiff's character. After (10) this highly professional discussion has been further continued, (11) Nerissa, "dressed as a lawyer's clerk," in strict Westminster Hall style presents a letter to the Duke; and (12) Bassanio, Shylock and Gratiano exchange amenities. (13) The letter is then read out by the Duke, with scrupulous attention to legal forms. It announces (14) that Bellario, the "Podestà," being ill, appoints a "young doctor" from Rome as his substitute, the Duke of Venice concurring as in duty bound; though (15) he thoughtfully inquires whether the substitute knows anything about the case. (16) He is assured that the substitute knows all about it—before having heard anything from the parties. (17) Portia, dressed as "a doctor of laws," then discusses moral issues with Shylock in a fashion which illustrates *her* profound acquaintance with Westminster Hall usage, the plaintiff (18) alter-



nately retorting and applauding, in Westminster Hall fashion. Portia's line is (19) to urge the plaintiff to accept thrice his debt, knowing all the while that it is because of his refusal to do so that the case is in court. On his refusal (20) she admits that he may "lawfully" have his pound of flesh, and (21) advises Antonio to prepare for the operation there and then, at the hands of the plaintiff, as was the wont at Westminster Hall. Incidentally (22) she intervenes in the conversation between Bassanio and Antonio with a jest—here, certainly, conforming to English legal usage—and Nerissa follows suit, ostensibly as clerk to the court; whereupon the plaintiff (23) rebukes the court for wasting time. (24) The court then develops the interesting legal theory that flesh does not, according to the vulgar notion, contain or include blood, and warns the plaintiff accordingly. (25) In reply to him, the court courageously alleges that an Act to that effect is in existence; proceeding further (26) to aver that the plaintiff must exact the whole penalty due under his bond, and will himself incur the capital penalty if he takes more or less. (27) Having thus already, in effect, non-suited the plaintiff, the court unexpectedly does it afresh, intimating that he has all along lain under the capital penalty, inasmuch as the laws of Venice—of which the Venetian authorities and public appear to have no knowledge—define his entire proceedings as homicidal; and further (28) that the same occult code awards half of his property to the defendant, and the other half to "the privy coffer of the State," whose interests have been so indifferently represented by the Duke.

The plaintiff is now advised to throw himself on the mercy of the Crown, which he contumaciously fails to do; but the Crown, now getting a word in, spontaneously remits the death penalty, and (having apparently some doubts as to the revelation just made concerning its fiscal privileges) suggests a substantial remission of the pecuniary



penalty so far as the State is concerned. (29) The defendant, however, intervenes with a somewhat obscure proposal that, he retaining his half of the plaintiff's property, the plaintiff shall "let me have the other half *in use*, to render it upon his death" to plaintiff's son-in-law; adding, "Two things provided more," to wit, (a) that "for this favour" plaintiff shall turn Christian, and (b) "record a *deed of gift*, here in the court, *of all he dies possessed*," to his son-in-law and daughter. Defendant has justifiably taken for granted the assent of the court and Crown, which latter (30) accommodately intimates that plaintiff's pardon will be "recanted" if he does not do as he is told. (31) With the same business-like promptitude the plaintiff assents, and the court directs the clerk to "draw up a deed of gift." (32) The plaintiff is nevertheless allowed to withdraw, directing that the deed be "sent after him"; whereupon the Crown invites the court to dinner; adding, when the learned judge pleads lack of time, its celebrated suggestion to the defendant, to see that the judge is well paid. The courthouse then becomes the scene of domestic amenities, according to Westminster Hall practice.

And this "trial," we are told by a Lord Chief Justice; later Lord Chancellor, "is duly conducted according to the strict forms of legal procedure," whence arises a highly strengthened presumption that the dramatist was a practised attorney's clerk. His lordship brilliantly concludes with the reflection that Gratiano's speech:

In christening thou shalt have two godfathers,  
Had I been judge, thou shouldst have had ten more,  
To bring thee to the gallows, not the font,

is "an ebullition which might be expected from an English lawyer."

I should expect further ebullitions from any lawyer who should chance to peruse Lord Campbell's pages. It is not too much to say that, apart from downright



Baconism, the theorem before us is the worst nonsense that has ever been penned in Shakespearean discussion, which is saying a good deal. I leave it to the lawyers to decide whether or not his lordship was writing with his tongue in his cheek ; and I invite Mr. Greenwood to say on what critical principles he makes use of such a critic's declaration that " to Shakespeare's law, lavishly as he expounds it, there can neither be demurrer, nor bill of exceptions, nor writ of error." " There is nothing so dangerous," wrote Lord Campbell, " as for one not of the craft, to tamper with our freemasonry." It would appear that there are still more dangerous undertakings open to lawyers.

It may be worth noting in this connection that, as a legal friend of mine has put it, whosoever wrote the trial scene in *THE MERCHANT OF VENICE*, it cannot have been Bacon, the equity lawyer. Mr. Devecmon and other lawyers have been so struck by the disregard of equity in Portia's rulings as to be unable to refrain from severe censure of Shakespeare's conception of justice. They in turn, in their revolt against the entire lack of true legal feeling in the play, have perhaps grown blind, by reaction, to the moral enormity of Shylock's position. An equity lawyer, I suppose, would have set aside alike Portia's " blood " argument and Shylock's " bond " argument, and given simple decree for payment of the debt. We can imagine what Bacon would have thought of the theorem that if A lends money on condition of being allowed to cut off half a newly killed pig belonging to B, he cannot be permitted to cut off less than half, and is precluded from taking any blood. But whatever the equity lawyer might decide on the final merits, the playwright has in view an audience who—to say nothing of their primary prejudice against the Jew—were at least justified in regarding Shylock as a miscreant in the matter of the pound of flesh. And it is the utterly un-lawyer-like punishment of the miscreant for his *intentions* that



finally makes the legalist theory so completely preposterous in regard to this particular play. / N.

As regards Shakespeare's moral outlook in the matter, it may suffice to remind the reader of the existence of an older play, referred to by Stephen Gosson in his *SCHOOL OF ABUSE* (1579), on the subject of the caskets and the Jewish usurer's bond; and to suggest that Shakespeare, who has done so much to humanise the figure of the hated Jew in other respects, probably stopped short of the vengeance meted out in the older drama.

16. Portia's phrase (V, i, 298),

Charge us there upon inter'gatories,

is justly alleged to contain a "palpable allusion to English legal procedure." It does; and so do the four other instances of the word in the plays. And so does Ariosto's

What should move you  
Put forth that harsh inter'gatory?

in Webster's *THE DEVIL'S LAW CASE* (ii, 3). And so does Gelaia's "Slight, he has me upon interrogatories," in Ben Jonson's *CYNTHIA'S REVELS* (iv, 1). And so does Andelocia's phrase in Dekker's *OLD FORTUNATUS* (iv, *end*): "Are you created constable? You stand so much upon interrogatories." And so does Black Will's "You were best swear me on the inter'gat'ries," in *ARDEN OF FEVERSHAM* (III, vi, 6). And so do Nashe's phrases: "Let me deal with him for it by interrogatories" (First Part of *PASQUIL'S APOLOGIE: Works*, i, 115), and "Pilate's interrogatory ministered unto him was, Art thou the King of the Jews?" (*Ib.* p. 129.)

And so does the question, "What are you, sir, that deal thus with me by interrogatories, as if I were some runaway?" in Greene's *MENAPHON* (Arber's rep. p. 57). What then? Were these writers all lawyers?

17. The servant's phrase, "present her at the leet, because," &c., in the Induction to *THE TAMING OF*



THE SHREW, is alleged to betray an "intimate knowledge of the matters which may be prosecuted as offences before the Court Leet, the lowest court of criminal judicature in England." It shows exactly such knowledge as was, in the terms of the case, necessarily possessed in every alehouse in England; otherwise Sly is presented as a tinker impossibly learned in the law. An even wider range of legal knowledge of the same order, as it happens, is exhibited by Justice Overdo in Ben Jonson's BARTHOLOMEW FAIR (ii, 1). What is the inference there?

18. Because Tranio in the TAMING OF THE SHREW (i, 2) remarks that

adversaries in law  
Strive mightily, but eat and drink as friends,

the Lord Chief Justice is moved to observe that the dramatist "had been accustomed to see the contending counsel, when the trial is over, or suspended, on very familiar and friendly terms with each other." 'Tis like! Ten thousand laymen have noted as much; and a hundred popular tales have been current from time immemorial which convey the fact from generation to generation. Similar lore, to a layman's thinking, presumptively underlay the remark put by Dekker and Webster in the mouth of Mistress Justiniano in WESTWARD HO (i, 1), to the effect that she sleeps "as quietly as a client having great business with lawyers." But if that had been said in a Shakespearean play, what depth of legal experience would Lord Campbell not have found in it! What would he not have made, again, of the lines:

The man of law,  
Whose honeyed hopes the credulous clients draw,  
As bees by tinkling basins,

in the WITCH OF EDMONTON (iv, 1), by Dekker, Ford, and Rowley; or of the phrase, "They'll hold no more than a lawyer's conscience" in Dekker's MATCH ME IN LONDON (Act i, *end*). If he had only read THE DEVIL'S LAW



CASE (v, 2), he would perhaps have been content to stake his whole thesis upon one sentence of Sanitonella :

You have lawyers take their clients' fees, and their backs are no sooner turned but they call them fools and laugh at them.

For Sanitonella is actually a lawyer's clerk; and it clearly follows that the dramatist must have been one!

19. Whereas Katherine in the same play (ii, 1) says, "You crow too like a craven," we are seriously assured that the playwright "shows that he was acquainted with the law for regulating trials by battle" between champions; one of which had been fought in Tothill Fields before the judges of the Court of Common Pleas in the reign of Elizabeth, because "all lawyers" know that "craven" is "the word spoken by a champion who acknowledged that he was beaten, and declared that he would fight no more; whereupon judgment was immediately given against the side which he supported, and he bore the infamous name of *craven* for the rest of his days." "We have like evidence in HAMLET (iv, 4)," adds his lordship, "of Shakespeare's acquaintance with the legal meaning of this word," inasmuch as Hamlet has the phrase, "some craven scruple."

I invite Mr. Greenwood's critical attention to the rubbish upon which he has been building his case. He is, I know, the last man that would attend a cockfight; but he will perhaps admit that cockfighters called a timid cock a craven without possessing the lore of "all lawyers" as to the nomenclature of trial by battle—concerning which, more anon. He will also, I think, grant me that Shakespeare did *not* write THE TAMING OF THE SHREW; the "profound" legal learning of which play must accordingly be credited in some other quarter.

20. Lord Campbell gives three pages to the proposition that the bare plot of ALL'S WELL, as regards the legal position of Bertram, is proof "that Shakespeare had an *accurate knowledge* of the law of England respecting . . .



tenure in chivalry" and "wardship of minors." The wardship of Bertram, we are told, "Shakespeare drew from his own knowledge of the common law of England, which . . . was in full force in the reign of Elizabeth." That is to say, the alleged knowledge must have been common to the multitude, since there is not a word of technicalities in the play. And after all we learn, in a foot-note, that "according to Littleton it is doubtful whether Bertram . . . might not have refused to marry Helena on the ground that she was not of noble descent."

21. The profundity and accuracy of legal knowledge exhibited in the WINTER'S TALE is vouched for (*a*) by the fact that Hermione mentions, (i, 2), "a piece of English law procedure which . . . could hardly be known to any except lawyers, or those who had themselves actually been in prison on a criminal charge—that, whether guilty or innocent, the prisoner was liable to pay a fine on his liberation." Lord Campbell appears to have assumed that released prisoners would keep this strange circumstance to themselves as a dark secret. Mr. Greenwood will probably admit that it was likely to be known to Ben Jonson (who had been twice in prison, and may have revealed his occult knowledge to Shakespeare); to Marston and Dekker, who had also been in jail; and to Greene and Nashe, to say nothing of certain thousands of other Elizabethans! Lest, however, he or his Baconian friends should refuse to grant that anybody but a lawyer was likely to disclose the mystic secret in a play, it may be well to cite Heywood's A WOMAN KILLED WITH KINDNESS, where it is thoughtlessly revealed thrice over:

*Prison Keeper.* Dischargey our fees and you are then at freedom.

*Sir Charles.* Here, Master Keeper, take the poor remainder  
Of all the wealth I have. . . .

(Act ii, 2).

*Prison Keeper.* . . . You are not left so much indebted to us  
As for your fees: all is discharged, all paid.

(Act iv, Scene 2).



In the same scene, when Sir Charles discovers that he is released by his enemy Acton, he cries, "Hale me back!" and concludes:

I am not free: I go but under bail;

to which the keeper replies:

My charge is done, Sir, now I have my fees  
As we get little, we will nothing leese [lose].

Yet again, in Part II of his KING EDWARD THE FOURTH (Pearson's ed. i, 139) Heywood proclaims the usage which Lord Campbell thinks could have been known only to lawyers or ex-prisoners. Jane Shore, securing the pardon of the prisoners for piracy, about to be hanged, says to the officer:

You must discharge them, paying of their fees  
Which, for I fear their store is very small,  
I will defray.

And if this be not enough, we have yet another revelation in Dekker's THE WONDER OF A KINGDOM (iv, 1):

*Gentile.* Go and release him  
Send him home presently, and pay his fees.

If Lord Campbell and Mr. Greenwood had but handled this case as they would have done a legal one, and taken a little trouble to discover precedents, they and their readers might have been saved the construction and demolition of a legal house of cards. That which Lord Campbell thinks could hardly have been known to any but lawyers and prisoners was known to every spectator, and is known to every reader, of Heywood's best play, to say nothing of ordinary means of knowledge.

22. With a supreme effort of candour, Lord Campbell admits that the indictment of Hermione (iii, 2) "is not altogether according to English legal form, and might be held insufficient on a writ of error." But he comforts himself with the reflection (b) that "we lawyers cannot but wonder at seeing it so near perfection in charging the

W.



treason, and alleging the overt act committed by her contrary to the faith and allegiance of a true subject."

With what wonder, then, must the lawyers read the indictment of Crispinus and Fannius in Jonson's *POETASTER* (v, i), where the technicalities are to Shakespeare's as three to one! The culprits there are "jointly and severally indicted and here presently to be arraigned" as having acted "contrary to the peace of our liege lord, Augustus Cæsar, his crown and dignity," and "mutually conspired and plotted at sundry times, as by several means, and in sundry places, for the better accomplishing your base and envious purpose. . . ." Mere clerkship in an attorney's office, surely, could not yield such profundity of legal learning! *THE POETASTER*, like the rest of the Elizabethan drama, must be by Bacon!

And only the same hand, surely, could have penned the "wonderful" indictment of Guildford and Lady Jane in the *FAMOUS HISTORY OF SIR THOMAS WYAT*, by Dekker and Webster, where the culprits are "here indicted by the names of Guilford Dudley, Lord Dudley; Jane Grey, Lady Jane Grey, of capital and high treason against our most sovereign lady the Queen's majesty," for having "sought to procure unto yourselves the royalty of the crown of England, to the disinheriting of our now sovereign lady the queen's majesty," and "manifestly adorned yourselves with the state's garland imperial," and so forth. And only a lawyer, clearly, could have made Norfolk order that the accused shall "directly plead unto the indictment."

Returning to Lord Campbell, we learn (c) that Cleomenes and Dion "are sworn to the genuineness of the document they produce *almost* in the very words now used by the Lord Chancellor when an officer presents at the bar of the House of Lords the copy of a record of a court of justice." Which completes the case for the *WINTER'S TALE* and the Comedies.

23. Coming to the Histories, our jurist notes that the



English history plays contain fewer "legalisms" than "might have been expected," and that there are more in the foreign plays. He recalls, however, that in the history plays Shakespeare was working upon foundations already laid by other men who had no "technical knowledge" of the recondite kind we have just been considering. And after all, we find that in King John's speech to Robert Faulconbridge, beginning:

Sirrah, your brother is legitimate,

we have the "true doctrine, *Pater est quem nuptiæ demonstrant.*" Unhappily, the author or authors of the older play, THE TROUBLESOME RAIGNE OF KING JOHN (whom I take to be mainly Marlowe and Greene), though necessarily devoid of technical knowledge, had been inconsiderate enough to develop the argument more fully and with more use of technical terms than Shakespeare has done. When, accordingly, it is further argued that the line (ii, 1),

As seal to this indenture of my love,

"might come naturally from an attorney's clerk," we can but remark that the metaphor in question seems to have come naturally to most of the poets and dramatists of Elizabethan England. Take fifteen instances out of a hundred:

Be this day  
My last of bounty to a wretch ingrate;  
But unto thee a *new indenture sealed*  
Of an affection fixed and permanent.

Heywood, *The English Traveller*, i, 2.

Not till my pardon's sealed. *Ib.* iv, 6.

*Mary.* Yes sir; a bond fast sealed with solemn oaths,  
Subscribed unto, as I thought, with your soul;  
Delivered as your deed in sight of Heaven:  
Is this bond cancelled: have you forgot me?

Middleton, *The Roaring Girl*, i, 1.

He and I  
Have sealed two bonds of friendship.

Dekker, *The Honest Whore*, Part I, i, 1.



Then with thy lips seal up this new-made match.  
*Arden of Feversham*, III, v, 150.

*Francis*. Bid her come seal the bargain with a kiss.

*Mall*. To make love's patent with my seal of arms.  
*The Two Angry Women of Abington*, iii, 2.

And have his lips seal'd up.

Jonson, *Every Man out of his Humour*, Induction.

Seal it with thy blood. (*twice*)

Dekker, *The Witch of Edmonton*, ii, 1.

the tragedy,

Though it be seal'd and honour'd with the blood  
 Both of the Portugal and barbarous Moor.

Peele, *The Battle of Alcazar*, iv, 2.

Join you with me to seal this promise true

That she be mine, as I to her am true. . . .

First Four but say, next Four their saying seal

But you must pay the gage of promised weal.

Sir Philip Sidney, *Arcadia*, b. iii.

I seal your charter-patent with my thumbs.

Greene, Eclogue in *Menaphon*, end.

You all fixt

Your hands and seals to an indenture drawn

By such a day to kill me.

Dekker, *Match Me in London*,

Act iv. Pearson's ed. iv, 200.

I'll bear him such a present,

Such an acquittance for the knight to seal,

As will amaze his senses.

Heywood, *A Woman Killed with Kindness*, v, 1.

I seal you my dear brother, her my wife. *Ib.*

Or seal our resolution with our lives.

Heywood, *First Part of Edward IV.*

Pearson's Heywood, i, 14.

I seal myself thine own with both my hands

In this true deed of gift.

*Blurt, Master-Constable*, 1602, v, 3.

It is edifying to know, in the same connection, that Bishop Wordsworth found in Shakespeare's metaphorical use of "seal" a proof of his study of the Bible.<sup>1</sup>

<sup>1</sup> *On Shakespeare's Knowledge and Use of the Bible*, 2nd ed. 1864, p. 333.



As there is no more "law" in KING JOHN, our jurist fills a page by demonstrating that his author "spurned the ultramontane pretensions of the Pope." It is even so.

24. A brighter prospect opens for the Baconian when we reach KING HENRY IV, Part I, for there (iii, 1) "the partition of England and Wales" is carried out "in as clerk-like, attorney-like fashion as if it had been the partition of a manor between joint tenants, tenants in common, or coparceners." All this because Mortimer has the lines

And our indentures tripartite are drawn,  
Which, being sealed interchangeably. . . .

"It may well be imagined," says the learned judge; "that . . . Shakespeare was recollecting how he had seen a deed of partition tripartite drawn and executed in his master's office at Stratford"—though in the critic's opinion he probably was never in any attorney's office! And when Hotspur asks: "Are the indentures drawn?" he shows that he "fully understood this conveyancing proceeding." By the same reasoning, Dekker knew as much when he wrote the lines last above cited from him; and Greene and Lodge may well be imagined to be drawing on office reminiscences when they made the Usurer in A LOOKING GLASS FOR LONDON say to his victim: "Have you not a counterpane of your obligation?" thus making their personage "fully understand" what only lawyers could know! And, once again, we find that Ben Jonson's plays must have been written by a trained lawyer, inasmuch as he not only has:

Here determines the indenture tripartite  
'Twixt Subtle, Dol, and Face,

in THE ALCHEMIST (v, 2), but makes the scrivener in the Induction to BARTHOLOMEW FAIR present a full-drawn "indenture"—of which the Bookholder gets the "counterpane"—in strict quasi-legal form, between the spectators and the author. As the document runs to over a hundred



lines, the claims for Shakespeare's legal training would seem to be at this point as dust in the balance. The only question open on the juristic principles under notice is, whether Jonson was an attorney's clerk or Bacon's amanuensis!

And the problem does not end with the dramatists. Bishop Hooper, the martyr, in a long passage of legalist theology quoted hereinafter (ch. vi), speaks of a contract "confirmed with obligations sealed interchangeably." Hooper is known to have been a monk before he became a Protestant preacher. Is it to be inferred that he had also been a lawyer's clerk?

25. Our jurist adds: "Shakespeare *may* have been taught that 'livery of seisin' was not necessary to a deed of partition, *or he would have probably directed this ceremony to complete the title.*" Such modesty of statement should be fitly acknowledged. But the judge is more assured in noting that "so fond was Shakespeare of law terms" that he makes Henry IV use (iii, 2) the "forced and harsh" figure, "*Enfeoff'd* himself to popularity." Upon this we have a copy of Malone's note on the passage, but not of Steevens's mention that in the old comedy of WILY BEGUILED there is the phrase: "I protested to enfeoffe her in forty pounds a year." When Shakespeare uses a legal term in a strained sense, such as probably would never suggest itself to a lawyer, he is held to exhibit his profound and accurate legal knowledge. When, then, Serlsby in Greene's FRIAR BACON (sc. 10) says:

I am the lands-lord, keeper, of thy holds ;  
By copy all thy living lies in me ;  
Laxfield did never see me raise my dues ;  
I will enfeoff fair Margaret in all,

it merely proves that Greene had "no technical knowledge." In point of fact, the "forced and harsh" use of this very term occurs often in Nashe:

Might the name of the Church infeoffe them in the kingdom of Christ. . . .

*The Anatomie of Absurditie*, 1589. Works, ed. McKerrow, i, 22.



A kind of verse it is he hath been enfeoft in from his minoritie.

Ep. Ded. to *Have with You to Saffron Waldon*, Works, iii, 7.

I . . . enfeofe thee with indefinite blessedness—

*Christ's Teares over Jerusalem*, ed. cited, ii, 32.

—in a fashion which indicates that it was a trick of speech of the period, analogous to that of the phrase, “ Shall I contract myself to wisdom’s love ? ” in Dekker’s *OLD FORTUNATUS* (i, 1). The words “ feoffee ” and “ feoffment ” occur again in the legal sense many times in two acts of Jonson’s play, *THE DEVIL IS AN ASS*. It is thus abundantly evident that both the normal and the abnormal use of such legal terms were common in Elizabethan phraseology. Yet because Hotspur in *1 HENRY IV* (iv, 3) simply tells how Henry on a historic occasion said he came to “ sue his livery ” when he actually did so, we are asked to believe that Shakespeare’s language is determined by his special legal training. What inference then shall we draw when Ben Jonson in *THE STAPLE OF NEWS* (i, 1) makes Pennyboy junior declare,

I’ll sue out no man’s livery but mine own—?

Are we to be told here also that Jonson exhibits lack of a technical knowledge which Shakespeare possessed ?

26. Whereas some have argued that the conversation between Falstaff and the Chief Justice does *not* exhibit a close observation of the manner of speech of judges, Lord Campbell demonstrates that Lord Chancellor Jeffreys once actually *did* talk of laying a man “ by the heels.” He further delivers the judgment that the author who made Falstaff talk of “ the wearing out of six fashions, which is four terms, or two actions,” “ *must* have been *early* initiated in the *mysteries* of terms and actions.” So, it appears, was Greene, who in *JAMES IV* (iii, 3) makes Andrew say that “ dead ” is “ a terrible word at the latter end of a sessions,” and further makes the Divine (v, 4) complain that the lawyers “ delay your common pleas for years.” And so must have been Dekker



and Webster, since they make Justiniano in WESTWARD HO speak of "the motion in law that stays for a day of hearing"; and Dekker in IF THIS BE NOT A GOOD PLAY, THE DEVIL IS IN IT (ed. Pearson, iii, p. 274) makes Octavio say:

Yet term time all the year!  
A good strong lawsuit cannot now cost dear;

and again in THE HONEST WHORE (Part I, iv, 2) makes Fustigo reflect: "I could have mine action of battery against him, but we may haps be both dead and rotten before the lawyers would end it"; and yet again makes Doll in NORTHWARD HO (i, 3) protest: "I'm as melancholy now as Fleet Street in a long vacation; . . . so soon as ever term begins I'll change my lodging." As for Heywood, he once more betrays his lawyership in THE ENGLISH TRAVELLER (iii, 3):

Besides, 'tis term,  
And lawyers must be followed; seldom at home,  
And scarcely then at leisure.

N. { Lord Campbell, it would appear, had not mastered the simple fact, which lies on the face of a hundred Elizabethan books dealing with contemporary life, that the "terms" of the law-courts were then a normal way of dividing time, as we now commonly divide it by the seasons. The reader, however, can now understand that when Nashe writes: "My clue is spun; the term is at an end; wherefore I will end and make vacation" (HAVE WITH YOU TO SAFFRON WALDEN; *Works*, iii, 136) he is really not giving any proof of legal experience; but is simply using the every-day language of the period; as he does when, at the close of the pamphlet, he says he will "keep back till the next term" his further scolding.

et. { 27. Pistol's "*absque hoc*" (v, 5) is of course cited as "remarkable," that being "an expression used, when the record was in Latin, by special pleaders in introducing a special traverse or negation of a positive material allegation on the other side, and so framing an issue of fact



for the determination of the jury." So that Shakespeare, whose genius is subsumed throughout the inquiry, was really incapable of drawing the character of the swaggerer Pistol without falsifying it by making him utter phrases which were within the ken only of trained lawyers, and which he could never have heard even as scraps and tags! Similarly, when Heywood in *THE FAIR MAID OF THE WEST* (i, 5) makes a tavern drawer say: "It is the commonest thing that can be, for these captains to score and to score; but when the scores are to be paid; *non est inventus*," he must be held to have bewildered his audience by putting in a tapster's mouth a Latin phrase possible only to lawyers. It really seems saner to suppose that tags of law Latin were common currency. ) N.

28. Our jurist reaches his high-water mark in the *HENRY VI* plays, where Dick's proposal (2 H. VI, iv, 2), "let's kill all the lawyers," and Jack Cade's allusions to parchment and beeswax, show "a familiarity with the law and its proceedings which strongly indicates that the author must have had some professional practice or education as a lawyer." And on the sentencing of the Clerk of Chatham, who could "make obligations and write court hand," and always signed his name instead of making his mark, the Lord Chancellor pens this reflection (italics his): "Surely Shakespeare must have been employed to write *deeds* on *parchment* in *court hand*, and to apply the *wax* to them in the form of *seals*: one does not understand how he should, on any other theory of his bringing up, have been acquainted with these details." Over this nonsense one's only doubt is as to whether the writer can have penned it with any consciousness of its purport; or whether he was deliberately farcing. It seems incredible that it should be necessary to mention that the parchment, beeswax, and seal, and the scene with the Clerk of Chatham, are all in the *FIRST PART OF THE CONTENTION OF THE TWO FAMOUS HOUSES OF YORK AND LANCASTER*, which was no more written by Shake-



speare than by Lord Campbell. But the argument before us is part of the case upon which Lord Campbell founds his deliverance as to the profound legal knowledge exhibited in Shakespeare's plays, upon which bare deliverance Mr. Greenwood in turn mainly rests *his* case, which convinced Mark Twain!

29. Of course we are next told that the indictment of Lord Say (iv, 7) was drawn by "no inexperienced hand," inasmuch as it contains the burlesque phrase "contrary to the king, his crown and dignity," and the further legal phrase, "such abominable words as no Christian ear can endure to hear," which are the equivalent of "*inter Christianos non nominand*."

It is quite certain that the drawer of this indictment must have had some acquaintance with "The Crown Circuit Companion," and must have had a full and accurate knowledge of that rather obscure and intricate subject—"Felony and Benefit of Clergy."!

Cade's proclamation, which follows, we are as gravely told, "deals with still more recondite heads of jurisprudence." Thus it runs:

The proudest peer in the realm shall not wear a head on his shoulders unless he pay me tribute: there shall not a maid be married but she shall pay me her maidenhead ere they have it. Men shall hold of me *in capite*; and we charge and command that their wives be as *free as heart can wish or tongue can tell*.

"Strange to say," writes the jurist, "this phrase, *or one almost identically the same*, 'as free as tongue can speak or heart can think,' is feudal, and was known to the ancient laws of England." *Ergo*, only a trained lawyer can have heard of it! Nashe, as it happens, is inconsiderate enough to employ the phrase in his HAVE WITH YOU TO SAFFRON WALDEN (*Works*, ed. cited, iii, 33). But that is a trifle. Once more, it appears, we must point out that "against the king's crown and dignity," and the "abominable words as no Christian ear is able to endure to hear it," and the edifying lines on the "still



more recondite heads of jurisprudence" which Lord Campbell describes as "legislation on the *mercheta mulierum*," are all in the FIRST PART OF THE CONTENTION, where, instead of "heart can wish," we have the professionally accurate "heart can think." What does Mr. Greenwood think of it all?

30. At a bound we pass from I HENRY VI to TROILUS AND CRESSIDA, where, as we might have expected, Pandarus' phrases (iii, 2) "a kiss in fee-farm" and "in witness the parties interchangeably" are solemnly cited; with the comment that the latter phrase is the "exact form of the *testatum* clause in an indenture"—"in witness whereof the parties interchangeably have hereto set their hands and seals"; whereas the word "whereof" has been left out. Then we are reminded of the "seals of love" in the song in MEASURE FOR MEASURE and the "sweet seals" in VENUS AND ADONIS, which are once more implicitly declared to be the lyrical expressions of an attorney's clerk. It would seem again necessary to vindicate the poethood of the poet against his legalist idolaters by pointing out that this too is a poetic commonplace of the time:

Sweet lady, seal my pardon with a kiss.

Dekker, *The Wonder of a Kingdom*, iv, end.

Seal me a pardon

In a chaste turtle's kiss.

Randolph, *The Jealous Lovers*, i, 7.

I had taught

Our lips ere this, to seal the happy mixture  
Made of our souls.

Jonson, *The Devil is an Ass*, i, 1.

Thus I seal it (*kisses her*).

Beaumont and Fletcher, *Monsieur Thomas*, v, 10.

My lips . . . seal my duty.

Massinger, *The Picture*, iv, 1.

Our bargain thus I seal. (*He kisses her*.)

Heywood, *The Brazen Age*. Pearson's Heywood, iii, 215.

31. In LEAR, naturally, the Fool's phrase (i, 4), "'tis like the breath of an unfee'd lawyer," is held "to show



that Shakespeare *had frequently been present at trials in courts of justice*, and now speaks from his recollection." Dekker and Webster, evidently, must have had the same recondite training, inasmuch as Mistress Birdlime in their *WESTWARD HO* (ii, 2) says, "I spake to her, as clients do to lawyers without money, to no purpose."

32. Gloucester's phrase (ii, 1), "I'll work the means to make thee capable," is characterised as "a remarkable example of Shakespeare's use of technical legal phraseology," inasmuch as "capable" is the technical formula for "capable of inheriting." "It is only a lawyer who would express the idea" so. So that, once more, Chapman must have been a lawyer, since he makes Almanzor in *REVENGE FOR HONOUR* (iv, 1) tell his son Abilqualit that he is "deprived of being capable of this empire"; Heywood must have been a lawyer, since he puts this very term "capable" in the same special sense in the mouth of the vintner's apprentice, Clem, in *THE FAIR MAID OF THE WEST* (v, 2):

Please your majesty, I see all men are not capable of honour :  
what he refuseth, may it please you to bestow on me ;

and Massinger must have been a lawyer, since he has the phrase in an edict (*OLD LAW*, v, 1), "no son and heir shall be held capable of his inheritance . . . unless . . . ." And Heywood, Chapman, Massinger, and Shakespeare stand alike convicted—if there be any validity whatever in the legalist argument—of at once putting their characters out of drawing and bewildering their audiences by making their non-legal personages use terms which none but lawyers could understand! It may suffice to mention that the terms "capable" and "incapable" are used in More's *HISTORY OF RICHARD III* (Murray's rep. pp. 194, 195) with reference to the succession to the crown, that they occur in the chronicles, and that they must have been used in all men's common talk for many generations.



33. The words of Cornwall to Edmund, "Seek out where thy father is, that he may be ready for our apprehension," are cited without any explicit claim to find in them signs of profound legal knowledge; but inasmuch as Edmund says, aside: "If I find him comforting the king, it will stuff his suspicion more fully," we are duly reminded that "comforting" is the term used in "the indictment against an accessory after the fact, *for treason*." The Lord Chancellor would appear to have been unaware that the word is used in indictments after the fact for lesser crimes than treason! It must have been heard as so used in every Elizabethan court, and would be familiar in every village.<sup>1</sup> It may be mentioned incidentally that "back up" or "encourage" is the original meaning of "comfort," and that the word is used often by Wiclif in that sense.<sup>2</sup>

34. There being no other "law" in *LEAR*, we are finally assured that at least "In Act iii, Sc. 6, the imaginary trial of the two unnatural daughters (*by the mad Lear*) is conducted in a manner showing a perfect familiarity with criminal procedure." In this case I spare comment.

35. In *HAMLET* the simple phrase, "should it be sold in fee" (iv, 4) is alleged to be one of the various expressions "showing the substratum of law in the author's mind." We then learn that the mention of impressed shipwrights who work on Sunday "has been quoted; both by text writers and by judges on the bench, as an authority upon the legality of the *press-gang*, and upon the debated question whether shipwrights, as well as common seamen, are liable to be pressed into the service of the royal navy." That is to say, the passage tells of

<sup>1</sup> In a recent English case which excited much interest, the newspapers printed the phrase in question, some misreading it "comport." In Elizabeth's day, the mistake would have been impossible.

<sup>2</sup> *Treatise Against the Order of Friars*, chs. 20, 24, 31.



Elizabethan usage. There is no question of "legal knowledge" in the matter.

36. Hamlet's phrase, "As this fell sergeant Death is strict in his arrest," cannot be let pass without the remark that in this metaphor Death comes "*as it were* to take him into custody under a *capias ad satisfaciendum*." His lordship would doubtless have said the same had he met in Shakespeare with Ben Jonson's "He'll watch this sen'night but he'll have you: he'll out-wait a sergeant for you" (EPICÆNE, iv, 2). Had Lord Campbell read Chapman's ALL FOOLS he would have known from a phrase about Dame Nature sending "her serjeant John Death to arrest his body" (i, 1), that the trope was in common use. Chapman's "executioner of justice, Death" (REVENGE FOR HONOUR, iii, 1), and Massinger's "Summoned to appear in the court of Death" (THE DUKE OF MILAN, v, 2) are simply samples of a vein of metaphor which runs through all English speech of the period. We have it in Nashe's CHRIST'S TEARES OVER JERUSALEM (1593):

The Judge [shall] deliver thee to Death, his Sarjant, the Sarjant to the divel.

*Works*, ed. McKerrow, ii, 32.

We have it again in Dekker:

They have broke Virtue's laws; Vice is her serjeant,  
Her jailer and her executioner.

*Old Fortunatus*, v, 2.

37. Over the grave-diggers' scene, naturally, we have special exultation: it is "the mine which produces the richest legal lore." Inasmuch as the talk of *felo de se* bears on the case of Sir James Hales, puisne Judge of the Common Pleas, who became insane and committed suicide soon after the accession of Queen Mary, we are assured that "Shakespeare had *read and studied* Plowden's Report of the celebrated case of Hales *v.* Petit, tried in the reign of Philip and Mary." The sole basis for this now familiar stress of asseveration is that in the lawsuit



over Hales' estate, in which one side argued that a man "cannot be attainted of his own death" and "cannot be *felo de se* till the death is fully consummate," whereas "the death precedes the felony and the forfeiture," the other side argued that "the act consists of three parts"—imagining, resolving, and executing. In the play, the Clown says, with regard to the suicide of Ophelia, "an act hath three branches, it is to act, to do, and to perform." That is the whole case.

N.B.

Now, it is obvious that such a notable argument as that in the Hales case must have been reported, discussed, and commented on for two generations all over England; and it would be discussed among common folk as among the educated. Shakespeare could often have heard just some such confabulation as he ascribes to the grave-diggers. If this be denied, we must decide that he put in the mouths of common folk quasi-legal talk which neither they nor the audience could even loosely understand. There is not the slightest reason to suppose that he went to Plowden to study a case of common notoriety for the sole purpose of framing a few burlesque phrases for a comic dialogue—for that is the sole use to which he puts the matter. Once more the legalist case, at its highest pretension, collapses on a moment's scrutiny.

note this recurrent argument.

38. Over Hamlet's speech on the skull, however, we have inevitably a further sweeping claim, inasmuch as it "abounds with lawyer-like thoughts and words." "These terms of art are all used seemingly with a full knowledge of their import; and it would puzzle some practising barristers with whom I am acquainted to go over the whole *seriatim* and to define each of them satisfactorily." So that Shakespeare, once more, is in-artistic enough to put in the mouth of a prince a string of law terms which a Victorian barrister would be hard put to it to define!

again

But, as usual, other dramatists of the time do likewise.



In Ben Jonson's *EPICŒNE* (iv, 2) we have Morose's list of terms to match Hamlet's :

There is such noise in the court that they have frightened me home with more violence than I went ! such speaking and counter-speaking, with their several voices of citations, appellations, allegations, certificates, attachments, interrogatories, references, convictions and afflictions, indeed, among the doctors and proctors, that the noise here is silence to't.

Then, in the scene (v, 1) in which Otter and Cutbeard play the parts of a divine and a canon lawyer, we have these legal terms :

Divortium legitimum ; divinere contractum ; irritum reddere matrimonium, "as we say in the canon law, not to take away the bond, but cause a nullity therein" ; impedimentum erroris ; error personae ; error fortunae ; error qualitatis nec post nuptiarum benedictionem ; irrita reddere sponsalia ; conditio ; votum ; cognatio spiritualis ; crimen adulterii ; cultus disparitatis ; vis ; ordo ; ligamen ; publica honestas, which is inchoata quaedam affinitas ; affinitas orta ex sponsalibus ; leve impedimentum—and yet more.

Why should Ben Jonson be denied his diploma as canon lawyer ?

39. In *MACBETH* the only phrases cited as having "the juridical mark" upon them are Macbeth's "take a bond of fate" and "live the lease of nature" (iv, 1). Upon these citations there follow certain professional pleasantries which laymen may pass by. It is fitting, however, to note that Mr. Castle, K.C.,<sup>1</sup> classes *MACBETH* among "the non-legal plays," and pronounces the "bond of fate" phrase "mere sound, not sense," as he does the "lease of nature" phrase to be "nonsense."<sup>2</sup> Above all, he is impressed by the legal ignorance displayed in the story of the traitor Cawdor, concerning whom Angus

<sup>1</sup> Work cited, p. 96 sq.

<sup>2</sup> If so, it was popular nonsense. In Webster's *White Devil*, Brachiana tells Flamineo : "I will not grant your pardon. . . . Only a lease of your life ; and that shall last But for one day" (iv, 5, *end*).



alleges "treasons capital, confessed and proved," without being able to tell the king what they were. In particular, Mr. Castle insists that the passage :

Is execution done on Cawdor ?  
Are not those in commission yet returned ?

"is an inaccurate and improper expression," inasmuch as Cawdor had not been tried. I leave this crux to the Baconians and the other legalists, merely noting that Mr. Castle finds "this condemnation of Cawdor to death without trial . . . the most convincing proof that Shakespeare had no legal assistance in writing this play." The poet, he thinks, personally leant to the view that the king could condemn any one to death without trial—as did James, to the scandal of the lawyers, in the case of a cutpurse, on his journey to London to be crowned. Perhaps James had read RICHARD III !

40. From OTHELLO Lord Campbell contrives to wring a larger harvest than from any other play. As thus :

(a) *Nonsuits* my mediators (i, 1).

(b) *Lawful prize* (ii, 2)—the trope indicating that there would be a suit in the High Court of Admiralty to determine the validity of the capture.

(c) The trial of Othello (i, 3) before the Senate as if he had been indicted on Stat. 33 Hen. VII, c. 8, for practising conjuration, witchcraft, enchantment, and sorcery, to provoke to unlawful love.

(d) The lines of Desdemona (iii, 3) :

I'll intermingle everything he does  
With Cassio's *suit* : Therefore be merry, Cassio :  
For thy *Solicitor* shall rather die  
Than give thy cause away.

(e) Iago's line (*ib.*) :

*Keep leets and lawdays, and in session sit.*

In (d) Desdemona's appeal, we are told, "is made to assume the shape of a juridical proceeding" ; in (e) the language "shows that Shakespeare was *well acquainted with all courts, low as well as high.*" Noting the utter futility of the two last cited pleas, we can best rebut the



whole five instances by citing a much longer series of "legal" passages from one play of Ben Jonson—EPICÆNE, OR THE SILENT WOMAN :

They say he has been upon divers treaties with the fishwives and orange-women, and articles propounded to them. (i, 1.)

It gives thee the law of plaguing him. . . . Disinherit thee ! he cannot, man. Art not thou next of blood, and his sister's son ? (Ib.)

He shall never have that plea against me. (Ib.)

Have I ever cozened any friends of yours of their land ? bought their possessions ? taken forfeit of their mortgage ? begged a reversion for them ? (Ib.)

Daw. Syntagma juris civilis ; Corpus juris civilis ; corpus juris canonici. . . .

Daup. What was that Syntagma, sir ?

Daw. A civil lawyer, a Spaniard.

Daup. Sure, Corpus was a Dutchman. (ii, 2.)

He's better read in *jure civile* than . . . (Ib.)

I'll kiss you, notwithstanding the justice of my quarrel. (iii, 2.)

I have an execution to serve upon them, I warrant thee, shall serve. (iv, 2.)

Batter ! If he dare, I'll have an action of battery against him. (Ib.)

In addition, we have all the other Jonsonian legalisms noted above and hereinafter—in all fifty times as much "law" as Lord Campbell finds in OTHELLO. It is doubtless a work of supererogation to cite parallels to "non-suits," "lawful prize," "leets," and "sessions," but here they are. In one speech in a play of Jonson we have :

*Pennyboy jun.* But Picklock, what wouldst thou be ? Thou canst cant too.

*Picklock.* In all the languages in Westminster Hall,  
Pleas, Bench, or Chancery. Fee-farm, fee-tail  
Tenant in dower, at will, for term of life,  
By copy of court-roll, knight's service, homage,  
Fealty, escuage, soccage, or frank almoigne,  
Grand serjeantry, or burgage.

*The Staple of News*, iv, 1.

Had Lord Campbell found such a catalogue in Shakespeare, with what superlatives would he have cited it !



“ Lawful prize ” is a standing Elizabethan term : witness—

’Tis a lawful prize  
That’s ta’en from pirates.

Dekker, *Match Me in London*, Act iii.

Pearson’s ed. of *Work*, siv, 187.

’Twas lawful prize when I put out to sea  
And warranted in my commission

Heywood, *Edward IV*, Part II.

Pearson’s ed. of *Works*, i, 123.

Take further the following :

But now the sessions of my power’s broke up,  
And you exposed to actions, warrants, writs ;  
For all the hellish rabble are broke loose  
Of serjeants, sheriffs, bailiffs.

Heywood, *The English Traveller*, iv, 5.

There’s subject for you ; and, if I mistake not,  
A *supersedeas* of your melancholy.

Jonson, *The Poetaster*, i, 1.

Many are the yearly enormities of this fair, in whose Courts of Pie-poudres I have had the honour, during the three days, sometimes to sit as judge.

*Id.* *Bartholomew Fair*, ii, 1.

Such a plea

As nonsuits all your princely evidence.

Greene, *Orlando Furioso*, Sc. 1.

Set a *supersedeas* of my wrath.

*Id.* *ib.*

As for “ leets and lawdays,” it was evidently a standing phrase. In the publisher’s or editor’s address “ to the Reader,” prefaced to Latimer’s Second Sermon before King Edward VI, 1549, we have :

Why, but be not lawyers diligent, say ye ? Yea truly are they ; about their own profit there are no more diligent men, nor busier persons in all England. They trudge, in the term time, to and fro. They apply the world hard. They foreslow ! They follow *assizes and sessions, leets, law-days, and hundreds*. They should serve the king, but they serve themselves.

*Sermons by Hugh Latimer*, Ed. in “ Everyman’s Library,” p. 94.

*This* surely is not a lawyer’s outburst !

Add that in a dozen other plays by non-lawyer dramatists of Shakespeare’s day there are far more elaborate



and realistic trials—to be noted hereafter—than any in Shakespeare, and the case founded on OTHELLO is done with.

41. Avowing that he can find no instance in JULIUS CÆSAR “of a Roman being made to talk like an English lawyer,” Lord Campbell proceeds to claim that in ANTONY AND CLEOPATRA (i, 4) Lepidus “uses the language of a conveyancer’s chambers in Lincoln’s Inn” when he says that the faults of Antony seem “hereditary rather than *purchased* ;” adding in a footnote a citation of the king’s lines in 2 HENRY IV, iv, 4 :

What in me was *purchas’d*  
Falls upon thee in a more fairer sort.

The point is that in legal terminology “whatsoever does not come through operation of law by descent is *purchased*, although it may be the free gift of a donor.” As we shall have occasion to go fully into this point later in connection with a similar claim by Mr. Grant White, it may suffice here to say that, as usual, Lord Campbell puts it in entire ignorance of the common phraseology of other Elizabethan dramatists and writers, and that we shall find the word used in the same way by them in scores of instances. What he describes as a specifically legal use of the term “purchase” was in fact the primary and normal sense of the word in English, as may be seen by tracing it through ordinary literature down to Shakespeare’s day.

42. Citing the speech of Menenius in CORIOLANUS (ii, 1), reproaching the tribunes Sicinius and Brutus with their fashion of wasting time over trifling causes, and embroiling issues “between party and party” by wanton displays of impatience and temper, Lord Campbell argues that here “Shakespeare shows that he *must have been present* before some tiresome, testy, choleric judges at Stratford, Warwick, or Westminster.” He admittedly “mistakes the duties of the *tribune* for those of the *prætor*” (a likely thing on the part of a trained lawyer !); but “in truth he was recollecting with disgust what he



had himself witnessed in his own country." And if so, what then? Is this any proof of profound legal knowledge? Where the claim is so feeble, it is hardly worth while to offer parallel instances; but as usual, they are easily found. The testy and choleric judge, a lamentably common figure in Tudor England,<sup>1</sup> appears in Webster's *WHITE DEVIL*; in Chapman's *ADMIRAL OF FRANCE*; in Massinger's *THE FATAL DOWRY*, and in Lodge and Greene's *LOOKING GLASS FOR LONDON*. In the *DUCHESS OF MALFY* (i, 1) Webster makes Antonio say of the Duke that he "will seem to sleep o' the bench, Only to trap offenders." Is *this* such a reminiscence as proves legal training?

43. Concerning *ROMEO AND JULIET*, we are assured that the first scene may "be studied by a student of the Inns of Court to acquire a knowledge of the law of assault and battery." Without bringing a microscope to bear on the few *minutiæ* put forward in support of this characteristic assertion, we may note that so much knowledge of the law of assault and battery could probably be picked up by any inhabitant of Stratford, to say nothing of those who attended the inferior courts of London. Lord Campbell himself evidently feels the triviality of the detail that the elder Montagu and Capulet are bound over, in the English fashion, "to keep the peace," as is Bobadill in *EVERY MAN IN HIS HUMOUR*. But he strives to make a good finish by citing Mercutio's phrase, "buy the fee simple of my life for an hour and a quarter" (iii, 1), and adding in a footnote that Parolles in *ALL'S WELL* (iv, 3) "is made to talk like a conveyancer of Lincoln's Inn"

<sup>1</sup> See Latimer's Third Sermon before Edward VI. Bishop Bale, recounting the Examination of Anne Askewe, tells of "the judges, without all sober discretion, running to the rack, tugging, hauling, and pulling thereat, like tormentors in a play. Compare me here," he adds, "Pilate with Wrisley, the high chancellor of England, with Rich, and with other . . . and see how much the pagan judge excelled in virtue and wisdom the false christned judge." *Select Works*, Parker Soc. rep. p. 241.



when he says : " He will sell the fee-simple of his salvation . . . and cut the entail from all remainders."

As we have already seen, the phrase " fee simple " is shown by other men's plays to have been a household word ; but it may be well to conclude with further analogies and parallels :

You helped me to three manors in fee-farm.<sup>1</sup>

Heywood, *Edward IV*, Pt. II.

Pearson's ed. of Works, i, 150.

There is only in the amity of women an estate for will, and every person knows that is no certain inheritance.

Webster and Dekker, *Westward Ho*, i, 2.

Runs it [the warrant]

Both without bail and mainprize ?<sup>2</sup>

Heywood, *The English Traveller*, iv, 1.

I'll hire thee for a year by the Statute of Winchester.

*Id.* *The Wise Woman of Hogsdon*, ii, 1.

Now thou art mine

For one and twenty years, or for three lives,

Choose which thou wilt, I'll make thee a copyholder,

And thy first bill unquestioned.

Jonson, *The Staple of News*, i, 1.

They stand committed without bail or mainprize:

*Id. ib.* v, 2.

I told you such a passage would disperse them

Although the house were their fee-simple in law.

*Id.* *The Magnetic Lady*, ii, 1, near end.

This concludes Lord Campbell's case as regards the plays. It remains to note his citations from the poems. They are nearly all instances of metaphor such as we have already dealt with :

1. But when the *heart's attorney* once is mute,  
The client breaks as desperate in the suit.

*Venus and Adonis*, l. 335.

2. Which *purchase* if thou make for fear of slips,  
Set thy *seal-manual* on my *wax-red* lips.

*Id.* 515-16.

3. Her *pleading* hath deserved a *greater fee*.

*Id.* 609.

<sup>1</sup> This term occurs only once in Shakespeare.

<sup>2</sup> This term never occurs in Shakespeare.



4. Dim *register* and *notary* of shame.  
*Rape of Lucrece*, 765.
5. Since that *my case is past the help of law*. *Id.* 1022.
6. No rightful *plea* might plead for justice here. *Id.* 1649.
7. Hath served a dumb *arrest* upon his tongue. *Id.* 1780.
8. When to the *sessions of sweet silent thought*  
 I *summon up* remembrance of things past. *Sonnet* 30.
9. So should that beauty which you hold *in lease*.  
*Sonnet* 13.
10. And summer's *lease* hath all too short a date. *Sonnet* 18.
11. And 'gainst thyself a *lawful plea* commence. *Sonnet* 35.
12. When that fell arrest  
*Without all bail* shall carry me away. *Sonnet* 74.
13. Of faults concealed, wherein I am *attainted*.  
*Sonnet* 88.
14. Which works on *leases* of short numbered hours.  
*Sonnet* 124.
15. *Lord of my love*, to whom in *vassalage*.  
*Sonnet* 26.
16. And I myself am *mortgag'd* to thy will. *Sonnet* 134.
17. Why so large cost, having so *short a lease*?  
*Sonnet* 146.
18. So should that beauty which you *hold in lease*  
*Find no determination*. *Sonnet* 13.

Finally, Sonnet 46 is quoted entire, with the claim that it "smells as potently of the attorney's office as any of the stanzas penned by Lord Kenyon while an attorney's clerk in Wales."

Hitherto, the legalist case has proceeded on the implicit assumption that Shakespeare chronically vitiates his art by putting in the mouths of lay characters phraseology which only lawyers could understand. Now the implication is that he similarly flavours his sonnets and poems in a way that only a lawyer would have done. Again, all that is necessary is to cast a glance over that contemporary poetry which Lord Campbell never takes into account. This has already been duly done by Sir



Sidney Lee ; and it will here suffice to quote a few of the sonnets to which he points as the patterns and precedents <sup>1</sup> of those in which Shakespeare plays the lawyer :

Then to Parthenophe, with all post haste  
 (As full assurèd of the *pawn fore-pledged*),  
 I made ; and with these words disordered placed  
 Smooth (though with fury's sharp outrages edged).  
 Quoth I, " Fair Mistress ! did I set mine Heart  
 At liberty, and for that, made him free ;  
 That you should win him for another start,  
 Whose certain *bail* you promised to be ! "  
 " Tush ! " quoth Parthenophe, " before he go,  
 I'll be his *bail* at last, and doubt it not ! "  
 " Why then," said I, " that *Mortgage* must I show  
 Of your true love, which at your hands I got.  
 Ay me ! She was and is his *bail*, I wot,  
 But when the *Mortgage* should have cured the sore  
 She passed it off, by *Deed of Gift* before.

Barnabe Barnes, *Parthenophil and Parthenophe, Sonnets, &c.*, 1593. Sonnet 8. (In rep. of Arber's *Elizabethan Sonnets*, 1904, i, 173.)

. . . . Why then, inhuman, and my secret foe,  
 Didst thou betray me ? yet would be a woman !  
 From my chief wealth, outweaving me this woe,  
 Leaving thy love in *pawn*, till time did come on  
 When that thy trustless *bonds* were to be *tried* !  
 And when, through thy *default*, I thee did *summon*  
 Into the *Court* of Steadfast Love, then cried,  
 " As it was promised, here stands his Heart's *bail* !  
 And if in *bonds* to thee my love be tied,  
 Then by those *bonds* take *Forfeit of the Sale* ! "

*Id. ib.* Sonnet 11, as cited, p. 174.

Those Eyes (thy Beauty's *Tenants* !) pay due tears  
 For occupation of mine Heart, thy *Freehold*,  
 In *tenure* of Love's service ! If thou behold

<sup>1</sup> Before the fashion of sonnets broke out as it did in the 'nineties, George Gascoigne had produced his poem "The Arraignment of a Lover" (in *Posies*, 1575), wherein the lover is tried at "Beauty's Bar," accused by False Suspect, whereon "Craft, the Crier, called a Quest," and after sentence "Jealous, the Jailor, bound we fast, To hear the verdict of the Bill"; the procedure ending with "Faith and Truth my Sureties," than which there is "no better warrantise." See the poem in Arber's *Spenser Anthology*, p. 132; Gascoigne's Works, ed. Cunliffe, i, 38.



With what *exaction* it is held through fears ;  
And yet thy *Rents, extorted* daily, bears.

Thou wouldst not thus consume my quiet's gold !  
And yet, though covetous thou be, to make

Thy beauty rich, with *renting* me so roughly  
And at such *sums*, thou never thought dost take  
But still consumes me ! Then, thou dost misguide all !

Spending in sport, for which I wrought so toughly !  
When I had felt all torture, and had tried all ;

And spent my stock through 'strain of thy extortion ;  
On that, I had but good hopes for my portion.

*Id. ib.* Sonnet 20, p. 181.

Shall we be told, in the absence of all biographical evidence; that Barnes *must* have been a lawyer ? There is simply no legal trace of him. But what is quite clear is that Shakespeare had read his poems, published in 1593. It is not merely that he writes "legal" sonnets in Barnes's fashion, and distinctly echoes him at various points :

A quest of thoughts all *tenants* to the Heart.

*Sonnet 46.*

That fell arrest without all *bail*.

*Sonnet 73* (Cp. 133).

Your *charter* is so strong

That you yourself may privilege your time.

*Sonnet 58* (Cp. 87).

—the two last recalling Barnes's

that charter,

Sealed with the wax of stedfast continence

*Sonnet 10,*

and

Thy love's large *Charter*,

*Sonnet 15 ;*

but that there are so many echoes of *tune* and theme that in reading Barnes one seems half the time to be hearing undertones of the more powerful song of Shakespeare. And as Lord Southampton was one of Barnes's as well as one of Shakespeare's proclaimed patrons, the two men are very likely to have been acquaintances.<sup>1</sup> Shake-

<sup>1</sup> Dr. Creighton, in his *Shakespeare's Story of his Life* (1904), works out a wildly speculative tale of Shakespeare's use of Barnes



spere's sonnets are in any case notably in the manner of Barnes's, and he was following him in legalism as in other fashions. And the same holds of his relation to the anonymous sonneteer who in 1594 published the volume entitled ZEPHERIA. Here we have the same trick of legal phraseology :

Mine eyes (quick pursuivants !) the sight attached  
Of Thee . . .

Mine heart, Zepheria ! then became thy fee.

Canzon 3. Vol. II of *Eliz. Sonnets*, as cited, p. 158,  
Care's Usher ! Tenant to his own Oppression.

Canzon 5, p. 159,

Wherein have I on love committed trespass ?

O, if in justice thou must needs acquit me,  
Reward me with thy love.

Canzon 16, p. 165,

and so forth. Two complete "canzons" show how far the fashion went :

How often hath my pen (mine heart's Solicitor !)

Instructed thee in Breviat of my case !

While Fancy-pleading eyes (thy beauty's Visitor !)

Have patterned to my quill, an angel's face.

How have my Sonnets (faithful Counsellors !)

Thee, without ceasing, moved for Day of Hearing !

While they, my plaintive Cause (my faith's Revealers !)

Thy long delay, my patience, in thine ear ring.

How have I stood at bar of thine own conscience ;

When in Requesting Court my suit I brought !

How have thy long adjournments slowed the sentence,

Which I (through much expense of tears) besought !

Through many difficulties have I run ;

Ah, sooner wert thou lost, I wis, than won !

When last mine eyes dislodged from thy beauty,

Though served with process of a parent's Writ :

A Supersedeas countermanding duty,

Even then, I saw upon thy smiles to sit !

Those smiles which we invited to a Party,

Disperpling clouds of faint respecting fear,

Against the Summons which was served on me

A larger privilege of dispense did bear.

as "devil" after lampooning him as Parolles. All this is idle myth-mongering ; but the two men must have met.



Thine eyes' edict, the statute of Repeal,  
 Doth other duties wholly abrogate,  
 Save such as thee endear in hearty zeal,  
 Then be it far from me, that I should derogate  
 From Nature's Law, enregistered in thee!  
 So might my love incur a *Præmunire*.

It will hardly be disputed that either Shakespeare had read in manuscript, or heard some one quote, ZEPHERIA, or the sonneteer had read VENUS AND ADONIS. That one poet should write of his "heart's solicitor," and another of the "heart's attorney," by sheer coincidence, is not plausibly to be argued. And even if it could be proved, which it cannot, that the more lawyerlike poet was a lawyer, it would be sufficiently idle to contend that the other must also have been so, in view of what we have seen of the habit of legalism among all the dramatists of the day. We are witnessing a fashion of the time, comparable with the vogue of Euphuism. The many echoes and parallels of earlier sonnets in those of Shakespeare are weighty hints of the slightness of our ground for taking his as direct records of his heart's experience. Even when he youthfully imitated other men's modes, he could not but give to his echoes the deeper vibration of his larger spirit, even as he avoided his models' grosser crudities. In ZEPHERIA, the canzon last above cited is followed by two in which we have the barbarisms "irrotulate" and "foyalty," "excordiate" and "exordiate"—outrages possible to a pedant, but not to our poet. But however his finer taste and deeper feeling might preserve him from such offences, he is none the less mannered by the "form and pressure" of the time, which in this matter of legalist vocabulary and imagery is nearly universal. The Elizabethan sonneteurs, like the old troubadours, have their tunes and themes in common, and each man's collection is visibly suggested by or suggestive of others. Their very titles, PHILLIS, LICIA, DELIA, DIANA, COELIA, IDEA, ZEPHERIA, FIDESSA, CHLORIS, LAURA, tell of a reigning mode, setting in with Sidney's ASTROPHEL AND

ex.

?



STELLA, and drawing much on French originals. It was in full force in 1593, and culminated about 1597—the years between which we know Shakespeare to have written many of his “sugred sonnets.” That he should copy a particular fashion as he copied the general was entirely natural. Drayton, who was no lawyer, but was a poet, could not so far resist the legalist craze as to abstain from working out in one Sonnet<sup>1</sup> the fancy that his mistress may be tried for murdering his heart :

The verdict on the view  
Do quit the dead, and me not accessory.  
Well, well ! I fear it will be proved of you !  
The Evidence so great a proof doth carry.

Shakespeare had thus the example, in these matters, of a poet whom he could not but esteem, and whom in one of his later sonnets he has so closely imitated that there can be no question of the influence. In this case the parallel is so striking that once more we are led to doubt the primary character of the experience suggested in Shakespeare's sonnet :

DRAYTON

An Evil Spirit (your Beauty) haunts me still,  
Wherewith, alas, I have been long possest ;  
Which ceaseth not to attempt me to each ill,  
Nor gives me once, but one poor minute's rest.  
In me it speaks, whether I sleep or wake ;  
And when by means to drive it out I try,  
With greater torments then it me doth take,  
And tortures me in most extremity.  
Before my face, it lays down my despairs,  
And hastes me on unto a sudden death :  
Now tempting me to drown myself in tears ;  
And then in sighing to give up my breath.  
Thus am I still provoked to every evil,  
By this good-wicked Spirit, sweet Angel-Devil.  
No. 22 in 1599 ed. of *Idea* ; No. 20 in ed. cited, p. 191.

<sup>1</sup> No. 51 of ed. 1599 of *Idea* ; No. 2 in reprint in *Elizabethan Sonnets*, as cited, ii, 182.



## SHAKESPEARE

Two loves I have, of comfort and despair  
 Which like two spirits do suggest me still :  
 The better angel is a man right fair,  
 The worser spirit a woman, colour'd ill.  
 To win me soon to hell, my female evil  
 Tempteth my better angel from my side,  
 And would corrupt my saint to be a devil,  
 Wooing his purity with her foul pride.  
 And whether that my angel be turned fiend,  
 Suspect I may, yet not directly tell ;  
 But being both from me, both to each friend,  
 I guess one angel in another's hell :  
 Yet this shall I ne'er know, but live in doubt,  
 Till my bad angel fire my good one out.

*Sonnet 144.*

Drayton has told in another sonnet (21) how :

A witless Gallant, a young wench that wooed. . . .  
 Intreated me, as e'er I wished his good,  
 To write him but one Sonnet to his Love ;

and how he did so, with the success desired. It is not easy to believe that these sombre lines of Shakespeare's were but such an exercise. Yet they may have been. In any case, there is no excuse now left for imputing to an overmastering devotion to law, the result of a deep legal training, the legalisms in which he outwent Drayton.

So far from being "lawyerlike" in the sense of striking the literary note natural to a trained lawyer, they struck such a lawyer, to wit Sir John Davies, as rather ridiculous. Davies, in one of his "gulling sonnets," avowedly parodies the legalist sonnets of the poet of ZEPHERIA; and he seems to have had before him in manuscript Shakespeare's Sonnet 26 when he penned his parody beginning :

To love, my lord, I do Knight's service owe,

"B. Griffin, Gent." who dedicated his *FIDESSA* (1596) to the Gentlemen of the Inns of Court, and was presumably one of them, makes only one slight excursion into legal imagery in his sonnets. Yet the Baconians would have us believe that Bacon, who in his non-legal works so



rarely resorts to legal phraseology, touched the sonnets with it so abundantly by reason of a natural professional propensity.

In this connection, however, it is hardly necessary to consider the theorem which, on the strength of the legalisms and of the fixed Baconian idea, would ascribe to Francis Bacon, as a real expression of experience, all the Sonnets. In no other aspect and over no other issue is that theorem more staggering to judgment. But we shall recur to it in a later chapter. For the present it is enough to have shown how entirely nugatory is the non-comparative process by which Lord Campbell has unwittingly fooled the Baconians to the top of their bent. Citing him, they have relieved themselves of the trouble of outgoing his research. The whole phenomenon is a warning instance of the heedless pretence, and the more heedless acceptance, of authority in criticism. "All law critics admit," says Dr. R. Theobald,<sup>1</sup> that such language as that of the 46th Sonnet "is not the writing of an amateur but of an expert." Lord Campbell alone is cited for the "all": Mr. Devecmon's counter-doctrine is unknown to the Baconian. We have seen the value of Lord Campbell's pronouncement, and we shall similarly examine some others.

But critics like Dr. Theobald, themselves habitually dogmatising on a basis of literary ignorance, are willingly at the mercy of any false evidence that chimes with their predilection. "Lawyers say," writes Dr. Theobald, "that one of the most difficult things to acquire in their profession is the phraseology." Dr. Theobald need only have read in the Elizabethan drama a little further than he went for material to prove that Bacon wrote Shakespeare and Marlowe, in order to learn that the lawyers talked ignorantly. When, however, he proceeds to help them in their mystification by asserting that "the outsider is *sure*, sooner or later, to be found out. He will

<sup>1</sup> *Shakespeare Studies in Baconian Light*, 1904, p. 19.



*traverse* what he approves (!),—or *empanel* a witness (!) instead of a jury—or in some way his legal chatter will degenerate into jargon.” On this principle, Dr. Theobald’s assent to the lawyer’s claim is of no value; he being no lawyer. Unable to illustrate his proposition save by imaginary enormities of blundering, he must by his own account be unable to detect any slighter deviations from legal accuracy. Then his endorsement of their *expertise* is admittedly worthless to start with.

Lawyers of literary competence will be the first to admit, on a study of the case, that Lord Campbell’s handling of the literary problem before us partakes of the nature of literary charlatanism; and that Lord Penzance’s professed “summing-up” of the Bacon-Shakespeare problem, being a grossly *ex parte* statement, is entitled to neither lay nor professional respect. In this matter the sole authorities are critical reason and literary evidence. Unhappily we shall find some professed Shakespearean scholars as uncritical as the judges.



## CHAPTER IV

### THE ARGUMENT FROM LEGAL PHRASEOLOGY: MR. GRANT WHITE'S CASE.

**U**NCRITICAL as are the arguments alike of Lord Campbell and the Baconians about the legal learning of Shakespeare, they are not more so than those put forth to the same effect by Mr. Grant White, a Shakespearean scholar and a hearty contemner of the entire Baconian theory. From him Mr. Greenwood is able to cite the allegation that

legal phrases flow from his (Shakespeare's) pen as part of his vocabulary, and parcel of his thought. Take the word "purchase," for instance, which in ordinary use means to acquire by giving value, but applies in law to all legal modes of obtaining property except by inheritance or descent, and in this peculiar sense the word occurs five times in Shakespeare's thirty-four plays, and only in one single instance in the fifty-four plays of Beaumont and Fletcher. !

This passage, which follows Lord Campbell's lead, forms part of a longer one in which the infirmity of Mr. White's handling of the problem lies on the surface.

Malone [he writes], noticing the frequency with which Shakespeare uses law terms, conjectured that he had passed some of his adolescent years in an attorney's office. In support of his conjecture, Malone, himself a barrister, cited twenty-four passages distinguished by the presence of law phrases; and to these he might have added many more. *But the use of such phrases is by no means peculiar to Shakespeare.* The writings of the poets and playwrights of his period, Spenser, Drayton, Greene, Beaumont and Fletcher, Middleton, Donne, and many

<sup>1</sup> *Memoirs of William Shakespeare* in 1866 ed. of *Shakespeare's Works*, I, pp. xlv. Repr. later.



others of less note, are *thickly sprinkled with them*. In fact the application of legal language to the ordinary affairs of life was more common two hundred and fifty years ago than it is now; though even nowadays the usage is far from uncommon in the rural districts. There law shares with agriculture the function of providing those phrases of common conversation which, used figuratively at first, and often with poetic feeling, pass into mere thought-saving formulas of speech.

Having thus reached a point of view from which his own theory is manifestly open to suspicion, since the first purpose of drama must be to be "understood of the people," Mr. White nevertheless proceeds to offer "reasons for believing that Shakespeare had more than a layman's knowledge of the law." Yet the sole "reason" suggested is the merest begging of the question. Needy young lawyers in the Elizabethan period, we are told, turned to play-writing as they now do to journalism; "and of those who had been successful in their dramatic efforts how inevitable it was that many would give themselves up to play-writing, and that *thus* the language of the plays of that time should show a remarkable infusion of law phrases." That is to say, we expect to find lawyer-dramatists filling their plays with law. Then comes the logical somersault:

To what, then, must we attribute *the fact* that of all the plays that have survived of those written between 1580 and 1620 Shakespeare's are most noteworthy in this respect? For no dramatist of the time, not even Beaumont, who was a younger son of a Judge of the Common Pleas, and who, after studying in the Inns of Court, abandoned law for the drama, used legal phrases with Shakespeare's readiness and exactness.

Shakespeare; that is to say, is more given to legalisms than are the lawyer dramatists, and must therefore have been much more of a lawyer than they! Shakespeare, accordingly, is likely to have had not the mere superficial training of a lawyer's clerk; the probability is that he was allowed to commence his studies for a profession for which his cleverness fitted him—and that he continued those studies until his father's misfortunes, aided, perhaps, by some of those



acts of youthful indiscretion which clever lads as well as dull ones will sometimes commit, threw him upon his own resources; and that then, law failing to supply his pressing need, he turned to the stage, on which he had townsmen and friends.

Thus a new hypothesis, outgoing all tradition, and resting on no shred of direct testimony, is superimposed on a dubious tradition, by way of supporting an unproved assumption. For Mr. White does not make one attempt to reach a true quantitative or qualitative estimate of the legal element in Shakespeare and his contemporaries by way of detailed comparison. He makes the blank affirmation, and merely follows it up with the before-cited passage about purchase, and by a further non-comparative recital of legal terms from the Shakespearean plays in rebuttal of the view that the whole vocabulary may have been acquired by haunting the law courts.

Those terms his use of which is *most remarkable* . . . are not such as he would have heard at ordinary proceedings at *nisi prius*, but such as refer to the tenure or transfer of real property—"fine and recovery," "statutes marchant," "purchase," "indenture," "tenure," "double voucher," "fee simple," "fee farm," "remainder," "reversion," "forfeiture," &c. This conveyancer's jargon could not have been picked up by hanging round the courts of law in London two hundred and fifty years ago, *when suits as to the title to real property were comparatively rare*. And besides, Shakespeare uses his law just as freely in his early plays, written in his first London years, as in those produced at a later period.

It is necessary to show in some detail that we have here, once more, merely a forensic "bluff"; and it is hardly possible to begin the demonstration without a word of protest against the hand-to-mouth fashion in which a critic who was most unsparing in his denunciation of other men's laxities and inadequacies went about a task which obviously called for the most exact critical procedure. He has been so heedless as to assign to Shakespeare the common phrase "statutes marchant," which is not to be found in any of the plays or poems,







(For all the rest is labour), as a list  
Of measurable friends.

*Wit without Money*, iii, 4.

*Luce.* Must every slight companion that can purchase  
A show of poverty, and beggarly planet [?],  
Fall under your compassion ?

*Ib.* iv, 4.

—these being the only instances of the word; in any application, in the play in question. And it occurs repeatedly in others by the same authors :

*Morecraft.* I purchased, wrung, and wire-drawn for my wealth, lost, and was cozened.

*The Scornful Lady*, v, 4.

(Here the meaning is “got by stratagems”—within the limits of the law.)

*Dinant.* Yet, but consider how this wealth was purchased [= acquired] . . .

In brief,

All you shall wear, or touch, or see, is purchased  
By lawless force [prize-taking at sea].

*The Little French Lawyer*, i, 1.

Let us enjoy our purchase [= capture].

*Ib.* iv, 6.

Again, these two last are the only instances of the word “purchase” in the play cited.

A partial collation of Beaumont and Fletcher’s large mass of work yields the following additional instances :

You make me more a slave still to your goodness,  
And only live to purchase thanks to pay you.

*A King and No King*, iv, 1.

[Can] his arms rust in ease  
That bears the charge, and sees the honoured purchase  
Ready to gild his valour ?

*Thierry and Theodoret*, iv, 1.

I hear some noise : it may be new purchase [= booty].

*Ib.* v, 1.

Here, you dull slaves : purchase, purchase ! the soul of the rock, diamonds, sparkling diamonds !

*Id. ib.*



Why, what remains but new nets for [= to effect] the purchase.

*Valentinian*, i, 1, end.

Let not this body . . . now be purchase  
For slaves and base informers.

*Id.* i, 3, end.

Can any but a chastity serve Cæsar,  
And such a one the gods would kneel to purchase.

*Id.* iv, 1.

I need no company to that, that children  
Dare do alone, and slaves are proud to purchase.

*Id.* iv, 4.

To purchase fair revenge.

*Id.* v, 2.

What have I got by this now? what's the purchase?

*The Chances*, i, 1.

My holy health . . . to purchase which . . .

*Monsieur Thomas*, v, 4.

I have purchased to myself, besides mine own undoing, the  
ill opinion of my friends.

*Knight of the Burning Pestle*, iv, 3.

This sessions, purchased at your suit, Don Henrique,  
Hath brought us hither.

*The Spanish Curate*, iii, 3.

Grant he purchase  
Precedency in the country.

*The Elder Brother*, i, 1.

Oh, Honour!

How greedily men seek thee, and, once purchased,  
How many enemies to man's peace bringst thou!

*The Prophetess*, iii, 3.

The philological fact is that the sense of "acquisition," "a thing got," is the fundamental meaning of the word "purchase," of which the starting-point is the idea of the chase (Fr. *pourchasser*), the product of hunting or foraging. It is the idea of buying that is secondary, though that has now become the normal force of the word. That is to say, the so-called "legal" meaning of "acquisition of property by one's personal action as distinct from inheritance" is the original meaning, and is the likely sense of the word in the whole feudal period. The meaning of "buy" is merely an evolution from that, buying being a common way of obtaining, a *mode* of "purchase." The



fact that "purchase" still means "hold"—as in "get a purchase on a rope"—shows the primary meaning subsisting on one line of extension while it has ceased on another. But down to the age of Shakespeare the original and quasi-legal sense was normal. To begin with, that use of the word in ordinary literature is established as early as Chaucer. Professor Skeat there assigns to the verb the meanings "to procure or acquire, to win, to buy, to promote, to contrive, to provide;" and to the noun the meanings "proceeds, gifts acquired, gain;" with the further sense of "conveyancing" in the form "purchasing."<sup>1</sup> In the *Canterbury Tales* we have:

His purchas was wel better than his rente ;  
*Prologue*, 256.

and again :

My purchas is the effect of al my rente.  
*Frere's Tale*, 1451.

Yet again, in another place, we have :

My purchas is better than my rent.  
*Romaunt of the Rose*, 6837.

In *TROILUS AND CRISEYDE* also (iv, 557) we have :

Sin wel I wot I may her not purcháce

—in the sense of "obtain." And again in the *Prologue* we have a secondary use (318-20) :

So greet a purchasour was nowher noon.  
Al was fee symple to him in effect,  
His purchasyng myghté not been infect.

That is, he (the Sergeant) was a great conveyancer, whose conveyancing could not be impugned. In *THE PERSONE'S TALE*, in the phrase "for to purchasen many earthly things (sent. 742), and in the *TALE OF MELIBEUS* (§ 55), in the phrase "they that loven and purchasen

<sup>1</sup> *Prol. to Cant. Tales*, l. 320. Other scholars (see *Glossary of Globe ed.*) assign the meanings "prosecuting" and "prosecutor" in the case of the description of the Man of Lawe. Skeat's seems the correct view. In the *Frere's Tale*, 1449, however, purchasing means acquiring.



peace," the meaning is clearly the primary one. We have the word again in Langland :

And purchased him a pardon  
*A pæna et a culpa*—  
 Manye wepten for joie  
 And preiseden Piers the Plowman  
 That purchased this bulle.

*Vision of Piers Ploughman,*  
 ed. Wright, 4469-70, 4538-40.

—where the idea is not buying but obtaining. It has the same force in the phrase "favour craftily purchasing" in ROYE'S REDE ME AND BE NOTT WROTTE (1528) and in Sir Thomas More's DIALOGUE OF COMFORT AGAINST TRIBULATION (1534) :

If we might once purchase the grace to come to that point,  
 Dent's rep. with *Utopia*, p. 187 ;

and again, in the editor's preface to Latimer's Second Sermon before Edward VI, the word is used in the alleged "legal" sense, though the writer is ostensibly a foe to lawyers :

Thou that purchasest so fast, to the utter undoing of the poor.  
*Sermons of Latimer*, Dent's rep. p. 90.

Obviously this was the regular force of the term, and it is in that sense that Latimer himself uses it :

A certain great man that had purchased much lands.  
*Last Sermon before King Edward*, ed. cited, p. 240.

So in Roger Hutchinson :

Now they [who "were wont to . . . maintain schools and houses of alms "] be purchasers and sellers-away of the same.  
*Epistle to Archbishop Cranmer* ; Parker Soc. vol. of Works, p. 4.

In theology the term is often used metaphorically with the same force : *e.g.*

The everlasting heritage which he [Christ] hath purchased for us.  
 Trans. of *Calvin on Ephesians*, 15, fol. 146, verso.

A metaphorical use of the word, resting on the "legal" sense, was in fact normal throughout Tudor literature ; and a dozen instances of it may be found in the early



version (from the Italian) of the PHŒNISSÆ of Euripides by Gascoigne and others under the title of JOCASTA (1566). It is common, again, in Spenser, in various senses which all turn upon the alleged "legal" one :

For on his back a heavy load he bare  
Of nightly stelths and pillage severall  
Which he had got abroad by purchas criminall.

*Faerie Queene*, B. I, C. iii, St. 16.

That [sword] shall I shortly purchase to your hand.

*Id.* B. II, C. iii, St. 18.

Made answer that the mayd of whom they spake  
Was his owne purchase and his onely prize.

*Id.* B. VI, C. xi, St. 12.

Sicker I hold him for a greater fon (fool)  
That loves the thing he cannot purchase.

*Shepherd's Calendar*, 158-9.

Again in the prose dedication of ΜΥΙΟΠΟΤΜΟΣ he has :

That honourable name which ye have by your brave deserts  
purchast to yourself.

In Puttenham's prose this sense of the term is explicit :

No doubt the shepherd's . . . trade was the first act of lawful  
acquisition or purchase, for at these days robbery was a manner  
of purchase.

*Art of Poetrie*, Arber's rep., p. 53.

That the word was in normal Elizabethan use in the  
quasi-legal sense might be inferred from its occurring  
twice metaphorically with such a meaning in Nicholas  
Breton's TOM THE PAGE'S SONG :

Faith ! she will say, you wicked page !  
I'll purchase you an heritage.

To purchase me an heritage.

*Joys of an Idle Head*, in *A Flouish upon Fancy*, 1582.

Rep. in Arber's *Spenser Anthology*, 1899, p. 187.

In homiletic literature it has the same metaphorical  
force :

Thereby purchase to himself . . . eternal damnation.

Stubbes, *Anatomie of Abuses*, Collier's Rep. p. 37.

Again, p. 68.

And unless we are to suppose that all the dramatists



alike made their personages talk out of character—as in effect the legalists imply that Shakespeare did—we must draw the same inference from their plays, for they all introduce the word in the broad primary sense, and this far more often than in the limited modern one :

He that will purchase things of greatest prize  
Must conquer by his deeds, and not by words.

Lilly, *Woman in the Moon*, ii, 1.

My valour everywhere shall purchase friends.

Kyd, *Soliman and Perseda*, IV, ii, 6.

To purchase Godhead, as did Hercules.

*Id. ib.* l. 19.

To purchase fame to our posterities.

*Id. Cornelia*, v, 5.

His company hath purchased me ill friends.

*Arden of Feversham*, v, 1 [twice].

*Jeron.* How like you Don Horatio's spirit?  
What, doth it promise fair?

*K. of Spain.* Ay, and no doubt his merit will purchase more.

*First Part of Jeronimo* [1605] Sc. i, ll. 17-19.

*Sadoc.* God save Lord Cusay. And direct his zeal  
To purchase David's conquest 'gainst his son.

Peele, *David and Bethsabe*, iii, 2.

To purchase hearing with my lord the King.

*Id. ib.*

*Messenger.* How many friends I purchase everywhere.

*King Leir and his Three Daughters*, Sc. 17.

That purchas'd kingdoms by your martial deeds.

Marlowe, *I. Tamb.* v, 2, end.

To purchase towns by treachery.

*Id. Jew of Malta*, v, 4.

He that will not when he may

When he desires shall surely purchase nay.

Greene, *Alphonsus King of Arragon*, v, ed. Dyce, p. 245.

Your pardon is already purchased.

*Id. ib.* p. 246.

Greene uses the word in the same way in his prose tales :

He thought no victuals to have their taste which were not purchased by his own sweat.

*Id.* Tale of *Perimedes the Blacksmith* [1588],  
Works, ed. Grosart, vii, 12.



Thou may'st practise virtue if thou take heed, or purchase discredit if thou beest careless.

*Id. Card of Fancy. Works, iv, 20.*

and in his play JAMES IV (v, 4) :

The crafty men have purchased great men's lands.

Jonson in his plays uses it many times :

I glory

More in the cunning purchase of my wealth  
Than in the glad possession.

*Jonson, Volpone, i, 1, near beginning.*

A diamond, plate, chequines. Good morning's purchase.  
[In this case = acquisitions by gift].

*Id. ib. near end of Scene.*

Do you two pack up all the goods and purchase.  
[In this case = cheaters' booty].

*Ib. iv, 4.*

I think I must be enforced to purchase me another page.

*Id. Cynthia's Revels, ii, 1.*

I will not rob you of him, nor the purchase.

*Id. The Magnetic Lady, v, 6, end.*

*Wittipol.*

In your sports only, nothing in your purchase [in this case = gains].

*The Devil is an Ass, iii, 1.*

This second blessing of your eyes  
Which now I've purchased.

*Ib. i, 1.*

Purchase to themselves rebuke and shame.

*Sejanus, iii, 1.*

(Here the sense is "attained to." Wittipol would not tell the lady that he has bought the sight of her.)

No less common is the word in Webster and his collaborators :

I will not purchase by thee [Laverna] but to eat.

*Webster and Rowley, A Cure for a Cuckold, ii, 1.*

And will redeem myself with purchase [= booty].

*Id. ii, 2.*

Of all my being, fortunes, and poor fame  
(If I have purchased any) . . .

You have been the sole creatress.

*Id. iii, 3.*



I made a purchase lately, and in that  
I did estate the child—  
*Joint-purchaser* in all the land I bought.

*Id.* iv, 1.

Ignorance, when it hath purchased honour,  
It cannot wield it.

Webster, *Duchess of Malfi*, ii, 3.

Were all of his mind, to entertain no suits  
But such they thought were honest, sure our lawyers  
Would not purchase half so fast.

*Id.* *The Devil's Law Case*, iv, 1.

They do observe I grew to infinite purchase  
The left-hand way.

*Id.* iii, 1.

That noblemen shall come with cap and knee  
To purchase a night's lodging of their wives.

*Id.* iii, 2.

In the same sense we have it in Randolph :

Here is a conquest purchas'd without blood.

*The Jealous Lovers*, i, 10.

In Thomas Heywood the word is particularly frequent :

I'll gain her, or in her fair quest  
Purchase my soul free and immortal rest.

Heywood, *A Woman Killed with Kindness*, iii, 1.

I have a trade,

And in myself a means to purchase wealth.

*Id.* *The Foure Prentises of London*, i, 1.

They are all on fire

To purchase [= win booty] from the Spaniard.

*Id.* *The Fair Maid of the West*, i, 1.

Now could your lady purchase  
Their pardon from the king.

[Here the force is, "obtain by favour"].

*Id.* *ib.* v, 1.

I'll purchase 't with a danger.

*Id.* Part II, *Fair Maid of the West*. Pearson's  
Heywood, ii, 349.

Purchased by this bold answer.

*Id.* *ib.* p. 350.

Show me the way

To gain this royal purchase.

*Id.* *ib.* p. 350.



Not to do it  
May purchase his displeasure.

*Id. ib.* p. 351.

Here the word is used in the quasi-legal sense four times in three successive pages. But it constantly recurs in the same general sense, as distinct from that of buying.

To purchase to yourself a thrifty son.

*Id. The English Traveller*, iv, 6.

Could I have purchased houses at that rate,  
I had meant to have bought all London.

[Here the sense is "acquired by fraud"].

*Id. ib.*

Your grace may purchase glory from above,  
And entire love from all your people's hearts.

*Id. If you know not me you know nobody.* Pt. I  
Pearson's Heywood, i, 225.

When my poor wife and children cry for bread,  
They still must cry till these [hands and spade] have purchast it.

*Id. ib.* Part II, ed. cited, p. 304.

My love to her may purchase me his love.

*Id. Pt. I of King Edward IV*, ed. cited, i, 129.

*Jupiter.* Hadst thou asked love, gold, service, Empiry,  
This sword had purchased for Callisto all.

*Id. The Golden Age*, ii, 1, ed. cited, iii, 26.

I'll wake her  
Unto new life. This purchase I must win.

*Id. ib.* iv, 1, p. 68.

*Saturn.* Re-purchast and re-lost by Jupiter.

*Id. ib.* v, 1, p. 75.

I'll try conclusions,  
And see if I can purchase it with blows.

*Id. ib.* p. 76.

*Pluto.* Ceres nor Jove, nor all the Gods above,  
Shall rob me this rich purchase [Proserpine].

*Id. The Silver Age*, iii, vol. cited, p. 137.

*Hercules.* We take but what our valour purchast us.

*Id. The Brazen Age*, i, 1, p. 177.

*Atreus.* Without some honour purchast on this Boar.

*Id. ib.* p. 188.

*Meleager.* To have purchased honour in this hasty quest.

*Id. ib.* p. 189.

Thou hast purchast honour and renown enough.

*Id. ib.* p. 192.



*Jason.* Rename all Greece  
By the rich purchase of the Colchian fleece.  
*Id. ib.* p. 203.

*Hercules.* Now is the rich and precious fleece  
By Jason's sword repurchast.  
*Id. ib.* p. 218.

*Medea.* To redeem the fleece,  
And it repurchase with your tragic deaths.  
*Id. ib.* p. 219.

*Hercules.* She is the warlike purchase of thy sword.  
*Id. ib.* p. 225.

And by our deeds repurchase our renown.  
*Id. ib.* p. 246.

Here we have the word used nine times in one play, and *only* in the primary sense. For Heywood, in fact, "purchase" *normally* means acquisition otherwise than by inheritance or buying; and there is no inference open save that this was a normal sense of the word in his day.

But we have it also in Dekker:

That would have purchased sin alone to himself.  
Dekker. *The Honest Whore*, Pt. I, ii, 1.

The purchase [booty] is rich.  
*Ib.* Pt. II, iv, 1.

It shall concern thee and thy love's purchase.  
*The Witch of Edmonton*, by Rowley, Dekker, Ford, &c. iii, 1.

Of this as of other "legal" uses of terms we have frequent examples in the prose of Nashe:

It may be that he meaneth about purchasing [acquiring property] as he hath done.

*First part of Pasquil's Apology.* Works, ed. McKerrow, i, 128.

That recantation purchased his liberty.  
*Four Letters Confuted.* Vol. cited, p. 297.

Their purchased [=granted by the King] prerogatives.  
*Nashe's Lenten Stuff*, ed. cited, iii, 165.

Voyages of Purchase of Refusals.  
*Id.* p. 180.

Men that have no means to purchase credit with their prince.  
*Id.* p. 218.



In Massinger the usage abounds :

Style not that courtship, madam, which is only  
Purchased on your part.

*A New Way to Pay Old Debts*, i, 2.

By that fair name I in the wars have purchased.

*Id.* iii, 1.

Purchased with his blood that did oppose me.

*Id.* iii, 2.

Honour

By virtuous ways achieved, and bravely purchased.

*Id.* iv, 1.

I can do twenty [tricks] neater, if you please,  
To purchase and grow rich.

*Id.* v, near end.

the knowledge of

A future sorrow, which, if I find out,  
My present ignorance were a cheap purchase.

*The Picture*, i, 1.

this bubble honour . . .

With the loss of limbs or life is, in my judgment,  
Too dear a purchase.

*Id.* i, 2.

There are other toys about you the same way purchased  
[=received in gift].

*Id.* iii, 6.

I would not lose this purchase [=gain].

*The City Madam*, v, 1.

This felicity, not gained

By vows to saints above, and much less purchased  
By thriving industry.

*Id. ib.* v, 3.

I shall break

If at this rate [by marriage] I purchase you.

*Id.* *The Guardian*, i, 1.

Here purchase the reward that was propounded.

*Id.* *The Virgin Martyr*, v, near end.

The danger in the purchase of the prey.

*Id.* *The Unnatural Combat*, ii, 1.

You have purchased

This honour at a high price [moral].

*Id. ib.*

My scrip, my tar-box, hook, and coat, will prove  
But a thin purchase [=booty].

*Id.* *The Bashful Lover*, iii, 1.



ARGUMENT FROM LEGAL PHRASEOLOGY III

I would purchase  
My husband by such benefits.

*Id. ib.* iii, 2, near end.

I will practise  
All arts for your deliverance, and that purchased . . .

*Id. The Bondman*, v, 2.

And it is frequent in Chapman :

Borrowing  
With thee is purchase.

*Byron's Conspiracy*, i, 1.

My purchased honours.

*The Admiral of France*, ii, 2.

Consume  
All he hath purchased.

*All Fools*, i, 1.

While we abroad fight for new Kingdoms' purchase.

*Revenge for Honour*, ii, 1.

So much I prize the sweetness  
Of that unvalued purchase.

*Id.* iv, 1.

Then your purchase holds.

*The Ball*, ii, 2.

We have it in the anonymous play NERO [1624] :

That heady and adventurous crew  
That go to lose their own to purchase but  
The breath of others and the common voice. i, 31

and in Henry Porter's TWO ANGRY WOMEN OF ABINGTON :

What shall I do purchase company? (v, 1)

It seems unnecessary to carry the comparison further. The primary and quasi-“legal” sense of “purchase,” so far from being peculiar to Shakespeare, is far more common than the other in the dramas of other writers in his and the next generation. And so absolutely normal was this use of the word that it enters into the old rhymed version of the Psalms, authorised for use in the churches in 1645 :

The swallow also for herself  
Hath purchased a nest. Ps. lxxxiv, 3.<sup>1</sup>

<sup>1</sup> Hopkins' sixteenth-century version of this Psalm, still retained in Scotland. Tate and Brady (1696) give a changed rendering.



When therefore we find the word used by Bacon (ESSAY OF HONOUR AND REPUTATION) we are not reading a legalism imposed on *belles lettres* by a lawyer, but a current English word used in its current meaning.<sup>1</sup> So widely was that meaning established that we find it as late as 1727 in a preface of Bishop Warburton's :

For now the Invention of Printing hath made it [the usage of dedications] a Purchase for the Vulgar.

*A Critical and Philosophical Enquiry into the Causes of Prodiges and Miracles*, 1727, ded. p. vii.

For the rest, Mr. Grant White's general case is obviously as void as that of Lord Campbell. To say no more of his divagation over the term "purchase," it is astonishing that such a scholar, who must have had a general acquaintance with the Elizabethan and Stuart drama, should find evidence of special and technical knowledge of conveyancing in the bare use of such terms and phrases "fine and recovery," "indenture," "tenure," "double voucher," "fee simple," "remainder," "reversion," and "forfeiture." A perusal of two plays of Massinger's might have led the critic to cancel his whole thesis. In A NEW WAY TO PAY OLD DEBTS we have, in addition to the passages already cited, this swarm of legal terms :

On forfeiture of their licences.

Makes forfeiture of his breakfast.

On the forfeit of your favour.

Sue in *forma pauperis*.

Put it to arbitrament.

Come upon you for security.

By mortgage or by statute.

You had it in trust, which if you do discharge,  
Surrendering the possession, you shall ease  
Yourself and me of chargeable suits in law.

<sup>1</sup> Bacon uses the word in its *modern* sense thrice in the *Essay Of Usury*.



If thou canst forswear  
Thy hand and seal, and make a forfeit of  
Thy ears to the pillory.

Indented, I confess, and labels, too,  
But neither wax nor words !

There is a statute for you.

I know thou art  
A public notary, and such stand in law  
For a dozen witnesses : the deed being drawn too . . . and  
delivered  
When thou wert present, will make good my title.

Your suit is granted  
And you loved for the motion.

In THE CITY MADAM, by the same playwright, we have  
these :

I can make my wife a jointure of such lands too  
As are not encumbered : no annuity  
Or statute lying on them.

His bond three times since forfeited.

Ten thousand pounds apiece I'll make their portions,  
And after my decease it shall be double.

Provided you assure them, for their jointures,  
Eight hundred pounds per annum, and entail  
A thousand more upon the heirs male  
Begotten on their bodies.

The forfeiture of a bond.

His whole estate  
In lands and leases, debts and present monies,  
With all the movables he stood possess'd of:  
Cancel all the forfeited bonds I sealed to.

I will likewise take  
The extremity of your mortgage, and the forfeit  
Of your several bonds : the use and principal  
Shall not serve.

From almost no play of Shakespeare can there be cited  
so many "legalisms" as occur in either of these two of  
Massinger. But Massinger is not singular. We have  
already noted dozens of legalisms in Jonson, Dekker,  
Heywood, and Chapman.



In Lilly's MOTHER BOMBIE alone I find some thirty "legal" allusions :

A good evidence to prove the fee simple of your daughter's folly.

I convey a contract:

Impannelled in a jury.

Carrying the quest to consult.

A deed of gift.

Witnesses to their contract.

Let us join issue with them.

He arrests you at my suit for a horse.

Sergeant, wreak thine office on him.

Nay, let him be bailed.

I'll enter into a statute marchant to see it answered. But if thou wilt have bonds, then shalt have a bushelful.

Thou bound in a statute marchant? A brown thread will bind thee fast enough. But if you will be content all four jointly to enter into a bond, I will withdraw the action.

A scrivener's shop hangs to a sergeant's mace like a bur to a frieze coat.

You must take a note of a bond.

The scrivener cannot keep his pen out of the pot: every goblet is an ink-horn.

I, such as they cry at the 'sizes, a work in issues.

Where did I consent? When? What witness?

Our good wills being asked, which needed not, we gave them, which bootied not.

Wast thou privy to this practice?

Thou shalt be punished as principal.

Let the conveyance run as we agreed.

You convey cleanly indeed, if cozenage be clean dealing.

You shall presently be contracted.

Upon submission escape the punishment.

Thy fact is pardoned, though the law would see it punished.

I was content to take a bond jointly of them all.



Sealed me an obligation, nothing to the purpose.

By this bond you can demand nothing.

I have his acquittance : let him sue his bond

With such a *noverint* as Cheapside can show none such.

Every one of these phrases would have been certified by Lord Campbell and Senator Davis as a proof of legal knowledge had they found it in Shakespeare, and in no Shakespearean play can they find half as many. Was Lilly then a lawyer? If Shakespeare's plays exhibit a professional knowledge of conveyancing, what inference, once more, are we to draw from this series of conveyancer's phrases in a single play of Ben Jonson's?—

The thing is for recovery of drown'd land  
Whereof the crown's to have a moiety  
If it be owner ; else the crown and owners  
To share that moiety, and the recoverers  
To enjoy the t'other moiety for their charge.

*The Devil is an Ass*, ii, 1.

He keeps more stir  
For that same petty sum, than for your bond  
Of six, and statute of eight hundred.

*Id.* ii, 3.

Then we grant out our process, which is diverse  
Either by chartel, Sir, or *ove tenus*.

*Id.* iii, 1.

Have your deed drawn presently,  
And leave a blank to put in your feoffees  
One, two, or more, as you see cause.

*Id.* iii, 2.

Get the feoffment drawn, with a letter of attorney  
For livery and seisin.

*Id.* iv, 2.

But, sir, you mean not to make him feoffee.

*Id.* *ib.*

Sir Paul Eitherside willed me give you caution  
Whom you did make feoffee ; for 'tis the trust  
Of your whole state.

*Id.* *ib.*

He has a quarrel to carry, and has caused  
A deed of feoffment of his whole estate  
To be drawn yonder.

*Id.* iv, 3.



I am ready  
For process now, Sir ; this is publication.

*Id. ib.*

By which means you were  
Not *compos mentis* when you made your feoffment.

*Id. v, 3.*

Move in a court of equity.

*Id. ib.*

In Jonson, as in Lilly, we have one of the law terms erroneously ascribed by Grant White to Shakespeare :

I'll be his Statute staple, Statute-marchant  
Or what he please.

*The Staple of News, iii, 1.*

We find it in Nashe :

. . . The Divell used to lend money upon pawnes, or anything, and would let one for a need have a thousand pounds upon a Statute Marchant of his soul, or . . . would trust him upon a bill of his hand. . . .

*Pierce Penilesse his Supplication to the Divell. Works, i, 161.*

It occurs also in at least two stories of Greene's :

Lends him money and takes a fair statute-marchant of his lands before a judge.

*Life and Death of Ned Browne. Works, xi, 30.*

He must bind over his lands in a statute marchant or staple.

*Quip for an Upstart Courtier. Works, xi, 277.*

And this particular law term occurs in one of the old morality plays :

Bounde in statute marchante.

*Impatient Poverty (1560), Rep. 1909, l. 191,*

—with other legalisms such as “surety,” “bill of sale,” “writ of privilege,” and the maxim that “the law is indifferent to every person” (l. 6)—all going to show that legal phraseology and discussion pervaded Elizabethan drama from its earliest stages.



## CHAPTER V

THE ARGUMENT FROM LEGAL PHRASEOLOGY :  
MR. RUSHTON ; SENATOR DAVIS ; MR. CASTLE

### § 1. *Rushton*

A DISTINCTION should be drawn between the argumentation of Mr. W. L. Rushton and that of the later advocates, Baconian or other, of the theory that the Shakespearean plays exhibit special knowledge of law. Mr. Rushton, as has been noted above, preceded and apparently primed Campbell ; and throughout his series of small books on Shakespearean questions he exhibits at once a wider literary learning and a somewhat sounder judgment than are to be seen in the other writers with whom we have to deal. His SHAKESPEARE'S EUPHUISM is a painstaking performance, the work of an industrious literary antiquary. Yet there is in all his work an element of laborious trifling, and he is always somewhat indiscriminate in his citation of parallels.

In so far as his case for Shakespeare's knowledge of law is appropriated and embodied in Campbell's, it has been disposed of in our examination of that. He himself, however, never committed Campbell's folly of claiming for the law of the plays an entire freedom from error. As he puts it in his laconic way, taking his revenge for plagiarism :

We all know that Lord Campbell was a lawyer of great experience, yet in his book he has made several mistakes in law ; how then could any errors in law which I might show in Shakespeare's works afford conclusive evidence that Shakespeare was not a lawyer ? <sup>1</sup>

<sup>1</sup> Appendix B to *Shakespeare's Testamentary Language*, 1869, p. 53 ; *Shakespeare's Legal Maxims*, 1907, p. 12.



As a matter of fact, however, Rushton had undertaken in his *SHAKESPEARE A LAWYER* "to show that Shakespeare had acquired a general knowledge of the principles and practice of the Law of Real Property, of the Common Law and Criminal Law, that he was familiar with the exact letter of the Statute Law, and that he used law terms correctly." Of the value of that thesis we have been able to judge in our examination of Campbell; and it need but be added that even a generally "correct" use of law terms by an Elizabethan dramatist has been seen to be no warrant for supposing him a lawyer, since it can be predicated more largely of Jonson and Webster, to name no others, than of Shakespeare. When, for instance, Rushton argues that Macbeth's

But yet I'll make assurance double sure,  
And take a bond of fate,

"refers not to a single but to a conditional bond, under or by virtue of which the principal sum was recoverable,"<sup>1</sup> he says nothing to the purpose. In his later work, *SHAKESPEARE ILLUSTRATED BY THE LEX SCRIPTA* (1870), the augmentation is equally nugatory, in so far as it is not a mere "illustration" of the text. The first item is that in Suffolk's "præmunire" speech in *HENRY VIII* (iii, 2) the phrase about forfeiting goods, lands, tenements, &c., and being "out of the king's protection," is "the exact letter of the statute law"—an assertion which carries us nowhere.<sup>2</sup> The last item is the proposition that when Speed, in *THE TWO GENTLEMEN OF VERONA* (ii, 1) says first "do you not perceive her jest?" and then "did you perceive her earnest?" he uses "perceive" first in its usual meaning, but the second time in the sense of a statute phrase, "take, perceive, and enjoy." If

<sup>1</sup> *Shakespeare a Lawyer*, 1858, p. 19.

<sup>2</sup> I do not here stress the fact that the speech in question belongs to the share assigned to Fletcher in *Henry VIII* by the critics. It stands in any case for no special knowledge.



this be "illustration" of anything, it is not of the thesis that the plays are written by a lawyer.

Of more significance is Rushton's more recent thesis that Shakespeare's use of legal maxims tells of legal training. It is put with comparative circumspection, and partly in bar of the Baconian view. "Although Bacon's legal maxims are twenty-five in number," he writes, "I have not found any of them in Shakespeare's plays; but a portion of one of them. . . ."

*Sententia interlocutaria revocare potest, definitiva non potest,* expresses the law to which Shakespeare refers in the COMEDY OF ERRORS (i, 1) :

And passed sentence cannot be recalled.

To impute legal knowledge on the strength of that commonplace, however, is but to continue the idle mystification which we have been occupied in clearing up. And the case is little better when Rushton puts his point that Shakespeare in his use of legal maxims translates correctly from the Latin :

In the plays of Ben Jonson, George Chapman and other dramatists of their time, legal maxims are to be seen in Latin, Shakespeare never quotes legal maxims in Latin, but he gives correct translations of them which are so embodied in his verse and prose that they have not the appearance of quotations. . . . Shakespeare's correct translations of legal maxims are, I think, the only satisfactory evidence we have of his knowledge of Latin.<sup>1</sup>

Here the case for the dramatist's legal knowledge is in effect abandoned, and the question shifted to that of his scholarship, with the admission that the evidence usually cited on that head is not satisfactory. If Ben Jonson and George Chapman, who are not lawyers, admittedly cite legal maxims in Latin, what is to be proved from Shakespeare's citation of any in English, when the same thing is done by Heywood and Massinger, who also were

<sup>1</sup> *Shakespeare's Legal Maxims*, p. 9.



not lawyers? Massinger (*THE FATAL DOWRY*, i, 2) writes, quite "correctly":

though it be a maxim in our laws,  
All suits die with the person.

Is he then not to be credited with Shakespearean lawyer-ship?

The instances given from Shakespeare by Rushton are sufficient to entitle us once more to dismiss the whole case:

I now give one example of Shakespeare's correct translation of the Latin maxims, and of the good verse (!) he makes of it:

Dormiunt aliquando leges, moriuntur nunquam  
(The law hath not been dead, though it hath slept),

where the verbs *dormior* and *morior* in Latin are represented (!) by the verbs sleep and die in English.<sup>1</sup>

It is not clear why we are not further informed that *leges* is represented by "law." The whole point is a futility. Shakespeare was citing a legal commonplace which must have been familiar to thousands of laymen; as he was when he made Portia say:

To offend and judge are distinct offices,  
*Merchant of Venice*, ii, 9;

or Olivia say:

both the plaintiff and the judge,  
*Twelfth Night*, v, 1.

Rushton gravely cites these simple utterances, with Cranmer's

I shall both find your lordship judge and juror,  
*Henry VIII*, v, 2,

as standing for knowledge of the legal maxims:

Nemo debet esse iudex in sua propria causa,

and

Ad questionem facti non respondent iudices;  
Ad questionem legis non respondent juratores.

One can but patiently put the old questions. When

<sup>1</sup> Work cited, p. 10.



Massinger makes Alonso in *THE BASHFUL LOVER* (ii, 7) say :

No man's a faithful judge in his own cause,<sup>1</sup>

was he drawing upon a professional knowledge of law? When Greene in one of his stories wrote: "They both agreed I should be judge and juror in this controversy" (*QUIP FOR AN UPSTART COURTIER*: Works, xi, 229) did he prove himself a trained lawyer? Or did Rowley and Dekker do so when they made characters say :

You are in effect both judge and jury yourselves,

*A Cure for a Cuckold*, iv, 1;

Thou my evidence art,

Jury and judge——?

*The Witch of Edmonton*, iv, 2.

A good many thousand laymen have in their time remarked that "Possession is nine points of the law" without expecting to be reckoned experts for it; but inasmuch as we have in *KING JOHN* (i, 1) the lines :

*King J.* Our strong possession and our right for us.

*Elinor.* Your strong possession much more than your right,

our antiquary would have us see in them a translation of the legal maxim :

In *aequali jure melior est conditio possidentis*.

And when Hamlet says, unpretentiously enough,

Man and wife is one flesh,

it is held to stand for the canonical knowledge that

Vir et uxor sunt quasi unica persona, quia caro una, et sanguis unus.

So much for the last stages of the first attempt to prove "Shakespeare a lawyer."

### § 2. *Davis*

We need spend little time over the kindred performance of Senator Cushman Davis, who in his work *THE LAW*

<sup>1</sup> Cp. *The City Madam*, iii, 2.



IN SHAKESPEARE does but eke out the method and matter of Campbell and Rushton with a multitude of more trivial details. Like Campbell, he finds that Cade's talk of parchment, wax, seals, the killing of lawyers, and the charge against the clerk of Chatham, "are expressions such as a lawyer *would naturally put in the mouth of a brutal and ignorant insurgent*"; and with Campbell he sees recondite legal knowledge in the alleged allusion to the *mercheta mulierum*, though he seems to ascribe it to the rebel and not to the dramatist: "Cade undoubtedly had this atrocious custom in his mind."<sup>1</sup>

Like the Lord Chancellor, the Senator does not ask whether the lawyer-dramatist could or could not expect the audience, devoid of legal training, to appreciate the allusions; and he makes nothing of the fact that they are all in the pre-Shakespearean play. When, again, Cade speaks of being "seized for a stray for entering his fee-simple without leave," we are simply assured that he "uses technical language."<sup>2</sup> It should be suitably acknowledged that in the phrase:

I here entail the crown,

3 *Henry VI*, i, 1,

the learned Senator is scrupulous enough to confess that the expression is inaccurate, inasmuch as there is needed the use of the term "body" "to make it a fee-tail."<sup>3</sup> But as against this stand for technical exactitude, we have from him a multitude of claims for legal knowledge where even Campbell would have blenched at the suggestion. Thus in the first scene of *CORIOLANUS* the words *verdict*, *statutes*, *act*, and *repeal*, are all cited as displays of legal knowledge, the word *edicts* being unintelligibly ignored. Elsewhere he makes "legal" capital of such words as *arrest*, *arrested*, *abjure*, *appellant*, *avouch*, *addition* (of name), *bond*, *cases*, *depose*, *earnest*, "execution done

<sup>1</sup> *The Law in Shakespeare*, St. Paul, U.S.A., 1884, pp. 195-7.

<sup>2</sup> *Id.* p. 198.

<sup>3</sup> *Id.* p. 200.