

SUMMARY: The documents below are the bill of complaint dated 5 May 1612 in a lawsuit brought in the Court of Chancery by Henry Evans, the answer dated 19 June 1612 of the defendant, Edward Kirkham, and the undated replication of Henry Evans.

Three decades prior to this lawsuit, Oxford had had dealings with Henry Evans. At that time, Evans sold to Oxford his sublease of premises in the Blackfriars belonging to Sir William More (1520-1600) of Loseley, and Oxford then granted the lease to his servant, John Lyly (1554-1606). See Folger Library MS L.b.425.

Edward Kirkham, Yeoman of the Revels, was a cousin of Oxford's trustee, George Kirkham. For the indenture dated 14 June 1580 for the purchase of the Great Garden property made between Oxford and his trustees George Kirkham, Hugh Beeston and William Walter, see TNA C 54/1080. For the will of George Kirkham, in which he mentions his cousin, Edward Kirkham, see TNA PROB 11/122, f. 230.

As noted in Henry Evans' bill of complaint below, on 2 September 1600 Evans entered into a 21-year lease of certain premises in the Blackfriars with Richard Burbage (1568-1619), to commence on 29 September of that year at a yearly rent of £40. Shortly thereafter, at the request of Edward Kirkham, William Rastell and Thomas Kendall, Evans entered into an agreement with them for joint use of the leased premises and joint payment of the rent and other expenses for the duration of his 21-year lease, secured by a bond sealed by Evans in the amount of £200 on condition that Kirkham, Rastell and Kendall would not sue upon the bond for trifling breaches. However within one month of the sealing of this agreement, Evans 'departed into the country'. This was in December 1600, and it would appear from Evans' replication that Evans' departure was occasioned by false information given by Kirkham to George Carey (1548-1603), 2nd Lord Hunsdon, then Lord Chamberlain. On 20 April 1602 Evans assigned his lease to his son-in-law, Alexander Hawkins. After the 1603 plague, Evans negotiated with Burbage concerning the surrender of his lease, but instead, on 31 January 1604, King James licenced Kirkham, Hawkins, Thomas Kendall and Robert Payne to train the Children of the Revels to the Queen, and to have them perform at the Blackfriars (see TNA SP 38/7, f. 65).

However, as Evans notes in his replication below, in early 1605, after some 'misdemeanours committed in or about the plays there', King James prohibited further performances of the children's company, and Kirkham 'delivered up their commission which he had under the Great Seal authorizing them to play, and discharged divers of the partners & poets', after which Evans 'dealt with his Majesty's players and contracted with them for the same, as was lawful for him to do, who entered and enjoyed and yet do enjoy the same'. Thus on 9 August 1608 Richard Burbage and six others, William Sly (d.1608), John Heminges, William Shakespeare of Stratford upon Avon (1564-1616), Cuthbert Burbage (1564/5-1636), Henry Condell (1576?-1627) and Thomas Evans (d.1633?), entered into leases granting each a one-seventh part in 'all that playhouse and divers other possessions' situate in the precinct of the Blackfriars for 21 years at a yearly rent of £5 14s 4d, and the King's Men began to perform there in 1609 (see TNA KB 27/1454/1, rot. 692).

For a chronology of events related to the lawsuit below and an original spelling transcript, see Fleay, Frederick Gard, *A Chronicle History of the London Stage 1559-1642*, (London: Reeves and Turner, 1890), pp. 208-22, available online. Fleay concludes that:

It is quite clear that Kirkham was, as Jonson calls him, "a base fellow," and that, not daring to move in this matter till Rastell and Kendall and Hawkins were dead, he seised on the first favourable opportunity, some three years after, to press his iniquitous claim.

For the will of Thomas Kendall, who left a gold ring to Oxford's first cousin, Percival Golding, see Honigmann, E.A.J. and Susan Brock, *Playhouse Wills 1558-1642*, (Manchester: Manchester University Press, 1993), pp. 79-80. Kendall appointed Edward Kirkham as one of the overseers of his will.

5 Maij 1612 Tothill

To the right honourable Thomas, Lord Ellesmere, Lord Chancellor of England

In all humbleness complaining showeth unto your good Lordship your daily orator, Henry Evans of London, gentleman, that whereas one Richard Burbage of the parish of St Leonard's, Shoreditch, in the county of Middlesex, gentleman, by his indenture of lease bearing date the second day of September in the two and fortieth year [=2 September 1600] of the reign of our late Sovereign Lady Queen Elizabeth of famous memory, hath leased and to farm letten unto your said orator all that great hall or room with the rooms over the same situate and being within the precinct of the Blackfriars in London then or late in the tenure or occupation of your said orator for the term and space of one and twenty years commencing at the feast of St Michael the Archangel next ensuing [=29 September 1600] the date of the same indenture of lease for the yearly rent of forty pounds, quarterly to be paid at such days and in such manner and form as in and by the said indenture, whereunto relation being had, it doth and may more plainly appear, by virtue whereof your said orator was truly and lawfully possessed of the demised premises for the term aforesaid;

And he, your said orator, being so possessed, one Edward Kirkham of London, gentleman, William Rastell and Thomas Kendall, late of London, deceased, earnestly laboured with and entreated your said orator that he, your said orator, would suffer them to have and enjoy some part of the demised premises, whereupon it was agreed and concluded upon between the said Edward Kirkham, William Rastell and Thomas Kendall and your said orator that they, the said Kirkham, Rastell and Kendall, should have the joint benefit and profit of all the said demised premises excepting only one or two rooms wherein your said subject then inhabited;

And thereupon the said Rastell, Kirkham and Kendall caused one obligation of the penal sum of two hundred pounds or thereabouts to be written and engrossed, ready to be

sealed by your said orator and one Alexander Hawkins, late of London, gentleman, deceased, to this or the like effect following, videlicet:

That if the said William Rastell, Edward Kirkham and Thomas Kendall and every of them, their and every of their executors, administrators and assigns, should or might from thenceforth during the continuance of the same lease have the joint use, occupation and profit together with your said orator and the said Alexander Hawkins, their executors, administrators and assigns and every of them, without the let or trouble of your said orator and the said Alexander, their executors, administrators or assigns and every of them, of and in the said great hall or room and other the premises without the let or trouble of your said orator and the said Alexander, their executors, administrators and assigns or any of them or of any other person or persons by their or any of their means or procurement, they, the said William Rastell, Edward Kirkham and Thomas Kendall, their executors, administrators and assigns or any of them, paying unto your said orator and the said Alexander, their executors or assigns or to some or one of them, from thenceforth yearly during the continuance of the said lease the moiety or one half of the said yearly rent of forty pounds at the four usual feasts in the year or within one and twenty days next after any of the said feast-days by even and equal portions, and also bearing and paying the moiety of such charges as from time to time shall be laid out or disbursed for, in or about the reparations of the premises by and according to the purport and true meaning and limitation of the said lease, and also permitting and suffering your said orator and the said Alexander, their executors and assigns and every of them, to have their [sic?] joint use, occupation and profit together with them, the said William Rastell, Edward Kirkham and Thomas Kendall, their executors, administrators and assigns and every of them, of and in the said great hall and premises without their or any of their let, troubles and interruptions, that then the said obligation to be void and of none effect, or else it to stand in full force and virtue;

Which said obligation, upon the faithful promises of the said Kirkham, Rastell and Kendall that they would never seek or take any advantage upon the said bond in respect of any small breach of the condition of the said obligation or in respect of your orator's dwelling or inhabiting there, he, your said orator, sealed the said bond of £200;

And within one month or thereabouts next after th' ensealing of the same obligation your said orator did depart into the country, and relinquished and left all the aforesaid demised premises to them, the said Rastell, Kirkham and Kendall, only to their use and dispose as best liked them at their free wills and pleasures for a long space and time, to their great benefit and profit and to the damage of your poor orator at the least to the value of three hundred pounds;

And yet notwithstanding, the said Edward Kirkham, carrying a great spleen and malice against your said orator, in Trinity term last arrested your said orator by writ out of the King's Bench upon several actions of a thousand pound damages of purpose that your said orator might not find sufficient sureties to bail him, which great and undeserved malice of his, the said Kirkham, was (although to his great trouble) avoided, for he, your said orator, did put in good bail to answer the said actions, whereupon the said Edward

Kirkham declared against your said orator upon the above-recited bond or obligation, and your said orator, without any delay on his part, answered and came orderly to issue with the said Kirkham ready for trial, for which, in Michaelmas and Hilary terms last, the said Kirkham three or four times gave warning to your said orator to go to the trial, and several days were appointed for the trying thereof, and your orator, with his counsel, attorney and witnesses, at his no small charge, every several time attended, but the said Kirkham, having, as it seemeth, no purpose to proceed therein, doth by multiplicity of suits and vexations seek to impoverish and undo your said orator, and to manifest the same, the said Kirkham hath commenced three several actions against your said orator and the said Alexander Hawkins upon the said bond, and now the said Kirkham seeketh to take advantage against your said orator upon the said bond of two hundred pounds upon no or very small occasions, being very little or nothing damnified;

And for breach of the condition of the said obligation, the said Kirkham hath set forth that there was a certain room called the schoolhouse and a certain chamber over the same demised and letten by the said Richard Burbage to your said orator in and by the said indenture of lease, parcel of the premises, locked up by your said orator the twentieth day of January in the first year [=20 January 1604] of the reign of our Sovereign Lord James the King's Majesty that now is, and the said Edward Kirkham, William Rastell and Thomas Kendall from the said twentieth day of January until the first day of May then next ensuing [+were excluded?], by which the said Edward Kirkham, William Rastell and Thomas Kendall by and during that time had not the use, occupation and profit of the same schoolhouse and chamber with your said orator and Alexander Hawkins according to the form, effect and intent of the condition of the said obligation;

Which said schoolhouse and chamber over the same were severed from the said great hall and made fit by your said orator at his own proper costs and charges to dine and sup in, and there stood divers implements of household stuff, and therefore it was not fit and convenient that the doors of the same rooms should always be unlocked and left open;

And yet nevertheless the said doors were always opened at the request or desire of the said Kirkham, Rastell and Kendall and either of them, and they might have had the joint use and occupation thereof at their will and pleasure, and they received no loss or damage by their said lease nor any loss or damage by the shutting or locking of any door for that if any such door were shut or locked, as is pretended, then the same was always opened and offered to be opened upon every request of the said Kirkham, Rastell and Kendall, and so no damage at all unto them or any of them;

Yet for that the same bond is forfeited, as he, the said Kirkham, pretendeth, they, the said Rastell and Kendall, being dead, he, the said Kirkham, for matter of vexation, hath put the said bond in suit at the common law against your said orator, and threateneth to take all advantages thereupon, and to that end endeavoureth as much as in him lieth to recover the penalty of the same bond of your said orator, contrary to all right, equity and good conscience;

In tender consideration whereof may it therefore please your good Lordship, the premises considered, to grant unto your said orator his Majesty's most gracious writ of subpoena to be directed unto the said Edward Kirkham, gentleman, commanding him thereby at a certain day and under a certain pain therein to be limited personally to be and appear before your good Lordship in his Majesty's High Court of Chancery then and there to answer the premises and further to stand to and abide such order and direction herein as to your Lordship shall be thought meet, and your said orator shall pray for your Lordship in health and happiness long to continue, with increase of honour.

Symon Muskett(?)

Iurat{us} 19 Junij 1612 Mathew Carew
Saunders

The answer of Edward Kirkham of London, gentleman, defendant, to the bill of complaint of Henry Evans of London, gentleman, complainant

The said defendant saith that the said bill of complaint and the matters therein contained are very incertain and insufficient in the law to be answered unto, and framed and contrived only of purpose to vex, trouble and molest him, this defendant, and to drive him to unnecessary charges & expenses in the law rather than of any just cause or matter whatsoever;

Nevertheless, all and all manner of advantages of exception to the incertainty, insufficiency, wants & imperfections whatsoever of the said bill of complaint now & at all times saved & reserved to him, this defendant, for answer to so much thereof as in any sort toucheth or concerneth him, this defendant, he, this defendant, saith that he thinketh it to be true that the said Richard Burbage in the bill mentioned did in or about the time therein specified lease & let to farm to the said complainant all that great hall or room with the rooms over the same situate & being within the precinct of the Blackfriars in London for such term of years & under such yearly rent, covenants, limitations and provisos as in the said bill of complaint is set forth;

And this defendant saith that the said complainant, being by force of the foresaid demise of all and singular the said premises so possessed for the whole time and term therein expressed, true it is that he, this defendant, and the said William Rastell and Thomas Kendall in the bill likewise named did treat and had communication with the said complainant to such end and purpose as in the bill is set forth, and that thereupon it was agreed and concluded between the said complainant and this defendant and the said other defendants, Rastell and Kendall, that they, the said defendants, should have and enjoy the joint benefit and use of the said demised premises as in and by the said bill is alleged;

And thereupon the said complainant and the said Alexander Hawkins in the said bill named became bound to the said defendant & to the said Rastell and Kendall in the said

bill likewise named in the said obligation of the penalty of two hundred pounds in the said bill mentioned with condition to such purpose & effect as in the said bill is declared, as by the said obligation & the condition thereof, whereunto the said defendant referreth himself, doth and may appear, which said bond of two hundred pounds was by the said complainant, together with the said Alexander Hawkins, sealed & delivered to this defendant & the said other defendants;

And this defendant denieth that he or any of the said other defendants to his knowledge did upon the sealing of the said bond or at any time before or since make any promise that they would never seek or take any advantage upon the said bond in respect of any small breach of the condition thereof or in respect of the plainant's dwelling or inhabiting in part of the said premises, or that the said complainant did seal and deliver the said bond upon any such promise as in and by the said bill of complaint is most untruly alleged;

And whereas the said complainant in and by his said bill of complaint pretendeth that he, the said complainant, in or about one month next after th' ensealing of the said obligation did depart into the country, and relinquished and left all the foresaid demised premises to this defendant and the said other defendants in the bill named only to their use and dispose to their great benefit and profit and to the damage of the plainant at least of three hundred pounds, to this the defendant saith that the same is not in any part thereof true in such sort as in the said bill is surmised, for this defendant saith although the said complainant departed for a time into the country, yet he left the said Alexander Hawkins to deal for him and to take such benefit of the said house as should belong unto him in his absence, which the said Alexander Hawkins did accordingly, so as the said complainant lost nothing to the knowledge of the said defendant;

But of the other side, by reason of the said agreement made by the said defendant & the said Rastell and Kendall with the said complainant, they were enforced to disburse and lay out for divers ymplements [=implements?] the sum of three hundred pounds at the least, after which the complainant unjustly turned the said defendants out of the said house and would not suffer them to have benefit or use thereof, for which cause true it is that he, the said complainant, in or about the time in the bill specified was arrested at the suit of him, this defendant, by writ out of the King's Bench upon several actions of one thousand pounds damage, and was thereupon enforced to find and put in bail, as there was just cause he should do;

And this defendant saith that the reason whereupon he arrested the said complainant grew not out of spleen or malice which this defendant conceived against the said complainant, but upon good and sufficient cause, for the said complainant, notwithstanding his former bargain and faithful promises concluded & made between the said complainant & this defendant, did turn the said defendant out of the said house & premises four years together come Michaelmas next [=from 29 September 1608 to 29 September 1612], & would not suffer this defendant or the said other defendants to take any benefit thereby;

And this defendant likewise saith that true it is that upon the plainant's putting in of bail as aforesaid, he, this defendant, did declare upon the foresaid obligation or bond

obligatory, whereunto the said complainant answered and came to issue with this defendant ready for trial;

And this defendant likewise saith that true it is that he, this defendant, in or about the time in the bill specified, did at several times give warning to the complainant to go to a trial, & that several days were appointed for trial thereof, but this defendant denieth upon his oath that he ever intended to impoverish or weaken the said complainant's estate by multiplicity of suits, for it was the said complainant's own doing that the said trial was so long delayed & so often put off, for being ready for trial, he, the said complainant, made means to cross the going on thereof, and procured an order to amend his plea, and so to change the issue, for which he, the said complainant, paid costs to this defendant;

And further this defendant saith that forasmuch as this defendant hath lost threescore pounds per annum for four years at the feast of St Michael th' Archangel next coming [=29 September 1612], and is like, if the plainant may prevail in his injurious courses, to lose the profit of the said house and premises for the term yet to come, being full ten [sic?] years, & for that the said complainant hath made breach of the obligation so by him and the said Hawkins entered to him, the said defendant, as aforesaid, true it is that the said defendant hath thereupon commenced several suits against the said complainant, as he hopeth, under the favour of this honourable court, it is lawful for him to do;

And this defendant saith that true it is that the said schoolhouse & chamber over the same were severed from the said great hall & made fit by the said complainant at his own proper costs and charges to dine and sup in, as in the said bill of complaint is alleged, whereupon the said complainant did wrongfully withhold & detain the same from the said defendants, being of right belonging unto them as part of the demised premises, wherefore they were enforced to commence suit at the common law for remedy thereof;

Without that that the said doors belonging to the said house were always opened at the request or desire of this defendant and the said other defendants in the bill named so as they might have the joint use and occupation thereof at their will & pleasure, or that they received no loss or damage by the shutting of the said doors, as in the said bill of complaint is most untruly alleged;

And this defendant saith that he is so far from desiring the overthrow or hindrance of the plainant's estate by vexing him with multiplicity of suits that if in any reasonable manner he be recompensed for the money by the complainant already detained for the time past, & permitted to have the joint use & occupation of the said house & premises for the time & term to come, being full ten years, he, this defendant, saith that he will take no benefit or advantage of the forfeiture of the said bond so to him & the said other defendants by the said complainant & the said Hawkins entered as aforesaid;

Without that that this defendant since the death of the said other defendants, Rastell & Kendall, hath for matter of vexation put the said bond in suit at the common law against the said complainant and threateneth to take all advantages thereupon, or to that end

endeavoured to recover the penalty thereof, as in & by the said bill of complaint is most slanderously surmised;

And without that that any other matter or thing in the said complainant's bill material or effectual in the law to be answered unto & herein not sufficiently confessed & avoided, traversed or denied, is true;

All which this defendant is ready to aver and prove as this honourable court shall award, and humbly prayeth to be dismissed out of the same with his reasonable costs and charges in that behalf wrongfully sustained.

Thomas Richardson(?)

LM: Tothill

The replication of Henry Evans, gentleman, complainant, to the answer of Edward Kirkham, defendant

The said complainant for replication doth and will aver, justify and maintain his said bill of complaint and all and every the matters and things therein contained to be just, true, perfect and sufficient in the law to be answered unto, and that the same matters are full of equity, and fit to be aided and relieved in this honourable court in such manner and form as in and by the said bill of complaint is deduced and desired;

With this that this complainant will aver that it was meant and intended that small occasions should not of the complainant's behalf make breach of the said obligation, and that the said doors were always (as this complainant thinketh) ready to be unlocked and left open at the public request of the defendant and the rest of his said associates upon notice given that they or any of them meant to make any joint use, occupation and profit thereof according to the meaning of the condition of the said obligation;

And the complainant for replication further saith that the same condition specifieth the said agreement to be upon sundry payments, performances and limitations of the defendant and of the said Kendall and Rastell's parts executorily to be performed, which not being performed, made in equity and truth the said obligation to be void, as in the said bill of complaint is truly alleged;

Yet nevertheless the said defendant, having proceeded to issue thereupon against the complainant, delayed to procure a trial, thereby to put the complainant to trouble and charge, as in the bill is alleged, but after the preferring of the said bill, the said suit commenced by the defendant upon the said obligation (the now defendant having joined issue thereupon as in the said bill and answer is alleged) came to trial before the Lord Chief Justice of England about the end of Easter term last past, and upon hearing of the proofs produced of the now plainant's behalf, the said defendant did then become nonsuit

upon the same issue so joined, as by the record thereof remaining in his Majesty's court commonly called the King's Bench may appear;

And the defendant sithence the said trial had put in his answer, so that now there is no cause why the said defendant should detain the said obligation, as this complainant conceiveth, unless it were infinitely to molest this complainant, the said defendant having used the best and extremest means he could to lay the penalties thereof upon this complainant, or if there be any cause upon any small trifling occasion (which this complainant denieth), as upon locking a door of a room where no joint profits to any great value could be made (alleged by the defendant in his said answer as a cause of breach of the said bond), it standeth with the justice of this court that the same or any other matter or the circumstance thereupon depending, which was no wilful or voluntary cause of forfeiture of the said obligation committed by the plainant, should be heard and moderated by the equity of this honourable court;

And the complainant further for replication saith that he was, by the defendant and his said associates upon false information made to the late Lord Hunsdon, late Lord Chamberlain, against this complainant, commanded by his Lordship to avoid and leave the same, for fear of whose displeasure the complainant was forced to leave the country, and lost in want of not looking to his profit there, and charge otherwise, near three hundred pounds, which they did of purpose to prejudice this complainant, the said Hawkins negligently, under whose title soever he pretended to take any profits, using the same;

And whereas contrariwise it is alleged in the defendant's said answer that by the said agreement the said defendant, Rastell and Kendall were enforced to disburse and lay out for divers implements the sum of three hundred pounds at the least, after which the complainant unjustly thrust the said defendant and his associates out of the said house and would not suffer them to have the benefit or use thereof, thereunto the said complainant for replication further saith that it is not material to this complainant what the said defendant disbursed or laid out for divers implements as is alleged, neither material to be replied unto, considering that it is not showed how they were enforced so to do, or by whom, or for whom, or to whose benefit the same loss and damage grew;

And this complainant for replication saith that after the said agreement specified in the condition of the said obligation, neither the said defendant or the said Rastell or Kendall did ever, to this defendant's knowledge, buy any implements other than necessary apparel after the rates and portions for to be used in and about such plays as were to be made there;

But it is true that after the King's most excellent Majesty, upon some misdemeanours committed in or about the plays there, and specially upon the defendant's acts & doings thereabout, had prohibited that no plays should be more used there, that upon such prohibition the defendant and his associates seemed to go back, for no plays being used, and little or no profit made of the house, but the complainant still chargeable to pay forty pounds per annum for the rent thereof, whereas without plays used there the same rooms were not worth almost any rent, and the agreement being conditional or upon limitation

that the not paying of the rent or not performing the limitations aforesaid could but make void the said agreement between the complainant and the defendant, therefore the defendant, willing to quit the place, as it seemed to this complainant, the said defendant at or about the 26th of July 1608 caused the apparels, properties & goods belonging to the copartners, sharers and masters of the Queen's Majesty's Children of her Revels (for so it was often called) to be indifferently praised, and upon such praise the same was divided, and so praised and divided that the praisers were at his own mere appointment, and the said complainant had thone half thereof upon such praise and division for his part and proportion, and the defendant and the said Rastell and Kendall had the other part for their parts and proportions, which they took and accepted and seemed fully satisfied, for anything this complainant perceived;

After which partition so made (some of the boys being before committed to prison by his Majesty's command for the considerations as aforesaid), for those and other considerations before specified the defendant said he would deal no more with it, 'For,' quod he, 'it is a base thing', or used words to such or very like effect, whereupon the defendant having not performed every of the limitations tied to the complainant's said agreement of his, the defendant's part to be performed, and so this complainant, knowing the said agreement by the breach and not performance of the same of the defendant's part to be void, and the defendant having delivered up their commission which he had under the Great Seal authorizing them to play, and discharged divers of the partners & poets, as this defendant [sic] hopeth to prove, this defendant [sic] dealt with his Majesty's players and contracted with them for the same, as was lawful for him to do, who entered and enjoyed and yet do enjoy the same;

And shortly after the defendant put the said obligation in suit against the complainant as aforesaid, thinking that way unjustly to get the forfeiture thereof of this complainant, in which suit, upon trial and full hearing after issue joined as aforesaid, he was nonsuit as aforesaid;

Without that that this complainant unjustly thrust out the said defendant and the said Rastell and Kendall out of the said house, or unjustly suffered them not to have benefit thereof, as in the said answer is very falsely and untruly alleged, but upon good and lawful means warranted by law and equity;

Without that that any other matter in the said answer material alleged and in this replication not sufficiently traversed or denied, confessed or avoided, or otherwise replied unto is true;

All which matters the complainant is ready to aver and prove as this honourable court shall award, and prayeth as in the said bill of complaint he prayed.

Napper