

SUMMARY: The document below is the judgment in a lawsuit brought by William Shakespeare against John Clayton of Willington, Bedfordshire, concerning a bond for the repayment of £7 which Clayton had acknowledged in London on 22 May 1592.

The document states that the lawsuit began in Hilary term 1600, and that judgment was rendered in William Shakespeare's favour in Easter term 1600, John Clayton not having put in a defence.

Bill of Middlesex

Robert Detobel, *infra*, was the first to identify the suit as a 'bill of Middlesex'. A bill of Middlesex commenced with a fictional complaint that the defendant had committed trespass, thereby bringing the defendant within the jurisdiction of the Court of King's Bench. Once jurisdiction had been established, and the defendant was, either in reality or constructively, in the custody of the Marshal of the Marshalsea, a plea of debt was substituted for the original complaint of trespass, and fictional pledges for prosecution were introduced, John Doe and Richard Roe.

For bills of Middlesex, see:

<http://shylocke.org/legalhistory.html>

By the mid-sixteenth century, the volume of litigation between citizens greatly increased. The common lawyers and their clients wanted another option, preferably one with greater flexibility, less cost, and less delay. The judges on King's Bench took note of the fees that would accrue to the Court of Common Pleas from the handling of lawsuits between citizens, and decided that they might share some of the burden of this upswell in litigation, as well as some of those fees. The Court of Common Pleas originally had no objection because they had more legal business than they could handle.

The judges of King's Bench created a more simplified and inexpensive mechanism for initiating a lawsuit: a bill instead of a writ. The Plaintiff did not have to pay the substantial fee that the Clerk's Office charged for issuing a writ. In addition, King's Bench devised a legal fiction whereby they could obtain jurisdiction of complaints between private citizens. This subterfuge was called the Bill of Middlesex, and was based on the notion of trespass, which, being a breach of the King's peace, fell within the jurisdiction of King's Bench.

A Plaintiff would file an unsworn complaint (a bill) in King's Bench, alleging that the Defendant had committed a trespass against the Plaintiff in the county of Middlesex, and therefore within the criminal jurisdiction of King's Bench. Because the complaint was unsworn, the Plaintiff did not risk a charge of perjury for this lie. Upon payment of a more reasonable fee, King's Bench would issue a warrant for the arrest of the Defendant, who would then be booked into Marshalsea Prison. The Marshal of this prison was the official jailer of the Court; because he attended the Court, his prisoners were deemed to

be always before the monarch, and therefore within the jurisdiction of King's Bench for all purposes.

When the Defendant was in custody or out on bail, King's Bench could then entertain any other complaint the Plaintiff may allege, such as an action for Debt. The Plaintiff would drop the trespass charge, continue only with the action for Debt, and the court would refuse to hear any complaint that the Defendant had been thrown in jail on a charge that everyone knew to be a sham.

See also Wikipedia:

https://en.wikipedia.org/wiki/Bill_of_Middlesex

As a longer term and more significant development, the Bill of Middlesex was one of several revolutionary developments by the King's Bench met with a conservative reaction from the Common Pleas, fearful of losing its own caseload. The troubles during this period are best illustrated by Slade's Case. Under the medieval common law, claims seeking the repayment of a debt or other matters could only be pursued through a writ of debt in the Common Pleas, a problematic and archaic process. By 1558 the lawyers had succeeded in creating another method, enforced by the Court of King's Bench, through the action of assumpsit, which was technically for deceit. The legal fiction used was that by failing to pay after promising to do so, a defendant had committed deceit, and was liable to the plaintiff. The conservative Common Pleas, through the appellate court the Court of Exchequer Chamber, began to overrule decisions made by the King's Bench on assumpsit, causing friction between the courts. In Slade's Case, the Chief Justice of the King's Bench, John Popham, deliberately provoked the Common Pleas into bringing an assumpsit action to a higher court where the Justices of the King's Bench could vote, allowing them to overrule the Common Pleas and establish assumpsit as the main contractual action.

St Mary le Bow

As noted above, William Shakespeare initiated the suit via a bill of Middlesex, claiming that the defendant, John Clayton, had committed trespass. Once Clayton had been arrested, and was, either in reality or as yet another legal fiction, in the custody of the Marshal of the Marshalsea, the trespass claim was dropped, in accordance with standard practice, and Shakespeare substituted a bill for the real cause of action, a debt. The new bill included yet another legal fiction, this one involving St Mary le Bow. As Miller explains (p. 629):

No matter where the act complained of was really committed, the declaration, after stating the true situs, added the clause "to wit, in London in the parish of St. Mary-le-Bow in the Ward of Cheap."

See Miller, Sidney, T., 'The Reasons for Some Legal Fictions', *Michigan Law Review*, Vol. 8, No. 8 (June, 1910), pp. 623-36, available online at:

<https://www.jstor.org/stable/pdf/1274904.pdf>

In the document below, the relevant phrase reads:

. . . at London aforesaid, namely in the parish of Saint Mary le Bow in Cheap Ward in London

Thus, Shakespeare alleged in his bill that the true *situs*, i.e. the place where the cause of action arose, was London. He then followed that with the legal fiction 'in the parish of Saint Mary le Bow in Cheap Ward in London', a phrase which gave the Court of King's Bench jurisdiction over the case, and which could not be disputed by the defendant.

See also 'Legal Fictions', *Pump Court*, Vol. 7, No. 98, (August 29, 1888), pp. 279-81 at:

<https://books.google.ca/books?id=HC8WAAAAYAAJ&pg=PA279>

Date of the judgment

According to Holinshed's *Chronicle* (1577), Hilary term began on 23 January (if that date was not a Sunday) and ended on 12 February. From the *OED*:

1577 W. Harrison Hist. Descr. Islande Brit. iii. iii. f. 102^v/1, in R. Holinshed Chron. I Hillary terme beginneth the xxij. day of Ianuary, if it be not Sunday, otherwise the next daye after, & endeth the twelfth of February, and hath foure returnes.

However according to the *Handbook of Dates*, Hilary term almost always began on 20 January and continued for two to four weeks, usually ending on the morrow, octave or quindene of the Feast of the Purification (2 February). See Cheney, C.R., *Handbook of Dates for Students of English History*, (London: Royal Historical Society, 1961), p. 67.

According to Cheney, p. 68:

Easter [term] invariably began on the quindene. Normally that should mean the second Sunday after Easter, but later books explain that it means seventeen days after Easter, and therefore a Wednesday.

Judgment was given in William Shakespeare's favour on 'the Wednesday next after the 18th of Easter', which in 1600 would have been Wednesday, 9 April.

Additional documents

The National Archives catalogue mentions three additional documents connected to KB 27/1361/1:

The corresponding docket roll for civil pleas is in IND 1/1354; the controlment roll in KB 29/237; the special remembrance roll in IND 1/1385.

IND 1/1354, the docket roll for civil pleas, contains a reference to the Clayton loan case stating that the cause of action originated in London:

London ir{rotulatur}(?) nihil dic{it} in deb{it}o int{er} Will{elmu}m Shackspere q{uerentem} & Ioh{ann}em Clayton CCxCij

[=London, enrolled(?), nothing said [i.e. the defendant did not defend the case] in debt between William Shackspere, querent, & John Clayton 293]

However the special remembrance roll in IND 1/1385 refers only to very specific cases in each term, and there is no mention of the Clayton loan case on that roll.

The controlment rolls, KB 29, appear to be a register of crown cases in the King's Bench. Since the Clayton loan case is a civil case, there is no mention of it in KB 29/237.

There is a remote possibility that the original bill in the Clayton loan case still exists. Mateer found the original bill in a similar action for debt involving Christopher Marlowe. See Mateer, David, 'New Sightings of Christopher Marlowe in London', *Early Theatre*, 11:2 (2008), pp. 13-38 at:

<http://jps.library.utoronto.ca/index.php/eth/article/view/7418>

The plaintiff's original bill, which still survives filed among the court's declaraciones, was re-copied verbatim onto the plea roll once process began.

However a search of the *declaraciones*, i.e. the KB 152 writ file, in the spring of 2018 was unsuccessful. The original bill for the Clayton loan case is not in the file for Easter term, the term in which the case was enrolled, and the 'S' file is missing for the term in which the case was originally presented, Hilary term. The possibility thus exists that the missing writs from the 'S' file for Hilary term are still among unsorted writs in the National Archives.

Identification of the plaintiff

The evidence as to the plaintiff's identity is inconclusive.

Hotson discovered that a William Shakespeare lived in Campton, Bedfordshire, eight miles south of Willington, and concluded that he was the William Shakespeare who had loaned John Clayton £7. Hotson does not explain, however, why two people who lived

eight miles apart in Bedfordshire would have travelled to London so that one could lend the other £7. It seems more likely that John Clayton required money while in London on business, and that William Shakespeare of Stratford upon Avon was then resident in London, and was the source of the loan.

Moreover, as noted above, both the bill itself and the docket roll (see TNA IND 1/1354, *supra*) state that the cause of action originated in London. It appears Hotson did not take that fact into consideration when he suggested that the plaintiff was William Shakespeare, husbandman, of Campton, Bedfordshire.

Moreover the John Clayton found by Hotson was also a husbandman, while the John Clayton of the Clayton loan is described as ‘yeoman’, a word which had more than one meaning at the time. From the *OED*:

yeoman

a. A servant or attendant in a royal or noble household, usually of a superior grade, ranking between a sergeant (sergeant n. Compounds 1) and a groom (groom n.1 4) or between a squire and a page.

b. An attendant or assistant to an official, etc.

a. A man holding a small landed estate; a freeholder under the rank of a gentleman; hence vaguely, a commoner or countryman of respectable standing, esp. one who cultivates his own land.

Hotson appears to have assumed that the third definition applied to the borrower, John Clayton, and to have made the further assumption that ‘husbandman’ and ‘yeoman’ were equivalent. But the *OED* definition suggests that a yeoman was of slightly superior social and economic status to a husbandman. From the *OED*:

husbandman

a. A worker who tills and cultivates the soil; a farmer, typically one who works a smallholding. Also Eng. regional (north.) and Sc.: the holder of a husbandland, a manorial tenant.

It thus seems that in ‘John Clayton, husbandman, of Willington, Bedfordshire’, Hotson did not identify a social and economic equivalent of ‘John Clayton, yeoman, of Willington, Bedfordshire’ in the Clayton loan document. And there is the outside possibility that the John Clayton of the Clayton loan document was not ‘a freeholder of the rank of a gentleman’, but rather a ‘groom’.

According to Price, Chiljan and Pointon, *infra*, the ‘William Shackspere’ of the Clayton loan was William Shakespeare of Stratford upon Avon.

Identification of the plaintiff’s attorney

John Rollet has suggested that Shakespeare's attorney in the suit can be identified as Thomas Awdley (d.1603), citizen and grocer of London, of the parish of St Magnus, son of Thomas Awdley (d.1553) of Henlow, Bedfordshire. In his will, Awdley appoints as one of his overseers his 'very good friend, Mr Thomas Greene', who may have been the solicitor, Thomas Greene, from Stratford upon Avon. According to Palmer, Thomas Greene, whom Shakespeare of Stratford upon Avon described as his 'cousin', entered the Middle Temple in 1595, one of his sureties being the playwright, John Marston. He acted as solicitor for the Corporation of Stratford in 1601, assisting Richard Quiney in supporting the Corporation against Sir Edward Greville (c.1625-1621), lord of the manor of Stratford, and was Town Clerk of Stratford from 1603 to 1617. Quiney died in May 1602 after being 'wounded by a drunken band of Greville's men'.

Despite these connections, Rollett's suggestion that the plaintiff's attorney was a London grocer seems an unlikely one.

Robert Detobel, *infra*, has argued that the mention of St Mary le Bow in Cheapside as the place where the bond was sealed meant that the debt in question could have belonged to only one class of debt, 'namely debt wholly contracted and performed abroad', and that therefore both William Shakespeare and John Clayton were overseas when Shakespeare lent Clayton £7. That argument is clearly contradicted by a case brought by James Burbage's brother-in-law, John Brayne, against his carpenter, John Reynolds, in the form of a Bill of Middlesex which, like the Clayton loan, states that the bond was sealed in London at St Mary le Bow in Cheapside, TNA KB 27/1229, m. 30. It seems unlikely anyone would contend that Brayne and Reynolds were overseas at the time the bond was sealed, and Detobel has clearly over-reached in claiming that mention in a Bill of Middlesex of St Mary le Bow in Cheapside as the place where a bond was sealed meant that the debt was contracted abroad. For the case, see Wickham, *infra*, pp. 291-4 at:

<https://books.google.ca/books?id=y82YJ1P5gksC&pg=PA291>

Detobel's argument is also contradicted by two cases involving Christopher Marlowe, also in the form of bills of Middlesex, which mention St Mary le Bow in Cheapside. See Mateer, *supra*.

Numerous other Court of King's Bench cases of debt contracted in London which make use of the legal fiction of St Mary le Bow can be found on the AALT Law website at:

<http://aalt.law.uh.edu/Eliz.html>

References:

(1) Chambers, Sir Edmund Kerchever, *William Shakespeare: A Study of Facts and Problems*, (Oxford: Clarendon Press, 1930), Vol. 2, p. 52.

(2) *Shakespeare in the Public Records*, (London: Her Majesty's Stationery Office, 1964), pp. 37-8.

(3) TNA KB 27/1361/1, rot. 293 at:

<http://discovery.nationalarchives.gov.uk/details/r/C215934>

(4) Hotson, Leslie, *Shakespeare's Sonnets Dated*, (London: Rupert Hart-Davis, 1949), pp. 229-30.

(5) Price, Diana, 'Shakespeare, Shake-scene and the Clayton Loan', *Elizabethan Review* 4 (Spring 1996), pp. 3-13 at:

<http://www.shakespeare-authorship.com/About/Resume.htm>

(6) Price, Diana, *Shakespeare's Unorthodox Biography*, (Westport, Connecticut: Greenwood Press, 2001, pp. 15, 20-2, 52-3, 96.

(7) Detobel, Robert, 'Was Shakespeare a Moneylender? Legal Fictions and the Clayton Suit', at:

<http://www.elizabethanauthors.org/research1.htm>

(8) Mateer, David, 'New Sightings of Christopher Marlowe in London', *Early Theatre*, 11:2 (2008), pp. 13-38 at:

<http://jps.library.utoronto.ca/index.php/eth/article/view/7418>

(9) Wickham, Glynne, ed., *English Professional Theatre, 1530-1660*, (Cambridge: Cambridge University Press, 2000), pp. 291-4 at:

<https://books.google.ca/books?id=y82YJ1P5gksC&pg=PA291>

(10) Fripp, Edgar I., ed., *Minutes and Accounts of the Corporation of Stratford-Upon-Avon and Other Records 1553-1620 Transcribed by the Late Richard Savage, Vol. IV 1586-1592*, (London: Dugdale Society, 1929), pp. 151-2.

(11) Palmer, Alan and Veronica Palmer, *Who's Who in Shakespeare's England*, (New York: St Martin's Press, 1981, reprinted 1999), pp. 96-8, 198-9.

(12) Chiljan, Katherine, *Shakespeare Suppressed*, (San Francisco: Faire Editions, 2011), pp. 99-101.

(13) Pointon, A.J., *The Man Who Was Never Shakespeare*, (Tunbridge Wells, Parapress, 2011), p. 45.

(14) Rollett, John, 'William Shackspere vs. John Clayton', *Notes and Queries*, Vol. 257, No. 4 (December 2012), p. 559 at:

<http://nq.oxfordjournals.org/content/59/4/559.extract>

(15) Will of Thomas Awdley, dated 22 July 1603 and proved 12 August 1603, TNA PROB 11/102/58.

Still Easter term [=Easter term, continued]. John Popham

London. Memorandum: Be it remembered that at another time, namely in Hilary term last past, there came before the Lady Queen at Westminster William Shackspere by Thomas Awdley, his attorney, and he then and there produced here in the court of the said Lady Queen a certain bill of his against John Clayton of Willington in the county of Bedford, yeoman, in the custody of the Marshal etc., concerning a plea of debt;

And there are pledges for prosecuting, namely John Doo & Richard Roo;

Which bill follows in these words:

London. William Shackspere complains concerning John Clayton of Willington in the county of Bedford, yeoman, being in the custody of the Marshal of the Marshalsea of the Lady Queen, before the same Queen concerning a plea that he pay him seven pounds of lawful money of England which he owes him & unjustly detains, for this reason, namely for that whereas the foresaid John Clayton, on the twenty-second day of May in the thirty-fourth year [=22 May 1592] of the reign of the Lady Elizabeth now Queen of England at London aforesaid, namely in the parish of Saint Mary le Bow in Cheap Ward in London, by a certain writing obligatory [=bond] of his sealed with the seal of the same John and now here shown in the court of the said Lady Queen, whose date is the same day and year, acknowledged himself to be bound & firmly obliged to the forenamed William in [+the amount of] the foresaid seven pounds, to be paid to the same William when requested to do so, nevertheless the foresaid John, although often requested etc., has not yet paid the foresaid seven pounds to the foresaid William, but hitherto has altogether refused to pay them to him & still refuses, and unjustly detains [+the same], to the damage of the same William [+in the amount of] ten pounds, and thereupon he brings suit, etc.;

And now on this day, namely Wednesday next after the 18th of Easter [=9 April 1600] in this same term, until which day the foresaid John Clayton had leave to imparl to the bill aforesaid, and then to answer etc.(?), before the Lady Queen at Westminster, came the foresaid William Shackspere by his attorney aforesaid, and the foresaid John Clayton, although on the same day solemnly called, did not come, nor said anything to bar or preclude the action of the same William aforesaid, by which the same William remains undefended against the forenamed John Clayton;

In smaller script, apparently added after the preceding paragraphs were written:

Therefore it is considered that the foresaid William Shackspere shall recover against the forenamed John Clayton his debt aforesaid. And also twenty shillings for his damages which he has sustained, both by occasion of the detention of the same debt as for his costs & charges laid out by him about his suit in that behalf, is adjudged to the same complainant by the court of the Lady Queen here with his assent;

And the foresaid John Clayton [+be] in mercy etc.

Adhuc T{er}mi{n}o Pasche I{ohannes} Popham

1 Lon{don} ff Memorand{um} q{uo}d al{ia}s scil{ice}t T{er}mi{n}o s{an}c{t}i Hillarij vltimo p{re}t{er}ito coram D{omi}na Regina apud West{monasteriu}m ven{it}

2 Will{el}m{u}s Shackspere p{er} Thomam Awdley Attorn{atum} suu{m} Et p{ro}tulit hic in Cur{ia} tunc ib{ide}m quand{a}m

3 billam suam v{er}sus Ioh{ann}em Clayton de Wellington in Com{itatu} Bedd' yeoman in Custod{ia} Marr{escalli} &c

4 de pl{ac}ito deb{it}i Et sunt plegi{j} de p{ro}s{equendo} scil{ice}t Joh{ann}es Doo & R{ic}c{har}dus Roo Que quid{e}m Billa sequit{ur} in

5 hec v{er}ba ff London ff Will{el}m{u}s Shackspere querit{ur} de Ioh{ann}e Clayton de Willyngton

6 in Com{itatu} Bedd' yoman in Custod{ia} Marr{escalli} Maresc{callie} D{omi}ne Regine coram ipsa Regina existen{te} De

7 pl{ac}ito q{uo}d reddat ei septem libr{as} leg{a}lis monete Angl{ie} quas ei debet & injuste detinet p{ro} eo

8 videl{ice}t q{uo}d cu{m} p{re}d{ic}tus Ioh{ann}es Clayton vicesimo s{ec}c{un}do die Maij Anno regni D{omi}ne Elizabeth{e}

9 nunc Regine Angl{ie} tricesimo quarto apud London p{re}d{ictum} videl{icet} in p{ar}ochia b{ea}te Marie de

10 arcub{us} in Warda de Cheape London p{er} quodd{a}m scriptu{m} suu{m} obligatoriu{m} sigillo ip{s}ius Ioh{ann}is

11 sigillat{um} Cur{ia}q{ue} d{ic}t{e} D{omi}ne Regine nunc hic ostens{um} cui{us} dat{um} est eisd{e}m Die et Anno cogn{ovit} se

12 ten{er}i & firmit{er} obligari p{re}fat{o} Will{el}mo in p{re}d{ictas} septem libr{as} solvend{as} eid{e}m Will{el}mo cu{m} inde requisit{us}

13 esset p{re}d{ic}t{us} tamen Ioh{ann}es licet sepius requisit{us} &c p{re}d{ictas} septem libr{as} p{re}fat{o} Will{el}mo nondu{m} soluit

14 Sed ill{as} ei hucusq{ue} solu{er}e om{n}i{n}o cont{ra}dixit & adhuc contradic{it} ac iniuste detinet ad dampnum

15 ip{s}ius Will{el}mi Decem librar{um} Et inde p{ro}duc{it} sect{am} &c

16 Et modo ad hunc diem scil{icet} diem Mercur{ij} p{ro}x{ime} post xviiij pasche isto eod{e}m T{er}mi{n}o usq{ue} quem

17 Diem p{re}d{ic}t{us} Ioh{ann}es Clayton h{ab}uit licenc{iam} ad billam p{re}d{ictam} int{er}loquend{i} Et tunc ad respondend{um} &c(?)

18 Coram D{omi}na Regina apud West{monasteriu}m ven{it} p{re}d{ictus} Will{el}m{u}s Shackspere p{er} Attorn{atum} suu{m} p{re}d{ic}tu{m} Et p{re}d{ic}t{us}

19 Ioh{ann}es Clayton licet ad eund{em} diem solempnit{er} exact{us} non ven{it} nec aliquid dic{it} in barr{am} siue

20 p{re}cluc{i}onem acc{i}onis ip{s}ius Will{el}mi p{re}d{icti} p{er} q{uo}d id{e}m Will{el}m{u}s reman{et} inde v{er}sus p{re}fat{um} Ioh{ann}em Clayton

21 indefens{us} I{de}o Cons{ideratum} est q{uo}d p{re}d{ictus} Will{el}m{u}s Shackspere recup{er}et v{er}sus p{re}fat{um} Ioh{ann}em Clayton deb{itu}m suu{m} p{re}d{ic}tu{m} necnon viginti

22 solid{as} p{ro} dampn{is} suis que sustinuit tam occ{asi}one detenc{i}onis eiusd{e}m debit{i} q{ua}m p{ro} mis{is} & Custag{ijs} sui{s} p{er} ip{s}um circa sect{am} suam in hac

23 p{ar}te appo{s}it{is} eid{e}m quer{enti} per Cur{iam} D{omi}ne Regine hic ex assensu suo adiudicat{is} Et pred{ictus} Ioh{ann}es Clayton in mi{seri}co{rdia} &c