

SUMMARY The documents below are the pleadings and orders in the lawsuit brought in the Court of Requests by Robert Keysar (1576-c.1640), a London goldsmith, against Richard Burbage (1568-1619), Cuthbert Burbage (1564/5-1636), John Heminges (1566?-1630), Henry Condell (1576?-1627) and Henry Evans on 8 February 1610.

The lawsuit was discovered by Dr Charles William Wallace, and published, transcribed and discussed by him in 'Shakespeare and his London Associates as Revealed in Recently Discovered Documents', *University Studies of the University of Nebraska*, Vol. X, No. 4 (October 1910), pp. 261-360 at pp. 340-360, available online at <http://www.archive.org/details/universitystudie101910univ>.

As of 9 August 1608 there were seven shareholders in the Blackfriars. On that date Richard Burbage had granted himself and six others 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 (see TNA KB 27/1454/1, m. 692). The seven shareholders under these leases were Richard Burbage, Cuthbert Burbage, John Heminges, Henry Condell, William Sly (d.1608), William Shakespeare (1564-1616) of Stratford upon Avon and Thomas Evans (d.1633?), gentleman. William Sly had died in 1608, and his share had apparently been surrendered to Richard Burbage by his executrix, leaving only six shareholders on 8 February 1610 when Robert Keysar filed his bill of complaint.

Of the remaining six shareholders, Keysar sued only four – Richard and Cuthbert Burbage, John Heminges and Henry Condell. The other two shareholders, William Shakespeare of Stratford upon Avon and Thomas Evans, were not named as defendants because Keysar's claim was only against those shareholders -- the Burbages, Heminges and Condell – whom he alleged had made promises to him which had caused him to act to his detriment.

Keysar also joined a non-shareholder, Henry Evans, as a defendant. In their rejoinder, the defendants claimed that Keysar had named Henry Evans as a defendant for the sole purpose of depriving the defendants of Evans' testimony 'for fear lest that he, knowing the truth of all the said complainant's untruths, should discover more than the complainant would willingly have known'.

Keysar claimed a one sixth interest under an earlier 21-year lease of the Blackfriars which had been granted by Richard Burbage to Henry Evans. Keysar claimed that Henry Evans had sold part of all of his interest in that 21-year lease to the poet and playwright John Marston (1576?-1634), who had since become a clergyman, and that he, Keysar, had purchased for £100 Marston's interest in the lease, as well as Marston's one sixth interest, conveyed to him by Henry Evans and others, in 'certain goods, apparel for players, properties, play-books and other things then and still used by the Children of the Queen's Majesty's Revels in and about their plays, interludes and other exercises by them to be acted, showed, exercised or done in the said great hall or room [at the Blackfriars]', as well as a one sixth interest in the profits from the Blackfriars playhouse.

According to the defendants (1) Henry Evans was legally precluded under the terms of his earlier 21-year lease from selling any interest in it to a third party, (2) there was no documentary evidence that Henry Evans had in fact sold any interest in his earlier 21-year lease to Marston, or that Marston had sold any interest to Keysar, and (3) Henry Evans had already surrendered his earlier 21-year lease to Richard Burbage ‘about the tenth of August last past’ [=10 August 1609] in return for ‘some competent consideration’ given to him. It thus seems that Keysar’s claim to a one-sixth interest in the Blackfriars was without legal merit, and it follows that his claim that he had relied on promises from the Burbages, Heminges and Condell before proceeding with his alleged purchase of a one-sixth interest from Marston was similarly without legal merit since there was apparently no indenture in existence to establish that Keysar had in fact purchased any interest from Marston. It should be noted that in his answer to a petition to the Lord Chamberlain in 1635, Cuthbert Burbage confirmed the repurchase of Evans’ lease (‘it was considered [the Blackfriars] would be as fit for ourselves, & so purchased the lease remaining from Evans with our money, & placed men players, which were Heminges, Condell, Shakespeare etc’). See LC 5/133, pp. 44-51.

After the pleadings had closed, Cuthbert Burbage filed an affidavit indicating that he and the other defendants would call as witnesses John Marston, Henry Evans, Nathaniel Field, John Underwood, William Ostler, William Baxtead, Philip Rosseter and Margaret Hawkins. It appears that this list of witnesses caused Keysar to realize the futility of his claim. The case was likely settled out of court, as there is no record of further proceedings.

For further discussion of the case, see Smith Irwin, *Shakespeare’s Blackfriars Playhouse*, (New York University Press, 1964), (pp. 193-6).

The ‘Mr Rosseter’ mentioned in the documents below as Robert Keysar’s partner was the lutenist, composer and theatre manager Philip Rosseter (c.1568–1623). The ‘William Baxtead’ who was to be called as a witness according to Cuthbert Burbage’s affidavit was the actor and poet William Barksted [Backsted, Baxter] (fl. 1607–1630), for whom see the entry in the *Oxford Dictionary of National Biography*, available online.

For a discussion of the case, see Corrigan, Brian Jay, *Playhouse Law in Shakespeare’s World* (Cranbury, NJ: Rosemont Publishing and Printing Corp., 2004), pp. 93-5. See also Leinwand, Theodore B., *Theatre, Finance and Society in Early Modern England*, (Cambridge University Press, 1999), pp. 136-7; and Ingram, William, ‘Robert Keysar, Playhouse Speculator,’ *Shakespeare Quarterly* 37 (1986):476-85, all available online.

[Bill]

Endorsed: viijo die ffebruarij Anno Regni Regis Iacobj Anglie etc septimo et Scotie xliijeo [=8 February 1610]

Defendentes vocentur per Mandatum nuncij Camerae

To the King's most excellent Majesty

Humbly complaining showeth unto your most excellent Majesty your Highness' loyal and obedient suppliant, Robert Keysar, citizen and goldsmith of London, that whereas one Richard Burbage, gentleman, was and still is seized of an estate of inheritance in fee or fee tail of and in an [sic] one great hall or room, with certain rooms over the same, set and being in the Blackfriars, London, erected, furnished and built with stage, galleries and seats, and being so seized did for the term of twenty and one years demise the same to one Henry Evans at the yearly rent of forty pound, quarterly to be paid during the said term, which in effluxion of time is not yet expired by many years;

By force and virtue of which said lease he, the said Henry Evans, did thereinto enter and was thereof lawfully possessed, & being thereof so possessed, he, the said Henry Evans did, for good and valuable consideration, afterwards grant all or some part of the said term, the certainty your suppliant knoweth not, to one John Marston, gentleman, who by force and virtue thereof did enter in and upon such part and so much thereof as was meant and intended to be to him granted, and was accordingly thereof possessed;

And being so possessed, and having also one full sixth part of and in certain goods, apparel for players, properties, play-books and other things then and still used by the Children of the Queen's Majesty's Revels in and about their plays, interludes and other exercises by them to be acted, showed, exercised or done in the said great hall or room or elsewhere by good conveyance from the said Evans and others, for the full value of which said goods and premises was, at a very low and reasonable appraisement, worth six hundred pound at the least, he, the said John Marston, and your now suppliant did fall into speech and communication touching the buying of his, the said John Marston's right, title and interest of, in and to the full sixth part of the lease aforesaid & of all & singular his right & interest of, in & to the said sixth part of the said goods, apparel for players, properties, play-books and other things which then he had or which afterward was to be had by reason of his joint partnership with others therein, and of the sixth part of all the profit and commodity to be made thereof and thereby during the continuance of the said lease;

And in the end it was fully concluded and agreed by and between your said suppliant and the said John Marston that for and in consideration of one hundred pounds to be in hand paid by your said suppliant to the said Marston for the full sixth part of all and singular the premises, he, the said Marston, should convey his right and interest therein and thereunto to your said suppliant;

But your said suppliant understanding that there were divers partners in the said lease, goods and profit to be made as aforesaid, and fearing that by some practice and confederacy between the said Richard Burbage, Henry Evans and then [sic?] your suppliant might be defeated and cozened of all or of the greatest part thereof, and withal having heard some rumours and flying speeches to that purpose which did increase his

fear, your said suppliant did make his repair to the said Richard Burbage, and unto one Cuthbert Burbage, John Heminges, Henry Condell & others, being all partners, and the only partners that might prejudice and wrong your suppliant in the premises, and told them that he had concluded and agreed with the said Marston for a full sixth part in the premises, and that he had or was presently to pay to the said Marston one hundred pounds for the same, and both prayed them and told them that he hoped they would take no such deceitful and injurious courses to hurt or hinder him as had been reported and bruited abroad that they or some of them would, whereunto they all replied that they had intelligence that he, your said suppliant, had concluded with the said Marston as aforesaid, and that he either had or was then shortly to pay to the said Marston one hundred pounds for his sixth part in the premises as aforesaid, and withal promised to your said suppliant at the same time, and told him that notwithstanding that the said Henry Evans had been treating and persuading with them to some such act as might tend to his hindrance and loss therein, yet that they would never yield to any such matter until all partners and parties interested in the said lease, goods & profits to be made as aforesaid were fully satisfied and paid whatsoever was to them due in law or conscience, or words to the same effect;

And upon this faithful promise so generally made by them all, your suppliant did pay his said one hundred pound to the said Marston, and the rather because if your suppliant would have joined to have sold his said sixth part with others that had equal interest therein, they did then offer to have given four hundred pound for the same;

Notwithstanding all which, and that your suppliant had endeavoured to prevent all dishonest practice by repairing to them as aforesaid, and that they had by their faithful promises and offers encouraged your suppliant to proceed and to pay his money, yet notwithstanding, and by the giving of some small piece of money to the said Henry Evans to the end that he would surrender up the original lease to the said Richard Burbage, which he, the said Burbage had made formerly to the said Henry Evans of the said hall & rooms in the Blackfriars as aforesaid, he, the said Evans, did surrender the same, by means whereof they, the said Richard Burbage, Cuthbert Burbage, John Heminges, Henry Condell and others, have entered in and upon the said playhouse, and all the said goods, apparel and premises, and have so continued in the possession for a long time, and made profit thereof to themselves to the full value at the least of fifteen hundred pounds, a full sixth part whereof in all equity and conscience doth of right belong unto your suppliant, but being unjustly kept out of possession, hath not been by them, nor any of them, permitted to do or perform that which for his rateable part he ought and was most ready and willing to have done;

In tender consideration whereof, and because they, the said Evans, Richard and Cuthbert Burbage, John Heminges, Henry Condell and divers others do well know that your said suppliant did pay his said one hundred pound to no other end but to have had & enjoyed his said bargain, and that he hath no means to recover the same against anybody but such as have unjustly defrauded him, and that they only are the said parties and no other, and because your said poor suppliant, in hope to have enjoyed his said bargain, hath kept boys these two years to his exceeding charge, of purpose to have continued plays in the

said house upon the ceasing of the general sickness, and hath disbursed by that means and by making provision in the said house for the purpose aforesaid, five hundred pound, and all the said parties upon the repair of your suppliant unto them, and acquainting them with that which he had in purpose to do, and with that which had been rumoured abroad concerning their intention to do him wrong in the premises, and his earnest request unto them not to prejudice him therein, did faithfully promise your suppliant not to join in any act to the hindrance of any man until all men interested therein had satisfaction, and that upon the said faithful promise your suppliant did conclude and pay his said hundred pound, and because if remedy be not had in this honourable court for your suppliant's enjoying the said full sixth part of the said goods, apparel and the premises, with a full sixth part of all the profit made in this meantime, that then your suppliant shall lose his said hundred pound so long forborne, and all the charges that he hath been at with boys, and making provision to the value of five hundred pound as aforesaid, it will tend to his exceeding great charge for that he is void of all remedy at [-at] the common law, either against the said Marston or any other of the said parties, that therefore your Majesty will be graciously pleased, in a case of such nature and consequence, to grant to your said suppliant your Highness' writ of privy seal, or the messenger of the court to call into this honourable court the said Richard Burbage, Henry Evans, Cuthbert Burbage, John Heminges and Henry Condell, commanding them and every of them by a certain day, and under a certain pain therein to be limited, to be and appear in this honourable court of Whitehall before your Majesty & your Highness' Council of the said court, then and there to answer to the premises, and further to stand to and abide such further order and direction thereupon as to your Highness' Council of the said court shall seem to be agreeable to equity and good conscience, & your Highness' said suppliant shall, as he is nevertheless bound, pray to God for your Highness' long life and happy reign over us.

Ralph Wilbraham

[Answer]

xijo die februarij Anno Regni Regis Iacobi Anglie ffrancie et Hibernie septimo et Scotie xliijo [=12 February 1610]

The joint and several answers of Richard Burbage, Cuthbert Burbage, John Heminges and Henry Condell, four of the defendants to the bill of complaint of Robert Keysar, citizen and goldsmith of London

The said defendants and each of them, saving unto him and themselves at all times hereafter all advantages of exception unto the uncertainties and insufficiencies of the said bill of complaint, for full and perfect answer unto the said bill or so much thereof as any way concerneth them, the said defendants, or any of them, they, the said defendants, and each of them for himself, saith that the said bill of complaint, as they are verily persuaded, is only preferred against them for molestation and vexation's sake, and thereby

to put these defendants to unnecessary and great charges in suits of law without just cause so to do;

And further they, the said defendants, for themselves and each of them for himself, saith that true it is, as they and each of them believe and are verily persuaded, that the said Richard Burbage is seized of and in an estate of inheritance of and in all that great hall or room with certain other rooms over the same set and being in the Blackfriars in London erected, furnished and built with stage, galleries and seats, as in and by the said bill of complaint is set forth and declared;

And the said Richard Burbage for himself saith that true it is that he, the said Richard Burbage, did heretofore, for the term of one and twenty years, demise the same unto the said Henry Evans, one other of the defendants in the said bill of complaint named, at the yearly rent of forty pounds, to be paid quarterly during the said term, which said term of one and twenty years is not yet expired, by force and virtue of which said lease he, the said Henry Evans, did enter in and upon all and singular the said premises, and was thereof lawfully possessed, as in and by the said bill of complaint is set forth and alleged, but whether the said Henry Evans did, for good and valuable consideration (or any consideration at all) grant all or any part of the said term unto John Marston, gentleman, in the said bill of complaint named, or whether the said Marston by force or virtue of any such grant entered into or upon such or any part of the premises, as in and by the said bill of complaint is supposed, these defendants or any of them cannot certainly depose for that they nor any of them were at any time present at privy consenting, or acquainted with any dealings and bargains made or supposed to be made by or between them, the said Henry Evans and John Marston, neither do they or any of them know that the said Marston had any such, or any part at all, in all or any the goods, apparel for players, properties, play-books and other things then, now or at any time used by the Children of the Queen's Majesty's Revels in and about their plays, interludes and other exercises by them to be acted, showed, exercised or done in the said great hall or room or elsewhere, as in and by the said bill of complaint is suggested;

And these defendants utterly deny, and every one of them for and by himself utterly denieth, that the said complainant did at any time repair or come unto these defendants or any of them and acquaint or tell them that he, the said complainant, had concluded and agreed with the said Marston for a full sixth part in the premises, and that he had, or was presently to pay to the said Marston one hundred pounds for the same, or used any such communication to or with all or any the said defendants, or that they or any of them made him, the said complainant, any such promise, or replied as in [+and] by the said bill of complaint is also most untruly surmised;

And these defendants also utterly deny, and every one of them for and by himself utterly denieth, that they or any of them did at any time make any such offer unto the said complainant to give him four hundred pounds or any other sum or sums of money in such manner and form as in the said bill of complaint is set forth and declared, or that they or any of them did at any time advise or encourage the said complainant, either by their or any of their promise, offers or otherwise, to proceed and to pay the said Marston the said

hundred pounds or any other sum or sums of money, as in and by the said bill of complaint is also most untruly alleged;

But these defendants say, and each of them for and by himself saith, that true it is that the said Henry Evans, having entered into one bond or obligation of four hundred pounds unto the said defendant Richard Burbage for true payment of the said rent of forty pounds per annum, and into divers covenants for reparations to be done in and upon the premises and performance of other matters agreed by and between them, the said Richard Burbage and Henry Evans, as by the said bond & indenture of lease, whereunto these defendants for the more certainty do refer themselves, doth and may appear, and that by reason the said premises lay then, and had long lain void and without use for plays, whereby the same became not only burdensome & unprofitable unto the said Evans, but also ran far into decay for want of reparations done in and upon the premises, they, the said defendants, or some of them, entered into communication with the said Henry Evans, as well for satisfaction of the said bond & covenants then forfeited unto the said Richard Burbage as for the repairing of the premises & so maintaining the same for & during the time to come unexpired demised in and by the said lease in due and necessary reparations, which he, the said Henry Evans, finding himself, as these defendants are verily persuaded, unable to perform, and being unwilling any longer to charge himself with so great and unnecessary a burden, he, the said Evans, began to treat with the said Richard Burbage about a surrender of the said Evans' lease, which finally, for and in regard of some competent consideration given him in recompense of his, the said Evans', charge formerly bestowed in buildings in & about the premised [sic], was accomplished, and the said Evans' whole estate of, in & to the premises was surrendered by the said Evans unto the said Burbage, who accepted the same surrender accordingly (without knowing of or intending to prejudice the estate of the said Marston or the complainant, or either of them), as he hopeth it lawful was for him to do, especially the premises being in such decay for want of reparations as then they were;

& the said defendants confess that true it is that sithence the said surrender made by the said Evans to the said Richard Burbage as aforesaid, which was about the tenth of August last past [=10 August 1609], they, the said defendants, have entered into, occupied & enjoyed the said great hall or playhouse, & taken the benefit & profit thereof, & have rejected the said complainant from intermeddling with them in any sort, as they hope, under favour of this honourable court, it lawful was & is for them to do;

But they, the said defendants, & every of them for himself, do utterly deny that they or any of them have at any time intermeddled with, had, enjoyed or received any the goods or apparel mentioned in the said bill of complaint, or have at any time converted them or any of them to their or any of their own use, uses, benefit or behoof;

Without that that to the knowledge of these defendants or any of them the said goods & premises were at any time worth at a low & reasonable appraisement the value of six hundred pounds at the least;

Or that the said complainant paid in hand one hundred pounds to the said Marston for the full sixth part of all & singular the premises, or that these defendants have made fifteen hundred pounds' profit of and by the premises at any time since the said surrender made as aforesaid;

Or that the said complainant did pay the said sum of one hundred pounds, if he paid any, to the said Marston to no other end but to have & enjoy his said bargain of & in the premises;

Or that the said complainant hath to that only end and purpose kept boys by the space of two years last past to his exceeding charge;

Or that the said complainant hath disbursed by that means, & by making provision in the said house for the purpose aforesaid, five hundred pounds, or any other sum or sums of money at all, as in & by the said bill of complaint is suggested;

And without that that any other act, matter or thing in the said bill of complaint contained & herein not sufficiently answered unto, confessed & avoided, traversed or denied, is true, all which these defendants, & each of them, are ready to aver & prove as this honourable court & the Masters thereof shall award, & therefore they most humbly pray that they may be from thence dismissed with their reasonable costs & charges in this cause most wrongfully sustained.

Vivian

[Replication]

xxijo die Maij Anno Regni Regis Iacobi Anglie ffrancie et Hibernie Octavo et Scotie xliijo
[=22 May 1610]

The replication of Robert Keysar, complainant, to the joint and several answers of Richard Burbage, Cuthbert Burbage, John Heminges & Henry Condell, defendants

This complainant doth and will aver and maintain his said bill of complaint, and that the matters therein alleged are not preferred against them or against any of them for molestation and vexation's sake, thereby to put them to unnecessary and great charges in suit of law without just cause, as by their said answer is most falsely and most vainly alleged, for this complainant is not so profuse and lavish of his expense either in law or otherwise, howsoever the defendants by their false and treacherous dealing with him in this matter whereof he now complaineth have exasperated and provoked him against them as to spend his money and lose his time upon so perfidious persons unless his complaint were just and full of equity and so to be manifested by good proof without exception;

And therefore as he, this complainant, is well able to maintain his said bill of complaint to be good, certain and sufficient and the matters therein alleged to be just and true and therefore fit to be answered unto, so on the contrary part doth this complainant aver that the defendants' said answers are very uncertain, untrue and insufficient in the law to be replied unto for many gross and apparent faults and imperfections therein most plainly appearing, the advantage and benefit of exception whereof now and at all times hereafter to this complainant saved, for replication thereunto he saith in all things as in his said bill of complaint he hath said, with this also, that the said complainant will aver and prove that the said defendants, not contenting themselves with abusing him by their encouragement to proceed with their [sic?] bargain in the said bill of complaint mentioned with the said John Marston, and so to pay his said hundred pound for the particulars in the said bill likewise mentioned, which they secretly meant and intended that he, this complainant, should never enjoy, but be by their fraud utterly defeated both of money and bargain as much as in them lay, but with an inveterate and increasing malice towards him, this complainant, they, the said defendants, intending their uttermost skill and power to supplant this complainant from having any commerce or dealing in any matters of plays or interludes, did, after such time as they had entered upon the said house and goods for which the complainant had paid as aforesaid, receive the said Evans into the said house, where they keep him secret from this complainant, & so divide & share the said goods & profits among themselves to the exceeding loss and hindrance of this complainant;

And having thereby fraudulently disappointed this complainant both of house, goods, and all his just and rightful profit to have been made thereby, then also did they, in further testimony of their malice, privately contract with the owners of all the private playhouses within the city of London for one whole year, and for the same did satisfy and pay a dead rent to the owners thereof, to their own great loss and hindrance, intending nothing thereby but the advancement of their exceeding malice to this complainant and his utter overthrow so far-forth as by any possibility lay in their power, and by that means did exceedingly hinder this complainant, who all that time had a company of the most expert and skilful actors within the realm of England to the number of eighteen or twenty persons, all or most of them trained up in that service in the reign of the late Queen Elizabeth for ten years together, and afterwards preferred into her Majesty's service to be the Children of her Revels by a patent from his most excellent Majesty, but kept and maintained at the costs and charges of this complainant until now, by the malicious practices of the defendants as aforesaid, they are enforced to be dispersed and turned away, to the abundant hurt of the said young men, the disappointing of her Majesty's said service, and to the loss and hindrance of this complainant at least of one thousand pounds, all which things being advisedly considered and compared together, this complainant doubteth not but this court will thereof take honourable and just consideration for this complainant's relief against the malicious enterprises and injurious oppressions to him offered by the said defendants;

Without that that the said defendants or any of them were or is ignorant that the said Henry Evans in the bill and answer mentioned did grant all or any part of the term in the bill mentioned to the said John Marston for good and valuable consideration or for any

consideration at all, or were doubtful whether the said John Marston by force of any grant from the said Henry Evans did enter upon the premises, as by their said answers they do most untruly pretend;

And without that that the said defendants or any of them were ignorant that the said John Marston had any such or any part at all of, in or to the said house or room in the bill mentioned, or of, in or to any the goods, apparel for players, properties, play-books and other things, as by their said answers they do most falsely and subtly pretend;

And without that that this complainant did not repair and come unto the said defendants, and acquaint and tell them that he had concluded and agreed with the said John Marston for a full sixth part in the premises, and that he had, or was presently, to pay to the said John Marston one hundred pounds for the same, and that thereupon they did not make any such promise or reply as they, the said defendants, in their said answers have most falsely and untruly deposed;

And without that that the said defendants did not then offer to give four hundred pound to this complainant, or that they did not advise and encourage this complainant to pay the said hundred pound to Marston as aforesaid, as by their said answers is most untruly alleged;

And without that that the surrender made by the said Evans to him, the said Burbage, was truly and bona fide in respect of any the pretences and probable shows in the said answers mentioned, but only of malice and purpose to defraud, deceive and disappoint this complainant of his said bargain therein, and to the very end that he might be cozened of his said hundred pound so far-forth as their malice and faithless dealing could help and induce thereunto;

And without that that they, the said defendants, or some of them, have not since the payment of the said hundred pounds to the said Evans [sic?], and since the promise made by the defendants or some of them to this complainant, and their encouragement by them used for his, this complainant's, proceeding and concluding in the said bargain as aforesaid, have not intermeddled with, had, enjoyed or received any the goods or apparel in the bill mentioned, or converted the same or any part thereof to their or any of their use or uses, as by the said defendants is most falsely denied;

And without that that any other matter or thing material or effectual in law to be replied unto in the said defendants' answers contained, and not herein sufficiently replied unto, confessed and avoided, traversed or denied, is true, all which matters this complainant is ready to aver and prove as this honourable court shall award, and prayeth as before in his said bill of complaint he hath prayed.

Ralph Wilbraham

[Rejoinder] NOTE: REJOINDER HAS BEEN CHECKED

xixo die Junij Anno R{eg}ni R{egis} Iacobi Angl{ie} ffr{ancie} et hib{er}nie octauo et Scotie xliijo [=19 June 1610]

The rejoinder of Richard Burbage, Cuthbert Burbage, John Heminges and Henry Condell, defendants, to the replication of Robert Keysar, complainant

1 The said defendants for rejoinder unto the said complainant's replication say, and each of them for and by himself saith, in all and every thing and things as in their said answers they have said, and do and will aver, justify, maintain and prove the same and all and every thing and things, clause, sentence, article and allegation therein contained to be good, just and true, certain and sufficient in the law to be replied unto in such sort, manner and form as the same be therein most truly set forth and declared;

And these defendants further say, and each of them for and by himself saith, that the said replication of the said complainant is very incertain, scandalous, untrue and insufficient in the law to be rejoined unto for many apparent faults, imperfections, slanders and absurdities therein contained, and that the same is so made and contrived of mere malice and spleen by the said complainant for the causes in the said answer expressed, and to the end to give some colour, or rather shadow, for the maintenance of the said complainant's bill without just cause in this honourable court, to the unjust scandal and vexation of these defendants, as may appear, for that the said complainant's bill and the matters for which he therein complaineth and for which he principally seeketh to be relieved in this honourable court consisteth chiefly in these two parts:

First to obtain an interest in and to one-sixth part of the said playhouse or great room & galleries used for playing in the said complainant's bill mentioned, which, as the said complainant suggesteth, he bought of one John Marston, gentleman, in the bill named, which Marston, as also the said complainant (though untruly) suggesteth had the same passed unto him from Henry Evans in the said bill also mentioned, unto which said first part these defendants & every of them for & by himself saith that the said Henry Evans never granted, assigned or set over any such estate or term at all of, in or unto the said house, room or galleries unto the said John Marston as in and by the said bill of complaint is supposed, or any other estate or term of, in or unto the said house, room or galleries, neither could he so have done if he would but the same was & would have been presently void for that, as these defendants by their learned counsel are informed, he, the said Henry Evans, was restrained in & by his said lease had from this defendant, Richard Burbage, from granting, assigning or putting away the premises or any part thereof for any term whatsoever or unto any person whatsoever, neither did the said Marston, as these defendants are credibly informed & do verily believe to be true, sell, grant or assign any part at all in the said house, room or galleries unto the said complainant, neither is there any mention at all made thereof in any deed or writing made or passed from the said Marston unto the said complainant, as these defendants are credibly informed and do verily believe to be true, so as then, for the said first & most principal part of the said bill,

the said complainant hath no just cause to clamour, scandalize or complain against them, these defendants;

And as touching the second main part of the said complainant's bill of complaint by which he also claimeth to have from these defendants one full sixth part of the apparel, goods, play-books, properties for plays & other like things complained of in the said complainant's bill, these defendants say, & each of them for & by himself saith, that they nor any of them now have or at any time had any part or portion of the said goods, apparel, play-books, properties & other like things mentioned in the said bill of complaint, neither did they or any of them ever meddle or have to do with them, or claim or have any interest, use or property of, in or to them or any of them, but these defendants confess that they have heard that they are in the keeping of the said Henry Evans, who hath caused the same to be appraised by honest & indifferent men & hath made & taken a true inventory of them, as these defendants have likewise heard, according whereunto he always was, & yet is, ready to deliver such part & portion thereof unto the said complainant as his part shall or may amount unto, by both which said parts of the said complainant's bill, the malice, idle humour & causeless vexation, together with the slenderness of cause & malicious spleen of the said complainant towards the said defendants do most clearly declare & show themselves;

And these defendants further say, & each of them for & by himself saith, under favour of this honourable court, that they much marvel that the said complainant should desire so apparently to set forth his folly on record as to charge these defendants in & by his said replication with malice towards him in contracting privately with the owners of all the private playhouses within the city of London for one whole year, & for the same to pay a dead rent to the owners thereof, to these defendants' own great loss & hindrance, but to the intent only thereby to advance their malice & to overthrow the said complainant only so far-forth as by any possibility lay in their power, whenas the said complainant might in truth thereby, if the said suggestion were true, be perfectly persuaded & assured that these defendants should be not only malicious, as he, the said complainant most injuriously suggesteth, but also malicious fools, if to do the complainant a little hurt, if they might, which also must needs be uncertain to them, they, the said defendants, should do themselves a far greater & more certain loss;

And whenas also the contract made with the owners of the said private playhouses, if any such were, hath always been so far from the overthrow, hindrance or loss of the said complainant that the same hath always been & yet is as well to & for the use, benefit & profit of the said complainant himself & his partners according to the said complainant's part & rate as to the benefits of these defendants or any of them according to their several parts & rates, as these defendants have credibly heard & do verily believe, for these defendants say, & each of them for & by himself saith, that there being, as these defendants verily think, but only three private playhouses in the City of London, thone of which being in the Blackfriars & in the hands of these defendants or of their assigns, one other being in the Whitefriars in the hands or occupation of the said complainant himself, his partners or assigns, & the third near St. Paul's Church, then being in the hands of one Mr Pierce, but then unused for a playhouse, one Mr Rosseter, a partner of the said

complainant, dealt for & compounded with the said Mr Pierce to the only benefit of him, the said Rosseter, the now complainant, the rest of their partners & company (& without the privity, knowledge or consent of these defendants or any of them, & that thereby they, the said complainant & the said Rosseter & their partners & company, might advance their gains & profit to be had & made in their said house in the Whitefriars), that there might be a cessation of playing & plays to be acted in the said house near St Paul's Church aforesaid, for which the said Rosseter compounded with the said Pierce to give him, the said Pierce, twenty pounds per annum, but these defendants afterwards coming to play at their said house in the Blackfriars, and the said Rosseter perceiving that the benefit of the said cessation of plays at Paul's did or was likely to turn as well to the benefit of these defendants and their company as to the benefit of the said complainant, the said Rosseter & the rest of their company, & yet that the whole matter of charge for payment of the said twenty pounds per annum was of necessity to lie only on the said complainant, the said Rosseter & the rest of their company, he, the said Rosseter, came unto these defendants or some of them, & entreated them that for the ease & benefit of the said complainant & his company & partners, who find themselves thereby overcharged & aggrieved, they, the said defendants, having, as he alleged, as great benefit as themselves, & yet were bound to nothing, would nevertheless be content to bear & pay one half of the charge of the said rent of twenty pounds per annum, whereunto these defendants, in all love, & as well for the benefit of the said complainant according to his part as of any other person or persons, willingly did yield, & accordingly have paid their part of the said rent, wherein also the malice & ingratitude of the said complainant is most perspicuous & plain, who can be contented to receive daily benefit not only by the cessation of the plays in the said house near Paul's but also out of these defendants' purses in ready money, & yet cannot bridle his envy toward these defendants, but ceaseth not, most unchristianlike, to charge them with falsehood, cozenage, treachery, perfidiousness, malice, fraud, practice to the overthrowing of the complainant's estate, injurious oppression & many other lewd & slanderous supposals, whereas in truth, & as by the premises plainly may appear, he, the said complainant, hath no just cause of suit, much less any cause at all to use or set forth any such scandalous & vile speeches against these defendants or any of them as in & by the said complainant's bill & replication are set forth, uttered & declared;

Without that that these defendants or any of them have or did at any time receive or keep the said Evans secret from the said complainant & so divide & share the said goods and profits amongst themselves, as in & by the said replication is most untruly surmised, but rather, to the contrary, these defendants verily think that the said complainant surceaseth & in truth never meant to proceed against the said Evans for fear lest that he, knowing the truth of all the said complainant's untruths, should discover more than the complainant would willingly have known, and yet the complainant, by inserting his name into the said bill of complaint, thinketh to take away the said Evans his testimony from these defendants, which these defendants hope, under favour of this honourable court, shall not be permitted;

And without that that the said complainant had at any time, to these defendants' knowledge, any such company of the most expert & skilful actors within the realm of

England to the number of eighteen or twenty persons kept & maintained at the costs & charges of the complainant, or that they were dispersed by the malicious practices of these defendants, as in & by the said replication is surmised, for that these defendants have heard it credibly reported & do verily believe it to be true that those actors which he, the said complainant, had & kept, although none such either of quality or number as in & by the said replication is surmised, were dispersed & driven, each of them, to provide for himself by reason that, the plays ceasing in the City of London either though sickness or for some other cause, he, the said complainant, was no longer able to maintain them together, which ought by no means, for the reasons above declared, to be imputed unto any fault in these defendants;

And without that that the said complainant hath lost, by the dispersing of the said company, at the least one thousand pounds, as in & by the said replication is most untruly & vaingloriously surmised only to raise the credit of his estate, which these defendants verily think was never so good as to be able to disburse so great a stock as could have brought him in so great a benefit;

And without that that any other matter, thing or things, clause, sentence, article or allegation in the said replication contained, specified or declared, material or effectual in the law to be rejoined unto by these defendants, & not here in this rejoinder sufficiently rejoined unto, confessed & avoided, traversed or denied, is true, all which matters & things these defendants are ready to aver & prove as this honourable court shall award, & therefore they, the said defendants, pray as before in their said answer they have prayed.

Vivian

[Court of Requests, Note Book, 6-8 James I (Miscellaneous Books, 152) f. 260]

Termino Paschae Anno Regni Regis Iacobi Anglie ffrancie et hibernie 8o et Scotie 43o, viz.

Monday the xxjth day of Maij and the last day of this present term

Robert Keysar vs Richard Burbage et al

The defendants upon notice t' examine their witnesses that the cause may come to hearing the next term if the defendants the first of the next term show not cause. Mr Wilbraham, counsel etc.

[Court of Requests, Decrees and Orders, Easter, 8 James I (Miscellaneous Books, 25) p. 164]

21o Maij A {nn}o 8o et 43o

Keysar, Burbage

In the cause at the suit of Robert Keysar, plaintiff, against Richard Burbage & others, defendants, upon the motion of Mr Wilbraham, of counsel with the said complainant, it is ordered that the said defendants, having convenient notice of this order, shall at their perils examine all such witnesses as they intend to use in this cause, that the matter may come to hearing in this court the next term if they, the said defendants, shall not upon the first day of next term show sufficient cause to the contrary.

[Court of Requests, Note Book, 6-8 James I (Miscellaneous Books, 152) f. 264]

Termino Sanctae trinitatis Anno Regni Regis Iacobi Anglie ffrancie et hibernie Octavo et Scotie xliijtio, viz

Saturday, the 9th of June

Robert Keysar versus Cuthbert Burbage et al make affidavit of necessity of witnesses, setting down their names, and that their desire of further time is not for delay, shall have day to examine till the first of the next term, and publication the sixth of the same, notwithstanding former order. John Walter, counsel defendants, in presence of Mr Wilbraham.

[Court of Requests, Decrees and Orders, Trinity Term, 8 James I (Miscellaneous Books, 25) p. 232]

[The Court's order written out by the clerk in full from the preceding minute]

Termino Trinitatis Anno Regni Regis Iacobi octavo

Nono die Junij A {nn}o preadicto

Keysar, Burbage

Touching the cause at the suit of Robert Keysar, complainant, against Cuthbert Burbage and others, defendants, upon the motion of Mr John Walter, of counsel with the said defendants, it is ordered in presence of Mr Wilbraham of the plaintiff's counsel, any former order notwithstanding, that the defendants, upon affidavit to be made that they have material witnesses t' examine in this cause, setting down their names and dwelling places, and that their desire of further time t' examine them is not for any wilful delay to the cause, shall have day t' examine their said witnesses until the sixth day of the next term, and publication shall be in the same cause granted, & not before.

[Court of Requests, Affidavits, 6-9 James I (Miscellaneous Books, 127)]

Termino Trinitatis A {nn}o Regni Regis Jacobi Anglie ffrancie et hibernie octavo et Scotie xliijo 1610

xviiijo die Junij A {nn}o etc. 8 et 43 [= 18 June 1610]

Cuthbert Burbage of the parish of St. Leonard's, Shoreditch, in the county of Middlesex, gentleman, sworn, saith that he & the rest of the defendants in this honourable court at the suit of Robert Keysar have material witnesses to examine in the said cause, and that the said defendants do not nor have desired any further time to examine their said witnesses for any wilful delay to the said cause, and further that such witnesses as they now intend to examine are these whose names follow, that is to say, John Marston of Barford in the county of Wiltshire, clerk; Henry Evans of the Blackfriars in London, gentleman; (blank) his wife, now not in London; Nathaniel Field, John Underwood, William Ostler and [William] Baxtead of London, gentleman(?), Philip Rosseter of the Whitefriars, London, gentleman, & Margaret Hawkins of London, widow.