

SUMMARY The documents below are the pleadings and orders in a lawsuit brought in the Court of Requests by John Witter against John Heminges (1566-1630) and Henry Condell (1576?-1627) in 1619.

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. 305-336, available online at:

<http://www.archive.org/details/universitystudie101910univ>.

The complainant, John Witter, had married Anne, the widow and executrix of Augustine Phillips (d.1605), and in his bill claimed a one-sixth interest in the galleries of the recently rebuilt Globe through an assignment from Anne as executrix, and a similar one-sixth interest in the gardens belonging to the same by force of a lease made to him by Nicholas Brend (d. 12 October 1601).

The position taken by John Heminges in his answer was that Augustine Phillips did not hold his interest at his death directly from Nicholas Brend by the lease made 21 February 1599, because under that original lease Augustine Phillips, William Shakespeare of Stratford upon Avon (1564-1616), Thomas Pope (d.1603), John Heminges and William Kempe had held one moiety as joint tenants with Cuthbert Burbage (1564/5-1636) and Richard Burbage (1568-1619), who held the other moiety, but the original joint tenancy was broken shortly after the making of the original lease from Nicholas Brend by a transfer by Phillips, Shakespeare, Pope, Heminges and Kempe of their moiety to two trustees, William Leveson (d.1621) and Thomas Savage (d.1611), who then transferred to each of them separately a fifth part, with the result that Phillips, Shakespeare, Pope, Heminges and Kempe thereafter held the moiety among themselves by joint tenancy, each of them having a one-fifth part of the moiety, but that they now held as tenants in common with the holders of the other moiety, Cuthbert Burbage and Richard Burbage.

As indicated in the answer of John Heminges and Henry Condell below, William Kempe left the King's Men shortly thereafter, assigning his one-fifth share to three of the four others, Phillips, Shakespeare and Heminges, but excluding Thomas Pope. One inference which could be drawn from this fact is that a quarrel between Kempe and Pope precipitated Kempe's decision to leave the Lord Chamberlain's Men. On the other hand, it may be that Kempe actually did assign his share to all four of his fellow shareholders, including Pope, and that in writing up the statement of defence in TNA REQ 4/1/2 the lawyer inadvertently omitted Pope's name.

Phillips, Shakespeare and Heminges then assigned the one-fifth share received by them jointly from Kempe to the London mercer Thomas Cressey (d.1604) (for his will, see TNA PROB 11/104/462, who reassigned it back to all four of them, Phillips, Shakespeare, Heminges and Pope, with the result that they all held their original one-fifth parts in the moiety as joint tenants, and also held as joint tenants a one fourth part of a

fifth part in the moiety (i.e. Kempe's former share). However they held as tenants in common with Cuthbert and Richard Burbage, who had the other moiety between them.

For further discussion of the legal issues, see Corrigan, Brian Jay, *Playhouse Law in Shakespeare's World* (Cranbury, NJ: Rosemont Publishing and Printing Corp., 2004), pp. 64-9 at:

<https://books.google.ca/books?id=5FoVUIYGXdgC&pg=PA68&lpg=PA68&dq=%22Playhouse+Law+in+Shakespeare%27s+World%22+%22Basil%22&source=bl&ots=gmbfmpVzb6&sig=dSg6ie1FBWckBEPxvbg8tFsiXI4&hl=en&sa=X&ved=0CBwQ6AEwAGoVChMI1YOP77CzyAIVSqSICCh24UgGF#v=onepage&q=%22Playhouse%20Law%20in%20Shakespeare%27s%20World%22%20%22Basil%22&f=false>.

Thomas Pope died in 1603. In his will, dated 22 July 1603 and proved 13 February 1604, he left his share in the ground lease of the Globe to Mary Clark (alias Wood) and Thomas Bromley, a minor whose interest was administered by Pope's executor, Basil Nicoll (1576-1648), a London scrivener and member of the Company of Haberdashers. Mary Clark (alias Wood) later married the actor John Edmonds. Nothing further is known of Thomas Bromley. It seems possible that Mary Clark was Pope's mistress, and Thomas Bromley his illegitimate son by her. For the will of Thomas Pope, gentleman, of St Saviour, Southwark, see TNA PROB 11/103/226. For the wills of Basil Nicholl and his father, the notary public William Nicholl, see TNA PROB 11/206/9 and TNA PROB 11/150/147.

As mentioned above, Augustine Phillips died in 1605, leaving a third of his goods to his wife, Anne. The will of Augustine Phillips, gentleman, of Mortlake, Surrey (see TNA PROB 11/105/387), was proved by Anne as executrix on 13 May 1605. However Phillips had stipulated in his will that Anne would cease to be his executrix if she were to remarry, and at an unknown date she married the complainant, John Witter, and assigned Phillips' interest in the lease of the Globe to Witter, although whether she elected to take Phillips' interest in the lease of the Globe as part of her one-third interest under the will, or whether she made the assignment as executrix before or after her marriage to Witter is unclear.

At some point shortly afterwards, as stated by John Heminges in his answer below, Witter and his wife Anne joined Heminges, Shakespeare, Basil Nicoll (representing Thomas Bromley) and Mary Clark in dividing their four shares in the moiety into six parts, and granting a sixth part to William Sly (d.1608) and a sixth part to Henry Condell, with the result that in late 1605 or early 1606 there were now six shareholders, each holding a one sixth interest as joint tenants in the moiety.

In 1606, as noted in the documents below, John Witter and his now wife, Anne, mortgaged their interest to John Heminges, but later redeemed it.

Anne's remarriage having nullified her executorship, on 16 May 1607 Phillips' will was proved a second time by the oath of John Heminges. See Honigmann, E.A.J. and Susan

Brock, *Playhouse Wills 1558-1642*, (Manchester: Manchester University Press, 1993), p. 74. After having been granted administration, Heminges entered into the fifth part which had formerly belonged to Augustine Phillips and which had been assigned in 1605 by Anne as executrix to her new husband, John Witter, taking the rents and profits, and paying legacies due under Augustine Phillips' will. On 10 February 1611, while Heminges was in possession of their one-fifth interest, Anne and her husband John Witter released all actions, debts and accounts against John Heminges by deed poll, and four days later, on 14 February 1611, leased a sixth part interest from Heminges, as administrator of Augustine Phillips' will, for 18 years at a yearly rental of £24 2d, and with the proviso that they pay certain legacies due under the will.

A lawsuit brought by Thomasina (nee Heminges) Ostler against her father, John Heminges, in 1616 (see TNA KB 27/1454/1, m. 692) confirms that a year later, on 20 February 1612, the moiety was divided into six equal parts, of which Basil Nicoll, John Edmonds & Mary, his wife, had one equal sixth part, William Shakespeare had one other equal sixth part, John Witter had one other equal sixth part, and John Heminges and Henry Condell had three equal sixth parts. It thus appears that after William Sly's death on 14 August 1608, Heminges, or Heminges and Condell between them, had acquired Sly's share, and that an interest in Thomas Pope's former share had been conveyed to Mary Clark's new husband, John Edmonds. It also appears that Basil Nicoll was still representing the interest of Thomas Bromley, who was apparently still under the age of majority.

In his answer below, Heminges states that:

[One] other sixth part of the said moiety of the said playhouse, galleries, gardens & ground, before the said playhouse was burned & consumed with fire, was absolutely sold.

Unfortunately no details of this sale are provided in Heminges' answer or in other extant documents.

According to Thomasina Heminges Ostler's bill in 1616, by indenture between Basil Nicoll, William Shakespeare, John Witter, John Heminges, Henry Condell, and John Edmonds and Mary, his wife, of the one part, and Thomasina's husband, William Ostler (d.1614), of the other part, made 20 February 1612, Nicoll, Shakespeare, Witter, Heminges, Condell, John Edmonds and Mary Edmonds divided their moiety into seven parts, and granted Ostler a seventh part.

On 29 June 1613 the Globe burned to the ground. Shortly thereafter Heminges and his 'partners' resolved to rebuild the Globe in accordance with a covenant in the original lease binding them to maintain and repair all buildings erected on the leased property. Heminges therefore sent a letter to Witter requesting that he pay £50 or £60 by a certain date as his proportionate contribution to the rebuilding. Witter failed to pay the requested sum. For that default, and for his failure to pay his portion of the rent, and to pay one of the legacies he was to have paid under the lease from Heminges of 14 February 1611, Heminges re-entered the one sixth interest he had leased to Witter and Anne and gave a

half interest in it to Henry Condell gratis, and from that point they shared the profits from it.

The rebuilding of the Globe is stated by Heminges to have cost £120, and Nathan Field (1587-1619/20) is stated to have been granted a one eighth interest in the moiety after the rebuilding, thus indicating that the moiety had been divided into eight parts. The *ODNB* states that 'By 28 April 1619 [Field] was a company shareholder', presumably in reference to the date of Heminges and Condell's lawsuit in the present lawsuit.

Anne Phillips Witter died at the house of William Smith, surgeon, of Houndsditch and was buried in St. Botolph's without Aldgate on January 26, 1617/18. See <http://www.kateemersonhistoricals.com/TudorWomenP.htm>.

Witnesses were examined in the case, but their depositions have not survived. A final decree dismissing Witter's claim against Heminges and Condell forever was issued on 29 November 1620 (see TNA REQ 1/30, f. 761).

For the lease of the site of the Globe playhouse, see also TNA C 54/1682, mm. 10-11 and documents referred to therein.

[Bill]

Endorsed: xxo die Aprilis Anno Regni Regis Jacobi Angliae ffranciae et Hiberniae xvij et Scotiae lij [=20 day of April in the year of the reign of James, King of England, France and Ireland 16 and of Scotland 52 [=20 April 1619]

Vocentur defendentes per nuntium Camerae/ Ar. Parkins

To the King's most excellent Majesty

Most humbly complaining showeth unto your most excellent Majesty your most humble subject, John Witter of Mortlake in the county of Surrey, gentleman, that whereas Augustine Phillips of London, gentleman, deceased, was in his lifetime lawfully possessed for many years then in being and yet to continue of and in a sixth part of the moiety of the galleries of the playhouse called the Globe in Southwark in the county of Surrey (sithence the death of the said Augustine Phillips consumed with fire and lately re-edified), and of divers gardens thereunto belonging and adjoining, by force of a demise or lease to him, the said Augustine Phillips, made of all the same by Nicholas Brenn of Molesey in the said county, gentleman, who was thereof seized in his demesne as of fee;

And he, the same Augustine Phillips, so being thereof possessed, in or about the month of May in the third year [=May 1605] of the reign of your Majesty made his last will and testament in writing, and thereby did constitute and make his then wife, Anne, his

executrix of his said last will and testament, and shortly after died so possessed of the said term;

And soon after the decease of the said Augustine Phillips, his said will or testament was duly proved before Sir John Bennett, knight, then judge of the Prerogative Court of the then Archbishop of Canterbury, which was the competent ordinary to whom the same did then appertain and belong of right according to your Majesty's ecclesiastical laws of your Highness' realm of England;

By virtue whereof, and of a devise or gift in and by the same will and testament to her given and devised, she, the said Anne Phillips, the executrix and relict of the said Augustine Phillips, into the said sixth part of the said galleries, ground and playhouse of the Globe and gardens entered and was thereof possessed accordingly, and did receive and take the issues, profits and commodities thereof, as well and lawful was for her to do;

And she, so being thereof, and of the other goods and chattels of her said late deceased husband which she administered, possessed, did during the time of her widowhood, that is to say, in or about the month of July in the said third year [=July 1605] of your Majesty's reign of this your realm of England sufficiently grant and assign over unto your said subject all the same term therein then to come and unexpired, together with the original lease or grant thereof unto her said late deceased husband so made and granted by the said Nicholas Brenn as is aforesaid, to have and to hold the same unto your said subject and his assigns for and during all the term and time therein then to come and unexpired;

By force whereof your said subject thereinto did enter, and was thereof possessed accordingly, and received the rents, issues and profits thereof accordingly for five years [=1605-1610], until now of late about eleven years last past [=1608] that your said subject, wanting money, was driven to mortgage the same lease and term unto John Heminges of London, gentleman, for the sum of fifty pounds, which your said subject then of him had and received upon a proviso or condition therein expressed for the repayment thereof with fifty shillings more for the use or interest thereof at the end of six months then next ensuing, all which fifty-two pounds and ten shillings the said Heminges then had and accepted of at the hands of your said subject at the said limited time according to the said proviso or condition before mentioned at such time as your subject was in prison in the King's Bench in Southwark aforesaid;

But now so it is, may it please your Majesty, that the said original lease, last will and testament, and the assignment and grant aforesaid, being by such means as is aforesaid or by some other casual means come to the hands and possession of the said John Heminges and one Henry Condell, gentleman, one of his fellows and familiar companions, being both servants to your Majesty, they, the said John Heminges and Henry Condell, by colour of having thereof, not only have wrongfully and without any just title about five years last past [=1614] entered into and upon the said sixth part of the said playhouse, ground, galleries and gardens called the Globe, but also did by like wrong and injury ever sithence and yet do detain and keep the same and all the rents, issues and profits thereof

from your said subject without any recompense or consideration to him therefore given, paid or allowed, and have made and contrived unto themselves and to divers other persons unto your said subject unknown divers and sundry subtle, secret and fraudulent estates of purpose to defraud and defeat your subject thereof and that he might not know whom to sue for the same nor against whom he might recover the premises, all which is done contrary to all right, equity and good conscience and to the undoing of your said subject, his wife and children, unless your Majesty's accustomed aid to him be therein, as it is to others in like distressed cases, extended;

In tender consideration whereof, and forasmuch as the said John Heminges and Henry Condell have hitherto denied and refused and as yet do deny and refuse to permit your said subject quietly to enjoy and possess the demised premises, or yet to redeliver unto your said subject the said original lease, last will and testament, and the assignment and grant before mentioned made by the said Anne, and satisfy your said subject for the mean profits thereof, although they, the same John Heminges and Henry Condell, and either of them have been thereunto often in friendly and courteous manner required and desired to do all the same, which they affirm and pretend by their words, speeches and actions they will still so continue their doing of, and hold perforce your said subject from and out of the same without any account, profit or commodity thereof to your said subject to be given or answered for the same;

And forasmuch as the said mortgage so made to the said John Heminges, and the payment of the said fifty-two pounds and ten shillings unto him, the same John Heminges, by your said subject was in private, and secretly had and made, and scarce any more than themselves that be now alive privy or acquainted therewith who san [sic] testify the same;

And for that also your said subject doth not know all the certainty of the said last will or testament, original lease, and the assignment thereof, nor the full substance and sure contents or certain and true dates thereof, or whether the same or any of them be contained in any chest, cupboard or trunk locked, or any bag or box sealed or otherwise;

And for that also your said subject verily hopeth and is persuaded that the said John Heminges and Henry Condell, being to answer hereunto in this court upon their oaths, will (as your subject desireth) thereby confess and acknowledge all the whole truth for and in the premises upon their oaths in their answers hereunto, whereunto they are not compellable at or by the common laws of this realm;

And forasmuch also as your said subject is not of ability and power to contend in law with the said John Heminges and Henry Condell, who are of great living, wealth and power and have many more mighty and great friends than your said subject, whereby he is and shall be destitute of all help, remedy and hope to be aided and relieved by the ordinary and strict course or rigour of the common laws and ordinary proceedings of this realm or elsewhere than by your Majesty or your Court of Requests and Council of Whitehall at Westminster usually extended to help and succour them in these and the like cases distressed or oppressed;

May it please your Highness to grant unto your said subject your most gracious writ of privy seal to be directed to the said John Heminges and Henry Condell, and to either of them, commanding them and either of them at a certain day and under a certain pain therein to be limited, to be and personally to appear before your Majesty and Council in the said honourable Court of Requests at Whitehall in Westminster, then and there to answer unto the premises and further to stand to and abide such further order and direction therein as to your Highness' said Council of the same Court shall be therein taken and thought fit to agree with equity and good conscience;

And your said subject shall, according to his duty, daily pray unto God for the long preservation, continuance and stability of your Majesty's most happy reign.

Ralph Wilbraham

[Appearance Book, 16 and 17 James I]

Liber Emptae per Petrum Langley in Termino pasche xvjto [sic?] Jacobj Regis &c

23 April 17 James I [=23 April 1619]

Johannes Heminges et Henricus Cundall generosi personaliter comparuerunt coram consilio per mandatum nostrum Camerae ad sectam Johannis Witter generosi postea viz 28o die mensis instantis admissi sunt per Lee consilio magistri Kele

[Answer]

xxviiio die Aprilis Anno Regni Regis Jacobi Angliae ffranciae et Hiberniae xvijo et Scotiae lijdo [=28 April 1619]

The joint and several answers of John Heminges and Henry Condell, gentlemen, defendants to the bill of complaint of John Witter, gentleman, complainant

The said defendants, and either of them, saving to themselves and either of them now and at all times hereafter all advantages of exception to the incertainty & insufficiency of the said bill of complaint, for answer to so many of the matters therein contained as any way concern them, the said defendants, or is material for them or either of them to answer unto, do say, & either of them for himself saith, that he thinketh it to be true that the said Augustine Phillips in the said bill of complaint named was in his lifetime lawfully possessed of such term of years of & in a fifth part of the moiety of the said galleries of the said playhouse called the Globe in the said bill mentioned, and of divers gardens

thereunto belonging & adjoining, and that the said Nicholas Brend in the said bill named was thereof seized in his demesne as of fee, as in the said bill is alleged;

But the said defendants say that they do not think that the said Augustine Phillips was so possessed of the said term of years by force of a demise or lease to him, the said Augustine Phillips, made of all the same by the said Nicholas Brend immediately, for the said gardens and grounds whereupon the said playhouse & galleries were afterwards builded were demised & letten by the said Nicholas Brend by his indenture of lease tripartite bearing date in or about the 21st day of February in the 41st year of the reign of the late Queen Elizabeth [=21 February 1599] unto Cuthbert Burbage, Richard Burbage, William Shakespeare, the said Augustine Phillips, Thomas Pope, the said John Heminges, one of the said defendants, and William Kempe, to have and to hold the one moiety of the said garden plots and ground to the said Cuthbert Burbage and Richard Burbage, their executors, administrators & assigns, from the feast of the birth of Our Lord God last past before the date of the said indenture [=25 December 1598] unto the end & term of 31 years from thence next ensuing [=24 December 1629] for the yearly rent of seven pounds & five shillings, and to have & to hold the other moiety of the said garden plots & grounds unto the said William Shakespeare, Augustine Phillips, Thomas Pope, the said John Heminges, one of the said defendants, & William Kempe, their executors, administrators & assigns, from the said feast of the birth of Our Lord God then last past before the date of the said indenture unto the said full end & term of 31 years from thence next ensuing for the like yearly rent of seven pounds & five shillings;

Which said William Shakespeare, Augustine Phillips, Thomas Pope, John Heminges & William Kempe did shortly after grant & assign all the said moiety of & in the said gardens & grounds unto William Leveson and Thomas Savage, who regranted & reassigned to every of them severally a fifth part of the said moiety of the said gardens & grounds, upon which premises, or some part thereof, there was shortly after built the said then playhouse, so as the said Augustine Phillips had a fifth part of the moiety of the said gardens & grounds, & after the said playhouse was built, he had a fifth part of the said galleries of the said playhouse in joint tenancy with the said William Shakespeare, Thomas Pope, the said John Heminges & William Kempe, & as tenant in common during the said term of years demised by the said Nicholas Brend as aforesaid, as the said defendants do take it;

But the said defendants do say that about the time of the building of the said playhouse & galleries, or shortly after, a third part of the fifth part of the said moiety of the said playhouse, galleries, gardens & ground which was the fifth part of the said William Kempe did come unto the said Augustine Phillips by a grant or assignment of the said fifth part made by the said William Kempe to the said William Shakespeare, the said John Heminges, one of the said defendants, and the said Augustine Phillips;

Which said last mentioned fifth part did shortly after come to Thomas Cressey by the grant & assignment of the said William Shakespeare, the said John Heminges and Augustine Phillips;

Which said Cressey did shortly after regrant and reassign the said fifth part to the said William Shakespeare, John Heminges, Augustine Phillips & Thomas Pope, as the said defendants do take it, so as the said Augustine Phillips then had a fifth part, and the fourth part of another fifth part, of the said moiety of the said playhouse, galleries, gardens and grounds, as the said defendants do verily believe, for & during the same term of years;

And the said defendant, John Heminges, doth also say that he thinketh it to be true that the said Augustine Phillips, being so of one fifth part, and of the fourth part of another fifth part, of the said moiety so possessed, in or about the time in the said bill mentioned, made his last will & testament in writing [=4 May 1605], & thereby made his then wife, Anne, his executrix of his said last will & testament, & shortly after died so possessed of the said term of & in the said part of the said moiety as is aforesaid;

And that shortly after his decease, his said will was proved in the Prerogative Court of Canterbury, as in the said bill is alleged;

And the said defendant John Heminges doth say that he likewise thinketh it to be true that, by virtue of her, the said Anne's, being executrix of the said will, she into the said parts of the moiety of the said galleries, ground & playhouse, late of the said Augustine Phillips as aforesaid, did enter, & was thereof possessed accordingly, and did receive & take the issues, profits and commodities thereof;

But whether her said entry into the said part, or into any part thereof, was by virtue of a devise or gift in & by the said will & testament to her given & devised or not, this defendant saith he knoweth not, and yet he thinketh it to be true that the said testator, Augustine Phillips, in & by his said last will & testament, did give & bequeath one third part of all his goods & chattels to the said Anne, but this defendant saith that he doth not think that the said Anne made her election to have a third part of the parts late of the said Augustine, her said husband, of the said moiety of the said galleries, gardens & ground as a legacy given unto her by the said will;

And this defendant John Heminges doth also say that, although the said testator, Augustine Phillips, in & by his last will and testament did ordain & make the said Anne, his wife, executrix of his said last will & testament, yet the same was not absolutely, but only with proviso, or upon condition, in the said will expressed, that if the said Anne, his wife, should at any time marry after his decease, that then & from thenceforth she should cease to be any more or longer executrix of his said last will or any ways intermeddle with the same, and that then and from thenceforth this defendant, John Heminges, the said Richard Burbage, William Sly & Timothy Whithorne should be fully & wholly his executors of his said last will and testament, as though the same Anne had never been named, as by the same last will and testament, ready to be showed to this honourable court (to which said will this said defendant for the more certainty thereof doth refer himself) more plainly appeareth;

And this defendant, John Heminges, further saith that the said complainant, in or about the month of November in the fourth year of the King's Majesty's reign of England [=November 1606], did come to this defendant, and making show and affirming that the said Anne and himself then stood in great need of money, did make offer to procure the said Anne to mortgage her said term of and in the said fifth part of the said playhouse, galleries, gardens and grounds which was so regranted to the said Augustine Phillips by the said Leveson and Savage, as is aforesaid, unto this defendant for the sum of fifty pounds or thereabouts wherewith to relieve their wants, and would have had the said Anne by herself to have made the said mortgage to this defendant;

But this defendant then suspecting that the said complainant and Anne, having then by a good space been in treaty of a marriage between them, might then be secretly married, and so her assurance alone nothing worth, and nothing at all then doubting that the said Anne had assigned over the said term of years of & in the said fifth part of the said moiety to the said complainant, this defendant required the said complainant to join in the said assurance of the said term of years of the said fifth part of the said moiety in mortgage for his said money, which he, the said complainant, yielded unto;

And thereupon both the said complainant & the said Anne then confessing themselves to be married, joined in the said mortgage to this defendant, and he paid unto them the said sum of £50, which together with 50s for consideration for the forbearance thereof, this defendant confeseth was repaid unto him on the day limited in & by the said deed of assurance in mortgage for the repayment thereof;

But this defendant did not know or think that the said Anne had assigned or set over the said term of years & the said interest of & in the said fifth part of the said moiety unto the said complainant, which if she had done, this defendant thinketh he had been merely deceived & defrauded of his said £50 if he would have lent the same without the said complainant's joining with the said Anne in the said mortgage;

But if any such assignment of the said term of years was made by the said Anne unto the said complainant before the said complainant & the said Anne intermarried, the same was done contrary to the said testator's meaning in & by his said last will, and to the trust by him reposed in the said Anne thereby, & with purpose to take away & avoid the effect of the said condition made by the said testator in his said will, which was intended for the good & preferment of his children, which course of dealing this defendant thinketh deserveth no favour or relief in any court of equity;

And this defendant hopeth to prove that the said Anne did not make the said supposed assignment of the said term of years & interest of & in the said fifth part of the said moiety to the said complainant before their intermarriage for that after their said intermarriage, the said complainant claimed the same part only in the right of the said Anne, his wife, as executrix of the said Augustine Phillips, as will appear by divers writings & otherwise;

And this defendant verily thinketh that if the said supposed assignment be produced & brought to light, that it will not abide the touch in the trial thereof;

Or if the said Anne did make the said assignment unto the said complainant before their intermarriage, this defendant hopeth to prove that it was and is merely void in law;

And this defendant saith that after the said intermarriage of the said complainant with the said Anne, he, the said complainant, did join in the granting of two sixth parts of the said moiety of & in the said playhouse, galleries, gardens and grounds with this defendant & the rest then interested therein unto William Sly and the said other defendant, Henry Condell;

And this defendant doth deny that he, or to his knowledge the said other defendant, Henry Condell, hath the said assignment or grant so supposed to be made by the said Anne to the said complainant, but confesseth that he hath the said last will and testament of the said Augustine Phillips, and the said deed whereby the said Augustine Phillips had only a fifth part of the said moiety of the said playhouse, galleries, gardens & ground during the said term of years, and that at & upon the earnest solicitation & entreaty of the said Anne before the said repayment of the said fifty pounds unto this defendant, she then in urgent manner, affirming unto him that the delivery thereof unto the said complainant would be her utter undoing, he, this defendant, did forbear to deliver the same unto the said complainant, but kept the same;

And this defendant hath also in his hands and custody the said original lease so made by the said Nicholas Brend to him & others as is aforesaid, and keepeth the same to the use of himself & the rest which have any interest thereunto by & with their consents;

And this defendant further saith that, by means that the said complainant & the said Anne were intermarried, whereby the said condition in the said will of the said Augustine Phillips was broken, and especially to keep the complainant from receiving or recovering of the sum of £300 which did then remain in the hands of Sir Eusebius Isham, knight, lest he should spend the same, as he had before lavishly and riotously spent, wasted & consumed almost all the rest of the said goods & chattels which were of the said Augustine Phillips, and as he after spent £80 of the said £300 which he got out of this defendant's hands after that he [=Heminges] had received the same £300 of the said Sir Eusebius, and with the consent and entreaty of the said Anne, the administration of the goods and chattels of the said Augustine Phillips in or about the month of May in the fifth year of his Majesty's said reign was committed to this defendant in the Prerogative Court of Canterbury as executor of the said last will & testament of the said Augustine Phillips [=16 May 1607], by virtue whereof he, this defendant, did enter into the said fifth part of the said moiety of the said playhouse, galleries, gardens and grounds, and did take the rents, issues and profits thereof, as well & lawful it was, as he hopeth, for him to do;

After which said administration so taken by this defendant, he paid a legacy of five pounds to or for the poor of Mortlake in the county of Surrey which the said Anne & the said complainant had left unpaid by all the time wherein she was executrix as aforesaid,

and he, this defendant, is to pay more legacies to others when the same shall be due & payable by the same last will, and this defendant, in charity also to relieve the said complainant & the said Anne his wife, & her children, did from time to time, divers & many times deliver, sometimes unto the said complainant & sometimes to the said Anne, divers sums of money amounting in the whole to a great sum until about the month of February in the eighth year of his Majesty's said reign, about which time the said complainant & Anne, his wife, by their deed poll bearing date the 10th day of February in the said eighth year [=10 February 1611] of his Majesty's said reign (this defendant then being in possession of the said fifth part of the said moiety of the said playhouse, galleries, grounds & gardens) did remise & release unto this defendant all & all manner of actions, debts, bills, bonds, accounts, matters & demands whatsoever, as by the said deed poll, ready to be showed to this honourable court, may appear;

By which said release this defendant hopeth that the said complainant is barred, both in law & equity, to sue for or demand the said fifth part of the said moiety of the said playhouse, galleries, ground or gardens, & contrary or against which said complainant's own deed of release, this defendant hopeth that this honourable court will not permit the said complainant to sue this defendant for the said fifth part or any part of the said moiety of the said playhouse in this honourable court;

And this defendant further saith that, shortly after the making of the said release by the said complainant & his wife to this defendant, the said complainant & his said wife did take a lease of this defendant by indenture, bearing date the 14th day of the said month of February [=14 February 1611], which was but four days after the date of the said release, of a sixth part of the said moiety of the said playhouse, garden plots and premises for the term of eighteen years from the birth of Our Lord God then last past [=25 December 1610], yielding & paying therefore yearly during the said term unto this defendant, his executors, administrators & assigns, £24 2d of lawful money of England at the feasts of the Annunciation of the Blessed Virgin Mary, the Nativity of St. John Baptist, St. Michael the Archangel, & the birth of Our Lord God, or within ten days after every of the same feast days, by even portions;

Provided always that if it should happen the said yearly rent of £24 2d to be behind, unpaid, in part or in all, by the said space of ten days next over or after any of the feast days of payment thereof aforesaid in which the same ought to be paid, being lawfully demanded, or if the said complainant, his executors, administrators or assigns should not, within one year then next coming, pay and discharge the said legacy of five pounds given & bequeathed by the last will & testament aforesaid unto the poor of the parish of Mortlake, or should not, within the space of one whole year then next coming cause & procure a sufficient acquittance or discharge under the hands & seals of the parson or curate and churchwardens of the said parish to be given & delivered to this defendant, his executors, administrators or assigns for his & their discharge of & for the said legacy of five pounds, with divers other parts of the said condition hereafter to be performed by the said complainant, his executors, administrators & assigns, that then the demise & grant aforesaid of the premises should be void & of none effect;

In which said indenture of lease it is recited and expressed that the said sixth part of the said moiety of the said playhouse, garden plots & premises was then lawfully come to the hands & possession of this defendant by his being administrator of the goods, chattels, rights & debts aforesaid of the said Augustine Phillips, and that this defendant, in consideration that the said complainant should pay & discharge the said legacy of five pounds, and two other legacies of ten pounds apiece mentioned in the said condition, did make the said demise & lease, as by the counterpart to the said indenture of lease, ready to be showed to this honourable court (whereto this defendant referreth himself) more plainly appeareth;

Whereby this defendant thinketh that it manifestly appeareth that the said complainant then claimed not the said sixth part of the said moiety by the said supposed assignment by him pretended to be thereof made unto him by the said Anne, & that this defendant was lawfully interested in the said sixth part as administrator when the said release was so made unto him, or by the said release when the said defendant made the said lease unto the said complainant & his said wife of the said sixth part of the said moiety of the said playhouse, gardens & ground;

And this defendant further saith that about the said term of five years last past mentioned in the said bill of complaint, or about six months before, the said playhouse and galleries were casually burnt down & consumed with fire [=29 June 1613], shortly after which this defendant and his partners in the said playhouse resolved to re-edify the same, & the rather because they were by covenant on their part in the said original lease contained to maintain & repair all such buildings as should be built or erected upon the said gardens or ground during the said term, as by the said original lease may appear;

And thereupon this defendant did write his letter to the said complainant, signifying the same unto him, & therein required him to come & bring or send £50 or £60 by a day therein mentioned for & towards the re-edifying of a house in regard of his, the said complainant's, part of the said ground which this defendant had so demised unto him & his said wife by the said lease if he would adventure so much (he, the said complainant, having lately [=20 February 1612] before joined with the said defendant & the rest then interested in the said moiety of the said playhouse, gardens & ground to William Ostler of a seventh part of the said moiety), but the said complainant neither brought or sent any money towards the re-edifying of the said playhouse, nor did this defendant ever receive any answer by or from him, the said complainant, of his, this defendant's, said letter, which when this defendant perceived, although the said complainant had broken the said condition of the said lease by not paying the said legacy of five pounds, & by not procuring of the said acquittance or discharge from the said parson or curate & churchwardens of Mortlake aforesaid, yet he, this defendant, demanded the two next quarter's rents reserved upon the said lease on the several tenth days after the said two next feasts of payment, & there continuing his said demands until the sun was set on either of the said days, but neither the said complainant, nor any for him, paid or came to pay either of the said quarter's rents on either of the said days;

And thereupon this defendant did enter into the said part so demised as aforesaid for the said condition broken, & because he found that the re-edifying of the said playhouse would be a very great charge, & doubted what benefit would arise thereby, & for that the said original lease had then but a few years to come, he, this defendant, did give away his said term of years & interest of & in the one moiety of the said part of the said moiety of the said garden plots & ground to the said other defendant, Henry Condell, gratis;

The re-edifying of which part hath sithence cost the said defendants about the sum of £120, and yet one other sixth part of the said moiety of the said playhouse, galleries, gardens & ground, before the said playhouse was burned & consumed with fire, was absolutely sold for less money than the half of the said charges of the said defendants in the new building thereof when there were more years to come therein than there were at the time of the said burning thereof, & yet the said complainant was in law chargeable with the re-edifying of the said part of the said moiety by the said lease;

And this defendant further saith that sithence the said release & lease made, as is aforesaid, he hath also from time to time, divers & many times, in charity, & to relieve the said complainant, his said wife & her children, delivered, sometimes unto the said complainant himself, sometimes to his said wife, & sometimes to others for them, divers other sums of money amounting to a further great sum of money, until about the said time of the burning of the said playhouse, & the said complainant, divers years before the said Anne died, did suffer her to make shift for herself to live, & at her death this defendant, out of charity, was at the charges of the burying of her;

Without that that the said Nicholas Brend made a demise or lease of the said sixth part of the said moiety to the said Augustine Phillips, or of any part otherwise than as is aforesaid, or that the said Anne, to this defendant's knowledge, did or could grant or assign the said supposed original lease to the said complainant, or that of the said playhouse, gardens & grounds, as in the said bill of complaint is pretended;

And the said other defendant, Henry Condell, for himself saith that the said other defendant, John Heminges, a little before the re-edifying of the said new playhouse, did freely give & assure unto him one moiety of the said part of the said garden plots & grounds, but denieth that he, or to his knowledge, the said other defendant, John Heminges, hath the said assignment or grant so supposed to be made by the said Anne to the said complainant, or that he, this defendant, hath the said last will & testament of the said Augustine Phillips, or the said deed whereby the said Augustine had only a sixth part of the said moiety of the said playhouse, galleries, gardens & ground during the said term of years, or the said original lease made by the said Brend, but he thinketh that the said other defendant hath the same will, deed & original lease;

And both the said defendants do say & confess that a little space before the re-edifying of the said playhouse, they, the said defendants, did enter into the said moiety of the said part of the said moiety of the said garden plots and grounds which was of the said Augustine Phillips, and do yet keep the same, and from and after the re-edifying of the said playhouse, did and yet do receive and take the rents and profits thereof, and do keep

the same from the said complainant, as well & lawful it was & is for them, as they hope, to do;

Without that that the said defendants have made or contrived to themselves or to any other person or persons any estate or estates of the said part other than is above mentioned, & one eighth part of the said moiety of the said playhouse, galleries, gardens & grounds granted by the said defendants & other their partners in the said moiety to Nathan Field, & one other estate made to John Atkins, gentleman, in trust for the said defendant John Heminges, of two little parcels of the said ground by the said defendant John Heminges & the rest of the partners in the said playhouse & premises, upon part whereof the said John Heminges hath built a house;

And without that that the said defendants have made or contrived to themselves or to any other person or persons any secret, subtle or fraudulent estates of purpose to defraud or defeat the said complainant or otherwise, as in & by the same bill of complaint is very falsely & slanderously suggested;

And without that that any other matter or thing in the said bill of complaint contained material or effectual for the said defendants or either of them to answer unto, & herein & hereby not sufficiently answered unto, confessed & avoided, denied or traversed, to these defendants' knowledges is true;

All which matters the said defendants & either of them are ready to aver & prove as this court shall award, & do pray to be dismissed forth of the same with either of their reasonable costs & charges in this behalf most wrongfully sustained. Seb: Kele:

[Replication]

Xo die Maij Anno Regni Regis Jacobi Angliae ffranciae et Hiberniae xvijo et Scotiae lijdo [=10 May 1619]

The replication of John Witter, gentleman, complainant, to the joint and several answers of John Heminges and Henry Condell, gentlemen, defendants

The said complainant, having to him now and at all times hereafter saved and allowed the benefit of all exceptions and other advantages whatsoever to the uncertainty, insufficiency and imperfections of the said answers of the same defendants, for replication thereunto saith that his said bill of complaint against the same defendants and either of them exhibited in this honourable court, and all and every the allegations, matters, things and clauses therein contained, are good, lawful, perfect and sufficient in the law in such sort, manner and form as in the said bill the same are and every of them is set forth, declared and expressed;

And that the matters therein contained are not nor any of them is to be justly avoided, discharged or answered in this court by the said defendants or either of them, but are grounded upon good and just cause of suit, as by the contents thereof and better shall hereafter appear herein to this honourable court;

And further he, the same complainant, saith that the answers of the said defendants are and either of them is uncertain, imperfect and insufficient in the law to be replied unto, and likewise is most false and untrue, and that the same answers are replenished and stuffed full of idle, imperfect and frivolous matters inserted only to put the complainant to needless and unnecessary charges for the copy, and all the same he, the said complainant, will aver and prove as this honourable court shalld [sic] award;

And the said complainant for further replication saith and will aver and prove that the same defendants or either of them have not nor of late years had any manner of right, title or interest in or to the part of the galleries of the playhouse called the Globe and of the [+said] gardens and premises in the bill mentioned by the said complainant claimed, by reason whereof the issues, commodities and profits thereof should have been and yet ought to be still answered and paid to the said complainant by the said defendants, who have unjustly and without any lawful cause [+or] good colour of title received and taken the same of their own mere wrong and apparent injury, and convert the same unduly and wrongfully to their own proper use and behoof, being the principal and chief stay and means of maintenance for the said complainant and his wife and children;

And forasmuch as it as it [sic?] evidently appeareth by their answers of the same defendants that the said complainant hath good interest and title to as much at the least, if not more, as in the said bill he doth demand and claim, which was the part of Augustine Phillips, deceased, in the said bill named unto him demised expressly and by name amongst the rest by the said Nicholas Brend by his indenture tripartite, which came unto his said wife lawfully after his decease, and from her likewise unto the said complainant by her grant and assignment thereof unto him, which is not in any sort answered or avoided by the answers of the said defendants or of either of them, the said complainant doth demand the judgment and order of this honourable court for the same part of their first moiety in the said answers mentioned, whereunto they, the said defendants, neither do nor can make any good colour or pretence of lawful right or title in law;

And as unto another part by this complainant claimed in the other moiety of all the said premises which the said defendants in like manner do confess to have been first the said Phillips' and secondly the said complainant's wife's, and thirdly was this complainant's own afterwards, the said complainant saith and will aver and prove that he should and ought to have the same also both in law and equity, for he, the said complainant, at the time of the making of the said supposed release and long after had and enjoyed the same his said part of the said other or later moiety of the premises without any manner of let, disturbance, denial or claim of the said defendants or either of them or of any other person or persons whatsoever;

And the said defendant Heminges did after the time of the making of the said supposed release account with the said complainant for divers years together for his part of the profits thereof, [+and] did also satisfy and pay him the same of right and duty, and not, as he seemeth now falsely to pretend and mean by his said answer, of courtesy, benevolence or gift;

And the said complainant also saith and will aver and prove that the said release neither did not could discharge nor alienate from him his said part, nor extinguish or avoid his said interest or title therein or to any parcel of the premises by any manner of means, nor yet hath the same release sufficient words therein for that purpose to bind, bar or tie this defendant in law;

And if there were sufficient words therein by law to bar the said complainant therein (as there are not), yet he ought not nor should be bound or barred thereby in equity or justice, for that there was not any valuable or sufficient consideration or any cause at all given to the said complainant or meaning wherefore the same should pass or be transferred to the said defendant Heminges, nor yet any word touching or concerning the same whereby the conscience and charity of the said defendant Heminges by him so much amplified and set out in and by his said answer may truly appear who [sic?] could carry and draw away from the said complainant so much yearly revenue and profit, whereupon he should also live, for nothing at all;

And to satisfy this honourable court fully for the matter of the complainant's release, he further saith that there was suit and controversy at the time of the making of the release supposed to be made by the complainant and before between him and the said defendant Heminges in an action of trespass upon the case for words alleged to be spoken by the said complainant against the said defendant Heminges to his scandal or damage, to end and determine which action or suit the release had or gotten from the said complainant was only made and obtained, and to no other end or purpose;

And that it may plainly appear to this [-to this] honourable court there was not any intention or meaning by such release as this complainant made to the said defendant Heminges to take away from him or to bar him of any interest, right or title he had or did claim or pretend to have unto the demised premises or any part thereof, the said complainant saith that the same is manifest and clear, as well by the same defendant's answers as by his lease to the said complainant made, as also by the letter and offer therein to him sent by the same defendant in the said answer mentioned, and by his payment and satisfaction for the said complainant's part and portion of the profits and commodities of the demised premises, had, made and answered unto him long after the time of the making of the said supposed release;

And as unto the entry and title of the said Anne, the executrix, into the same premises, the law doth express and set down how and in what manner and form she should and ought to have the same part which was to her devised and bequeathed if there were no special and express kind of declaration how and in what sort she claimed the same when she

entered therein and claimed the same at the time of her entry, which will and must fall out to be very clear both in law and equity on the said complainant's behalf;

And yet further to avoid and take away the doubt and scruple which the said defendant maketh against her and the said complainant therein, he saith that the condition or proviso in the said will and in the said answer rehearsed whereon the said defendant doth insist is not good nor available in our laws not yet in the ecclesiastical laws of this realm nor in the Imperial or Roman civil laws, whereby no woman is to be bound or tied from lawful marriage, nor to lose or forfeit any executorship, legacy or other matter or thing to her devised, bequeathed, given or appointed, as this case is, for or by reason of marriage;

And yet if the law were otherwise, and the said proviso or condition good and of force in the law, yet as this case is it cannot bind or tie the said complainant or his right, title or interest aforesaid, not yet benefit or help the said defendant, forasmuch as she, the said Anne, the executrix, had first lawfully and duly proved the said will of her said former husband, Phillips, and took upon her the execution thereof whilst she was his widow, and did also afterwards and before her intermarriage with the complainant assign and grant the same unto the said complainant, as she well and lawfully might do, before the said condition was broken and before the said defendant Heminges anything had or could have or claim therein, and also before he had the executorship by him now claimed, or anything to do or intermeddle for [sic?] touching or concerning the premises or executorship aforesaid;

Whereby when and after the same lease or part of the said Anne Phillips was duly and lawfully to the said complainant granted or assigned by her, the said Anne, whilst she was lawful and sole executrix of the said testament, the said defendant Heminges could not afterwards draw back or regain the same, nor yet prejudice the said complainant therein, nor claim the same by any good title or other means, nor yet was he or could he be any lawful executor of the same will after she had proved and accepted of the same, neither could or might she afterwards, when she was married, relinquish the same and yield it up unto the said defendant Heminges without the complainant's consent, or that the same administration of the said defendant [sic?] could be or was lawfully committed to the said defendant Heminges of the said goods and chattels of the said Anne Phillips as his executor, which if it were not so, yet the said defendant Heminges doth by his said answer make the matter clear and plain against himself, for the said complainant in his expressing and recital of the said proviso or condition in the said will to be that if the said Anne should at any time marry after his decease, that then and from thenceforth she should cease to be any more or longer executrix of his said last will, or any ways intermeddle with the same, and that then and from thenceforth the said defendant Heminges and the others therein nominated should be fully and wholly his executors;

So as it is very evident and certain that the full and whole power and authority rested in her solely all the time of her widowhood at the least, and that during all the same time there could be none other executor nor any means or good colour to alter, void or cross her executorship, grant or assignment or any other matter or act she did as executrix during all the time of her widowhood, which also should and ought to continue and

remain good and effectual after her intermarriage with the said complainant, being formerly well and duly made or executed;

And forasmuch as the said defendant Heminges confesseth the having in his hands and custody as well of the said release and the said deed whereby the said Augustine Phillips had a fifth part of the moiety of the said playhouse, galleries, gardens and grounds during the said term of years yet enduring, and the said last will and testament of the said Augustine Phillips, as also the said original lease to him and others made by the said Nicholas Brend, which lease the same defendant confesseth he keepeth to the use of himself and the rest which have any interest thereunto, whereof the said complainant is one who neither did nor yet doth consent thereunto, he humbly desireth that all the same may be brought into this court by the order thereof, and that a *ducens tecum* may be therein awarded for the same accordingly against him;

And whereas the said defendants do labour and trouble themselves to abate and pull down the value of the complainant's part as if it were little worth, and make a great matter of his non-payment of his portion of the rent, which he never paid but out of the profits of the same, and of the new building of the said playhouse and galleries, to answer the same fully and to give good satisfaction to this honourable court, therein he saith and will aver and prove that the issues, profits and rents of the residue of the said demised premises over and besides the playhouse and galleries will satisfy and pay, as it was still used and accustomed to pay, the whole rent reserved to the said Nicholas Brend;

And for the full proof and manifestation thereof, he, the said complainant, saith that he doth and will offer to accept and take to himself solely for all his parts all the residue of the houses, buildings, gardens and grounds so demised by the said Nicholas Brend, excepting only the said playhouse and galleries which the said defendant and the rest, other than the said complainant, shall and may solely have, retain and keep to themselves for and in consideration of the said residue;

And that he, the said complainant, will also for the same satisfy and pay all the said yearly rents reserved upon the said lease and give good security for the payment thereof out of the same residue, so as he may have and enjoy the same without any other charge or encumbrances according to the said lease of the said Brend, notwithstanding he is and ought to have his part aforesaid in all the same premises discharged and freed of encumbrances and charges, excepting the same rent thereupon reserved, over and above which rent he, the said complainant, hath heretofore had and received *de claro per annum* between thirty and forty pounds, and been answered so by hands of the said defendant John Heminges for divers and sundry years for a seventh part only when all the said premise were not of that yearly value by much as they now are;

Without that that the said Anne did not make the said assignment of the said term of years and interest of and in the fifth part of the said moiety to the said complainant before their intermarriage, as by the said defendant Heminges is untruly suggested and surmised;

And without that that after their said intermarriage the said complainant claimed the same part only or in the right of the said Anne as executrix of the said Augustine Phillips, or if he had so done, that the same is material, or that the said assignment made unto the said complainant was, is or can be void in law;

Or that by the said deed in the answer of the said defendant Heminges mentioned the said Augustine Phillips had only a fifth part of the moiety of the said playhouse, galleries, gardens and grounds during the term of years thereby demised and yet enduring in manner and form as in the said defendants' answer is alleged;

And without that that the said complainant had fourscore pounds or any like or great sum at all out of the hands of the said defendant Heminges after that he had received the sum of three hundred pounds of Sir Eusebius Isham;

Or that the same defendant lawfully did or could enter into the said fifth part of the said moiety of the said playhouse, galleries, gardens and grounds, or could lawfully take the rents, issues and profits thereof;

Or that well it was for him so to do in manner [+and] form as is also in their said answer untruly is [sic] surmised;

And without that that the said defendant in charity and to relieve the said complainant and the said Anne and her children did from time to time divers and many times or any time at all deliver to them or to either of them divers sums or any sum at all of money, as in the said answer is falsely and untruly alleged;

In th' expressing whereof in and by the said answer the same defendant used a little of his small cunning and craft (which cannot help him), not only in his alleging it to be a great sum, which is so great as he was and well might be ashamed or abashed (if any shame at all he had) to express any sum at all, but also in this point especially, that he, under the colour of his accounting with him and paying the said complainant and his said wife such money as was oftentimes to them or to one of them due and payable of right and duty for their profits and commodities of the said demised premises by him then received, which was so paid and answered accordingly, and not otherwise than as a pig of his own sow would new cloak and colour the same (as he endeavoureth) to be by him done and given out of charity and to relieve the said complainant and his said wife and children, wherein to make the dissimulation and hypocrisy of the same defendant more notorious and remarkable, it shall evidently appear to this honourable court that he is so far from all charity and good dealing that he will not without compulsion pay and satisfy the said complainant so much by a great deal as is to him due and answerable both in law and equity, and for which he hath no good colour nor pretence of right or title unto, but would for very little, or rather no consideration at all, take and gain to himself a matter of great profit and worth, and the only stay and state which the said complainant hath left to live and to relieve himself, his wife and children;

And that there is nothing at all to him paid or answered for or in respect of the same wherein he mightily (although in vain) racketh and stretcheth his wits for very poor and simple shifts, quirks and galls to colour and set forth the same as the said release without consideration, and the false recital of his lease by him made, and the non-payment of the said complainant's part of the said rent, and also the non-payment of fifty pounds for his part to re-edify and new build the said playhouse and galleries, whereas the same defendant not only ever had more than sufficient of the said complainant's money to him due in the hands and custody of the same defendant to pay the said rent, but also hath and long time have had far more money of the said complainant's out of the rents and profits of the demised premises than he did demand or require for the new building thereof or than his part or portion doth or can amount unto for the re-edifying thereof, wherein he saith and is informed by his counsel learned in the laws that he is not now nor was tied or bound by the law to contribute to the new building of the same, which the said defendants and some other of their partners and fellow players did in their default suffer to be burnt and consumed wilfully, or at the least very negligently;

And the said defendant Heminges hath adjoining thereunto upon the same ground and soil so therewith demised and letten, as is aforesaid, a fair house new builded to his own use, for which he payeth but twenty shillings yearly in all at the most, and no part of the same rent to the said complainant, who should have his said parts and portions of and in the same house, which house will in a few years yield a greater sum in rent that the new building of the said playhouse and galleries did cost, which is and will be more chargeable to repair than the former was;

And without that that the said complainant is or ought to be barred by the said release both in law and equity or by either of them of any of the said parts by him claimed or challenged in the said demised premises;

And as unto the said letter and the lease in the said answer mentioned supposed to be made by the same defendant, the said complainant saith that the same and the recital therein also and the forfeiture thereof are idle and impertinent matters nothing material to him nor to the cause now in question, and that the same lease was invented, procured and given when the said complainant was poor and distressed by the said defendant to stop and withhold him from his said former estate, title and lease, which the same defendant would not depart with nor restore to the said complainant after his repayment of the said fifty pounds with fifty shillings interest upon the said mortgage, but most unconscionably, injuriously and unduly detained and withheld from the said complainant to drive him to take the said new estate or last lease to prevent the same defendant, wherein the said complainant by the advice of his counsel was willing and desirous to relinquish the same, wherein also the charity and relief of the said defendant whereof he boasteth and braggeth without cause several times may also appear, who would take advantage thereof or of anything else he could without giving of any recompense or consideration to the said complainant for or in respect of the same lease;

And as unto the same defendant his gift of the said term of years and interest of and in the one moiety [+of] the said part of the said moiety of the said garden plots and ground to

the said other defendant, Henry Condell, gratis, the said complainant saith that the same is also idle and frivolous matter wherein the said defendant Heminges showeth how liberal he could be of another man's goods and lease, and what large thongs he can cut out of another man's hide which he would not have done of or for that which was his own, and did that but to have help and assistance to join with him to keep out and wrong the said complainant therein, as was and is done to the benefit of either of the same defendants, who would share and divide all that part and portion of the said complainant between them, the said defendants, which for the said defendant Heminges (as the proverb saith) is but a kind of robbing, to rob Peter to pay Paul;

And therefore finally, forasmuch as the same defendant Heminges is so little beholden to his neighbours that he is enforced to be the trumpeter and setter forth of his own praises or commendations, and driven to magnify and extol himself and his virtues (which he so much without all cause coveteth) to help the same, and to give the said complainant and his friends just occasion so to do and publish his pity and charity upon just occasion, he saith that the said defendant Heminges may easily procure the same by suffering the said complainant to have so much from him out of his part and portion of the said demised premises as he confesseth he hath given gratis to the said other defendant, Condell, for which he shall not only have very many thanks and good reports, and that right worthily and deservedly, but also shall very desirously be duly paid yearly thirteen pounds six shillings and eight pence by the said complainant for the same, and have security and assurance for the performance and accomplishment thereof, which because it is much more worth, he is well assured the said defendant Heminges will not either out of his pity and charity or out of his bounty and liberality or any other of his virtues (whereof he is so much defective and insensible) accept or take, notwithstanding any charitable request and good offer that the said complainant can or will make, whereby and in the rest before herein recited the whole truth may evidently appear, and here like himself he, the same defendant, showeth himself in his said answer and in the matter, wherein with fallacies and deceits he endeavoureth and seeketh to shadow and obscure the truth, and to abuse this honourable court, of all which the said complainant prayeth the due consideration of this honourable court;

And lastly, without that that any other matter, thing, clause, sentence, cause or article whatsoever material or effectual contained or mentioned in the said answers of the said defendants or either of them, and by the said complainant to be replied unto and not hereinbefore sufficiently confessed and avoided, traversed and denied, or otherwise replied unto, is true;

All and every which things, matters and allegations the said complainant is and will be ready to aver and prove as this honourable court shall award, and prayeth as he before in his said bill hath prayed.

John Walshe

[Witness Book, 16 James I to I Charles I, Miscellaneous Books, vol. 200]

List of witnesses examined *ex parte* Witter, Hilary Term, xvijo James I (1620).

John Witter, gentleman, plaintiff, John Heminges and Henry Condell, gentlemen, defendants

Thomas Woodford, gentleman
James Knasborough, gentleman

[The depositions of Thomas Woodford and James Knasborough, taken February 1620, are wanting.]

[Decrees and Orders Miscellaneous Books, vol. 29, p. 598]

[Badly damaged. Outer edges rotted away]

Termino Trinitatis Anno 17o

28o Maij A {nn}o 17o et 52o [=28 May 1619]

Touching the cause at the suit of John Witter, complainant, against John Heminges [+and] Henry Condell, defendants, upon the motion of Mr Wilbraham of counsel with the said complainant, it is ordered that the said defendant Heminges, having convenient notice of this order, shall attend this court . . . with the lease & deed of mortgage mentioned in the [bill of complaint] . . . shall then at his peril show cause why the . . . delivered into the safe custody of this court . . . Majesty's Council in this court shall be thought . . . laid out upon the said mortgage being . . . in his answer to be received(?) at the day . . . due for the same;

And further it is ordered that . . . the said defendants' answer shall be referred to the . . . retained, who is required by this court to . . . impertinency thereof, and to report his opinion . . . and thereupon the further order of this court . . . justice shall appertain.