

SUMMARY The document below is the final order, dated 8 February 1622, in the lawsuit brought by King James in the Court of Wards by which ownership of the Globe playhouse and other properties in Southwark and in Bread Street in London was restored to Sir Matthew Brend (1600-1659).

Berry summarized the lawsuit as follows:

The menage persisted at West Molesey, and John (Sir John after September, 1617) Bodley persisted at the Globe until the heir, Matthew Brend, came of age on February 6, 1621, when many changes had to take place. First of all, Matthew [Brend] sued Bodley in the Court of Wards for the return of the Brend properties in London and Southwark, including the site of the Globe. Bodley argued that the document of October 10, 1601, was an absolute sale, and Matthew [Brend] argued that however worded the documents might be, his father's transactions as he lay dying amounted to a scheme of trusts, not sales. The case was heard on November 10, 1621, and again on February 8, 1622. Matthew won the case, but the court found that Bodley was still owed £540 for Nicholas Brend's debts and awarded him another £210 for his pains and travel. If, that is, Matthew should pay Bodley £750, Bodley would have to return both properties. Though Bodley lost the case, the court excused him from paying costs because it also found that "hee hath bin a Careful husband in the well ordering of the said messuages lands & tenements."

Matthew promptly paid the money, and Bodley, joined by Collet, turned over the properties on February 21, 1622. Matthew Brend now owned the Glove. As if to afix a royal seal on this coming of age, the King knighted Matthew at Hampton Court on April 6.

See Berry, Herbert, *Shakespeare's Playhouses*, (New York: AMS Press, 1987), pp. 94-5.

The document below reveals, however, that the lawsuit was not brought by Matthew Brend, but by King James on behalf of Matthew Brend, who was the King's ward, and that the King sued not only Bodley but also John Collett. The document also reveals that depositions were taken from witnesses before the case went to trial. Unfortunately these depositions have since been lost.

A significant issue appears to have been deliberately glossed over by the Court in its decision, namely that the properties, including the Globe playhouse, with which the lawsuit below is concerned were not declared in the inquisition post mortem taken after Nicholas Brend's death. If, as the Court found in the decision below, these properties were in reality being held in trust by Sir Matthew Browne and John Collett for Matthew Brend, a ward of the Crown, the failure to declare them in the inquisition fraudulently deprived Queen Elizabeth (and later King James) of control of the properties, including the Globe playhouse, as well as one-third of the revenues from them, during Matthew Brend's 20-year wardship.

It would thus be of interest to know when Queen Elizabeth and/or King James first became aware of the deception, and whether the fact that after Nicholas Brend's death Queen Elizabeth and later King James were effectively 'landlords' of the Globe had any bearing on King James' decision to create the King's Men.

For the indenture of 7 October 1601 by which Nicholas Brend mortgaged his properties in Bread Street in London and in Southwark, including the Globe playhouse, to Sir Matthew Browne and John Collett, see TNA C54/1722, mm. 5-7. For Brend's recognizance in the amount of £2500 guaranteeing performance of the indenture of 7 October 1601, see TNA C54/1705, mm. 24-5. For the further indenture of 10 October 1601 by which Brend sold his properties in Bread Street and Southwark, including the Globe playhouse, to Browne and Collett, see TNA C54/1682, mm. 10-11. As noted earlier, in the lawsuit below the Court of Wards decided this latter indenture was a trust, not a sale. For the inquisition post mortem taken at Southwark on 3 December 1601 in which the properties in the lawsuit below were omitted, thus depriving Queen Elizabeth and later King James of control over the properties and one-third of the revenues from them during Matthew Brend's 20-year wardship, see TNA C 142/271/151. For the indenture of 11 November 1608 by which Collett sold his interest to Bodley, see TNA C54/1947, mm. 5-6.

Sir James Ley, the King's attorney in the lawsuit below, was appointed Attorney of the Court of Wards in 1608. See McGlynn, Margaret, *The Royal Prerogative and the Learning of the Inns of Court*, (Cambridge University Press, 2004), p. 236 at:

<https://books.google.ca/books?id=CRfogYOOFsUC&pg=PA236&lpg=PA236&dq=%22Ley%22+%22Attorney+of+the+Court+of+Wards%22&source=bl&ots=fqk1ApG9CX&sig=A0vMXQUZi8WoWMQltOZmZeLm2wc&hl=en&sa=X&ved=0CBwQ6AEwAGoVChMIwerZx6WQyAIVxaKlCh0XxAlw#v=onepage&q=%22Ley%22%20%22Attorney%20of%20the%20Court%20of%20Wards%22&f=false>.

See TNA REQ 2/706 for the pleadings, interrogatories, depositions and orders in a lawsuit initiated on 28 January 1632 in the Court of Requests by Cuthbert Burbage (1564/5-1636), Richard Robinson (d.1648?), Winifred Robinson (d.1642), William Heminges (1602?-1649x53), John Lowin (1576?-1653) and Joseph Taylor (1586?-1652) against Sir Mathew Brend (1600-1659) for performance of a covenant signed by Sir Mathew Brend in his minority granting the surviving shareholders a further lease of the ground on which the Globe was built for fifteen years, to commence immediately after the expiry of the old lease for thirty-one years which had been granted by his father, Nicholas Brend (d. 12 October 1601), by indenture dated 21 February 1599, to Cuthbert Burbage, Richard Burbage, William Shakespeare of Stratford upon Avon, Augustine Phillips, Thomas Pope, John Heminges and William Kempe.

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LM: Brende

[f. 31v] Whereas Sir James Ley, knight & baronet, his Majesty's Attorney of his Highness' said Court of Wards and Liveries, did heretofore exhibit an information for and on the behalf of Matthew Brend, esquire, his Majesty's ward, against Sir John Bodley, knight, and John Collett, esquire, defendants, showing thereby that Nicholas Brend, esquire, the ward's father, was seised in fee of and in the messuage or inn called the Star in or near Bread Street in the parish of All Hallows in Bread Street, London, and of divers other messuages, lands, tenements & hereditaments with th' appurtenances there, and also of divers messuages, lands, tenements & hereditaments with th' appurtenances in the parish of Saint Saviour alias Mary Overies in Southwark in the county of Surrey, being worth per annum £400 and worth £700, and the said Nicholas being indebted to his creditors in £1865 for which he and the defendants and one Sir Matthew Browne stood bound as his sureties to his creditors by several obligations, the said Nicholas, being very sick and having great care of his sureties' safety and for payment of his debts, by indenture bearing date the 7th day of October in the 43rd year [=7 October 1601] of the reign of the late sovereign Lady Elizabeth, late Queen of England, made between him, the said Nicholas, and the said Collett and the said Sir Matthew Browne, therein setting forth that in consideration of [sic?] his said sureties stood bound for & with him by the obligations mentioned in a schedule to the same indenture annexed for payment of £1478, part of the debt aforesaid, and for the residue of his debts which he owed or should owe which they undertook to pay, and for their security, as also for £250 paid to him by the said Collett & 5s by the said Browne, did bargain & sell all the said premises unto the said Sir Matthew Browne and Collett and their heirs upon condition that if the said Nicholas or his heirs did save his said sureties harmless of the said obligations & debts, and paid the said £250 to the said Collett the 13th day of January 1601 [=1602], then the said bargain and sale to be void & the said Nicholas & his heirs to re-enter into the premises, & by the same indenture agreed that the said Nicholas & his heirs should hold the premises and take the profits thereof until some breach were made of the said condition, which said indenture was acknowledged the 8th day of the said month of October & enrolled in Chancery the second day of March in the 44th year [=2 March 1602] of the reign of our said late Sovereign Lady Queen Elizabeth;

But the said Nicholas still continuing sick, his said sureties entreated him and desired Margaret, his wife, to move him to make them an absolute estate in fee of all the said premises in trust as aforesaid, the better to enable them to pay his said debts which they then undertook [f. 32r] to pay by the profits thereof or by sale of some part thereof, and after his said debts should be paid then the overplus, if any should be, and the premises unsold to reconvey to the said ward and his heirs, and thereof to make a true account to the said ward or to his mother for him;

Whereupon the said Nicholas by their persuasions was contented to make such an absolute bargain and sale of the premises in trust as aforesaid, and such an absolute deed being drawn and ready engrossed by the directions of the said sureties, the said Nicholas by indenture bearing date the tenth day of the said month of October [=10 October 1601] in consideration of a sum of money therein mentioned did absolutely bargain and sell the

premises to the said Sir Matthew Browne and the defendant Collett and their heirs, which said indenture was acknowledged and enrolled the 13th day of the said month of October, the said Nicholas being dead the day before, and that both the said indentures were made in trust as aforesaid, and not upon payment of any money by the said sureties;

And that after the death of the said Nicholas by an office [=inquisition post mortem] taken at Southwark aforesaid the third day of December in the 44th year [=3 December 1601] of the reign of the said late Queen Elizabeth it was found that he died seised in fee of divers other lands in the counties of Surrey and Kent held in capite by knight's service, and died the said 12th day of October, and that the said ward was his son and next heir and then of the age of 8 months and 6 days, by virtue whereof his Majesty was entitled to the wardship of the body and lands of the said ward, and for that the lands in the said office did not amount to a full third part of all his lands whereunto his Majesty ought to be entitled unto, therefore his Majesty ought to be entitled to the said messuages in London and Surrey and so conveyed to the said Browne & Collett as aforesaid, that thereupon the said ward might sue his livery of them and his Majesty have the custody thereof during his minority;

And for that the defendants have ever since received the profits of the same messuages, and thereby and by fines made thereof paid all the said debts with an overplus, and because the defendants refuse to account for the same or to reconvey the premises unsold or deliver the deeds thereof to the said ward and his heirs, or to deliver the possession thereof to him according to the said trust, or to discover what estate or estates the defendants have made thereof, therefore his Majesty's writ of privy seal was prayed and awarded against the defendants;

And both the said defendants did make answer to the said information;

And first the defendant, Sir John Bodley, did set forth that Thomas Brend, the ward's grandfather, marrying with the said Sir John Bodley's mother, there grew great love and familiarity between Sir John Bodley and the ward's father, at whose request the said defendant, Sir John Bodley, became bound as his surety for payment of his debts, and the said Sir John drew the defendant Collett, his kinsman, to be bound with them and Sir Matthew Browne as sureties for the said Nicholas Brend's debts;

And the said Nicholas being seised in fee of the premises in Bread Street and Southwark aforesaid, by the said indenture of the said 7th of October bargained and sold the said premises in Southwark aforesaid only to the said Sir Matthew Browne and the defendant Collett, as in the said information is set forth, and also the said Nicholas Brend became bound by his recognizance to the said Sir Matthew Browne & the defendant Collett in the sum of two thousand five hundred pounds for performance of covenants in the said indenture acknowledged the said 8th day of October aforesaid;

And it appeareth by the said schedule that the said Nicholas' debts came to £1478 besides the said £250, and besides £105 omitted for which the said Nicholas and the defendants

stood bound by bond to one Thomas Lyde, and also £32 omitted due by the said Nicholas' own bill;

And the said Nicholas, well knowing that the said tenements in Southwark consisted of small & ruinous houses in 30 several tenants' hands, per annum £90 at the most, and that he had often offered to sell all of them for £800 but could not get any to buy them at that rate, therefore the said Nicholas in the sickness whereof he died by the said other indenture of bargain & sale of the tenth of October aforesaid and enrolled within 6 months for the consideration of a certain competent sum of money therein mentioned did absolutely bargain & sell all the premises in Southwark and Bread Street aforesaid, all the same then amounting to £160 per annum or thereabouts, to hold to the said Sir Matthew and the defendant Collett and their heirs forever;

And the defendant Sir John denieth that the said later indenture of sale was made upon any trust, and that the said conveyances were made to the said Collett for his security as in trust for the said Sir John Bodley;

And after the later indenture acknowledged, the said Nicholas died the said 12th day of the said month of October aforesaid, and after his death the said Sir Matthew Browne and Bodley stood engaged for his said debts in £1870 or thereabouts, paying £10 for every hundred for part thereof besides charges for renewing the bonds & their pains therein;

And the said Sir Matthew Browne & Sir John Bodley offered to sell all the premises but could not get so much for them as would discharge the said debts [f. 32v] by £200;

And within two years after the said Nicholas Brend's death, the said Browne died, and all the premises survived to the said Collett;

And the said Sir John Bodley being then unable to raise money by the sale of any the said premises to pay the said debts nor get tenants to hold the said tenements in Bread Street at any certain or reasonable rates, he was enforced to build new and repair the premises in Bread Street and Southwark, which cost him near £300 or thereabouts, and so the defendant Sir John Bodley is now out of purse by the undertaking of the payment of the said debts two thousand one hundred and fifty pounds & upwards, besides his damages & trouble many years together about the same;

And the said Sir John Bodley & Collett deny the having or detaining of any the deeds or evidences saving the said two indentures of sale and a recovery of the tenements in Bread Street and indenture of sale of the premises made by the said Collett unto him and the said recognizance and certain cancelled bonds entered into by the said sureties for the said Nicholas Brend which remains in the said Sir John Bodley's hands;

And the said defendant Collett for his part did say that he, at the said Sir John Bodley's request, entered into the said bonds with him & the said Sir Matthew Browne as Brend's sureties for divers great sums of money, but knoweth not the certainty of them, nor to his remembrance was made acquainted with the making of the said assurances and

recognizances in the said information mentioned, but verily believeth that the other defendant's answer is in every part thereof true;

And both the defendants do say that the said Sir John Bodley, having undertaken the payment of the said debts and having freed the said Collett of them, he, the said Collett, at the said Sir John Bodley's request by his indenture bearing date the eleventh day of November in the 6th year [=11 November 1608] of the reign of our Sovereign Lord King James and enrolled, in consideration of certain sums of money therein mentioned to be paid to him by the said Bodley in consideration of the trust reposed in him, the said Sir John Bodley, did grant, bargain & sell all the same premises to the said Sir John Bodley and his heirs, by force whereof he was and is thereof seised in fee;

And the said Sir John Bodley confesseth the said office, and that the said lands are a full third part of all the ward's lands whereunto his Majesty ought to be entitled;

And the defendant Sir John confesseth he receiveth all the issues of all the said messuages and premises in Bread Street & Southwark aforesaid since the making of the said indenture of the said tenth of October;

And both the said defendants do deny the making any conveyances or sale of any of the premises other than as aforesaid, saving that the said Bodley hath made several leases for years to several tenants yet in being at several yearly rents;

And both the said defendants do by way of traverse deny that the said premises are or were worth the value in the information specified, or that the said later indenture was drawn by the said Sir John Bodley's direction, or that the said conveyances or any of them were made upon any other trust or in any other manner than the said Sir John Bodley hath before set forth and declared, and so do traverse all other the material points in the said information specified;

Unto which said answer his Majesty did reply, & afterwards the said cause did descend to issue, and witnesses were examined on both sides, and after publication granted the said cause did come to hearing on the tenth day of November in the 19th year [=10 November 1621] of the reign of our Sovereign Lord King James, the King's Majesty that now is, in the presence of the counsel learned on both sides, and the Court did then conceive, upon hearing the depositions on both sides, that the said conveyances made by the said ward's father were made upon trust and for securing the said Sir John Bodley for such money as he stood engaged for as surety for the said ward's father, and that it was meant that at the making [+of?] the said last conveyance that the ward should have the lands so conveyed as aforesaid when Sir John Bodley should be satisfied and saved harmless of such engagements as aforesaid;

Nevertheless the Court intended that upon the account to be made the said defendant, Sir John Bodley, should have full satisfaction of his disbursements before any order should be given for the possession;

And thereupon it was referred to the Auditor to cast up the account betwixt the parties, and Mr Auditor having cast up the account, the said cause came to hearing upon the said account the 8th day of this instant month of February [=8 February 1622] in this present Hilary term for a final end to be made between the said plainant and defendants;

And upon a full & deliberate hearing of the said account in the presence of the counsel learned on both sides, forasmuch as it appeareth unto this Court that upon the account of the said Sir John Bodley, all deductions and allowances being made, the £36 for the rents of the said lands in London due at Christmas last and by him received being likewise allowed unto him, there doth now remain due unto him £540;

And because the said Sir John Bodley doth make other demands for riding charges and for his own trouble and labour & other disbursements, it is therefore for a final and [f. 33r] summary end to be made between the said parties the said 8th day of February in the 19th year [=8 February 1622] of the reign of our Sovereign Lord King James according to an order made the same day in that behalf ordered, adjudged and decreed by this Court that the said defendants shall forthwith by good and sufficient conveyances & assurances in the law convey and assure unto the said Matthew Brend, his heirs and assigns, all and singular the said messuages, lands, tenements, hereditaments and premises with th' appurtenances conveyed by the said ward's father as aforesaid, and that the said assurances shall be made and passed at the plainant's charges, and the defendants shall not travel further than the places of their abode for the doing thereof;

And if the said parties and their counsel shall not agree upon the said assurances so to be made as aforesaid, then his Majesty's Attorney of this Court will be pleased to reconcile their differences, and the said assurances shall be drawn with reasonable covenants severally and respectively, and for freeing the said land as, of & from all charges & encumbrances done by the defendants or either of them severally and respectively, excepting such particular leases as shall be specially and particularly expressed in a schedule to be annexed to the said indentures;

And it is also ordered and decreed that the said complainant shall pay unto the said Sir John Bodley in full satisfaction of all debts & demands whatsoever the sum of £750 of lawful money of England, the same to be paid unto the said Sir John Bodley at the sealing of the said assurance;

And it is further ordered and decreed that the said defendants shall deliver unto the plainant all deeds, evidences and writings concerning the premises, and cause the said recognizance at the costs & charges of the said plainant to be vacated;

And it is also ordered, adjudged and decreed that the said Matthew Brend, his heirs and assigns, shall quietly and peaceably after the said £750 good money paid unto the said Sir John Bodley, or lawfully tendered to be paid without fraud or covin, hold and enjoy the said messuages, lands, tenements & hereditaments and every part thereof without the let or interruption of the said defendants or either of them or any person or persons lawfully claiming from, by or under them or either of them, excepting lessees for years who had

their estates for years made unto them bona fide before this suit commenced for valuable considerations, either of fine or yearly rent, they paying the said rents unto the said Brend & his heirs, and the plainant may take an injunction for that purpose;

And it is also further ordered and decreed that the said defendant, Sir John Bodley, shall authorize the plainant by letter of attorney to be made at the plainant's charge to receive & recover all arrearages of rents that are due and unpaid by any of the tenants, as well such rents as were due at Christmas last and which the said Sir John Bodley nor any for him have not received, and likewise to authorize the plainant to recover & receive of Thomas Cadogan and all other of the tenants of the premises such fines as are remaining in their hands and unpaid, the said plainant saving the said Sir John Bodley harmless from all costs that may be recovered for not prosecuting or for not prevailing in the said suits unless it be by the default of the said Sir John Bodley himself;

And it is also ordered that the said Sir John Bodley in regard he hath been a careful husband in the well ordering of the said messuages, lands & tenements, that he shall be freed & discharged from payment of costs in this suit which otherwise he should have paid.