

Reviews

SHAKESPEARE'S LEGAL AND POLITICAL BACKGROUND,

By George W. Keeton; Pitman, (1967) 417 pp.

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Anyone, who discovers Shakespeare at the right time, must surely echo these words of Goethe: "The first line of him that I read made me his for life, and when I had gone through the first play I felt like one born blind whose sight was restored in a moment by a magic hand."¹ Others abide our question, Shakespeare is free. So far does he out-top knowledge that many generations of ingenious commentators have been at a loss to explain him. Some claim that the man, known as William Shakespeare, who was baptized in the parish church at Stratford-on-Avon, on April 26, 1564, and whose will (in which as an afterthought, he left his wife his second-best bed) is on file in Somerset House—that this man was not the author of Hamlet, King Lear, and the other great plays that were gathered together in the First Folio by two actors.

The point made by Swift about Homer:

As learned commentators view
In Homer more than Homer knew—

this point is far more applicable to Shakespeare.

Arguing from their various points of view, commentators have held that the man who wrote the great plays must have been, at some stage in his early life, a soldier in the Lowlands, a sailor who was at home in distant ports, a school-master, a falconer, a horticulturist, a law-clerk—and many other things as well. The plain fact seems to be that Shakespeare's mind was always running at high speed, that he did not have to take his experience at first hand, that his curiosity burnt with such an intense flame, that he absorbed, with the air he breathed, the ideas that were current in the great days of Elizabeth the First.

Could a man whose formal education was limited to a few years in a country school, who "had but little Latine and lesse Greek", have written the great plays? The simple answer to this question is that the man was Shakespeare—"the greatest Englishman of history", who, in Arthur Meighen's eloquent tribute, "quaffed most deeply and passed around most generously the very wine of life and . . . left to us of later times the richest legacy of all the dead."²

1. Quoted by Barker Fairley, in, *Goethe as Revealed in His Poetry*, (2nd edition 1963) p. 1.

2. *Unrevised and Unrepented*, (1949) p. 278.

There is no direct evidence that Shakespeare was trained as a law clerk. Though Lord Campbell was not the first to claim that Shakespeare had some legal training, he is frequently cited in support of this proposition. Because of his eminence in the law, to those who lean heavily on authority, his opinion carries great weight. In 1859, after some cursory research, he published a book entitled *Shakespeare's Legal Acquirements Considered*. Lord Campbell found about a hundred references to legal matters in the plays. An American writer has discovered three hundred.³ In his book Lord Campbell concluded that "to Shakespeare's law, lavishly as he propounds it, there can neither be demurrer nor bill of exceptions, nor writ of error."⁴

Unlike Lord Campbell, Professor Keeton, in this book, does not indulge in rhetorical generalities. He examines the facts. He follows them where they lead. He has been a close student of Shakespeare for many years. This is not the first book he has published on Shakespeare and the law. His conclusion is this: "Shakespeare's legal knowledge differed from that of other writers of his time, but his observation was closer and more accurate . . . The legal and political ideas which he incidentally expresses were part of the intellectual equipment of educated men of his time, and his touch was sensitive."⁵

A comparison of Shakespeare's work with that of his contemporaries, says Professor Keeton, "has shown that Shakespeare's knowledge is not remarkable, either in extent or accuracy, for the other Elizabethan dramatists showed a similar disposition to use legal terms."⁶

Lawyers were not least among the educated men of Shakespeare's day. Shakespeare and his fellow-playwrights sought them out and were in turn sought out by them. They were much in each other's company. There was a natural affinity between the law and the stage. Before the blight of Puritanism descended upon the land, it was part of a lawyer's training to take part in masques and revels at his Inn. Sir D. Plunket Barton has recalled that Ben Jonson dedicated his play 'Every Man in His Humour' to "the noblest nurseries of humanity and liberty in the Kingdom, the Inns of Court."⁷

The two great scenes from the plays in which Shakespeare is alleged to have displayed an exact and exceptional knowledge of

3. Keeton, p. 14.

4. Quoted by F. Lyman Windolph, in, *Reflections of the Law in Literature*, (1956) p. 43.

5. Keeton, preface, p. v.

6. Keeton, p. 15.

7. *The Story of Our Inns of Court*. (no date) p. 19.

law are the amazing case of Shylock v. Antonio in the Merchant of Venice, and the gravediggers' scene in Hamlet. Let us glance at these scenes.

In the Merchant of Venice, Antonio (the merchant) has a friend, Bassanio, a young blade who does not seem to have much to recommend him. Bassanio aspires to the hand of Portia, a wealthy heiress. He needs funds to finance his campaign of courtship. Antonio comes to his aid, but all his ready money is tied up in his various business ventures, he borrows from Shylock, a Jewish moneylender, whom, at times, he has treated like a dog. Seeing an opportunity for revenge (I will feed fat the ancient grudge I bear him), Shylock loans him the money, and then, as if in jest, he proposes that Antonio enter into a bond with him.

Go with to a notary, seal me there
Your single bond; and, in a merry sport,
If you repay me not on such a day,
In such a place, such sum or sums as are
Express'd in the condition, let the forfeit
Be nominated for an equal pound
Of your fair flesh, to be cut off and taken
In what part of your body pleaseth me.

Confident that his ships will come home before the loan must be repaid, Antonio signs the bond.

When news reaches the Rialto that Antonio has suffered losses at sea, Shylock gloats, "Let him look to his bond." He is asked what good will Antonio's flesh do him, and he replies: "To bait fish withal: if it will feed nothing else, it will feed my revenge."

When Antonio's ships do not come home in time Shylock has him arrested. A friend suggests that the Duke of Venice will not let Shylock claim the forfeiture, and Antonio replies:

The Duke cannot deny the course of law:
For the commodity that strangers have
With us in Venice, if it be denied,
Will much impeach the justice of the state;
Since that the trade and profit of the city
Consisteth of all nations.

Here seems a good place to quote Sir Frederick Pollock's opinion: "No court in the civilized world ever undertook to administer any such specific remedy as Shylock here demands."⁸

But as Sir Frederick admits anyone, who charged Shakespeare with misrepresenting the law, might have been answered by him thus: "My dear man, I am a maker of plays, not of law-books: I wanted a good scene, not justice."⁹

8. (1914) 30 L.Q.R. 175.

9. *Ibid.*, p. 178.

So the trial of Shylock v. Antonio, which makes for a good scene, indeed, proceeds in the Venetian court before the Duke.

As the trial opens, the Duke addresses Shylock:

Shylock, the world thinks, and I think so too,
That thou but lead'st this fashion of the malice
To the last hour of act.

Shylock soon disabuses him of this notion:

I have possess'd your Grace of what I purpose;
And by our holy Sabbath have I sworn
To have the due and forfeit of my bond.

Portia attends the trial, disguised as Balthasar, a learned doctor from Rome. The Duke invites her opinion on the case.

"Do you confess the bond?" she asks Antonio.
"I do."
"Then must the Jew be merciful."
"On what compulsion must I? tell me that,"
demands Shylock.

Portia then launches forth on her great speech:

The quality of mercy is not strain'd;
It droppeth as the gentle rain from heaven
Upon the place beneath: it is twice blest;
It blesseth him that gives, and him that takes:
'Tis mightiest in the mightiest: it becomes
The throned monarch better than his crown . . .

Turning to Shylock, she asked him if Antonio is not able to discharge the debt.

Bassanio speaks up, offering to pay (with Portia's money) the debt ten times over. And he suggests to her.

To do a great right, do a little wrong;
And curb this cruel devil of his will.

Portia replies:

It must not be; there is no power in Venice
Can alter a decree established:
'Twill be recorded for a precedent;
And many an error, by the same example,
Will rush into the state.

Shylock breaks in:

A Daniel come to judgment! Yea, a Daniell
O wise young judge, how I do honour thee!

But Portia has a surprise in store for him. Again she asks him to take the money. And when he refuses, she tells Antonio to prepare his bosom for the knife.

Then she addresses Shylock:

A pound of that same merchant's flesh is thine:
The court awards it, and the law doth give it.

Tarry a little; there is something else.
This bond doth give thee here no jot of blood;
The words expressly are, a pound of flesh:
Take then thy bond, take thou thy pound of flesh;
But, in the cutting it, if thou dost shed
One drop of Christian blood, thy lands and goods
Are, by the laws of Venice, confiscate
Unto the state of Venice.

Realizing he has been led into a trap, Shylock decides to take three times his money. But Portia has him on the hip.

Soft!
The Jew shall have all justice; soft! no haste:
He shall have nothing but the penalty.

Shylock, seeing only defeat and humiliation as his portion, makes ready to leave the courtroom.

Portia stays him:

Tarry Jew
The law hath yet another hold on you.

And she explains that if any man attempt the life of a citizen, his goods are forfeit—half to the citizen, half to the state.

Antonio, who now has a chance to show mercy, does not fail the occasion.

He quits the fine of one-half of Shylock's goods, on condition that he may have the other half in use for his lifetime to render it to Shylock's daughter and her husband at death.

What was Shakespeare's purpose in writing this very dramatic scene? Was he venting some private spleen of his own? Was he catering to the spirit of his times? If the scene came fresh to the stage today, without the authority of his great name, the producer might find himself faced with proceedings for defamation, in this jurisdiction, at least, at the instance of a member of the Jewish race.

Whatever Shakespeare's purpose, it was not to show how much he knew about law. In an interesting article in the *Canadian Bar Review*,¹⁰ T. M. Wears, makes much ado about the fact that Antonio signed a single bond, that is a bond without sureties, arguing that Shakespeare must have had an exceptional knowledge of law to have known of the special significance of a single bond. But this point does not reach the heart of the matter. From a lawyer's point of view, the whole scene is wrongly conceived from beginning to end. Professor

10. (1938) 16 *Canadian Bar Review*, p. 28.

Keeton offers these dry comments. "If one could imagine the possibility that (the case could be tried in a modern law court, there would be at least two defences, and possibly three, open to Antonio. In the first place, he could have pleaded tender of the sum in dispute . . . The second line of defence open to Antonio was to urge that the bond was void as contrary to public policy . . . Thirdly it was possible for Antonio to plead fraudulent misrepresentation."¹¹

His general comment on the trial is this . . . "it is certainly true that any trained lawyer would find it difficult to commit the liberties with procedure of which Shakespeare was guilty in this trial . . ."¹²

To come to the other great scene. Sir James Hales was a Judge of the Common Pleas during the reign of Queen Mary. He became involved in a conspiracy to put Lady Jane Grey on the throne. Proceedings were taken against him and he was forced to renounce his allegiance to Protestantism. His enforced change of religion so preyed upon his mind that he tried to take his own life by opening a vein with a penknife. When he failed in this attempt, he drowned himself in a river. A coroner's jury returned a verdict of *felo de se*. Suicide was a felony. His property was forfeited to the Crown, and his body was not permitted to rest in consecrated ground.

At the time of his death, he held a leasehold estate jointly with his wife. The Crown decided that the lease was forfeited and granted it to one Cyriac Petit. Hales' widow, Margaret, thereupon launched the suit of *Hales v. Petit*,¹³ claiming that she was entitled to the property.

On her behalf Serjeants Southcote and Puttrell spun a fine argument. The felony of the husband, they maintained, should not take away the widow's title. Two things are to be considered—first, the cause of death, and secondly, the death ensuing the cause. The cause of death is the act done in the party's lifetime. Hale's act was the throwing of himself into the water. He cannot be attainted by his own death, because he is dead before there is any time to attain him. He cannot be *felo de se* till the death is fully consummate, and the death precedes the felony and the forfeiture.¹⁴

For the defendant, Petit, Serjeant Walsh was no less resourceful in his argument. "The act (of suicide) consists of three parts," he argued. "The first is the imagination, which is a reflection or medita-

11. Keeton, p. 132.

12. P. 150.

13. (1561) 1 Plowden 253-65.

14. P. 187.

tion of the mind, whether or not it is convenient for him to destroy himself, and what way it can be done; the second is the resolution, which is a determination of the mind to destroy itself; the third is the perfection, which is the execution of what the mind has resolved to do. And of all the parts, the doing of the act is the greatest in the judgment of our law, and it is in effect the whole. Then here the act done by Sir James Hales, which is evil, and the cause of his death, is the throwing himself into the water, and the death is but a sequel thereof."¹⁵

After listening to such pedantic splitting of hairs, the Court was not to be outdone. "Sir James (they held) was dead, and how came he to his death? by drowning; and who drowned him? Sir James Hales; and when did he drown him? in his lifetime. So that Sir James Hales, being alive, caused Sir James Hales to die; and the act of the living man was the death of the dead one. He therefore committed felony in his lifetime, although there was no possibility of the forfeiture being found in his lifetime, for until his death there was no cause of forfeiture."¹⁶

Let us now turn to the fifth act of Hamlet to see how Shakespeare adopted these "ultra-metaphysical arguments" to his purpose of relieving grim tragedy with delightful nonsense. Ophelia has committed suicide by drowning. Two gravediggers are digging a grave for her in consecrated ground. They hold a discussion between themselves:

1st clown: Is she to be buried in Christian burial when she wilfully seeks her own salvation?

2nd clown: I tell thee she is; and therefore make her grave straight; the crowner hath sat on her, and finds it Christian burial.

1st clown: How can that be, unless she drown'd herself in her own defence?

2nd clown: Why, 'tis found so.

1st clown: It must be "se offendendo", it cannot be else. For here lies the point: if I drown myself wittingly, it argues an act; and an act hath three branches — it is, to act, to do, to perform; argal she drowned herself wittingly.

2nd clown: Nay, but here you, Goodman Delver.

1st clown: Give me leave. Here lies the water; good. Here stands the man; good. If the man go to this water and drown himself, it is, will he, nill he, he goes — mark you that; but if the water come to him and drown him, he drowns not himself. Argal, he that is not guilty of his own death shortens not his own life.

2nd clown: But is this law?

1st clown: Ay, marry is't; crowner's quest law.

15. P. 187.

16. P. 188.

- 2nd clown: Will you ha the truth an't? If this had not been a gentlewoman, she should have been buried out of Christian burial.
- 1st clown: Why, there thou sayst; and the more pity that great folk should have count'nance in this world to drown or hang themselves more than their even Christians.

Shakespeare must have written this passage with his tongue in his cheek, delighted at having an occasion to make sport with his friends from the Inns of Court, by gently ridiculing "old father antic the law."

And if, as an early commentator claims, he wrote these lines:

"There's a Divinity that shapes our ends,
Rough-hew them how we will"¹⁷—

after watching a butcher sharpening some skewers;¹⁸ he certainly did not need any practical experience of the law to write the gravediggers' scene in *Hamlet*. He had but to keep his ears open when his lawyer friends were discussing, as "true lovers of the nice case and the moot-point,"¹⁹ the case of *Hales v. Petit*.

Professor Keeton's admirable book is divided into two parts. Part I deals with Shakespeare and the law, and part II with Shakespeare's political thinking.

In his political thinking Shakespeare sailed with the main current of his time. He belonged to his own age. He was a true-blue, full-blooded Elizabethan, born in his due time. "Again and again in the sermons and political tracts of the period," says Professor Keeton, "it is emphasized that the king's duty is to care for the temporal and spiritual welfare of his people, administering impartial justice that all men may live good lives, and keeping the laws himself. Shakespeare sees the functions of the monarch in these terms."²⁰

In other words as a political thinker, he was not out of joint with his times. He believed in an absolute monarch. True, there was a parliament of sorts during Elizabeth's reign, but, as G. B. Harrison has suggested, there was no room in that Parliament for "a salaried official called the Leader of His Majesty's Opposition."²¹ The Queen ran the show herself. Professor Keeton declares that "Parliament existed only to register the royal commands."²² This state of affairs was quite satisfactory to Shakespeare.

17. *Hamlet*, Act V, Scene 2.

18. See: G. J. Holyoake, *Public Speaking and Debate* (14th impression, 1918) p. 163.

19. Maitland's words, quoted H. E. Bell, in Maitland, (1965) p. 104.

20. P. 264.

21. *Introducing Shakespeare*, (Pelican) p. 31.

22. P. 335.

In his 'King John' there is not a single reference to Magna Carta, the great constitutional document, which, in Lady Doris M. Stenton's words, "points the way to the new age, to a kingship controlled not by fear of revolt but by acceptance of the restraint of law."²³ Professor Keeton asserts that it is not difficult to find satisfactory reasons for this omission. "In the first place," he says, "Magna Carta, as we now regard it, owes a great deal to the use (or misuse) of it by Parliamentary apologists in the great constitutional struggles of the seventeenth century. In Elizabethan days there was little consciousness that it should be regarded as the cornerstone of English liberties, and it was not until the next two reigns that Coke and his colleagues began to ascribe semi-mystical properties to it. The Elizabethans regarded it, partly as a feudal document, and partly as one more symptom of John's failure as a king."²⁴

Shakespeare was no champion of social justice. He was in point of fact, to utilize a phrase of A. M. Klein's, "one of the fat (ones) plumped upon the status quo." He was determined to be a worldly success. He wrote his plays for money, and there is no evidence that he assessed them at anything like their true worth. As Pope put it:

"For gain not glory, winged his roving flight,
And grew immortal in his own despite."

He preferred to be known as a gentleman (as in his will) rather than as a poet. After making a substantial fortune in London, by means which he did not consider quite respectable, he returned to his native Stratford, where he bought a fine house. He petitioned the College of Heralds for that emblem of respectability—a coat of arms. He put his money out at high interest and did not scruple to invoke the full vigour of barbarous laws against a delinquent debtor.

His conscience was not troubled by the fact that Elizabethan society was divided into two distinct classes—a small one booted and spurred to ride, and a large one bridled and saddled to be ridden. Indeed, he had a contempt for the lower orders. This allegation has been disputed many times over by those who insist, against evidence, that the man Shakespeare was as great as the poet Shakespeare. But could a man who had an ounce of sympathy for the masses have produced such a blaze of scorn as this (from 'Coriolanus', Act III, Scene III):

You common cry of curs! Whose breath I hate
As reek o' the rotten fens, whose loves I prize
As the dead carcasses of unburied men
That do corrupt my air . . .

23. *English Society in the Early Middle Ages*, No. 3, in *The Pelican History of England*, p. 47.

24. P. 289.

Frank Harris, who knew the plays as few men have known them, has pointed out that Shakespeare never drew a fanatic or a reformer, never conceived a man who swam against the stream of his time. "He had but a vague conception of the few spirits in each age," continues Harris, "who lead humanity to new and higher ideals; he could not understand a Christ or a Mahomet, and it seems as if he took but small interest in Jeanne d'Arc, the noblest being that came within the ken of his art."²⁵

Who can explain the mystery of this man? Others abide our question, he is free. As W. F. Osborne once wrote, he impresses us more as a phenomenon than as a man.²⁶

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STUDIES IN CANADIAN COMPANY LAW,

Edited by Jacob S. Ziegel; (Butterworths: Toronto), 1967,
xlii and 670 pp., (index) 47 pp.

As a teacher in company law, nothing has been more frustrating for me than having to tell students that the best texts on Canadian company law were Professor Gower's excellent English publication or the outdated and out-of-print book on Canadian companies by F. W. Wegenast. Finally, we have under one cover, a book which covers almost all the contentious areas on Canadian company law and which this reviewer has no hesitation in recommending to his students as *the* text for his course on company law.

The book consists of twenty-one essays in varying fields of company law, written by both teachers and practitioners. Of particular interest and importance is the fact that there is throughout an attempt to distinguish, explain and clarify the essential difference, both academic and practical, between registration-type companies and letters patent companies. This is particularly relevant in dealing with the rule in *Foss v. Harbottle*, personal rights, ultra vires, and internal regulations generally.

It is surprising that in a book of this nature, where several authors have contributed to the whole, there is very little overlapping in subject-matter. No doubt the editor deserves much praise for this. To say that the content and quality of the essays is first-class perhaps

25. *The Man Shakespeare*, (1923 edition) p. 380.

26. *The Genius of Shakespeare*, (1908) p. 9.

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