LAW AND LAWYERS IN LITERATURE.[1]

II.

Shakespeare's plays are replete with allusions to law and lawyers. They are so numerous that a book might easily be filled with a discourse upon them. Lord Campbell has earned the gratitude of the profession, if not of the general readers of Shakespeare, by a thorough search through his works for evidence on the question whether Shakespeare was ever apprenticed to an attorney, the results of which are published in the form of a letter to Mr. Payne Collier on "The Legal Acquirements of Shakespeare." And I cheerfully acknowledge the assistance I have derived from this little book, without which I should have overlooked many interesting passages. No certain conclusion is arrived at by Lord Campbell; but he puts it as a judge naturally would put it, that if the evidence were submitted to a jury and they found a verdict either for or against the allegation that Shakespeare had been an attorney's clerk, no Court could properly set it aside. At the same time, the burden of proof is on those who assert the fact, and in Lord Campbell's opinion the evidence is not conclusive. The knowledge of law might have been acquired by a very acute observer; and, considering Shakespeare's genius, he was capable of acquiring more knowledge for his immediate purpose than any other person could have done. But the extent of his knowledge is baffling to any one who advocates this opinion. One can understand how, for the development of a plot, a writer might apply himself to the study of a particular phase of the law, and acquire a sufficient amount of knowledge for his immediate purpose; as witness "Felix Holt the Radical," the plot of which turns on an abstruse point in property law. But Shakespeare's allusions are so numerous and so varied, ranging as they do over a large body of law, that it is difficult to imagine him as making a long and arduous incursion into highly technical subjects merely for the purpose of making use of one phrase, or supplying one illustration; and as repeating the proceeding, not twice or thrice, but very many times as occasion arose. He is always ready with an apt illustration from law as if his mind were charged with the subject and responded to the slightest suggestion; his allusions flow

[1] Part I of these lectures appears *ante* pp. 104-111.

from his pen naturally and spontaneously, as they would from that of an accomplished lawyer; he never mis-applies a principle of law or a technical expression, except when he ridicules his stupid justices and constables; and then he displays sufficient knowledge of law to sport with it—which of itself indicates a high degree of efficiency. It is, of course, unnecessary to determine here the question, whether or not he had ever been apprenticed. It is difficult to prove that he had been, and impossible to imagine that he had not. Accepting his marvellous acquirements as a fact, let us take a cursory glance at his allusions to and applications of the law.

He constantly displays an accurate knowledge of the law of real property, or land, and of the methods of dealing with it—by some thought to be the most difficult branch of law. One of the remarkable passages is found in *The Merry Wives of Windsor*, Act II, Sc. 2:—

> "Like a fair house built upon another man's ground; so that I have lost my edifice by mistaking the place where I erected it."

Every owner of land is entitled not only to the surface, but to all that lies beneath it down to the centre of the earth; and also to the column of air above it, *usque ad coelum*. Also, anything permanently attached or affixed to the soil, by whomsoever done, becomes part of, and therefore belongs to the owner of, the soil—the maxim of law being *quicquid plantatur solo, solo cedit*. So that if a stranger should plant a tree in, or build a house upon, another's land it becomes the property of the owner of the land. That this is subject to some exceptions according to the particular facts of the case does not impugn the correctness of the statement in the text. Shakespeare is, therefore, quite accurate in saying that an edifice built upon another's land is lost to the builder; and he shows his knowledge of a fact not generally appreciated.

His knowledge of the nature of a title to land is also remarkable. In the same play, Act IV, Sc. 2, he uses the expression, "If the devil have him not in fee-simple, with fine and recovery, he will never, I think, in the way of waste, attempt us again." A fee-simple is the largest interest in land that man can own under our system of land tenure. It is perpetual in its endurance, so to speak, descending to the owner's heirs both lineal and collateral, *ad infinitum*. So the expression means—if the devil have him not for good and all, if I may use that expression in that connection. What then is the meaning of "with fine and recovery"? Fines and recoveries were two kinds of actions brought in which the ownership of land was

claimed. A fine was a fictitious action, and was so called because it was put an end to by a compromise, and the claimant adjudged to be the owner. A recovery was not always fictitious, but was prosecuted to the end and judgment pronounced. In each case the title to the land was confirmed in the most public manner, and the claimant, therefore, had the best possible title. The firmness of the devil's hold upon the unfortunate old gentleman referred to is, therefore, illustrated by the best possible title that a man could have to his own land.

In *Hamlet,* Act V, Sc. 1, he again displays a marvellous knowledge of recondite terms of law. Hamlet, contemplating a skull turned up out of the ground says:—

> "There's another; why may not that be the skull of a lawyer? Where be his quiddities now, his quillets, his cases, his tenures, and his tricks? Why does he suffer this rude knave now to knock him about the sconce with a dirty shovel, and will not tell him of his action of battery? Hum! This fellow might be in 's time a great buyer of land, with his statutes, his recognizances, his fines, his double vouchers, his recoveries; is this the fine of his fines, and the recovery of his recoveries, to have his fine pate full of fine dirt? Will his vouchers vouch him no more of his purchases, and double ones too, than the length and breadth of a pair of indentures?"

The first thing that strikes one on reading this passage is the question, why did Shakespeare select a lawyer as the probable owner of the skull? Why not a statesman, a soldier, a parson, or a host of other individuals whose characteristics would have furnished a good subject for Hamlet's monologue?

It would fill the compass of a small treatise to explain fully all the terms used and all that they signify. I must content myself with trying to explain what is meant by a double voucher. When the owner of an entailed estate wished to bar the entail and sell to a purchaser, the purchaser brought an action against him claiming the land, alleging, of course fictitiously, that he had a title thereto. The tenant in tail then appeared and suffered judgment to go against him; but, to make the action appear more real, he vouched or called upon a third person (who was supposed to have warranted the title to the tenant in tail) and claimed against him lands of equal value to those which he had warranted, and which were now lost to him. The claimant then recovered the land, and the tenant in tail got his compensation in a judgment for other lands. Where the third

person was vouched, he sometimes vouched a fourth person and that constituted a double voucher. Thus, Shakespeare shews a very remarkable intimacy with the complicated process then in vogue for barring, or cutting off, an entail.

The phrase, "fine and recovery" is again used in a comical manner in *The Comedy of Errors,* Act II, Sc. 2:—

"Drom. S. There's no time for a man to recover his hair that grows bald by nature.
"Ant. S. May he not do it by fine and recovery?
"Drom. S. Yes, to pay a fine for a periwig, and recover the lost hair of another man."

This sportive reference to a fine involves a second play upon the word. It is used to denominate the sum which a tenant sometimes pays for a renewal of an expiring lease. And so, the bald man may renew his hair by paying a fine for a periwig, as a tenant pays a fine for renewal of his lease.

In *Troilus and Cressida,* Act III, Sc. 2, he uses the expression "fee-farm." A feoffment in fee-farm was a conveyance of land forever, as the word "fee" imports, reserving a rent forever, as the word "farm" imports. If we suppose that Mr. A. conveyed his land to Mr. B. forever, and the instrument contained a provision obliging Mr. B. to pay to Mr. A. an annual sum by way of rent forever, we have the explanation of "fee-farm." And so, when Troilus is advised to give Cressida "a kiss in fee-farm," Shakespeare intended that it should be a good long one, at any rate, without limitations or bounds. If this were the sole intention it might have been accomplished by the use of the word "fee-simple." But "fee-farm" imports a corresponding return to the giver, and it appears therefore that Shakespeare slily intimates that Troilus is entitled to a return similarly unlimited. He proceeds, then, after the greeting has been given, to make Pandarus say, "What! billing again? Here's "In witness whereof the parties interchangeably—" These words are the concluding words of a deed used by English conveyancers, indicating that the parties interchangeably execute and deliver it. And so the illustration of a conveyancing transaction is complete. What is most remarkable about the use of this phrase, "fee-farm," is that at the time when Shakespeare wrote, a fee-farm was, according to a great authority, obsolete, though still a subject of enquiry to a student of property law; from which one is forced to conclude that Shakespeare did not, in this instance at least, acquire his knowledge of property law from observation of contem-

poraneous events or facts, but must at some time have pursued it as a study or received some very thorough training in it.

Again we find a legal expression applied to a kiss in *King John*, Act II, Sc. 1:—

> "Upon thy cheek I lay this zealous kiss,
> As seal to this indenture of my love."

An indenture is a deed made between two parties at least, and must bear the seal of each of the parties. I leave it to my readers, if I have any, to complete the parallel.

Shakespeare further shows his knowledge of the practice of conveyancing (the mechanical contrivances for passing land from one to another) in *King Henry IV*, Part I, Act III, Sc. 1, where he describes the partition of England into three parts:—

> "And our indentures tripartite are drawn,
> Which being sealed interchangeably, &c."

This accurately describes a deed of partition made in three parts, so that, when sealed and interchanged, each party will hold one part as the evidence of the title to his portion. Of course this bit of information could have been obtained in a few minutes from any lawyer, and, if it had been an isolated instance, would have proved nothing, but when taken in conjunction with other allusions which could only have been the result of a deep study, it furnishes cumulative evidence for the opinion that the great dramatist must have had a good training in law.

In the same play, Act III, Sc. 2, King Henry is made to say that Richard

> "Enfeoffed himself to popularity."

The explanation of this is, that under the feudal law a holding of land was called a fief, feod, or feud. In order to convey it to another actual delivery was made, accompanied by a deed called a feoffment, which contained a narration of the transaction; and the person transferring the land was said to enfeoff the person to whom it was transferred. When, therefore, Richard II was courting popularity it is said that he enfeoffed himself, or completely delivered himself up, to popularity.

References to a "fee-simple" are again found in *Hamlet*, Act IV, Sc. 4:—

> "Nor will it yield to Norway or the Pole
> A ranker rate, should it be sold in fee;"

and in *Romeo and Juliet,* Act III, Sc. 1,

> "An I were so apt to quarrel as thou art, any man should buy the fee-simple of my life for an hour and a quarter."

But a more remarkable passage occurs in *All's Well that ends Well,* Act IV, Sc. 3:—

> "Sir, for a cardecu he will sell the fee-simple of his salvation, the inheritance of it; and cut the entail from all remainders, and a perpetual succession for it perpetually."

Entails were common enough in England for every one to know that in some mysterious way land was entailed; and cutting of an entail, or barring it as the term is, might also be part of the common knowledge of men. But the expression used by Shakespeare of cutting the entail from all remainders is one that could only be used by a conveyancer. I must ask a moment's indulgence while I endeavour to explain this. When land is "settled," it is given to Mr. A., let us say, and his lineal descendants. As long as the entail is not barred or cut off the land will descend to A.'s lineal heirs as long as they persist. This interest in the land is called a "fee-tail," a corruption of the Latin *feudum talliatum,* or fee cut down, i.e., to lineal descendants. And it is clearly a less interest than one which is untrammelled and will pass to heirs generally, i.e., to collaterals as well as descendants, which is a fee-simple. When an entail is created, then, there is something left over. When making the settlement the donor gives this surplus to some one else in the event of a failure of lineal descendants, and this surplus interest, so disposed of, is called a remainder. If the lineal descendants fail, the land passes to the person entitled to the remainder. Now, in barring an entail it is necessary to get rid of both the right of the lineal descendants to inherit, and also the right of the remainder-man. And when an entail is barred both these interests disappear, and the land is left untrammelled, or the interest is converted into a fee-simple—"and a perpetual succession for it perpetually."

Shakespeare has, in this instance, as well as in Hamlet's monologue over the skull, displayed an accurate knowledge of the mysterious process and effect of barring or cutting off an entail, which are supposed to be known only to lawyers.

Minor references to conveyancing law are found in *Macbeth,* Act IV, Sc. 1:—

> "—Our high-placed Macbeth
> Shall live the lease of nature."

The interest created by a lease of lands is called a term. And we frequently speak of the term of a man's life. So the comparison involved in the text is a very apt one.

And in *King Richard III*, Act IV, Sc. 4:—

> "Tell me what state, what dignity, what honour,
> Canst thou demise to any child of mine?"

"Demise" is the technical phrase used by lawyers for a lease, and its meaning is not generally known to laymen, who not infrequently confound it with "devise," which is the word used for giving land by will. With this passage may be compared one from *Hudibras*, Part II, Canto III:—

> "Honour's a lease for lives to come,
> And cannot be extended from
> The legal tenant."

The word "purchase," when used in connection with the acquisition of property, in ordinary parlance, means to buy. But when used as a law term in connection with the acquisition of land, it has an entirely different signification. Thus used it means the acquisition of land by any means other than by inheritance or descent, even when it is acquired by will when it comes as a gift. Shakespeare makes use of the word in its legal signification twice, at least. In *Antony and Cleopatra*, Act I, Sc. 4, Lepidus says:—

> "His faults in him seem as the spots of heaven,
> More fiery by night's blackness; hereditary
> Rather than purchas'd."

The contrast between inheritance and purchase in this passage indicates that the latter word is used in the legal sense.

So, in *King Henry IV*, Part II, Act IV, Sc. 5, the usurper of the Crown says to the Prince of Wales:—

> "—For what in me was purchas'd,
> Falls upon thee in a more fairer sort."

Thus Henry speaks of "an honour snatch'd with boisterous hand" as having been "purchased," i.e., acquired by himself, not by descent; whereas he refers to the Prince of Wales' right of inheritance as a "more fairer sort."

(To be Continued).

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