

AUTHORIAL RIGHTS, PART II

Early Shakespeare Critics and the Authorship Question

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It had been a thing, we confess, worthy to have been wished, that the author himself had lived to have set forth and overseen his own writings, but since it hath been ordained otherwise and he by death departed from that right, we pray you do not envy his friends the office of their care and pain to have collected and published them, and so to have published them, as where (before) you were abused with diverse stolen and surreptitious copies, maimed and deformed by the frauds and stealths of injurious imposters that exposed them, even those are now offered to your view, cured and perfect of their limbs and all the rest absolute in their numbers, as he conceived them.

John Heminge and Henry Condell

From the preface to the *First Folio*, 1623



JULY 22, 1598 , the printer, James Roberts, entered *The Merchant of Venice* in the Stationers' Register as follows:

James Robertes

Entred for his copie under the handes of bothe the wardens, a booke of the Marchaunt of Venyce or otherwise called the Iewe of Venyce./ Provided that yt bee not printed by the said Iames Robertes; or anye other whatsoever without lycence first had from the Right honorable the lord Chamberlen.

Orthodox scholarship can offer no satisfactory explanation for the final clause, which states that the play could not be printed by Roberts, the legal holder of the copyright, nor by any other stationer, without the permission of the Lord Chamberlain. Shakespeare scholars have seen the uniqueness of the entry. In *The Elizabethan Stage*, the venerable E.K. Chambers notes: "This entry is conditional in form, but it differs from the normal conditional entries in that the requirement specified is not an indefinite 'auctoritie' but a 'lycence' from a particular individual, 'the Right honorable the lord chamberlen'" (188).

In Part I of this article (THE OXFORDIAN, 2001) we examined several entries in the Stationers' Register in which it was stated that printing (or reprinting) could not commence without the author's permission (5-24). Such statements, frequent enough that they cannot

be seen as anomalies, should make it clear that the claims of orthodox scholars that sixteenth-century authors had no rights whatsoever over the publication of their work are plainly mistaken. It is true that once a writer sold or gave his work to a printer he could claim no royalties from sales, since, at that time, this was a right that belonged only to the publisher, but the intellectual control of the work remained with him (Detobel 14).

Only in two instances were these rights of the author ignored: 1) if they were dead and 2) if they were members of the aristocracy or, more generally, if they aspired to belong to the ruling elite (14). A dead author could not exert his incorporeal or personal right, a living aristocratic author could (by law), but generally would not (by custom).¹

The Ordinance of 1588

Further evidence of this authorial right is to be found in an ordinance passed by the Stationers in 1588 for the purpose of preventing monopolies (18-20). Paragraph 5 of this ordinance states that if a stationer did not publish a work within a certain amount of time after its entry in the Register (roughly six months), another printer was allowed to print a single impression of the work. The warning was inscribed in a book (no longer extant) on a table in the hall of the Registry. The original printer did not lose his copyright, it was simply suspended for one issue. He also profited, if to a lesser extent, as the one time publisher could be required to pay him a percentage of the sales. Yet Paragraph 5, whose purpose was to protect the trade itself, to keep projects rolling along and prevent stagnation, was nevertheless rendered null and void if the author refused to allow the printing.

Let us illustrate by assuming that the

Paragraph 5

And lastly that yf it shall happen at any tyme hereafter the copy [i. e. a publication enjoying what was then roughly equivalent to our existing copyright protection] of any man to be out of prynt and that after the warninge shalbe gyven him and registred in the hall booke at a Court of Assistentes for the repringing thereof, the owner of the same doo not within Sixe monethes (after such warning and regestring in the said booke) repring or begyn to repring the same and procede orderly with the ympression to ye finishyng thereof as he conveniently may so that the

Author of any suche copy be no hinderance thereunto

That then it shalbe Lawfull for the Journemen of the said Company to cause and gett any suche booke or copy to be printed to ye use of ye Company during ye Impression then to be printed of ye same copy. Saving and allowinge to the owner of the copie a ratable parte with them in ye same Impression in profit and charge as yt shall fall out to every severall partener in every suche Impression According to the order and discretion of the Master, and Wardens of the Company for the tyme beyng.

(Arber 2.43.44, *emphasis added*)

entry lacked the final clause. It would then read:

xxijo Iulij 1598

James Robertes./Entred for his copie under the handes of bothe the wardens, a booke of the Marchaunt of Venyce or otherwise called the Iewe of Venyce./ . . .

Let us further imagine that some other stationer got hold of a manuscript of the play at some point, six months or more after entrance, and drew the wardens' attention to the fact that the publication was overdue. The wardens entered the play in the book in the hall, summoning Roberts to start printing within six months. Roberts begged off, giving the company the right to give our imagined second stationer the opportunity to make one impression of the play, a right that could be denied, however, if he was unable to obtain the author's consent. The clause: "Provided that it be not printed by the said James Roberts, or any other whatsoever, without licence first had from the Right honorable the Lord Chamberlain," is to all extents and purposes identical to similar entries, as in the entries of authors Thomas Ford, John Dansye, and Thomas Paybodye (7-8) where the permission of the author was required in the entry. The only conceivable purpose for requiring the author's permission in these cases was to block Paragraph 5 from taking effect. The only reason we can see for blocking Paragraph 5 was to allow for a further delay in publishing because, for some reason, the author still did not wish to print past the six month grace period.

Protection against piracy

We are often told that entry in the Stationers' Register was for the purpose of preventing the piratical printing by another stationer, but was an entry sufficient to secure *The Merchant of Venice*, or any work, against piracy? The answer is no, as the case of Sir Philip Sidney's *Apology for Poetrie* shows. Let us demonstrate once again by restating the entry, this time omitting a different phrase:

xxijo Iulij 1598

James Robertes./Entred for his copie under the handes of bothe the wardens, a booke of the Marchaunt of Venyce [...]/ Provided that yt bee not printed by the said James Robertes; or anye other whatsoever without lycence first had from the Right honorable the lord Chamberlen.

Without the addition of the second title the play could have incurred the fate of Sidney's book, which was

entered on 29 November 1594 by William Ponsonby, the accredited publisher of the author's remains, and published by him within twelve months. But he was not quick enough to prevent an unauthorized manuscript being entered under the title of *An Apology for Poetry* on 12 April following and published by Henry Olney. . . . Both entries were made under the same wardens' hands, which might be thought to imply some lack of vigilance; but *the titles differed and the second did not name the author*. The identity was not discovered till after Olney's edition at least had appeared; but that no blame was imputed is clear from the terms under which the second entry was cancelled: "This belongeth to Mr. Ponsonby by a former entrance, and an agreement is made between them whereby Mr. Ponsonby is to enjoy the copy." (Greg 71-2, emphasis added)

Why the two titles? *The Merchant of Venice* may also have been known as *The Jew of Venice*, possibly due to multiple productions, some under different names, or possibly because the play was popularly known by the second name, one its nonliterate audience had come up with on its own. Thus it would seem that these two clauses were added to prevent any possible unauthorized publication of the *The Merchant of Venice* and for as long a period as the Lord Chamberlain desired.

This, of course, begs the question why the Lord Chamberlain would have, or could have, appropriated rights clearly established as the author's by Paragraph 5 of the Ordinance of 1588? How does orthodoxy cope with this problem?

The attitude of the patrons

It was Pollard's purpose in his *Shakespeare's Fight with the Pirates* (1973) to refute Sidney Lee's pessimistic view about the transmission of Shakespeare's texts, a view later repeated by Leo Kirschbaum:

If the conjectural history in this chapter be accepted, then we can no longer be optimistic concerning the ability of Shakespeare's fellows to hold the stationers' depredations in check. Shakespeare, we will have to admit, was badly worsted in his fight with the so-called "pirates," and we can better understand the background of Heminge and Condell's angry words quoted at the beginning of this book. (253)

But was Shakespeare, in fact, "badly worsted"? Kirschbaum and Lee based their judgment on the passage in the "epistle to the Readers" in the Folio of 1623 where the authors complain that so many plays of Shakespeare's had been "maimed and deformed by the frauds and stealths of injurious imposters" (see page 30). The crux of Pollard's well-evidenced

refutation is that Shakespeare, as a professional playwright, should have had little to fear from piracy, but that, for some unknown reason, he was in fact the outstanding victim of it.

According to Pollard, the fact that the Lord Chamberlain's Men and the Lord Admiral's Men had such powerful patrons should have acted as a brake on prospective pirates who would have had "the strongest reasons for not embroiling themselves with the Privy councillors who were the players' protectors" (37). Certainly this makes sense, yet why then is there only this one (apparent) intervention by the Lord Chamberlain and none at all by the Lord Admiral? Why were no plays of the Lord Admiral's Men surreptitiously printed while many plays of the Lord Chamberlain's Men were pirated, nearly all of them plays by Shakespeare? And this being the case, why did the Lord Chamberlain intervene only in the case of *The Merchant of Venice*, ignoring other circumstances in which his company's plays were pirated?

Pollard addresses this question:

On the other hand, the hostility of the City and occasional trouble at Court rendered the position of the players always more or less precarious, and to trouble a great lord over a small matter when they might need his help in a much more important one would not have been wise. Hence we need not be surprised if we find a company submitting to occasional loss rather than trouble their protector, as long as the loss does not become too frequent. . . . To go to the Lord Chamberlain over the loss of a forty-shilling fee for the printing rights in a play would hardly have been good business. (36)

But even in the most important matters it seems these patrons were reluctant to intervene on behalf of their clients. In fact it seems that, according to a recurrent formula of the time, anything involving the theater was regarded by its patrons as mere "trifles"—no matter was sufficiently "weighty" to intervene. One such vital matter for the Lord Admiral's Men would certainly have been the building of the new theatre, *The Fortune*, yet while trying to obtain permission to build, Philip Henslowe noted in his *Diary*, "I am sure my lord admerall will do nothinge" (qtd. by Foakes 299).

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The record of the Lord Chamberlain, George Carey, is even worse. When a similarly vital matter was on the agenda for his company, the establishment of a public theatre at Blackfriars, and the neighbouring residents petitioned the Privy Council to block it, not only did Hunsdon not exert himself in their behalf, he himself signed the petition to block the theater, an act that Andrew Gurr calls: "either a great betrayal, or a total failure of consultation" (23-5). Would the same Lord Hunsdon have been willing to intervene with the business of the Stationers' Company just to protect this one play against premature printing?

And why should the players "trouble a great lord over a small matter" when the author himself, William Shakespeare of Stratford, their fellow-actor and fellow-shareholder, could far more easily have achieved the delay of printing all by himself?

Nor does any of this address the question that Pollard leaves unanswered, which is why such an intervention by the Lord Chamberlain would have been necessary in the first place. As E.K. Chambers states, "an unconditional entry would have served Professor Pollard's assumed purpose just as well" (146).

The troublesome clause

Kirschbaum tells us that "in 1620, the stationer John Bill, in writing of Bishop's publication of Fulke's so-called *Answer to the Rhemish Testament*, entered December 9, 1588 (II.510), states":

He had ye printing of yat copie to him and his Assignes. and this appeares by witnesses as also by ye Registry of ye Stationers hall where this was entred before ye master and wardens of ye Stationers at a Court then holden as all copies which are bought by Stationers are. And this entry in ye hall booke is the commun and strongest assurance yat Stationers have, for all their copies, which is the greatest parte of their Estates. (III 39)

Note that Bill does not say that entrance was the only assurance of copyright, just that it was the *strongest* assurance" (66). Kirschbaum adduces an entry of March 5, 1599 (3.140) in which the entrance of some sermons would only be valid if those sermons had not been printed already. It may well be that, in adding this conditional clause, the wardens were thinking of sermons which had already been both entered and printed.

But without doubt Kirschbaum is correct in asserting that, whether with or without entry in the Stationers' Register, publication was regarded as creating a copyright. As examples he cites two plays by Shakespeare: *Love's Labour's Lost* and *Romeo and Juliet*, both first printed surreptitiously by John Danter, the former probably in 1595/6 and the latter in 1597. Danter did not enter the plays, nor did Cuthbert Burby, who printed corrected versions in

1598 and 1599. Yet lack of entry did not prevent Burby from transferring his copyrights to Nicholas Ling in 1607. Even in this case we have to take into account that there was probably no transfer from Danter to Burby either in 1598 nor in 1599 (when Danter died). Such a transfer was not necessary as the versions published by Burby had been corrected, enlarged and amended by the author, thereby making obsolete any claim of Danter. And, at any rate, the condition quoted (from another entry) by Kirschbaum is “that none of these sermons be printed already” (966). Nowhere, it is true, does Kirschbaum state that printing a work after entrance could be opposed to the copyright recorded by that entrance.³ At least not explicitly. But in one case and one case alone it is to this that Kirschbaum resorts as a means of explaining what all must agree is a very odd case, namely the entry of *The Merchant of Venice*.

When, therefore, *The Merchant* was published, it was published with the full consent of Shakespeare’s company. It would appear, then, that in 1598 the Lord Chamberlain’s men, fearing that the play would be stolen, protected themselves in the only peaceful way in which they could protect themselves: by having an entry made in the Stationer’s Register *which would keep other stationers from entering or publishing the play*. (203, emphasis added)

Thus Kirschbaum explicitly asserts that entering the play was sufficient to prevent other stationers from printing it. He continues:

This assumes that Roberts was a friend of the company; this assumption is initially valid, for he printed their playbills. The entry, however, is a conditional entry; in other words, *The Merchant* was “to be stayed” until official allowance had been given. Furthermore, *a specific licenser who was not one of the regular licensers is named*. In this latter respect, the entry is unusual in the Registers proper. (205, emphasis added)

The entry is not only unusual, it is absolutely unique, and not only in the Registers proper; there is no comparable case in any of the other extant records of the Stationers’ Company. Nor was the play “stayed” in the usual sense in which this term was used in the context of the Stationers’ Company. A “stay” by the wardens meant that the copyright was held in suspense; either the book was not yet entered in the register, or it was provisionally struck out, or a note was added that further consideration was required. A number of such stayed plays survive on fly-leaves printed by Arber (3.35-38). None of these provisional entries were signed by the wardens and no copyright was established. But *The Merchant of Venice* was entered in the Stationers’ Register and, by the same token, James Roberts *did* have the copyright. Only if another stationer could prove that he had entered the very same play under the same or a different title before Roberts had made his entry would the latter lose his

copyright; or possibly, as Kirschbaum maintains, if another stationer could prove that he had *already published* before Roberts had entered it. Obviously, neither the former nor the latter had occurred, therefore Roberts's copyright was safe. Should another stationer print the play in breach of his copyright, he risked being fined, as in the following:

A case in point is Kyd's *Spanish Tragedy*. Of this the earliest known edition, surviving in a single copy, was published by Edward White without date but evidently late in 1592. This, however, was "Newly corrected and amended of such gross faults as passed in the first impression," and contains an excellent text evidently issued to replace what we have learned to call "a bad quarto." In fact the play had been entered on 6 October to Abel Jeffes, and we may therefore assume, although no copy survives, that the faulty "first impression" was his. In any case, on 18 December Jeffes complained to the Court that White had infringed his copyright, and the Court upheld his contention (in spite of the fact that his entrance fee was still owing) confiscating White's edition, fining him 10s., and even threatening him with imprisonment. (Greg 74)

With a view to the possibility Kirschbaum imagines (below) to explain why the clause requiring the license of the Lord Chamberlain would have been necessary, we should ask what would have happened if Edward White had published *The Spanish Tragedy* after Jeffes's entrance but before Jeffes's publication. That no such case can be found in the extant records of the Stationers' Company can hardly be surprising. If a stationer entered a book, it was generally with the intention of capitalizing on it in the near future; that is, printing it. As should now be obvious, the case of James Roberts—who delayed the printing of three plays by Shakespeare for over two years between 1598 and 1604—is exceptional!

The whole copyright system of the Stationers' Company was based on the first possessor principle. If there was entrance, there had been licensing by the wardens (signing of the copy) before. To cancel one man's copyright by an entry in favour of a copyright without previous entrance would be to undermine the trade regulatory function of register entry. Thus Roberts's entry was safe. No authority, that is, no submission to a censor was required. Had it been, it would have been with reference to an unspecified authority, as Chambers remarks. Further, the Lord Chamberlain simply could not act in place of the episcopal licensers. Their mandate required that they reject the printing of a work on political, religious, or moral grounds or for reasons of non-conformity. They never decided on *when* a particular work was to be printed. The decision when to publish a work was up to the author, not the licenser. If, as these scholars claim, the Lord Chamberlain, in this instance, took over, arrogated, or usurped some power, it was the power of the author, not of the episcopal licensers.

Since this is a solution that Kirschbaum either can not or will not admit, he continues to seek a solution for the troublesome clause:

If the Lord Chamberlain's men could trust that Roberts would not publish *The Merchant* without their consent and if a regular entry was sufficient to keep others from publishing it, why, one may ask, was the provision that he obtain the Lord Chamberlain's consent formally included in the entrance? (205)

He asks the right question, but comes up with an absurd answer, one that obviates his own conclusions of some 200 pages earlier:

When Roberts entered the play he must have brought a warrant from the Lord Chamberlain that the play was never to be published without the latter's consent. The Clerk, therefore, entered the play to Roberts and included his lordship's order in the entrance. This explanation accounts for "or any other whatsoever," for the warrant had probably read that no one was to print the play without licence "first" had from his Lordship." (205)

Bearing in mind Paragraph 5, the sense is clear: after six months Roberts cannot be urged to print, no other stationer can be given one impression on the prohibitive ground stated in the paragraph itself that there is "hindrance of the author"; in other words, the author does not yet give his permission or license, the author here being referred to as "the Lord Chamberlain." Based on his own assumptions, Kirschbaum cannot give a satisfactory reason why this clause was necessary if a normal entry was sufficient to bar the publishing by any other stationer. Sensing that he hasn't come up with a workable solution, he tries again:

It is also possible that the Lord Chamberlain's men wanted this provision inserted in Roberts's entry. If they feared surreptitious publication of the play, by their having it specifically stated that the play was not to be published without the Lord Chamberlain's consent Shakespeare's fellows might effectively frighten off any stationer who might have the temerity--if Roberts made a normal entry--to claim that the other stationer had begun printing the play before Roberts had entered it--to claim, that is, prior possession of the copyright. Furthermore, the provision would intimidate any stationer who might want to publish the play in the future. (205)

This is nothing more than double-talk, perhaps to deter any possible questions on the part of the reader. If a normal entry was sufficient to bar any other stationer from publishing the play (as, indeed, it was, except in this one case) why require a proviso from the Lord Chamberlain to make it *over-sufficient*? If a normal entry was sufficient to that effect, why should the Lord Chamberlain's Men--after Roberts, who had surely proven himself trustworthy, had entered the play--fear surreptitious printing? If, as Kirschbaum has stated, publication of a play prior to entrance was sufficient to establish a copyright, the wardens them-

selves would have refused Roberts the license and there would have been no further contest. It made no sense for the Lord Chamberlain to make printing dependent upon his permission.

Caught on the horns of this dilemma, Kirschbaum makes a second *ad hoc* assumption that, if followed through to its conclusion, would have made it possible for a stationer B to start printing a work *after* the copyright of that same work had been granted stationer A; a situation that, for the Stationers' Company, would have undermined their whole copyright system. Before printing a work, a stationer had to obtain the copyright from the company, at which point he could then enter or not enter the work in the register. Entry, however, was the best and simplest evidence of his copyright. According to Kirschbaum's default solution, The Stationers' Company would have granted the copyright and entered it to A; then, repealing their decision, allowed B to print although he had failed to present the work for entrance before he started printing, rewarding him for violating the rules and punishing A for observing them; a scenario that makes even less sense than his first suggestion.

Authorial rights at stake

It is his dogmatic and unwarranted denial of any authorial rights that has led Kirschbaum into this impasse. Because it is clear that it is authorial rights that are at stake in cases such as those of Farnaby, Downam, and Timothy Bright, discussed in detail in Part I (9, 10, 12), he simply ignores them, as he also ignores the Ordinance of 1588 which asserts the right of the author to oppose the printing (or reprinting) of his work. Because it is impossible for him to admit such rights, he cannot see how the recognition of the author's incorporeal, personal right was—indeed had to be—paramount, if the Stationers' Company was to overcome the primal anarchy of the early days of publishing and regularize the printing trade for the sake of its constituents.

Once it is understood that merely entering a work was not always sufficient to prevent printing by others and that a stationer to whom a work was entered could not postpone printing for an indefinite period, or rather that he could do so only on condition that *the author had explicitly made the printing conditional on his authorization*, it is clear that the clause in the entry of *The Merchant of Venice* was *not* superfluous but served an easily recognizable purpose: that of protecting the play against piracy and blocking the application of Paragraph 5 of the Ordinance of 1588 against premature printing by any other stationer *contrary to the will of the author*. It should also be clear from the wording of the entry that that author in this case was either the Lord Chamberlain, or that, for some reason, the Lord Chamberlain was acting in the author's place. The same paragraph also offers a simple and coherent answer to another conundrum of the publication history of Shakespeare's plays.

The publication of **Hamlet**

The circumstances surrounding the publication of Q1 (Quarto 1, known as the “bad quarto”) and Q2 are still puzzling scholars. Why was a bad quarto of *Hamlet* published in 1603 and a good quarto late in 1604 (some of the second quartos are dated 1605)? James Roberts was the printer of the 1604 quarto, Nicholas Ling the publisher; the printer of the bad quarto was Valentine Simms, while one of the publishers was also Nicholas Ling, the other being John Trundle. Mainly three answers have been given. They are summarized by Harold Jenkins in his introduction to the Arden edition of *Hamlet*:

Roberts’s claim to *Hamlet*, his two-year delay before printing, his relations with Ling, publisher of both quartos, have been the subject of ingenious speculation. But the most straightforward explanations are still also the most probable. Since nothing at all connects Roberts with Q1, we must infer that [1] this was brought out by Ling and Trundle in spite of, not in accordance with, the entry in the Stationers’ Register. Yet, from Roberts’s co-operation with Ling in the publication of Q2, it follows that [2] they came to an accommodation. The participation in Q1 of Trundle, a very much junior partner, with Ling, an established bookseller, together with Trundle’s disappearance when the bad quarto was succeeded by the better, has sometimes led to a guess—it can be no more—that [3] it was he who secured the unauthorized copy. (14-15)

If one takes into account the Ordinance of 1588, it seems certain that it was [3] or Jenkins’s “guess” that happened: it was Trundle who procured the unauthorized version.

Roberts’s role in the publication of Shakespeare’s plays

To explain the role of James Roberts in the entering on the register and printing of several plays by Shakespeare mainly three explanations have been advanced:

Roberts as pirate : That James Roberts was a pirating printer was a widely held belief until A.W. Pollard rejected it out of hand (43-4). In hindsight it is not easy to understand what might have induced scholars to see in Roberts one of the most unscrupulous of literary pirates. Any attempt to steal the plays would have been easily thwarted in July 1598, when *The Merchant of Venice* was entered for printing. The wardens, alerted by the players, would have required that Roberts first obtain the licence of the Lord Chamberlain for the printing of *The Merchant of Venice*.

Roberts, in fact, seems the very opposite of a piratical printer. He himself had to yield to the publication of Thomas Pavier’s bad quarto of *Henry V* when in August 1600 he tried

to register it with the Stationers along with three others, two of which were soon afterwards published and printed (not by him) as good quartos. Roberts waited for years before publishing *The Merchant of Venice*--not the typical behavior of a pirate. He entered *Troilus and Cressida* in February 1603 but never printed it himself, although he remained in business until at least 1606, possibly till 1608. Roberts owned two lucrative privileges, one for the printing of "Prognostications and Almanacs" which he shared with Richard Watkins; the other for the printing of the playbills, which was entirely his own. It should be clear then that Roberts was no needy printer. After *The Merchant of Venice* he entered four more plays of the Lord Chamberlain's Men and, as seen, tried to enter four more in August 1600.

Roberts had nothing to do with the unauthorized version of *Hamlet* published in 1603; either it was his copyright which was injured or he refused to print it, waiting till 1604 to print the good quarto. Pollard's argument that Roberts--a man who had steady business relations with the players through his privilege for the printing of playbills--was, in fact, a most unlikely pirate, was absolutely sound.

Ling breached Roberts's copyright: Hardly less odd, however, is the idea that Nicholas Ling published the bad quarto of *Hamlet* in 1603 in breach of Roberts's copyright. What is true for the relationship of Roberts to the players is even more true for the relationship of James Roberts to Nicholas Ling, who were obviously close associates. From 1593 to 1600, Ling published all six works written up to then by Michael Drayton; Nicholas Breton's *Wit's Trenchour* [translatable as *A Wit Sandwich*]; Evrard Guilpin's *Skialetheia*; Sir John Davis's *Orchestra*; the first and third of the commonplace book project *Wit's Commonwealth* (1597 and 1599); the first book of Luis de Granada's *The Sinner's Guide* in a 1598 translation by Francis Meres (author of *Wit's Treasury*); the second part of *Wit's Commonwealth* (1598), published by Cuthbert Burby, who was also associated with Ling (to whom he assigned in 1607 the copyrights in Shakespeare's *Love's Labour's Lost* and *Romeo and Juliet*); and finally, the choicest contemporaneous English miscellany of the day, *England's Helicon* (1600). Would Ling have infringed a copyright of so close an associate; a copyright, moreover, he was likely to have assigned to him anyway?

Ling breached his own copyright: The only possibility left is that Roberts had already assigned the copyright to Ling when the latter, with John Trundle as co-publisher, published the bad quarto of *Hamlet* in 1603. Assignments of copyrights from one stationer to another were sometimes registered much later than they occurred or even not registered at all in the Stationers' Register. But this gives us what is perhaps an even odder situation, because Ling, in sharing the copyright with John Trundle and publishing an unauthorized version before publishing the authorized version in 1604, would have had to pirate himself, so to speak, thus committing a breach of his own copyright.

We get the “most straightforward explanation” (pace Jenkins) if we consider the publication of *Hamlet* in 1603 as an instance of the application of Paragraph 5 of the Ordinance of 1588, in which case the only assumption we have to make is that Roberts had already transferred the copyright to Ling. Ling already had the copyright, but for some reason could not publish the authorized text. Possibly the author, Shakespeare, had not yet given his authorization, whether to Ling or to Roberts. But, unlike the 1602 entry of *The Merchant of Venice*, no proviso was included. In 1603, *Hamlet* had been registered for at least six months and was not yet printed. If during that period John Trundle came across a manuscript of the bad quarto version of *Hamlet*, he could have asked for application of Paragraph 5 in order to get the right to publish one impression of the play based on his possession of the Q1 text. Ling could then have refused to publish. In that case Trundle would have obtained one impression, with Ling acquiring a share in the proceeds as determined by the wardens. *Hamlet* could then have been published in the “bad quarto” version and Ling would have had no means of preventing it. Therefore, Ling’s most rational choice was to jointly publish with Trundle, Trundle’s right expiring as soon as his single impression was sold out, or as soon as a different and considerably amended version of the play was published, as happened in 1604. Seen in this light, there is nothing mysterious in the publication of *Hamlet* in 1603 and 1604, nothing to suggest anything but an amicable relationship between Ling and Roberts.

A question remains, however, concerning the relationship between Ling and Roberts, on the one hand, and the author of *Hamlet*, on the other. Why didn’t Ling publish the good quarto in 1603? If he had it, he could have published it alone, without Trundle. It may be that he had the copyright, but not the text the author wanted to publish, or possibly the author, by private agreement with either Ling or Roberts, did not yet want to see the authorized text published. The author might have been unavailable in 1603, maybe because of the plague. Or he might still have been working on it.

Who, then, was the Lord Chamberlain in question?

It is taken as a given by orthodox Shakespeare scholars that the only Lord Chamberlain in July of 1598, when the *Merchant of Venice* entry was made, was George Carey, Lord Hunsdon. Carey was the son of a previous Lord Chamberlain, Henry Carey, first Baron Hunsdon, the original patron of the Lord Chamberlain’s Men. Hunsdon’s office was that of “Lord Chamberlain of the Household,”² the office that managed the monarch’s personal household, which included responsibility for Court entertainment. It was, however, an office that had nothing to do with licensing plays for the press; at least, not at this time.³

George Carey had not been his father’s immediate successor as Lord Chamberlain. The post had gone first to Robert Cecil’s father-in-law, William Brooke, Lord Cobham. Cobham

died in March, 1597 at which point Carey succeeded to the post.

As most Oxfordians are aware, however, Hunsdon was not the only "Lord Chamberlain" during Elizabeth's reign. There was also, as there had been for centuries, the purely honorary post of *Lord Great Chamberlain*, an office hereditary to the earls of Oxford. Both titles were frequently shortened in common parlance to "Lord Chamberlain"⁴ so that, although it is true that in most documents of the period, the term "Lord Chamberlain" referred to whoever held the post of Lord Chamberlain of the Household at the time, there can be no absolute guarantee that a given reference in 1598 is to Lord Hunsdon and not to Lord Oxford. In every case it is necessary to know from the context which of the two was intended.

Whether the Lord Chamberlain referred to in the entry of *The Merchant of Venice* was the Chamberlain of the Royal Household or the Lord Great Chamberlain is a question the wardens of the Stationers' Company can no longer reveal. We can be sure, however, from what we do know, that they could see from the wording of the entry that Paragraph 5 of the Ordinance of 1588 could not be applied without the permission of *the author*. Thus it is on those who do not want to accept that Edward de Vere, Earl of Oxford, wrote *The Merchant of Venice* that the burden lies to prove that the author was George Carey, Baron Hunsdon. ©



NOTES

1 Francis Bacon was one of the first Court writers to break free from the constraints of this custom. In 1597 the stationer Richard Serger was about to surreptitiously print Bacon's *Essays*. The work was entered in the Stationers' Register on January 24, 1597. Bacon intervened and on February 7 Serger's copyright was cancelled. In the letter to his brother Anthony dated January 30, 1597 with which he prefaces the 1597 edition of his *Essays* Bacon makes clear his dilemma: "These fragments of my conceites were going to print; To labour the staie of them had bin troublesome, and subject to interpretation; to let them passe had been to adventure the wrong they mought receive by untrue Coppies... Therefore I helde it best discretion to publish them my selfe." We understand why "to labour the staie of them had bin troublesome" because, unless he invoked his right as author as stated in Paragraph 5, he had no authority to stop Serger, whose right to copyright was clear according to the rules of the Stationers'.

Thus, when the *Essays* were newly entered to Humphrey Hooper on February 5, Hooper's entry was "under the hands" of Bacon himself and two other persons:

Humfrey Hooper

Entred for his copie under the handes of Master FRAUNCIS BACON, master Doctor STANHOPE master BARLOWE, and master warden Dawson, A booke intituled *Essaies, Religious meditations, Places of Persuasion and Dissuasion* by master FRAUNCIS BACON.

Both Stanhope and Barlow were regular censors, empowered to pass on the moral suitability of works, but with no authority to contest Serger's copyright. Only a contest of copyright could have caused a stay. A contest of copyright, and consequently a stay, would be possible only if Hooper or any other stationer had registered the *Essays* before Serger. But since this was not the case, the only means open to Bacon to stay the publication of this "untrue copie" was to exercise his rights as author and so, as he states, he held it his "best discretion" to publish them himself. The hand which caused the cancellation of Serger's entry was neither Barlowe's nor Stanhope's hand, it was Bacon's hand, the author's hand.

Bacon's letter has been totally misunderstood by Leo Kirschbaum and given that he denies the existence of any authorial right, it is not difficult to guess why. Regarding the difficulty of "laboring a stay," he exclaims: "The words . . . coming from the pen of one of the greatest lawyers of his day, are highly significant." Far more significant are the dates: that Serger registered on 24 January, Hooper registered on 5 February, the court cancelled Serger's entry on 7 February, and that Bacon dates his letter 30 January, five days before Hooper's registration and seven days before the Court of Assistants annulled Serger's entry. The perfect certainty of one of the greatest lawyers of his day with regard to the success of his personal intervention should be a solid testimony to the existence of authorial rights and their recognition by the Stationers' Company.

2 "Lord Chamberlain of the Household" is a generic term coined by modern historiographers, no doubt derived from "Lord Chamberlain of the Royal Household," which came into use in the statutes of Charles II. The title most often used during Elizabeth's reign was "Lord Chamberlain to the Queen's House" (and in James's reign, "to the King's House"). Earlier, in the Henrician statutes, the term "Lord Chamberlain to the King" first appeared, although still older designations are also found: "Chamberlain to the King," or "the King's Chamberlain." Before Henry VIII, most official documents were in Latin where the predicate "Dominus" for "Lord" occurs extremely rarely; here he was simply termed "the King's Chamberlain"; the term also used by Francis Bacon in his 1622 biography of Henry VII.

Thus, technically speaking, an office of "Lord Chamberlain" did not exist, only the office of chamberlain. This is why until about the end of the 15th century the term "Lord Chamberlain" is rarely met with. In Latin documents he is simply the "camerarius," in English documents "chamberlain."

4 Three instances among many where, as Lord Great Chamberlain, Edward de Vere was referred to simply as "Lord Chamberlain" in contemporary documents:

From Volume 1 of the *Calendar of Proceedings in Chancery in the Reign of Elizabeth (185)*: "Plaintiff Daniel Cage: defendant, Thomas Hamond" it states: "Object of suit, claim by lease, Manor of Much Hormeade, the inheritance of Edward de Vere, Earl of Oxenford, lord chamberleyn" (Charles Wisner Barrell. "Lord Oxford As Supervising Patron of Shakespeare's Theatrical Company." *The Shakespeare Fellowship Quarterly* 4.33 [July 1944] 40; as qtd. by Miller 121-128, 156).

From a letter dated 1 July 1603, unsigned, but endorsed: "Mrs. Hicks to my lord" (the wife of Michael Hicks, private secretary to Lord Burghley, who later served as secretary to his son, Robert Cecil (Salisbury MSS: Vol. 15, p. 164): "... Mr. Billett desired me to speak with my Lord Chamberlain touching the money due to my lady Susan [Oxford's youngest daughter], which is for half a year the second of last month. Having no other assurance for the main sum but an assignment from those in whose name the manor of Hadnam [Hedingham Castle, Oxfords ancestral home in Essex] passed . . ."

That this was not something new can be seen from the following extracts from Robert Cotton's collection of records from the Tower of London (1637, emphasis added):

1) Earl of Oxford by Inheritance, 1 R.2. [ie. first year of the reign of Richard II]:
An Act, that the Chancellor, Treasurer, Steward of the Kings Household and Chamberlain during the Kings minority shall be chosen by the Lords in Parliament, saving the inheritance of *the Earl of Oxford in the Office of Chamberlain*, so always as if any of these Officers die between the Parliament, that then the King may name them by the advice of the continual Council. (159)

2) Earl of Oxford 1 H.4. [ie. first year of the reign of Henry IV]:
The Commons pray the King that *Richard Earl of Oxford*, who had married Alice the daughter of King Richard's Sister, may be restored to the office of *Chamberlain of England*, being his due inheritance, and taken away by violence by King R.2. (397)

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