

# **SHAKESPEARE'S LEGAL MAXIMS**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649192380

Shakespeare's legal maxims by William Lowes Rushton

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.  
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

[www.triestepublishing.com](http://www.triestepublishing.com)

**WILLIAM LOWES RUSHTON**

**SHAKESPEARE'S  
LEGAL MAXIMS**



# SHAKESPEARE'S LEGAL MAXIMS.

BY

WILLIAM LOWES RUSHTON

CORRESPONDING MEMBER OF THE BERLIN SOCIETY FOR THE STUDY OF MODERN  
LANGUAGES, AND AUTHOR OF "SHAKESPEARE A LAWYER."

\* \* \* \* Juvat integros accedere fontes  
Atque haurire. LUCENTIO.

\* \* \* \* "It is pleasant to handle  
An untouched subject."

LONDON

LONGMAN, GREEN, LONGMAN, AND ROBERTS

1859

5

*Price One Shilling.*



## NOTICE.

---

A PORTION of this attempt to explain several obscure passages in the works of William Shakespeare, has been published amongst the transactions of "The Berlin Society for the Study of Modern Languages," in the "Archiv," edited by Ludwig Herrig.

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100



## SHAKESPEARE'S LEGAL MAXIMS.

---

“Qui genus humanum ingenio superavit, et omnis  
Restinxit, stellas exortus uti acrius sol.”

LUCRETIUS, iii. 1056.

THE lawyer, when he reads attentively the works of William Shakespeare, may not be more surprised by the poet's correct use of law terms, and intimate acquaintance with legal customs and tenures and the *lex scripta*, than by his extensive and profound knowledge of the maxims of the English law.

PORTIA. “To offend, and judge, are distinct offices,  
And of opposed natures.”

*Merchant of Venice, Act 3, Scene 1.*

QUEEN KATHERINE.

“I do believe,

Induced by potent circumstances, that  
You are mine enemy; and make my challenge,  
You shall not be my judge: for it is you  
Have blown this coal betwixt my lord and me,  
Which God's dew quench!—Therefore, I say again,  
I utterly abhor, yea, from my soul,  
Refuse you for my judge; whom, yet once more,  
I hold my most malicious foe, and think not  
At all a friend to truth.”

*Henry VIII., Act 2, Scene 4.*

*Nemo debet esse iudex in propriâ suâ causâ.* (12 Rep. 113.) No man ought to be a judge in his own cause. It is a fundamental rule in the administration of justice that a man cannot be judge in a cause in which he is interested (per Cur. 2 Stra. 1173): *nemo sibi esse iudex vel suis jus dicere debet.* (C. 3. 5. 1.) If a man will prescribe that if any cattle were upon the demesnes of the manor, there doing damage, that the lord of the manor for the time being hath used to distrain them, and the distress to retain till fine were made to him for the damages at his will, this prescription is void; because *it is against reason that if wrong be done any man, that he thereof should be his own judge*; for by such way, if he had damages but to the value of an halfpenny, he might assess and have therefore one hundred pounds, which should be against reason. And so such prescription, or any other prescription used, if it be against reason, this ought not, nor will not, be allowed before judges: *quia malus usus abolendus est*: an evil or invalid custom ought to be abolished. (Litt. s. 212.) It is also a maxim of the law of England, that *Aliquis non debet esse iudex in propriâ causâ, quia non potest esse iudex et pars.* (Co. Litt. 141 a.)

OLIVIA. "This practice hath most shrewdly pass'd upon thee;  
But, when we know the grounds and authors of it,  
Thou shalt be both the plaintiff and the judge  
Of thine own cause."

*Twelfth Night, Act 5, Scene 1.*

Portia and Queen Katherine both seem to refer to this maxim; and Olivia promises, when the persons are discovered who have made Malvolio

“The most notorious geck and gull  
That e'er invention play'd on,”

that she will then allow him to be both plaintiff and judge of his own cause, notwithstanding that *nemo debet esse judex in propriâ suâ causâ*.

SHYLOCK. “My deeds upon my head! I crave the law,  
The penalty and forfeit of my bond.”

PORTIA. “Is he not able to discharge the money?”

BASSANIO. “Yes, here I tender it for him in the court;  
Yea, twice the sum: if that will not suffice,  
I will be bound to pay it ten times o'er,  
On forfeit of my hands, my head, my heart:  
If this will not suffice, it must appear  
That malice bears down truth. And I beseech you,  
Wrest once the law to your authority:  
To do a great right, do a little wrong;  
And curb this cruel devil of his will.”

PORTIA. “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: it cannot be.”

*Merchant of Venice, Act 4, Scene 1.*

Portia may expound the law of Venice; but in the English law it is also an established rule to abide by former precedents, *stare decisis*, where the same points come again in litigation. An English judge is sworn to determine, not according to his own private judg-