SHAKESPEARE'S LAW

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ADDENDA.

p. 18. "*Statutes.*" Since the following pages were in print, a writer in the *Times Literary Supplement* of June 25, 1920, has brought to our notice an instructive example of the use of this word, where it certainly does not "import a legislative Act." The "Statutes" of the Ewelme Almshouse (built before 1450) "run in the names of William de la Pole, Duke of Suffolk, and Alice his wife." But such use of the word was, and is, of course, extremely common.

p. 27, l. 26. "Let there be covenants drawn between us," etc. In Boccaccio's story (The ninth Novel of the second day of the *Decameron*) we read: "The two persons concerned were so resolutely bent on their purpose that all dissuasions were ineffectual, and an Obligation in writing being drawn up, they both signed and sealed it in the presence of their companions" (Mrs. Lennox's translation). It will be seen how closely Shakespeare follows his Italian model here.

PLAYS REFERRED TO ON LEGAL POINTS

FOREWORD

WHEN this essay was completed it occurred to me that it might, possibly, find a place in a certain Legal Magazine, which shall be nameless. I therefore wrote to a distinguished lawyer who had for some years edited the Journal in question, and with whom I happened to be acquainted, asking if I might be permitted to submit my paper for his consideration. He replied that he had recently resigned the editorship, but that he had forwarded my letter to the new editor, and subsequently that gentleman, who was entirely unknown to me, was good enough to write that he was "willing to consider" my article. Thereupon I forwarded it to him, but he shortly returned it to me saying that it was "unsuitable."

Now if he had stopped there I should, of course, have had nothing further to say. An editor is master of the situation, and if he decides to reject a proposed contribution it is extremely foolish to quarrel with his decision. Nor was I, in truth, greatly perturbed by it. Unfortunately, however, this gentleman did *not* stop there. He proceeded to lecture me, *de haut en bas*, in a style which, speaking from a long experience, I venture to say that editors are not in the habit of employing in such a case. On the contrary, I believe, and I sincerely hope, that this gentleman's editorial methods are unique. As I have already said, he was an entire stranger to me. I had never met him, nor

had I ever heard of him, and the Law List gave me no information concerning him except that, judging from the date of his call to the Bar, I gathered that he is a very considerably younger man than I am. And this is the style in which he thought it becoming to address a septuagenarian member of his profession, an entire stranger to him, who had, in an evil hour, been induced to submit an essay for his editorial consideration. He commenced by politely informing me that my article contains "a couple of howlers"! Now if he imagined that he had discovered two mistakes in my essay, and had, with due courtesy, drawn my attention to them, I should, if his criticism had appeared to be just, have been grateful for his correction, and if he had been an intimate friend I should not have taken any exception whatever to the familiar epithet employed to designate them. But for this stranger editor to write to me that I had been guilty of "howlers" appeared to me to indicate that, whatever else he might be a judge of, he is not exactly qualified to act as *arbiter elegantiarum*; in fact, that his manners are far from having that repose which stamps the caste of Vere de Vere!

And what were the "howlers" of which he asserted I had been guilty? Well, first, I state in my essay (see p. 31) that "no lawyer needs to be told that 'fines' and 'recoveries' were collusive actions." But, says the editor of this Legal Periodical, "a fine was *not* a collusive action." Here then is "howler" number one!

Now I should be quite content to leave this very remarkable assertion—viz., that "a fine was not a collusive action"—to any lawyer who has ever paid attention to the old law relating to "fines" and "recoveries." Moreover, it is quite unnecessary to refer to well-known authorities with regard to it, for I happen to have before me a very interesting pamphlet, entitled *The Line of Least Resistance*, by Mr.

Arthur Underhill, LL.D., Bencher of Lincoln's Inn, and Senior Conveyancing Counsel to the Court, from which I will quote but two sentences :—" The Statute *Quia Emptores* made freehold tenancies in fee-simple aleable free from the rights of the vendor's heir, although, curiously enough, subject to his widow's right to dower. . . . This right was ultimately able to be barred by *a collusive action called a fine* " (p. 11). I do not think I need say more on this matter, though quite possibly my omniscient editor will retort that Mr. Arthur Underhill has been guilty of a " howler." I hardly think, however, that even his self-sufficiency will carry him quite so far as that.[1]

As to " howler " number two, it was a mere matter of misapprehension of my meaning, and I need not now waste words upon it. But let us see what follows.

Speaking not as a matter of opinion, but *ex cathedrâ*, from his editorial chair, as though making an infallible pronouncement, this pontifical lecturer tells me that Shakespeare " wrote of law as a dramatist, and in every one of the instances that can be quoted there

[1] Amongst other authorities, I might mention the *Encyclopaedia of the Laws of England*, where " Fines " are described as " collusive actions." In other places they are called " fictitious " actions, as (e.g.) in Williams on the *Law of Real Property* : " Fines were fictitious suits commenced and then compromised by leave of the Court, whereby the lands in question were acknowledged to be the right of one of the parties " (12th Edn., p. 230). It is hardly necessary to say that the word " collusive " does not necessarily connote fraud, or deceit. As we read in *Termes de la Ley*, " Collusion is where an action is brought against another by his own agreement." If both plaintiff and defendant agree to bring an action with a common object, that is a " collusive action." As my editorial mentor himself admits, " Recoveries " were " collusive actions," but, like " fines," they were recognized and approved methods of dealing with land in certain cases, and no suggestion of fraud or deceit attached to them.