Lawyers and the Shakespeare Authorship Question

By Richard Malim

Lawyers are possibly the largest tribe of anti-Stratfordians. In the U.S., there is a procession of Supreme Court Justices and others who have come out against the Stratfordian case. I know only of Mark Johnson, a trial attorney from way out west, who argues for the 'orthodox' case.

In the UK this fact is a source of chagrin to The Reverend Dr. Edmondson, the Director of Research at the Shakespeare Birthplace Trust and joint-editor with Sir Stanley Wells: "It is surprisingly easy to persuade lawyers to take part in the Shakespeare Authorship Conspiracy Theory" ('Shakespeare Bites Back' p.12 on the Trust's website). But this notion of a 'conspiracy theory' is an invention of orthodox propaganda and has no place in mainstream Oxfordian thought. He does not dare ask himself in print why lawyers are so susceptible. Lawyers are trained to deal in the search and evaluation of evidence and to apply the current law to the factual scenario; that is why so many cannot match the Shakespeare biography to the factual writing and production of the works. Some literary persons wish to distinguish 'lawyers' evidence', 'historians' evidence' and 'literary evidence.' They fail, of course, to produce any definitions; evidence is either evidence or it is not evidence.

The De Vere Society has quite a number of lawyers amongst its members. In the UK, however, there seem to be none (nor any professional historians) who will defend what passes for the 'orthodox' case. While the Americans have held moots and other non-litigation conferences, we in England have the advantage in being able to consider and study the judgment in the one case that has come before our courts that touches on the Authorship Question, namely *Re Hopkins' Will Trusts* 164 3 All England Law Reports 46. Miss Hopkins left £6,500 (multiply by 30 for 2017 value) to the Baconian Society to be applied "towards finding the Bacon-Shakespeare manuscripts." The executors wanted directions from the Court as to the bequest's meaning, and whether it was valid and charitable in law.

In the summer of 1964, the case came up before Wilberforce J. It is worth noting that Wilberforce was until recently the only modern judge to be promoted directly from the High Court Bench to the House of Lords, bypassing the Court of Appeal, later in 1964.

To be valid as a charitable bequest is a matter of law, and we are not concerned with that decision, save to note that the judge was satisfied as to its validity. The first part of the case was dealt with by the judge in this way (at p.49 D):

> … it is convenient to deal with an argument put forward on behalf of the next of kin that the bequest is made for a purpose so manifestly futile that it does not even qualify for consideration as a possible charitable gift … Its validity depends on the evidence which has been filed, which I will now examine.

He then explains that he is not passing judgment on any aspect of the Authorship Question, but only on the practicability of carrying Miss Hopkins' wishes into effect, decided on the evidence of the experts before the Court. That evidence, he goes on "is of an economical character" [I understand this phrase to mean "far from complete"] but the Court cannot go outside it. The judge summarises it:

> 1) "the orthodox opinion, which at the present time is unanimous, or nearly so, among scholars and experts in the sixteenth and seventeenth century literature and history, is that the plays were written by William Shakespeare of Stratford-upon-Avon, actor."
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> 2) "the evidence in favour of Shakespeare's authorship is qualitatively slight," and he analyses not on the basis that it provides proof, but that it "provides no reason to doubt it."
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> 3) "there are a number of difficulties in the way of the traditional ascription." The judge mentions the lack of manuscripts, which have no mention in his will; his family background and character; and that "there are a number of known facts which are difficult to reconcile with William Shakespeare, authorship," referred in the Baconian affidavit before the court. The judge apparently approves the view of Professor Trevor-Roper, "so far from these difficulties tending to diminish with time, the intensive search of the nineteenth century has widened the evidentiary gulf between William Shakespeare the man and the author of the plays."
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> 4) There are other alternative candidates, none accepted by serious scholars.

> 5) The Baconian evidence, as it is before the court, is "somewhat unsatisfactory, and the Baconians had not thought it necessary or right to set out in their affidavit the full evidence at their disposal. Its solidity is difficult to appraise."

The judge concludes the point "on the other [orthodox] side," the two experts Professor Muir and Mr. Crow without traversing [i.e. contradicting item by item] [the Baconian affidavit] in detail, consider it "certain" that Bacon could not have written the 'Shakespeare' plays and poems. Professor Trevor-Roper, in a judicious affidavit, takes a more cautious line. While keeping his own position firmly in the ranks of the orthodox ["I consider that the available evidence, in so far as it is positive and unambiguous, shows that the poems and plays ascribed to William Shakespeare were in fact written by William Shakspere of Stratford-on-Avon …"] and stating that he definitely does not believe that the works of Shakespeare could have been written by Francis Bacon, he also considers that the case for William Shakespeare rests on a narrow balance of evidence and that new material could upset it; that, although almost all professional scholars accept Shakespeare's authorship, a settled scholarly tradition can inhibit free thought, that heretics are not necessarily wrong. His conclusion is that the question of the authorship cannot be considered as closed. I read this to mean at least the new material might show that some person other than Shakespeare to have written the plays and poems, and it may mean that it is conceivable, though unlikely, that Francis Bacon might turn out to be the author.

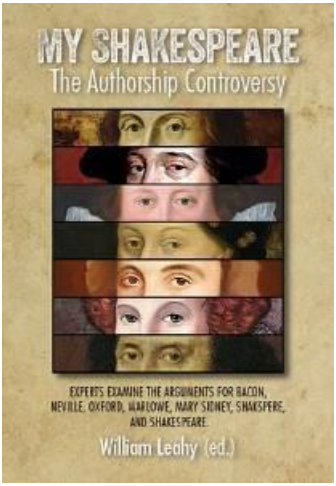
The judge that turned to the point as to whether new material, manuscripts etc. might be discovered and concluded, "I do not think that degree of improbability has been reached which justifies the court in placing an initial interdict on the testatrix's benefaction."

Since there was such a chance, however slight, the judge concluded in effect that there was a charitable object capable of being benefited by Miss Hopkins' bequest, a matter of law with which we are not concerned.

I have to say that I think that the Baconians were very lucky. Had the orthodox concentrated their fire on the Baconian case, they might well have convinced the judge that the bequest was "manifestly futile," but with their usual arrogance they tried to destroy in one fell swoop the whole anti-

Stratfordian schema. They could have had Trevor Roper on their side had they contended that if there is an alternative writer, then he/she could not be Bacon, but they knew better (what's new?). As it was the judge effectively had to consider whether it was possible that there might be a successful alternative candidate and that he might be Bacon: the Baconians were lucky in their judge as well, in that he answered both questions in the affirmative, however unlikely the possibilities.

[Note: The original Trevor-Roper affidavit wording is recorded by *Baconiana* (The Francis Bacon Society) October 1965 XLVIII no.165 at pp.71, 72. After the case, Professor Trevor-Roper clearly hardened his opinion. On the 21 February 1981 he wrote to Charlton Ogburn: "Evidence of association to be slender, weak and implausible," and considered, "Not a shred of evidence connects the man with the works during his lifetime, the association of such works with such a man is, on the face of it, implausible …" To me this means that it is for the Stratfordians to prove their case in the first place, and render it plausible, before calling on the disbelievers to try to disprove it.]



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