

SUMMARY The documents below are the pleadings, interrogatories, depositions and orders in a lawsuit initiated on 28 January 1632 in the Court of Requests by Cuthbert Burbage (1564/5-1636), Richard Robinson (d.1648?), Winifred Robinson (d.1642), William Heminges (1602?-1649x53), John Lowin (1576?-1653) and Joseph Taylor (1586?-1652) against Sir Mathew Brend (1600-1659) for performance of a covenant signed by Sir Mathew Brend in his minority granting the surviving shareholders a further lease of the ground on which the Globe was built for fifteen years, to commence immediately after the expiry of the old lease for thirty-one years which had been granted by his father, Nicholas Brend (d.1601), by indenture dated 21 February 1599, to Cuthbert Burbage, Richard Burbage (1568-1619), William Shakespeare (1564-1616) of Stratford upon Avon, Augustine Phillips (d.1605), Thomas Pope (d.1603), John Heminges (1566?-1630) and William Kempe. The lawsuit was finally settled in court on 18 November 1634 by agreement of the parties that Sir Mathew Brend would grant a further lease of nine years at a rent of £40 per year. However the new lease had not been signed at the date of an order made by the then Lord Chamberlain, Philip Herbert (1584-1650), 1st Earl of Pembroke and Montgomery, on 12 July 1635 (see TNA LC 5/133, pp. 44-51), and had still not been signed when Cuthbert Burbage died on 15 September 1636. The final extant decree in the case is dated 28 November 1637.

The lawsuit was discovered by Charles William Wallace, who announced his discovery in *The Times* on 30 April (pp. 9-10) and 1 May 1914 (p. 4). Wallace transcribed the documents in the lawsuit, but did not publish his transcript, which was donated by his wife's sister in 1962, along with Wallace's other papers, to the Huntington Library in San Marino, California. Wallace's original spelling transcript was corrected and published by Herbert Berry in 1987, together with transcripts of additional documents pertaining to the case discovered by Berry, in *Shakespeare's Playhouses*, (New York: AMS Press, 1987), pp. 195-240.

The modern spelling transcripts of all documents numbered TNA REQ 2/706 below have been prepared from digital images of the original documents. Transcripts of documents not so numbered have been put into modern spelling from Berry's original spelling transcripts.

The original documents are a tagged file stored in a box of some 200-300 files and loose membranes under the National Archives catalogue number REQ 2/706. The documents in the tagged file are unnumbered, and for convenience each document from REQ 2/706 is therefore identified below by a membrane number indicating the sequence in which the documents appear in the tagged file. To facilitate comparison between the modern spelling transcript below and Berry's original spelling transcript, Berry's list of documents is here reproduced:

1. January 28, 1632. The bill of complaint.
2. February 6, 1632. The answer.
3. May 10, 1632. The replication.
4. Before September 18, 1632. Interrogatories for the King's Men.

5. September 18, 1632. Depositions for the King's Men.
6. November 13, 1632. An entry in the order book.
7. Before November 22, 1632. Interrogatories for Brend.
8. November 22, 1632, Depositions for Brend.
9. December 3, 1632. An entry in the affidavit book.
10. February 5, 1634. Statement of fact for both sides.
11. February 6, 1634. An entry in the note book.
12. February 6, 1634. An entry in the order book.
13. February 10, 1634. An entry in the note book.
14. May 12, 1634. An entry in the note book.
15. June 6, 1634. An entry in the affidavit book.
16. June 6, 1634. An entry in the note book.
17. June 7, 1634. An entry in the note book.
18. July 1, 1634. The commission.
19. Before October 1, 1634. Interrogatories for the King's Men.
20. Before October 1, 1634. Interrogatories for Brend.
21. October 1, 1634. Depositions for the King's Men.
22. October 1, 1634. Depositions for Brend.
23. November 3, 1634. An entry in the note book.
24. November 3, 1634. An entry in the order book.
25. November 17, 1634. An entry in the note book.
26. November 18, 1634. An entry in the note book.
27. Michaelmas, 1634? Notice of the renewal of the commission.
28. January 17, 1635. An entry in the process book.
29. November 9, 1637. An entry in the note book.
30. November 9, 1637. An entry in the order book.
31. November 20, 1637. An entry in the indexes to a missing affidavit book.
32. November 21, 1637. An entry in the indexes to a missing affidavit book.
33. November 28, 1637. An entry in the note book.

[TNA REQ 2/706, m. 20; Berry 1, pp. 197-203]

To the King's most excellent Majesty

In all humble manner complaining show unto your most excellent Majesty your true, faithful and obedient subjects, Cuthbert Burbage of London, gentleman, Richard Robinson, your Majesty's servant, and Winifred his wife, late wife and executrix of Richard Burbage, deceased, William Heminges, son and executor of John Heminges, your Majesty's late servant, deceased, and John Lowin and Joseph Taylor, your Majesty's servants, assignees of the said William Heminges, executor of the said John Heminges;

That Nicholas Brend, late of West Molesey in the county of Surrey, esquire, deceased, was in his lifetime about thirty and two years since seised in his demesne as of fee of and in all that parcel of ground then lately enclosed and made into four several gardens which

were then late in the tenures or occupations of Thomas Burte, Isbrand Morris, dyers, and Lactantius Roper, salter, citizens of London, and of and in all that parcel of ground then also lately enclosed and made into three several gardens, two of them being then or lately in the several tenures or occupations of one John Roberts, carpenter, and the other of them then late in the tenure or occupation of Thomas Ditcher, citizen and Merchant Taylor of London, being all of them situate in the parish of St Saviour in Southwark in the county of Surrey by his indenture of lease tripartite bearing date the one and twentieth day of January [sic] in the one and fortieth year of the reign of our late Sovereign Lady Queen Elizabeth made between him, the said Nicholas Brend, on the first part, the said Cuthbert Burbage and Richard Burbage of the second part, and William Shakespeare, Augustine Phillips, Thomas Pope, the said John Heminges and William Kempe of London, gentlemen, on the third part, for divers great and valuable considerations him thereunto especially moving in the said-recited indenture specified, did demise, grant and to farm let unto the said Cuthbert Burbage, Richard Burbage, William Shakespeare, Augustine Phillips, Thomas Pope, John Heminges and William Kempe all those before-recited parcels of ground or garden plots with th' appurtenances in the said-recited indenture specified for the term of one and thirty years from the feast of the Birth of Our Lord God then last past before the date of the said indenture of lease for several yearly rents amounting in the whole to the sum of fourteen pounds and ten shillings, as by the said indenture of lease whereunto relation being had more at large appeareth;

And your said subjects and servants further inform and show unto your most excellent Majesty that the said Cuthbert Burbage and other the said lessees did then enter into and upon the aforesaid-recited demised premises by force and virtue of their said lease and demise, and became of them lawfully and quietly possessed, and did at their own proper costs and charges expend, disburse and lay out in the erecting, newbuilding and setting up there in and upon the said-demised premises of a house, structure or building used for a playhouse and commonly called the Globe the sum of one thousand pounds of lawful English money at the least;

And that about eighteen or nineteen years sithence the said house or playhouse called the Globe so by them erected and built in and upon the said-demised premises was by casualty of fire utterly ruined, burnt down and consumed, to the damage and loss of the lessees, their partners and assigns, of whatsoever had been by them formerly expended, disbursed or laid out in or about the erecting, building or setting up of the same, it being to the value of one thousand pounds at the least;

And your said subjects and servants further also show unto your most excellent Majesty that in or about the month of February 1613 and in the eleventh year of the reign of our late Sovereign Lord King James of pious memory (it being some short time after the great casualty of fire), the said Cuthbert Burbage, Richard Burbage and John Heminges, being surviving lessees, and others their partners interested in the said lease by assignment from other the lessees, became suitors and petitioners unto Sir Mathew Brend, then esquire and now knight, who was then interested in the immediate reversion of the said-demised premises as son and heir unto the said Nicholas Brend, his late father, deceased, and was then to have the same after th' expiration of the said lease so made by the said Nicholas

Brend as aforesaid, in consideration and respect of their said great losses by casualty of fire as aforesaid, and the better to enable and encourage them to re-edify, erect and new-build the same again, to grant unto them a further and longer time therein;

And your said subjects and servants further also show unto your most excellent Majesty that the said Sir Mathew Brend, albeit he, the said Sir Mathew Brend, was not then of the full and perfect age of one and twenty years, yet he was then of the age of twenty or eighteen years at the least, and well able to judge not only of the great loss which had befallen the said lessees by the said great casualty of fire, but also of the great charge and expense which the said lessees and their partne[r]s were to be put unto in and about the new-erecting and building of the said house and of the benefit and advancement that should come to his lands and ground thereby, did then most worthily and willingly with the assent of his mother, his uncle and other friends and allies at the petition and request of the then surviving lessees, their partners and assigns, in consideration of the said great loss and the better to enable and encourage them to new erect, build and set up the said playhouse, not only grant and yield to make a further and longer term of years of and in the said-demised premises unto them, the said then surviving lessees and their partners, for the space of fifteen years, to commence and begin immediately after th' end and expiration of their said old lease made by the said Nicholas Brend, his late father, but also by his writing under his hand and seal bearing date in or about the month of February 1613 in further expression of his, the said Sir Mathew Brend, his willingness to make the said new lease in consideration of the great loss, charge and expense sustained by the said casualty of fire and to be sustained by newbuilding as is aforesaid, and for their better encouragement towards the re-edifying thereof and for the sum of ten pounds of lawful money of England to be paid unto him, the said Sir Mathew Brend, when he should accomplish his full age of one and twenty years, did covenant and grant to and with the said Cuthbert Burbage, Richard Burbage, John Heminges and Henry Condell, who was then an assignee of part of the said house, their executors and assigns, and to and with every of them, that he, the said Sir Mathew Brend, at such time as he should accomplish and come to his full age of one and twenty years, should and would make, grant and confirm unto them, the said Cuthbert Burbage, Richard Burbage, John Heminges and Henry Condell, their executors and assigns, the full term of fifteen years more in the said garden plots, grounds and premises, to commence and begin immediately from and after th' end and expiration of their said former lease made and granted by his said late father, Nicholas Brend, deceased, as aforesaid, for and under the like and the same yearly rent of fourteen pounds and ten shillings and such other covenants and conditions as are or were contained and specified in the said former lease made by his said late father, as by the said writing subscribed, sealed and delivered by the said Sir Mathew Brend and attested and witnessed by Dame Margaret Zinzan, natural mother of the said Sir Mathew Brend, and by Henry Strelley, uncle of the said Sir Mathew, who were both present at th' ensealing thereof and gave their consent thereunto, whereunto reference being had more at large also appeareth;

And your said subjects and servants further show unto your most excellent Majesty that your said subjects and servants and those whose estates they have in the said playhouse and grounds, relying upon the word, promise and agreement of the said Sir Mathew Brend

and of his covenant in writing under his hand and seal as aforesaid, did and have sithence at their own proper costs and charges erected, built and set up there upon the said-demised premises in the same place where the former house stood a very proper new and fair house or playhouse called the Globe to their further charge of fifteen hundred pounds of lawful English money at the least, being the greatest part of your said subjects' and servants' substance and estates;

And sithence the said Sir Mathew Brend hath accomplished his age of one and twenty years your said subjects and servants and those whose estates they have in all gentle and courteous manner have tendered the said ten pounds unto the said Sir Mathew Brend and have requested him to accept thereof, and according to his said promise, grant and covenant in writing, to make, grant and confirm unto them a new lease or estate of the said house and ground for the said term of fifteen years to commence after the expiration of their said old lease under the like yearly rent of fourteen pounds and ten shillings and other the covenants and agreements contained in the same old lease;

But may it please your most excellent Majesty, he, the said Sir Mathew Brend, taking advantage of his said then minority when he did make, seal and deliver the said writing, hath and doth refuse to accept of the said sum of ten pounds and to grant and confirm unto your said subjects and servants such further term of years as he promised, agreed and covenanted to do;

And your said subjects and servants further also show unto your most excellent Majesty that the interest and estate of and in the said house and grounds amongst other things coming by some lawful ways or means unto the hands and possession of Sir John Bodley, then esquire and now knight, the said Sir John Bodley, taking notice of the great loss and charge sustained and to be sustained by them, the said Cuthbert Burbage, Richard Burbage, John Heminges and Henry Condell, by the burning of the former house and in re-edifying the same anew, did thereupon grant and demise the same premises unto the said Cuthbert Burbage, Richard Burbage, John Heminges and Henry Condell for the term of six years to commence and begin at th' end and expiration of the said lease made by the said Nicholas Brend as aforesaid at the said yearly rent of fourteen pounds and ten shillings and under such other covenants as were contained in their said old lease according to the said covenant and agreement of the said Sir Mathew Brend and in part of performance and towards the accomplishment thereof;

And the same lease so made by the said Sir John Bodley of the same premises for the said term of six years as aforesaid was and hath been, amongst other leases, sithence accordingly ratified, confirmed and decreed unto them in his Majesty's Court of Wards and Liveries;

But nevertheless, may it please your most excellent Majesty, the said Sir Mathew Brend, the said lease made by the said Sir John Bodley drawing on and coming near to an end and being to end about four years hence, the said Sir Mathew Brend doth not only refuse to make the said new lease for the remainder of the said term of fifteen years according to his said covenant, but doth threaten when the said lease made by the said Sir John Bodley is

ended to dispossess your said subjects and servants of the said house and grounds and to thrust your said subjects and servants out of the possession thereof and to sell it to others, and offereth also now to sell the same presently from your said subjects and servants, who have the present estate and term therein, unto others who are not nor cannot be bound by law by or unto the performance of the covenants, grants or agreements of the said Sir Mathew Brend, which is contrary to all equity and will be to your said subjects' and servants' utter undoing, having disbursed and laid out their whole stocks and estates in and upon the re-edifying and newbuilding thereof;

And your said subjects and servants are become remediless at law therein for that the said promise, covenant and agreement of the said Sir Mathew Brend was by him had and made in his minority, and the same neither doth or can bind or conclude him at the common law, being had, made and done in his minority as aforesaid;

But nevertheless in equity the said Sir Mathew Brend ought to be bound thereunto for that the inheritance of the said Sir Mathew Brend is advanced & bettered thereby to the sum of fifteen hundred pounds, which hath been so done and improved by the whole costs and charges that hath been expended and laid out by your said subjects and servants and those whose estates they have in the newbuilding and re-edifying thereof, and your said subjects and servants were thereunto drawn to expend and disburse the said moneys, which otherwise they would not have done but by and upon the promise, covenant and agreement of the said Sir Mathew Brend as aforesaid;

The premises therefore tenderly considered, and for that your said subjects and servants are otherwise remediless but only by petition unto your most excellent Majesty, and for that also the said house is for their exercise and practice of their quality very fit and commodious the better to enable your Majesty's said servants to do their service to your Highness, and that your most excellent Majesty by your Highness' letters patents under the Great Seal of England for the purposes aforesaid hath also licenced and authorized your said servants to exercise their said quality of acting and playing of interludes, comedies and tragedies in the same house called the Globe, as by your Majesty's said letters patents whereunto relation being had truly appeareth, may it therefore please your most excellent Majesty to grant unto your said subjects and servants your Majesty's most gracious writ of Privy Seal to be directed to the said Sir Mathew Brend, thereby commanding him at a certain day and under a certain pain therein to be limited personally to be and appear before your most excellent Majesty and your Highness' Council in your Majesty's honourable Court of Requests then and there to answer the premises upon his corporal oath and to stand to and abide such further order and direction therein as to your Majesty shall best seem to stand with equity and good conscience, and as etc.

S. Maunsell

Endorsed: (1) xxviiio die Ianuarij Anno R{eg}ni R{egis} Caroli septimo (2) p{er} warr{antum} (3) [NOTE: Berry also has a third endorsement: Burbage, Robinson, Heminges, Lowin et Taylor Compl{ainan}ts]

[TNA REQ 2/706, m. 19; Berry 2, pp. 203-7]

vjo die ffebruarij Anno R{egni} R{egis} Caroli septimo

The answer of Sir Mathew Brend, knight, to the bill of complaint of Cuthbert Burbage, Robert Robinson and Winifred, his wife, William Heminges, John Lowin and Joseph Taylor, complainants

The said defendant, saving to himself now and at all times hereafter all advantages and benefit of exception to the incertainty, insufficiency and other imperfections of the said bill of complaint, for answer thereunto saith that he believeth it to be true that his late father in the said bill of complaint mentioned did make such a lease of the parcels of ground, gardens and lands in the bill mentioned unto the said Cuthbert Burbage, Richard Burbage, William Shakespeare, Augustine Phillips, Thomas Pope, John Heminges and William Kempe, and under such yearly rents as in the said bill is set forth, but this defendant neither knoweth nor believeth that the same was made upon any other considerations than are in the said lease expressed;

And this defendant further saith that by the said indenture of lease the said lessees had power to pull down all such houses and buildings as then were upon the premises so as they would build as good or better instead thereof, and the said lessees for them, their executors and assigns, did thereby covenant at their own proper costs and charges to maintain and support the said buildings and fences of the premises in and with all needful and necessary reparations and amendments from time to time when and as often as need should require during the term in the said lease mentioned, and the same so repaired and made, maintained and amended, together with all such edifices and buildings whatsoever as should be built and set up by them, the said lessees or their assigns, in and upon the premises, or others as good and convenient for the place, at the end, expiration or other determination of the said lease to leave and yield up unto this defendant's said late father, his heirs and assigns, as in and by the said lease to which this defendant for certainty therein referreth himself doth and may appear;

And afterwards Sir John Bodley in [-in] the bill named, pretending title to the said parcels of land and premises and the playhouse now called the Globe thereupon erected, by his indenture bearing date the six and twentieth day of October in the year of Our Lord God one thousand six hundred and thirteen and in the eleventh year of the reign of King James of pious memory, did make a further lease thereof unto the said Cuthbert Burbage and others therein named for six years from the end and expiration of the said former lease made unto them by this defendant's said late father under the like yearly rents as in the said old lease was reserved under covenants to the same and like effect as are contained in the said old lease, whereby it may appear, as this defendant conceiveth, very clearly to this honourable court that the said lessees in the said first and old lease mentioned and their executors and assigns were bound in case any such fire happened as in the bill is

pretended, and damage thereby to the said lessees, their executors or assigns, to have borne the same and at their own charges to have repaired whatsoever the said fire destroyed, and leave the same buildings in good repair to this defendant's said late father, his heirs and assigns, at the end of the said old lease, and therefore this defendant conceiveth there was no just cause or motive or consideration for him to enter into any such covenant for the making of any new lease to commence from the end of the said old lease as in the said bill of complaint is pretended;

And this defendant further saith that he doth not know nor believe that there was one thousand pounds disbursed for the erecting of the playhouse aforesaid, or near any such sum, neither doth this defendant know that the same was by fire burnt down as in the bill is pretended, neither is the same material unto this defendant, as he conceiveth, under the favour of this honourable court, for that the said original lessees, their executors and assigns, were by covenant as aforesaid bound to erect buildings upon the said parcels of ground and premises, and for that consideration the same were let unto them at such small yearly rents by this defendant's said late father as aforesaid, and in case any casualty happened thereunto they were to maintain, repair, rebuild and amend the same buildings, and in the end of their said old lease to leave and yield up the same in good repair unto this defendant, and therefore their negligence or ill keeping of their fire ought not, as this defendant conceiveth, in law or equity to move this defendant to make them any longer lease of it or grant them any longer term in the said playhouse called the Globe than they had by virtue of the said first lease;

And as to the covenant in the bill suggested to be entered into by this defendant in the eleventh year of the reign of King James of blessed memory, this defendant saith that in case any such covenant was entered into by this defendant, the same was, as this defendant conceiveth & hopeth to prove, when this defendant was either within the age of fourteen years or when this defendant had but newly attained thereunto, and this defendant was greatly abused therein, as he also conceiveth, and therefore as he is not by law bound to perform the same, so he conceiveth, under the favour of this most honourable court, he is not compellable in equity to make the same good or perform the same covenant in any part, especially seeing by the complainants' own showing it appears that without any consideration at all they have obtained a further term of six years from the said Sir John Bodley than they had by the said old lease, which this defendant agreeth to confirm;

And in regard that thereby the complainants are to enjoy the same playhouse and premises for so many years more at so small yearly rents without any valuable benefit or advantage at all to this defendant whereby this defendant hath sustained so much loss in the improvement he might raise the yearly value and rents of the said playhouse and premises unto, this defendant is not willing to agree to make any further estate therein unto the said complainants than they have by the said lease of the said Sir John Bodley made unto them as aforesaid;

Without that that this defendant was at the time when the complainants pretend the said covenant to be entered into by him of the age of twenty or eighteen years or of any other

age, to this defendant's knowledge, than is above herein set forth, or that this defendant was then able to judge either of the losses or charges and expenses in the bill mentioned;

And whether this defendant's mother, uncle or any other of his friends did assent to this defendant's entering into such covenant as in the bill is pretended or not, this defendant remembereth not, neither doth he conceive the same to be material unto this defendant or to bind him at all;

And this defendant further saith that he doth not believe that the now playhouse called the Globe ever cost fifteen hundred pounds the building, or any more than five hundred pounds, as this defendant conceiveth, if it did so much, and that whatsoever it cost, this defendant believeth that they were bound by the said covenants to erect the same, and that by the said new addition of six years unto the said old lease which they have and enjoy by this defendant's agreement and confirmation, they have had and received much more profit and advantage than this defendant was bound either by law or equity to give unto them for the same, and therefore hopeth, under the favour of this honourable court, it shall and may be lawful for him after the end of the said new lease of six years to dispose of the same playhouse and premises as pleaseth him, and to whom he will, and at such better yearly rents as he can get for the same, notwithstanding the said covenant abusively and surreptitiously obtained from him when he had not discretion to know what he did or wherefore he did it;

And this defendant doth not know nor believe that the said playhouse and grounds ever came to Sir John Bodley by any lawful means or ways as in the bill is pretended, but this defendant confesseth that the said lease by him made of the said playhouse is confirmed by the assent of this defendant and by the decree of his Majesty's Court of Wards and Liveries, and this defendant is willing the complainants shall enjoy the benefit of that lease so made unto them by the said Sir John, performing the conditions and covenants thereof, but this defendant, because he intendeth to dispose of the same after the expiration of their said new lease for six years at his own pleasure and as he shall think most meet to be for his best profit and commodity, this defendant doth refuse to accept the ten pounds in the bill mentioned or to do any other thing that may give or confirm any longer time or term of years unto the complainants therein than the said term of years granted unto them by the said Sir John Bodley;

And this defendant doth not believe that his inheritance is advanced or bettered by any buildings now upon the premises, but verily thinketh that if fit dwelling-houses had been erected upon it in value answerable to the long term of years the complainants and their predecessors have enjoyed it and are to enjoy it at such mean yearly rents as aforesaid, it had been far better for this defendant's inheritance than now it is or can be, and that whatsoever benefit this defendant shall be able to make of the buildings now upon it after the end of the said term of six years, the same will never countervail the loss his father and he hath sustained and he is yet to sustain by the letting of the same parcels of ground, gardens and grounds originally let unto the said first lessees at such small yearly rents;

Without that that any other matter or thing, clause, sentence, article or allegation in the said bill of complaint contained material or effectual to be by this defendant answered unto and not herein before well and sufficiently answered, confessed and avoided, traversed or denied, is to the knowledge of this defendant true;

All which matters and things this defendant is ready and willing to aver, maintain and prove as this most honourable court shall award, and humbly prayeth to be dismissed out of the same with his costs and [-and] charges in this behalf most wrongfully and unjustly had and sustained.

John White

[TNA REQ 2/706, m. 18; Berry 3, pp. 207-8]

xo die Maij A {nn}o R {eg}ni R {egis} Caroli octauo

The replication of Cuthbert Burbage, Richard Robinson and Winifred, his wife, William Heminges, John Lowin and Joseph Taylor, complainants, to the answer of Sir Mathew Brend, knight, defendant

The said complainants do and will aver, maintain and prove their said bill of complaint and all and every the matters and things therein contained to be just, true, certain and sufficient in the law to be answered unto, and that the defendant's answer, for so much as is not therein confessed, is very uncertain, untrue and insufficient in the law to be replied unto for divers and sundry faults and imperfections therein evidently appearing, the benefit and advantage of exception to the incertainty and insufficiency whereof being unto these complainants now and at all times hereafter saved and reserved, for further replication thereunto they say in all things as in their said bill of complaint they have said;

Without that that any other matter or thing in the said defendant's answer contained material or effectual for them, these complainants, to reply unto herein not sufficiently replied unto, confessed and avoided, traversed or denied, is true in such sort, manner and form as in and by the said defendant's answer the same are surmised;

All which matters these complainants are ready to aver and prove as this most honourable court shall award, and humbly pray as in their said bill of complaint they have prayed.

[TNA REQ 2/706, m. 14; Berry 4, pp. 208-11]

Interrogatories to be ministered unto witnesses to be produced and examined on the part and behalf of Cuthbert Burbage, Richard Robinson and others, complainants, against Sir Mathew Brend, knight, defendant

1 Inprimis, whether do you know the parties, plaintiffs and defendant, and whether did you also know Nicholas Brend, deceased, late father of the defendant, Sir Mathew Brend, and do you know Sir John Bodley, late esquire and now knight? If yea, then how long have you known them or any of them?

2 Item, whether do you know that the said Nicholas Brend did heretofore by indenture of lease demise, grant and to farm let unto the complainant Cuthbert Burbage, Richard Burbage, and others whose estate and interest afterwards came unto the rest of the now complainants certain parcels of ground, gardens and garden plots situate in the parish of St Saviour in Southwark in the county of Surrey whereupon a certain playhouse called the Globe is sithence thereupon erected and built for the term of thirty and one years for several yearly rents amounting in the whole to the sum of fourteen pounds and ten shillings, and whether is not the same rent of fourteen pounds and ten shillings much more than the said parcels of ground and garden plots would have yielded yearly in rent before the erecting of the said playhouse thereupon? Declare what you know or have heard concerning the same.

3 Item, whether do you know that the said complainant Cuthbert Burbage and other the said lessees, after they had the same lease from the said Nicholas Brend, did at their own proper costs and charges erect, build and set up a playhouse upon the said-demised parcels of ground called the Globe, and whether, as you know, believe or have heard, did the said complainant Cuthbert Burbage and the said other lessees expend and lay out in the erecting and newbuilding of the same playhouse the sum of one thousand pounds in money or very near so much, and whether was the same playhouse so by them erected and built as aforesaid afterwards about eighteen or nineteen years sithence by casualty of fire utterly burnt down and consumed? If yea, then what damage and loss and to what sum or value do you know or believe the said lessees, their partners and assigns, did sustain thereby? Declare your knowledge and what you believe concerning the same.

4 Item, whether do you know or have heard that the defendant, Sir Mathew Brend, within some short time after the great casualty of fire and burning down of the said playhouse, did upon the request and desire of the then surviving lessees, their partners and assigns, in consideration of their said great loss, and the better to encourage them to new-build the said playhouse, willingly condescend and agree to grant unto the said now complainant Cuthbert Burbage and other his partners, the then surviving lessees, a further term of fifteen years to begin at th' end and expiration of the said thirty and one years granted unto them by his said father, Nicholas Brend, and that under the same yearly rent of fourteen pounds and ten shillings and the like covenants as in the said former lease were contained and mentioned? And whether to your knowledge did the said Sir Mathew Brend, in expression of such his willingness, by his writing under his hand and seal covenant with the said now complainant Cuthbert Burbage and other of the then surviving lessees, their executors and assigns, that he, the said Sir Mathew Brend, at such time as he should accomplish and come unto his full age of one and twenty years, for the considerations aforesaid and for the sum of ten pounds to be paid unto him, as in and by the said writing is mentioned, should and would make, grant and confirm unto them, the

said now complainant Cuthbert Burbage and other his partners, the then surviving lessees, their executors and assigns, the full term of fifteen years more in the said garden plots, grounds and premises, to commence and begin immediately from and after th' end and expiration of their said former lease made by his said late father, Nicholas Brend, for and under the like yearly rent of fourteen pounds and ten shillings and other covenants as were contained in the said former lease? If yea, then of what age or how many years old do you know or believe the said defendant was at the time of his making of the said covenant and agreement, and whether was he then of sufficient capacity and judgment to conceive and judge of the said complainants' loss by the burning of the said house, as you believe? And whether was the same covenant and agreement made by the said defendant, Sir Mathew Brend, and the said complainant and his partners with the assent and good liking of his, the said defendant's, mother, uncle and other his friends and allies, or of some of them? Declare the truth concerning the same.

5 Item, do you know or believe that the writing now showed unto you at the time of this your examination and which beareth date the fifteenth day of February 1613 and in the eleventh year of the reign of our late Sovereign Lord King James etc. was made by and from the said defendant, Sir Mathew Brend, to the said complainant Cuthbert Burbage, Richard Burbage, John Heminges and Henry Condell, the then surviving lessees, and whether did the said defendant, Sir Mathew Brend, seal and deliver the same writing as his act and deed unto them, the said Cuthbert Burbage, Richard Burbage, John Heminges and Henry Condell or to their use? And do you know or believe that the name Mathew Brend subscribed at the bottom of the said writing is of the handwriting of the said defendant, and that the said seal fixed to the said writing was marked with the seal of the said defendant? And whether do you know who were the several witnesses that were present at the' ensealing and delivery thereof and have subscribed their names unto the said writing? And whether do you know the same names so subscribed to be the handwriting of the same witnesses? Declare what you know or believe concerning the same, and the reasons why you so know or believe.

6 Item, whether do you know that the complainants and those whose estate they have in the said playhouse and grounds, being encouraged by the said promise and agreement of the defendant and by his said covenant in writing, have sithence at their own proper costs and charges erected and built a very fair new house or playhouse called the Globe upon the said demised premises? If yea, then what and how much in moneys, charges and expenses and to what sum or value do you know, believe or have heard the complainants and those whose estate they have in the said playhouse and grounds have laid out and been at in the erecting and newbuilding of the same playhouse, and how much and to what value do you know or believe the inheritance of the said defendant, Sir Mathew Brend, of and in the said garden plots and premises is advanced and bettered thereby? Declare your knowledge and what you have heard & believe concerning the same.

7 Item, whether do you know or have heard that the complainants and those whose estate they have or some of them sithence the defendant hath accomplished his age of one and twenty years did make request unto him in performance of his covenant to confirm unto them a further estate and term of fifteen years of and in the premises, to begin after th'

end and expiration of the said lease made by the said Nicholas Brend, his late father, under the like yearly rents and covenants as in the former lease, and to accept and take the said sum of ten pounds to be paid unto him, the said defendant, upon the doing thereof? And whether were the complainants, to your knowledge, always ready and willing, upon his performance therein, to pay him the said sum of ten pounds? Declare your knowledge and the truth concerning the same.

[NOTE: Berry has endorsement: Burbadge et al{i}us vers{us} Brend ter{mino} Mich{ael}is viij Caroli 1632

[TNA REQ 2/706, mm. 6-13; Berry 5, pp. 211-17]

LM: Ex p{ar}te quer{entium}

Depositiones capt{e} apud Westm{onasterium} 18o die me{n}s{is} Septembris Anno Regni Regis Caroli Angl{ie} &c octauo 1632 ex p{ar}te Cuthberti Burbage et al{iorum} quer{entium} v{e}rs{u}s Matheu{m} Brend Mil{item} Def{enden}t{em}

John Atkins of the parish of St Botolph without Aldgate, London, scrivener, aged fifty years or thereabouts, sworn & examined, saith as followeth, viz.:

1 To the first interrogatory this deponent saith that he knoweth the parties, plaintiffs & defendant, and hath known them & every of them for divers years past.

2 To the second interrogatory this deponent saith that he hath heard & doth verily believe that the said Nicholas Brend in the said interrogatory named, father to the said defendant, did heretofore by indenture of lease demise, grant and to farm let unto the said complainant Cuthbert Burbage & unto Richard Burbage, John Heminges & others, deceased, whose estates are sithence come to the said now complainants, certain parcels of ground or garden plots in the said interrogatory mentioned for such term of 31 years and for such yearly rent of £14 10s as in the same interrogatory is also expressed, and that he, this deponent, hath seen such lease of the same which is mentioned to be under the hand & seal of the same Nicholas Brend, father of the said defendant, but this deponent saith that he doth not believe that the said parcels of ground and garden plots at the time when they were so letten by the said Nicholas Brend could be of any such yearly worth or value as £14 10s or near so much, but that the buildings upon the same since erected by the lessees raised & made them of such value and worth in yearly rent.

3 To the third interrogatory this deponent saith that, as he verily believeth, the said now complainants & others the said lessees whose estates the said now complainants have did at their own proper costs & charges build and set up a playhouse upon the said parcels of ground, which playhouse was called the Globe, & as this defendant [sic] doth believe, the same might cost the best part of one thousand pounds, and which said playhouse

afterwards about 18 or 19 years since was by casualty of fire utterly burnt down & ruined, to the damage & loss of the complainants & others the then lessees whose estates & interests therein the now complainants have to the sum & value of one thousand pounds of lawful money of England.

4, 5 To the fourth and fifth interrogatories this deponent saith he knoweth that within some short time after the burning down of the said playhouse called the Globe so formerly erected & set up by them upon the said parcels of ground as aforesaid, the said complainant Cuthbert Burbage together with John Heminges, deceased, & others with them, did repair and go to the said defendant, Sir Mathew Brend, who as this deponent taketh it was then living and residing with the Lady Zinzan, his mother, at Molesey in the county of Surrey, and then & there in the behalf of themselves and others their partners the then lessees who had suffered a great loss by the said fire did request and desire the said defendant in consideration thereof, and the better to encourage them to re-edify and new-build the said playhouse so burnt down as aforesaid, to grant unto them a further and a longer term of years to be added unto their term then in being under the same yearly rent of fourteen pounds & ten shillings and such other covenants and conditions as were contained in their former lease then in being;

And this deponent saith that the said defendant and his said mother, the Lady Zinzan, and one Mr Henry Strelley, uncle to the said defendant, did then condescend & agree to & with the said complainant Cuthbert Burbage & John Heminges that they, the said Cuthbert Burbage, John Heminges & their partners, should have a further term of fifteen years to be granted unto them by him, this said defendant, when he should accomplish and come unto his age of 21 years, to begin and take effect at th' end & expiration of their said lease then in being under the like yearly rent of £14 10s, and such other like covenants & conditions as in their said former lease were contained for their better encouragement if they, the said complainant Cuthbert Burbage & the said John Heminges and their partners would re-edify & new-build the said playhouse;

And this deponent further saith that accordingly the said defendant by the name of Mathew Brend, gentleman, son & heir of the said Nicholas Brend, deceased, by a writing under his hand and seal bearing date the fifteenth day of February 1613 and in the eleventh year of the reign of our late Sovereign Lord King James by & with the consent & agreement of his said mother & uncle, did covenant, promise & grant to & with the said now complainant Cuthbert Burbage & with Richard Burbage, John Heminges & Henry Condell, sithence deceased, their executors & assigns, & to & with every of them, that he, the said defendant, as soon as he should come unto his full age of 21 year for the sum of £10 should & would grant & confirm unto them, the said complainant Cuthbert Burbage, & to Richard Burbage, John Heminges & Henry Condell, their executors & assigns, the full term of fifteen years in the said playhouse & grounds to commence & begin immediately after th' end & expiration of the lease made and granted unto them by the said Nicholas Brend, his father, deceased, then in being, & that for & under the like yearly rent of £14 10s & such other covenants & conditions as were contained & specified in the said former lease made by the said Nicholas Brend as aforesaid;

And this deponent also saith that the writing now showed unto this deponent at the time of his examination & subscribed by th' examiner of this court and bearing the date aforesaid is the same writing, and that the same writing was subscribed & sealed by the said defendant & delivered as his act & deed in the presence of his said mother & uncle, and that his said mother & uncle were witnesses unto his subscribing, sealing and delivery of the same, and did subscribe their names as witnesses unto the said writing, all which this deponent knoweth to be true for that this deponent was then present at the doing thereof, and did also subscribe his name unto the said writing as a witness thereunto, but this deponent saith that he doth not certainly know of what age the said defendant then was at the time when he did so seal & deliver the said writing, but conceiveth that he was then of an age & capacity sufficient to be sensible both of the great loss of the complainant Cuthbert Burbage & his partners sustained by the burning down of the said playhouse, as also of the great benefit that would accrue unto him, the said defendant, having the inheritance thereof by the re-edifying & building thereof.

6 To the sixth interrogatory this deponent saith that after the time of th' ensealing and delivery of the said writing by the said defendant for the granting of such further term of fifteen years as aforesaid, the said complainant Cuthbert Burbage, John Heminges, Richard Burbage and other their partners at their own proper costs & charges did re-edify, erect, build & set up a very fair building or structure now used for a playhouse and called by the name of the Globe which, as this deponent hath heard and doth verily believe, did cost them fourteen or fifteen hundred pounds, and this deponent saith that he is the rather so induced to believe for that he, this deponent, did make certain covenants & agreements between the said then lessees and a carpenter & others concerning the building thereof.

And this deponent also saith that he doth verily believe that the said complainant Cuthbert Burbage, John Heminges & the rest of their partners were so encouraged to rebuild the same upon such grant of a further term of years to be added unto their lease & term then in being as is aforesaid, and that the newbuilding thereof is a great advancement to the inheritance of the defendant in the same.

7 To the seventh interrogatory this deponent saith that he knoweth that the complainants sithence the accomplishment of the defendant's age of 21 years have requested the defendant, Sir Mathew Brend, in performance of his covenant contained in the said writing bearing date the said 15th day of February as aforesaid, to grant unto them such further term under the like yearly rent of £14 10s as by the same writing it was & is covenanted and agreed, which the said defendant hath denied to do, or at the leastwise hath deferred & delayed the performance thereof, albeit he hath been oftentimes by the said complainant Cuthbert Burbage & others thereunto required.

P{er} me Ioh{ann}em Atkins

Richard Hudson of the parish of St Alban's, Wood Street, London, carpenter, aged 61 years or thereabouts, sworn etc.

1 To the first interrogatory this deponent saith he hath known the plaintiffs specified in the title of this interrogatory 20 years and upwards; the defendant nor any other of the parties in the interrogatory mentioned this deponent neither doth nor did know.

3 To the third interrogatory this deponent saith that about eight and twenty years since, as this deponent now remembereth, the plaintiff Cuthbert Burbage and the other lessees of the lease in question did at their proper costs and charges erect, build and set up a playhouse upon the parcel of the ground called the Globe in the interrogatory mentioned, which this deponent verily believeth cost them £700 or thereabouts, which said erected playhouse was afterwards about 18 or 19 years since by casualty of fire utterly burnt down, to the loss and damage of £1000 to the said lessees, as this deponent verily believeth, and more or otherwise etc.

6 To the 6th interrogatory this deponent saith that the plaintiffs and those whose estate they have in the said playhouse and grounds have erected and built a very fair new playhouse upon the premises at their proper costs and charges, the timber and carpenters' work whereof should not be less worth than £1100 or thereabouts, and this deponent saith that the inheritance of the defendant in the premises is thereby bettered and advanced, but how much this deponent knoweth not, nor can more otherwise hereto depose.

To the rest he cannot depose at all.

Richard Hudson

Thomas Spurlinge of the parish of All Hallows in the Wall, London, carpenter, aged 29 years or thereabouts, sworn etc.

1 To the first interrogatory this deponent saith he hath known the complainant Burbage, but of late; the other parties in the interrogatory mentioned he did never know.

6 To the 6th interrogatory this deponent saith that about a fortnight since this deponent, at the request of Richard Hudson, carpenter, viewed the playhouse in question, and this deponent verily believeth the timber and carpenters' work of the said building could not cost less than eleven hundred pounds, and more or otherwise etc.

Thomas Spurling

John Wathen of the parish of St Giles without Cripplegate, London, bricklayer, aged 53 years or thereabouts, sworn etc.

1 To the first interrogatory this deponent saith he hath known the complainant Burbage 5 years or thereabouts, but did never know any other of the parties in the interrogatory mentioned.

6 To the 6th interrogatory this deponent saith that at the request of the plaintiff Burbage about 10 days since this deponent viewed the brickwork & tiling of the playhouse in question, the materials and workmanship whereof could not be less worth than two hundred and forty pounds or thereabouts, as this deponent verily believeth, and more or otherwise hereto etc.

John Wathen

Richard Fisher of the parish of St Dunstan's in the East, London, plasterer, aged 60 years and upwards, sworn etc.

1 To the 1 interrogatory this deponent saith he hath known the plaintiffs 20 years or thereabouts, but knoweth none other of the parties in the interrogatory specified.

6 to the 6th interrogatory this deponent saith that about a fortnight since, at the request of the plaintiff Mr Burbage, this deponent did considerably view all the plastering work in and about the playhouse in question, and this deponent saith he is confident that the same plastering work and the materials in and about the same were very well worth £300, and more or otherwise to any particular proposition in this interrogatory this deponent cannot depose.

Richard R Fisher

[Berry 6, pp. 217-18]

Decimo tertio Novem{bris}

La[ne]

In the cause at the suit of Cuthbert Burbage, William Heminges and Joseph Taylor, complainants, against Sir Mathew Brend, knight, defendant, it is ordered that the same matter shall be published upon the last Tuesday of this present term if the said defendant, having convenient notice of this order, shall not then or in the meantime show good matter in this court to the contrary.

[TNA REQ 2/706, m. 17; Berry 7, p. 218]

Interrogatories to be administered to witnesses to be produced for and in the behalf of Sir Mathew Brend, knight, defendant, to the bill of complaint of Cuthbert Burbage, Richard Robinson and Winifred, his wife, William Heminges, John Lowin and Joseph Taylor, complainants

1 Imprimis, did not Sir John Bodlett [=Bodley], knight, by indenture bearing date the six and twentieth day of October anno domini 1613 make a lease of the playhouse called the Globe unto the said Burbage and others for six years, and is not this indenture now showed forth unto you the said indenture of lease? Was not the counterpart of the said indenture of lease sealed and delivered by the said Sir John Bodlett? Declare your knowledge herein.

2 Item, when was the said Sir Mathew Brend baptized, and at what parish church? Is there an entry made in the book kept in the said parish of baptizings and burials of the baptizing of the said Sir Mathew and of the time thereof, and when doth the said entry thereof mention the said baptizing to have been? Declare your knowledge thereof.

3 Item, what profit and advantage have the complainants yearly had and made of and by reason of the said playhouse? Declare your knowledge and what you conceive herein and the reasons thereof.

[TNA REQ 2/706, mm. 15-16; Berry 8, pp. 218-20]

LM: Ex p{ar}te def{enden}tis

Deposic{i}o{n}es capt{e} ap{u}d Westm{onasterium} xxijo die 9br{is} A{nn}o 8o
R{egni} R{egis} Caroli 1632 Ex p{ar}te Mathei Brend milit{is} def{enden}tis
ad{versu}s Cuthbert{um} Burbage et al{ios} quer{entes}

George Archer of the parish of St Saviour's in Southwark in the county of Surrey, yeoman, aged 70 years and upwards, sworn etc.

1 to the first interrogatory this deponent saith that Sir John Bodley, knight, by the name of John Bodley, esquire, did by his indenture dated the six and twentieth day of October 1613 make a lease of the playhouse called the Globe after th' expiration of 31 years in the interrogatory mentioned unto the complainant Burbage and others for 6 years, and this deponent saith that the indenture in parchment now showed to this deponent at the time of this his examination subscribed by the examiners of this court is the counterpart of the same lease, and more he saith not.

2 To the 2 interrogatory this deponent saith he doth not know where or when the said defendant, Sir Mathew Brend, was baptized, but this deponent saith that at the decease of the said defendant's father, which was in or about November A{nn}o 43o R{egi}ne

Eliz{abethe}, the said defendant was in his cradle and not above 12 months old, and more hereto he saith not.

3 To the 3 interrogatory this deponent saith that the said complainants, ever since the sealing of the said lease, have made of certain ground to them granted by the said lease the sum of £6 of thereabouts yearly, besides the benefit and advantage of the said playhouse, and more or otherwise hereto he cannot say.

George Archer

John Chiswell of the parish of St Botolph's without Aldgate, London, haberdasher, aged 43 years or thereabouts, sworn and produced etc.

2 To the 2 interrogatory this deponent saith that he hath of late viewed the register book for baptisms and burials for the parish of Aldermanbury, London, and this deponent saith that it thereby appeareth that the defendant, Sir Mathew Brend, was baptized in the said parish church the sixth day of March 1599, and more or otherwise to this or any other of the interrogatories this deponent cannot depose.

John Chiswell

John Page of Islington in the county of Middlesex, servant to the defendant, aged 29 years or thereabouts, sworn and produced to be examined etc.

2 To the 2 interrogatory this deponent saith he of late viewed the register book for burials and baptisms for the parish of Aldermanbury, London, and this deponent saith that thereby it appeareth that the defendant, Sir Mathew Brend, was baptized in the said parish church the sixth day of March 1599, and more or otherwise to this or any other of the interrogatories this deponent cannot depose.

John Page

CHECKED TO HERE

[Berry 9, p. 220]

3tio die Decemb{ris} 1632

In the cause at the suit of Cuthbert Burbage, William Heminges and Joseph Taylor, complainants, against Sir Mathew Brend, knight, defendant, John Bell of Barwicken [=Barbican?], London, scrivener, maketh oath that upon the 23rd day of November last he served the said defendant with the copy of an order under teste of this court made

between the said parties dated the 13th day of November last aforesaid, and delivered it unto him.

John Bell

[Berry 10, pp. 220-2]

February 5to, 1633

The case between Cuthbert Burbage & others, plaintiffs, and Sir Mathew Brend,
defendant

Nicholas Brend, being seised in fee of a parcel of ground in length two hundred and twenty foot of assize and of one other parcel in length 156 foot of assize and in breadth 100 foot with buildings thereupon erected, did by his indenture 21o ffebruarij 41 Elizabeth lease the same to Cuthbert Burbage and others for one and thirty years from Christmas before under several yearly rents amounting in the whole to fourteen pounds and ten shillings, in which indenture the said Nicholas Brend doth covenant that it shall be lawful for the lessees, their executors and assigns, to take and pull down, alter or change any houses, sheds, pales, fences or other buildings which then were or after should be in or upon the premises so as there be as good or better re-edified and built on the premises within a year then next ensuing, and the lessees covenant for them, their executors and assigns, at their costs and charges to maintain and support as good and better buildings and fences as then were upon the premises in and with all necessary reparations during the said term, and the same so repaired, made, maintained and amended, together with all such edifices and buildings whatsoever as should be built and set up in or upon the premises, or others as good and convenient for the place, to leave at th' end of the said lease and yield up unto the said Nicholas, his heirs and assigns.

The lessees thereupon spent about seven hundred pounds in building a playhouse called the Globe upon the premises, and the same being burnt down by casualty of fire that happened therein during the said term, Sir Mathew Brend, the defendant, by his deed poll dated 15o ffebruarij 1613 reciting the said lease made by his father and the burning down of the said playhouse by casualty of fire and the lessees' intention to lay out one thousand pounds more upon the re-edifying of the said playhouse, in consideration of their said loss and expense and for their encouragement to re-edify the same, and for ten pounds to be paid him at his full age of 21 years (if he shall then make them the lease hereinafter mentioned), covenants that when the shall attain his said full age, to make them a further lease of fifteen years, to begin after th' expiration of the said lease of one and thirty years under the like rent and covenants as were in the said lease of one and thirty years, at th' ensealing of which deed the mother and uncle of the said Sir Mathew were present and were privy and acquainted with the said Sir Mathew his covenant and agreement in and by the same deed poll made, and did subscribe their names as witnesses to express their consents thereunto, and at the time of th' ensealing of the said deed poll

the said Sir Mathew was within one month of the age of fourteen years and was in ward to the King.

And Sir John Bodley, taking notice of the said loss by fire and charge of newbuilding, and pretending to have some estate in the premises, by his indenture dated xxvjo Octobris 1613 for good considerations him moving made thereupon unto the said lessees a lease of the premises for six years, to begin from th' end of the said lease for 31 years under the like rent and covenants as are in the said lease for one and thirty years, whereupon they new-built the said playhouse and expended about one thousand and four hundred pounds thereupon, and have ever sithence quietly enjoyed the same.

This lease of Sir John Bodley's was upon suit in the Court of Wards between Sir Mathew Brend and Sir John Bodley confirmed, and the lessees and their assigns sue to have a further lease made by the defendant Sir Mathew unto them for nine years from th' end of Sir John Bodley's lease, which the defendant, Sir Mathew Brend, doth refuse to make.

Richard Lane
John White

[Berry 11, p. 222]

Thursday the sixth of February

Burbage et al {ij} v {ersu}s Brend mil {item}, to be heard upon the case Monday next.

[Berry 12, pp. 222-3]

Lane
Burbage, Brend

Iovis Sexto die Februarij

In the cause at the suit of Cuthbert Burbage, Richard Robinson, William Heminges & others, plaintiffs, against Sir Mathew Brend, knight, defendant, upon the motion of Mr Richard Lane, of counsel with the said complainants, it is ordered that the counsels of both sides shall attend this court upon Monday next to be heard upon the case this day delivered into this court by the said complainants under the hands of Richard Lane & John White, esquires, of counsel severally with the said parties, and thereupon such further direction shall be given in the cause as shall be meet, and the said defendant is forthwith to have notice of this present order.

[Berry 13, p. 223]

Monday the 10th of February
18d
Lane

Burbage et al{ij} v{ersu}s Brend mil{item} Recompense & advantage may make a void contract good. A commission to examine the state of the things demised at the time of the plaintiffs' entry, & what advantage may redound to the defendant by the charge they have been at in building upon the premises, & whether there be a melioration of it now by their charge & the thing so much bettered that it is now in case to render more in profit than before. Upon hearing counsels on both sides sup{er} Casum in p{re}sencia p{er}tin{entium}.

[Berry 14, p. 223]

Monday the 12th of May

Burbage et al{ij} v{ersu}s Brend Mil{item} et al{ios} The commission to be renewed, any three of the commissioners, & made ret{urnabile} oct{auo} trin{itatis} next, & the commissioners to mediate an end if they can, & the name of the commissioner mistaken to be amended, & thereupon publication, & a day to be appointed for hearing next term.

[Berry 15, p. 224]

6to die Iunij a{nn}o xo 1634
Burbage, Brend

John Atkins, gentleman, maketh oath that according to an order of this court of the 12th of May last in the cause at the suit of Cuthbert Burbage & others, plaintiffs, against Sir Mathew Brend, knight, defendant, the commission in the said cause awarded was renewed & continued unto the commissioners therein already named or to any three of them and made returnable Octav{o} Trinit{atis} next coming, and that he, this deponent, about the 30th of May last did thereof give notice unto the said defendant, Sir Mathew Brend, knight, by showing unto him the said order & commission under seal of this court, and desired him, the said defendant, to join by his commissioners with the plaintiffs and their commissioners in the execution of the same commission, and this deponent also maketh oath that the said defendant answered this deponent that he would advise thereof & within 2 or 3 days give his answer whether he would or not, and this deponent further maketh oath that the said defendant did sithence come to this deponent's house & told him that he would not join with the plaintiffs in the execution of the said commission.

[Berry 16, p. 224]

Friday the sixth of June

Burbage v{ersu}s Brend mil{item} The commission to be renewed to 3 or 2, but the plaintiffs may execute the same by their own commissioners if the defendant sup{er} notie{iam} refuse to bring his commissioners. Mr Richard Lane cu{m} defendant [sic]

[Berry 17, pp. 224-5]

Saturday the 7th of June

2s

Langl{ey}

Burbage et al{ij} v{ersu}s Brend mil{item} The commission not to be enlarged, & no further examination but upon the points already directed & whether the house be made worse as to the defendant in regard it was not converted into tenements, and the commission to be renewed to 4, 3 or 2, as formerly. In presence of counsel.

[TNA REQ 2/706, m. 1; Berry 18, pp. 225-6]

By the King

Trusty and well beloved we greet you well, and send unto you here enclosed the true copies or transcripts of two several orders of late made by us and our Council in our Court of Whitehall in the cause there depending in variance between Cuthbert Burbage and others, complainants, and Sir Mathew Brend, knight, defendant, the one bearing date the tenth day of February last and the other the seventh day of June last past, whereupon we, trusting in your approved wisdoms, learnings and indifferences for the due administration of justice in this behalf will and desire you that by authority hereof, calling afore you in our name the said parties together with such witnesses and proofs as by any of them shall be nominated unto you, ye then do according to the effect, purport and true meaning of the said several orders in every behalf duly and substantially examine them, the said witnesses by their oaths in due form of law sworn, as well for proof of the state of the things demised at the time of the plaintiffs' entry thereupon in the said order mentioned, as also what advantage may redound to the defendant by the charge the plaintiffs have been at in building upon the premises, and whether there be a melioration thereof by the plaintiffs' charge whereby the premises are like to render more in profit to the defendant by their costs upon it in his nonage than it would otherwise have done, or

not, and to what value the said melioration amounteth unto by the playhouse built thereupon, and if the said complainants had built and erected tenements upon the premises then how much and to what value the premises would have been bettered thereby, endeavouring yourselves by all means to search and try out the verity of the premises by your said examinations and thereupon finally to end and determine the same matter between the said parties if ye can, and in case that by the obstinacy of any of the said parties or otherwise ye cannot conveniently so do, ye then do duly certify us and our said Council of our said Court of Whitehall at Westminster in the Vtas [=octave?] of St Michael th' Archangel next coming of the very true depositions of the said witnesses like as ye shall find by your said examinations, to th' intent that upon view thereof we and our said Council may make and settle such final order in the cause as to justice shall appertain, not failing hereof as ye tender our pleasure and th' advancement of justice. Given under our Privy Seal at our Palace of Westminster the first day of July in the tenth year of our reign.

W. Lane dep{utatus} James Mylles

LM: r{etornabile} oct{auo} Mich{ael}is p{ro}x{imi}

To our trusty and well-beloved George Bingley, Thomas Mainwaring, Richard Daniell, esquires, and to Henry Withers, gentleman, or to any three or two of them

Endorsed: (1) Com{planctores}(?) Burbidge et al{ij} con{tra} Brend Mil{item} r{etornabile} vjo die Octobris 1634 sup{er} sacrament{um} Ioh{ann}is Atkins gen{erosi} iur{ati}; (2) Execuc{i}o Comissionis infra menc{i}onat{a} patet in Quibusdam scriptis huic Annex{is}; (3) To the King's most excellent Majesty & his Highness' Council in his Court at Whitehall.

RM: 13s 4 [=1 mark]

[TNA REQ 2/706, m. 2; Berry 19, pp. 226-8]

Interrogatories to be ministered to the witnesses to be produced for and in the behalf of Cuthbert Burbage, Richard Robinson, William Heminges and other complainants against Sir Mathew Brend, knight, defendant

1 Inprimis, do you know the parties, plaintiff and defendant, or any of them, and how long have you known them or any of them, and whether did you know Nicholas Brend, esquire, deceased, late father of the defendant, Sir Mathew Brend, knight?

2 Item, do you know the house or building now called or known by the name of the Globe situate on the Bankside in the parish of St Saviour in Southwark in the county of Surrey

now used for a playhouse, and whether do you know one other house or building adjoining to the said playhouse late in the occupation of John Heminges, deceased, late father of William Heminges one of the complainants, and whether did you know the ground and soil whereon the said playhouse and the said other house or building thereunto adjoining do now stand before the said playhouse and the said other house or either of them were built upon the same?

3 Item, do you know or have you heard about what time the said ground and soil was demised and leased by the said Nicholas Brend, deceased, to the plaintiff Cuthbert Burbage and to others his partners or any of them? If yea, then for what time and for what yearly rent or other consideration was the same so let, and to what intent, whether to build a playhouse thereon? Have you seen the lease thereof or the counterpart of the same? Declare your knowledge therein and how you know the same.

4 Item, do you know or have you heard that the ground and soil whereon the said playhouse and the said other house thereunto adjoining now stand at the time when the same was leased by the said Nicholas Brend to the said Burbage and others was a mere void piece of ground or laystall without any building at all then standing thereupon, and that the same ground and soil was then of little or no worth or yearly value? Declare your knowledge therein and what you know concerning the same.

5 Item, do you know or have you heard that the said plaintiffs or those under whom they claim did bestow great costs and charges in building of the said playhouse and the other house adjoining to the same? What costs and charges and to what value do you know, have you heard, or do you believe that the said plaintiffs or those under whom they claim did bestow and lay out in and about the building of the said playhouse and the said other house, and whether by their said costs and charges will there come a great advancement in yearly rent and profit to the defendant for the said house when the same shall come into his hands and be out of lease? For what rent or profit do you conceive or believe the said playhouse and the said other house adjoining may be let yearly or may be worth to be let when the same shall be out of lease, and how much will the inheritance of the defendant then be bettered yearly by the plaintiffs' said costs, and at what yearly rate or value do you know, have you heard, or do you believe the defendant hath estimated and valued the same playhouse? Declare what you know, believe or have heard, and the truth concerning the same.

6 Item, whether do you know or have you heard that the said defendant, Sir Mathew Brend, knight, upon some conference by him heretofore had with you or some others either touching the sale of the inheritance of the said playhouse or the leasing thereof for years did value the same playhouse called the Globe at the yearly rent or value of two or one hundred pounds or of some other good yearly rent or value? Declare your knowledge therein what yearly value you know or have heard he did rate and value the same playhouse at.

[TNA REQ 2/706, m. 3; Berry 20, pp. 228-9]

Interrogatories to be administered to witnesses to be produced for and on the behalf of Sir Mathew Brend, knight, defendant, against Cuthbert Burbage and other complainants

1 Inprimis, do you know the playhouse called the Globe and the other tenements and grounds there in the possession of the complainants, their assigns or under-tenants, the inheritance whereof is in the defendant? Did you know the same grounds before Nicholas Brend, the defendant's late father, did lease the same to the complainants or some of them? In what estate were the same at the time of the making of the said lease and of the plaintiff's entry thereupon? What buildings and how many houses were there then erected and standing upon the same, and to what use and employment were the rest of the premises then put, and what yearly rent was the same then worth to be let?

2 Item, had not the premises been then worth fourteen pounds ten shillings a year to be let to any man to build tenements and houses upon the same for the habitation and dwelling of men, so as the lessee that should have undertaken such buildings at his own charge might have had a term of seven and thirty years in the same at the said yearly rent in lieu and satisfaction of his said buildings, and how much more yearly rent do you conceive the same might have yielded to the defendant and his ancestors in case the same had been so employed after the said seven and thirty years were ended and determined?

3 Item, what do you conceive the materials of the said playhouse may be truly worth to be sold in case the same should be pulled down? Declare the uttermost value thereof, and the reasons of your opinion concerning the same.

4 Item, do you conceive that the buildings of the said playhouse as they now are, in case they should be left to the defendant, are a sufficient recompense to him for the plaintiffs' quiet enjoying and holding the said leased premises seven and thirty years at no greater yearly rent than fourteen pounds ten shillings, whereby he hath been during all that time hindered of the better improvement of his inheritance in the premises by better and more useful and profitable buildings? And if you shall conceive the said buildings to be a full recompense to the defendant for all those many years past at so small a yearly rent and more, than set down to what value more.

[TNA REQ 2/706, m. 4; Berry 21, pp. 229-34]

LM: on the part of the plaintiffs

Depositions of witnesses taken before us, George Bingley, Thomas Mainwaring, esquires, and Henry Withers, gentleman, this present first day of October 1634 and in the tenth year of the reign of our Sovereign Lord King Charles at the house commonly called or known by the name or sign of the Swan on the Bankside in the county of Surrey by virtue of a commission out of the Court of his Majesty and his Highness' Council of Whitehall

to us directed in a cause there depending between Cuthbert Burbage, Richard Robinson, William Heminges and others, complainants, and Sir Mathew Brend, knight, defendant, as followeth, viz.:

1, 2 John Atkins of the parish of St Botolph without Aldgate, London, scrivener, aged fifty years or thereabouts, to the first and second interrogatories sworn & examined, saith that he knoweth the plaintiffs and defendant and the house called the Globe and the other house adjoining to the Globe late in the occupation of John Heminges, deceased, in the interrogatory mentioned, and hath known them for divers years past, and further to these two deposeseth not.

3 To the third interrogatory saith that by the sight of an old lease made by Nicholas Brend, father to the defendant, to the plaintiffs or to others under whom they claim, that certain ground upon which the said playhouse and the other houses standeth was let for one & thirty years in the one and fortieth year of Queen Elizabeth at the yearly rent of fourteen pounds and ten shillings to the intent, as this deponent believeth, to build a playhouse thereon, but for the more certainty therein he referreth himself to the said lease.

5, 6 To the fifth and sixth interrogatory saith this deponent hath heard and doth believe that the playhouse at the last building thereof did cost the plaintiffs and those under whom they claim the sum of thirteen or fourteen hundred pounds, and that the other tenement adjoining thereunto late in the tenure of the said John Heminges did cost in building the sum of two hundred pounds, and this deponent is the rather induced so to believe for that this deponent married the daughter of the said John Heminges who was a principal agent employed in and about the oversight of the building of the said playhouse and bore part of the charge, and this deponent was by him used in and about the making of certain covenants between the carpenters and the plaintiffs, and this deponent further saith and believeth that there will be a good advancement to the defendant when it comes into his hands by the plaintiffs' costs in building the same, for this deponent thinketh that the house called the Globe, if it be employed as a playhouse, may be worth forty pounds a year, and the other house twenty marks a year, and this deponent further saith that he hath heard the defendant, Sir Mathew Brend, upon some conference had by him touching the premises in question in the presence of Mr White and Mr Lane, counsel severally with the plaintiffs and defendant, did value the playhouse to be worth two hundred pounds a year, and further saith not.

p{er} me Ioh{ann}em Atkins

1, 2 Thomas Blackman of the parish of St Saviour in Southwark in the county of Surrey, waterman, aged threescore years or thereabouts, sworn & examined, to the first and second interrogatories saith he knoweth the plaintiffs in this suit but not the defendant, and also saith that he knoweth the house or building called the Globe and also the other house thereunto adjoining late in the occupation of the said John Heminges, deceased, in

the interrogatories mentioned, and hath known the said building called the Globe ever since the same was built, and did know the ground whereon the same building called the Globe and the said other house now standeth long before there was any building upon the same.

3 To the third interrogatory he cannot depose.

4 To the fourth interrogatory this deponent saith that the ground or soil whereon the said playhouse and the said other house now standeth at the time when the same was let by the defendant's father, Nicholas Brend, to the plaintiffs or those under whom they claim was a void piece of ground of little or no value, not worth above forty shillings a year, overflown by the spring tides, there being no wall or fence to keep the same out but the same ground lay between two ditches.

5 To the fifth interrogatory this deponent saith he doth not know to what value the plaintiffs did bestow in and about the building of the said playhouse and the other house, but he saith they built them new upon the said ground, there being before no building upon the same, but this deponent saith that he believeth that the said building called the Globe playhouse is worth to be let by the year thirty pounds, and the other house ten pounds by the year.

Thomas Blackman

Hugh Standish of the parish of St Giles without Cripplegate, London, carpenter, aged forty-two years or thereabouts, formerly sworn & examined for the defendant and now sworn and examined for the plaintiffs, to the fifth interrogatory this deponent saith that he believeth that the playhouse, besides the other house, did cost in building the sum of one thousand pounds in lawful money of England, and further he cannot depose.

The mark HS of Hugh Standish

1, 2 Richard Hudson of the parish of Saint Alban in Wood Street, London, carpenter, aged threescore and thirteen years or thereabouts, sworn and examined, to the first and second interrogatories this deponent saith he knoweth the plaintiffs and defendant and also knoweth the house or playhouse called the Globe and the other house thereunto adjoining, and did know the ground and soil whereon the said playhouse and other house now standeth before there was any building upon the same.

4 To the fourth interrogatory this deponent saith that the ground and soil whereon the said playhouse now standeth was, before it was built into a playhouse, a void piece of ground of little or no value, and a mere laystall.

5 To the fifth interrogatory this deponent saith that he verily believeth that the house now used for a playhouse did cost at the least fourteen hundred pounds in building at the last building thereof, and that the said other house late in the occupation of the said John Heminges adjoining to the playhouse cost the building two hundred pounds, which he, this deponent, is the rather induced to believe for that this deponent was employed by John Heminges, deceased, as a carpenter in the building thereof, and was to have been employed in the building the playhouse also but that he was at the time of the building thereof employed in other work elsewhere, and this deponent also saith that he believeth that there will come a great advancement in yearly benefit to the defendant by the plaintiff's costs in building of the playhouse and the said other house thereunto adjoining when the same shall come into his hands to be let, and that the building of the playhouse hath been an advancement to the yearly value of all the houses thereunto near adjoining, and he, this deponent, also saith that he verily believeth that the playhouse and the said other house thereunto adjoining are both worth to be let by the year the sum of one hundred marks of lawful money of England.

Richard Hudson

5 Henry Segood of the parish of St Giles in the Fields in the county of Middlesex, carpenter, aged threescore years or thereabouts, formerly sworn and examined for the defendant and now sworn and examined for the plaintiffs, to the fifth interrogatory he saith that he believeth that the playhouse in the interrogatory mentioned, besides the other house, did cost in building the sum of eight hundred pounds in lawful English money.

The mark of HS Henry Segood

1, 2 George Archer of the parish of St Saviour in Southwark in the county of Surrey, yeoman, rent-gatherer for the defendant, Sir Mathew Brend, aged threescore and fourteen years or thereabouts, formerly sworn and examined for the defendant and now sworn & examined for the plaintiffs, to the first and second interrogatories he saith that he knoweth the plaintiff Burbage and the defendant, Sir Mathew Brend, knight, and doth also know the playhouse and the other house in the interrogatory mentioned, and did know the ground whereon the same houses do now stand before the same houses were built thereupon.

3 To the third interrogatory this deponent saith that he knoweth that Nicholas Brend, deceased, in the interrogatory mentioned, about the one and fortieth or two and fortieth year of Queen Elizabeth did lease the said ground to the plaintiffs or to others under whom they claim for a certain term at the yearly rent of fourteen pounds ten shillings, as he conceiveth, to build a playhouse on, but for the certainty of the term the same was let for, he referreth himself therein to the lease.

4 To the fourth interrogatory this deponent saith that the ground whereon the playhouse & the said other house now stand at the time of the letting thereof by the said Nicholas Brend were employed in garden-grounds and had two tenements thereon of two rooms in each tenement, and were estimated by the said Nicholas Brend, as this deponent supposeth, at fourteen pounds ten shillings a year letting and taking.

5 To the fifth interrogatory this deponent saith that he believeth that the playhouse in the interrogatory mentioned cost the plaintiffs one thousand pounds in lawful English money the building, and that the other house built by the said John Heminges and adjoining to the playhouse did cost in building between two and three hundred pounds in lawful English money, and he further saith that he believeth that the playhouse, if it shall be employed as a playhouse, is worth to be let by the year forty or fifty pounds, and the said other house is worth to be let by the year eight pounds or nine pounds.

George Archer

1, 2 Thomas Godman of the parish of St Saviour in Southwark in the county of Surrey, waterman, aged five and fifty years or thereabouts, sworn and examined, to the first and second interrogatories he saith that he knoweth the plaintiffs in this suit but not the defendant, and doth also know the playhouse and the other house in the interrogatory mentioned, and did know the ground or soil whereon the same are built before there was any building thereupon.

4 To the fourth interrogatory this deponent saith that he knoweth that the ground & soil whereon the playhouse and the other house do now stand, before the said playhouse and the other house were built thereon, was a mere void piece of ground of little or no value, and no house or building thereupon, and subject to be overflowed by the Thames for want of fences or any banks to keep out the water.

Thomas Godman

George Bingley
Thomas Mainwaring
Henry Withers

[TNA REQ 2/706, m. 5; Berry 22, pp. 234-6]

Depositions of witnesses taken before us, George Bingley, Thomas Mainwaring, esquires, and Henry Withers, gentleman, this present first day of October 1634 and in the tenth year of the reign of our Sovereign Lord King Charles of England etc. at the house

commonly called or known by the name or sign of the Swan on the Bankside in the county of Surrey by virtue of a commission out of the Court of his Majesty's and his Highness' Council of Whitehall to us directed in a cause there depending between Cuthbert Burbage, Richard Robinson, William Heminges and others, complainants, and Sir Mathew Brend, knight, defendant, as followeth, viz.:

1 Hugh Standish of the parish of St Giles Cripplegate, London, carpenter, aged two and forty years or thereabouts, sworn and examined, to the first interrogatory saith that he knoweth the defendant but not the plaintiffs, and also saith that he knoweth the Globe, and further saith not.

3 To the third interrogatory saith that he doth conceive that the materials of the playhouse, being pulled down to be sold, may be worth two hundred pounds. His reason is that the same materials, being pulled down, will be short, it being the most part fir timber, and the lead thereof very thin, and further saith not.

The mark of the said Hugh HS Standish

Henry Seagood of the parish of St Giles in the Fields in the county of Middlesex, carpenter, aged threescore years or thereabouts, sworn and examined, to the first interrogatory saith that he knoweth the defendant, Sir Mathew Brend, and the playhouse, and further this deponent saith not.

3 To the third interrogatory saith that he doth conceive the said playhouse, to be pulled down, will be worth eight score pounds of lawful money of England. His reason is the same being builded with old pollard, to be pulled down will not be so useful as younger timber is, and further this deponent saith not.

The mark of the said Henry HS Seagood

1 George Archer of the parish of St Saviour in the county of Surrey, yeoman, aged threescore and fourteen years or thereabouts, sworn and examined, to the first interrogatory this deponent saith that he knoweth the defendant and the plaintiff, Mr Burbage, and the house called the Globe, and did know the ground before the playhouse was thereupon erected, and did know it to be certain gardens valued at fourteen pounds ten shillings per annum, and further saith not.

2 To the second interrogatory saith that the said gardens to be letten at that time for seven and thirty years to build thereon was worth fourteen pounds a year, and the lessee to have a good bargain, as he supposeth, and he believeth that if the said ground whereon the said playhouse standeth had had tenements thereon instead erected, had amounted double

the rent if not treble at th' end of the said seven and thirty years by reason of the neighbour houses by now yields the same, and further saith not.

3 To the third cannot depose.

4 To the fourth interrogatory saith he conceiveth it had been better for the defendant if a playhouse had not been thereon builded, but tenements, by the advantage of the rent now at this time paid, and further saith not.

p{er} me George Archer

George Bingley
Thomas Mainwaring
Henry Withers

[TNA REQ 1/157, f. 37; Berry 23, p. 236]

Tertio die Novembr{is}
La[ne]
p{er} co{nsiliarium} test{atum}

Cuthbert Burbage et al{ij}, plaintiffs, Sir Mathew Brend, knight, defendant, to be heard
17o Novem{bris} sup{er} notic{iam}

[TNA REQ 1/64/3; Berry 24, pp. 236-7]

Lune Tertio die Novembris
La[ne]
Burbage, Brend

In the cause at the suit of Cuthbert Burbage & others, plaintiffs, against Sir Mathew Brend, knight, defendant, it is ordered that the same matter shall be heard in this court upon the 17th day of this present month, the said defendant having convenient notice of this order.

[TNA REQ 1/157, f. 64; Berry 25, p. 237]

Monday the 17th of November

Burbage v{ersu}s Brend mil{item} set over till tomorrow, the first cause.

[TNA REQ 1/157, f. 65; Berry 26, p. 237]

Tuesday the 18th of November

Burbage et al{ij} v{ersu}s Sir Mathew Brend, knight, defendant. £14 10s per Ann{um} the rent now reserved, & the same rent answered before question for the 9 years' addition to the term of 6 years. The first six years allowed them by Sir Mathew urged as a sufficient recompense for their charge in building & re-edifying the playhouse. £1400 bestowed in re-edifying the playhouse & £200 upon the house. The charge of the plaintiffs induced by the hopes given them for enjoying the further term by the defendant's covenant in his infancy. The defendant's mother & his uncle witnesses to the covenant. The straight of the case how the covenant of the infant shall bind him. Where the person is disabled, there no court can make him able. For an end of the cause, it is ordered by consent of the defendant that the plaintiffs shall enjoy their term of nine years after the expiration of the six years in those things comprised in their lease upon the increase of their rent to £40 per annum during the continuance of the said nine years, upon full hearing in presence of counsel & parties. And they to put in sufficient for keeping the house[s] in repair & leaving them sufficiently in repair at the end of the term. And the plaintiff [sic] to make a lease accordingly to the said complainants.

[TNA REQ 2/617; Berry 27, p. 238]

Renewed 10 Commission to Bingley, Burbage, Brend 6-6.

[TNA REQ 1/185, f. 14v; Berry 28, p. 238]

xvijo die Ianuarij
La[ne]

An injunction to Sir Mathew Brend, knight, to perform a decree at the suit of Cuthbert Burbage and others.

[TNA REQ 1/160, f. 101v; Berry 29, p. 238]

Iovis ixo die Novem{bris}
Lang[ley]

p{er} co{nsiliarium} test{atum}

Burbage et al{ij} v{ersu}s Brend mil{item} The defendant is ready to make the lease so he may have his rent. The plaintiff to accept thereof, & pay the rent in arrear by Monday next. In presence of counsel.

[TNA REQ 1/76, p. 232; Berry 30, pp. 238-9]

Iovis Nono die Novem{bris}
Lang[ley]
Burbage, Brend

Whereas in the cause at the suit of Cuthbert Burbage, Richard Robinson, William Heminges & others, complainants, against Sir Mathew Brend, knight, defendant, by the decree in this cause made dated the 18th day of November Anno xj [sic] R{egis} nunc it was ordered that the plaintiff[s] should enjoy the messuage or playhouse in question for the term of nine years after the expiration of their former term of six years in their old lease, the said complainant[s] increasing their old rent of £14 10s to the sum of £40 from the commencement of their said new term of nine years during the continuance, and by the said decree the said defendant was required to make unto the plaintiffs a lease in writing of the same premises contained in the said old lease with the like covenants for the said term of nine years under the said rent of £40 p{er} Ann{um} accordingly, and by the said decree the plaintiffs were required to give sufficient security to the said defendant to maintain & keep the said house and buildings upon the premises in sufficient repair during the said term, and the same sufficiently repaired to yield and give up to the said defendant at the end of the said term of nine years, and forasmuch as this court was this day informed by Mr White of counsel with the said complainant [sic] that the said defendant hath been ready to make the said lease accordingly but the plaintiffs neither seek the same nor have hitherto paid the defendant any rent since the commencement of the said new term, nor have given the defendant security according to the direction of the said decree, it is therefore ordered that the said complainants shall at their peril accept of the said lease in writing and shall seal a counterpart thereof to the said defendant and pay unto him all his rent in arrear, and shall give the security intended by the said decree by or before Monday next without further delay.

[IND.9033; Berry 31, p. 239]

November
20

Burbage v{er}sus Brend

[IND.9033; Berry 32, p. 239]

November
21

Burbage v{er}sus Brend

[TNA REQ 1/160, f. 181; Berry 33, pp. 239-40]

Martis xxviiio die Novem{bris} and the last day of this present term

Burbage et al{ij} v{ersu}s Brend mil{item} The plaintiff[s] willing to accept of a lease sec{undum} decret{um}. The improved rent tendered and refused by the defendant, who would rather that the plaintiffs should continue it at the old rent than to be pressed to make a new lease. The plaintiffs' prayer that they may be discharged of the increase of rent for those two years. The plaintiffs refused the offer, and thereupon the defendant prays performance of the decree for the increase of rent. The plaintiffs to pay it for one of the 2 years, & to be discharged thereof for the other year. And for the remnant of the term, the plaintiffs to accept a new lease at the improved rent, & Mr Lane to consider whether it be fit that there be one or two. Herbert, in the presence of counsel.