

# Chicago Daily Law Bulletin®

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## Shakespeare and Illinois reviewing courts

William Shakespeare died 400 years ago last month. His influence is undeniable. We consistently say things that Shakespeare said first.

If you've ever vowed to "fight fire with fire," then you were invoking the poet's 1623 play "King John." If you ever uttered "good riddance" to a departing foe, then you took a page from his 1609 play "Troilus and Cressida." Perhaps you've recently had to "break the ice" in a social setting. You can thank his 1590 play, "The Taming of the Shrew," for that gem.

Our appellate court has been similarly influenced. Let us celebrate this anniversary of Shakespeare's passing by recounting the Illinois cases where the appellate court found it appropriate to invoke the greatest of all literary giants.

*People v. Allison*, 236 Ill.App.3d 175 (1st Dist. 1992), involved a convicted murderer's argument that his attorney should have been permitted to conduct cross-examination on the witness' refusal to be interviewed prior to trial. The appellate court agreed with the defendant and reminded us that the right to confrontation was recognized long ago by high authority:

"The immortal Shakespeare depicted the issue of confrontation as one of elemental fairness when he had King Richard II, some [400] years before there was a United States Constitution, command John of Gaunt, in connection with an accusation made by Henry Herford against the Duke of Norfolk":

"Then call them to our presence.

"Face to face,

"And frowning brow to brow, ourselves will hear

"The accuser and the accused freely speak."

*Allison*, 236 Ill.App.3d at 182-83, quoting William Shakespeare, "Richard II" Act 1, Scene 1, Lines 17-21 (Yale University Edition).

In *McDunn v. Williams*, 247 Ill.App.3d 935 (1st Dist. 1992), the dispute involved a judicial contest. One justice, concurring in part and dissenting in part, remarked, "If the parties are innocent victims of the process, where does fault lie? As with Brutus, fault lies not in our stars but in ourselves (William Shakespeare, 'Julius Caesar' (Act I, Scene 2).) Illinois primaries are held 7½ months before the general election which should be ample time for our election tribunals and our courts to resolve primary election contests." Id. at 949.

Another dissenting justice put Shakespeare to good use in *Sisk v. Williamson County*, 261 Ill.App.3d 49 (5th Dist. 1994). Dissenting from a majority opinion that found a duty existed to keep rural country roads safe for pedestrians, the justice wrote, "In this day and age of environmental concerns, a governmental unit is not going to spray weed killer around a creek, so I suppose county and city employees will have to visit every bridge every week during most of the year to cut the weeds in order to ensure that people do not fall off bridges. 'Great weeds do grow apace.' Id. at 62, quoting William Shakespeare, 'Richard III' Act 2, Scene 4, Line 13."

Shorter treatment was given

### THE PROCEDURAL THICKET



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to the great poet in *Walls v. Country Mutual Insurance*, 309 Ill.App.3d 566 (2nd Dist. 2000), when the court recited plaintiff's arguments and concluded that "[i]n the words of William Shakespeare, plaintiffs' argument is 'much ado about nothing.'" Id. at 571.

The majority in *Cobb v. Martin IGA*, 337 Ill.App.3d 306 (5th Dist. 2003), next utilized Shakespeare

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to pre-emptively thrust at the forthcoming dissent. "Thankfully, the position of the dissenter is not the law of this state. The dissenter denies that his position amounts to the imposition of absolute liability.

We turn to Shakespeare for our response: 'What's in a name? That which we call a rose by any other name would smell as sweet.'" Id. at 315, quoting William Shakespeare, "Romeo and Juliet" Act II, Scene 2.

This same sentiment was invoked a few years later when, in *Illinois Landscape Contractors Association v. Department of Labor*, 372 Ill.App.3d 912 (2nd Dist. 2007), the court confronted an issue under the Prevailing Wage Act and commented that "in the Prevailing Wage Act world, a rose called by another name may not smell nearly as sweet." Id. at 921, citing W. Shakespeare, "Romeo and Juliet," Act 2, Scene 2.

Most recently, another dissenting justice quoted the bard in *DTCT Inc. v. City of Chicago Dept. of Revenue*, 407 Ill.App.3d 945 (Dist. 2011). "The majority finds it important that [S]ection 7 is included in the tax ruling. I do as well, but for an entirely contrary reason. I find the Chicago [D]epartment of [R]evenue 'doth protest too much.' Id. at 954, quoting William Shakespeare, 'Hamlet,' Act 2, Scene 2."

Our appellate court can be persuaded with skillful reference to Shakespeare. Such references do find their way into appellate opinions, especially when the panel is sharply divided.

The lessons, the quips and the exclamations given to us over four centuries ago can be a useful and elegant way to communicate your point. The cases discussed above give you the literary license to do so.