



Condon, M., & Jones, E. T. William Weston v Thomas Smith: Chancery Petition, 1490

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**Margaret M. Condon and Evan T. Jones (eds.), ‘William Weston v Thomas Smith: Chancery Petition, 1490’ (University of Bristol, PURE, 2012)<sup>1</sup>**

This Chancery petition is central to the life of William Weston, merchant of Bristol and early explorer of the new found land.<sup>2</sup> The petition’s importance was first recognised by Alwyn Ruddock, who planned to include a transcript of the document in her book on John Cabot, proposed to the University of Exeter Press in 1992.<sup>3</sup> The petition was later found independently by both Evan Jones and Margaret Condon, during their investigations of Weston. The document is to be discussed more fully in a forthcoming article by Jones and Condon.

Weston made his petition to the Chancellor in response to a lawsuit initiated in Bristol’s Staple Court on 10 March 1490, prosecuted by the Bristol merchant Thomas Smith.<sup>4</sup> Weston’s petition sets out, from his perspective, the background to the dispute. He states that some two years earlier he had been serving as ‘attorney’ to John Foster of Bristol for his ship, the *Anthony Margaret* of Bristol.<sup>5</sup> Since Foster was the sole owner of the ship, it can be presumed from this that his attorney was employed to look after the commercial management of the vessel, leaving the shipmaster in charge of sailing the ship and supervising her crew.<sup>6</sup> Weston goes on to say that whilst he was with the ship in Lisbon, he had borrowed £12 from Thomas Smith, with the agreement to repay the loan, and a further £3 6s 8d, once the *Anthony Margaret* had returned safely to Kingroad – an anchorage of the Port of Bristol in the Severn Estuary. Weston suggests that when the *Anthony* was two miles or more from Kingroad a storm had driven her onto land, resulting in the loss of the vessel and all her merchandise. He therefore claims that, since the ship had been wrecked *before* reaching Kingroad, the loan was void. Despite this, Smith had commenced an action against him to recover the debt. Weston further suggests that he would not be able to get a fair hearing in Bristol, claiming that Smith had obtained the ‘unlawful favour’ of the mayor of Bristol, who would try the case, and that the twelve men of the jury had been selected by Smith to his own

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<sup>1</sup> The National Archives: Public Record Office, UK [TNA: PRO], C1/175/45. The following conventions were employed when transcribing the document: the line spacing, spelling, capitalization, and punctuation follow the manuscript, including interlineations and elisions. Reconstructions of suspensions are in italics; ‘u’ and ‘v’ have been rendered according to the document rather than to modern usage. Instances in which it is not clear whether an abbreviation is intended, or where the extension is unclear, have been indicated by an apostrophe. This transcription was undertaken as part of the ‘Cabot Project’ (University of Bristol, 2009-) in the phase funded by Gretchen Bauta, a private Canadian benefactor. We would like to thank Dr Jeff Reed, Dr Heather Dalton and Susan Snelgrove for commenting on an earlier draft of this paper.

<sup>2</sup> For the claims made about Weston’s voyages and the evidence published thus far that relates to them, see: Evan T. Jones, ‘Alwyn Ruddock: “John Cabot and the Discovery of America,”’ *Historical Research*, 81 (May 2008), 245-50; Evan T. Jones, ‘Henry VII and the Bristol expeditions to North America: the Condon documents,’ *Historical Research*, 83 (August 2010), 444-54.

<sup>3</sup> Margaret M. Condon and Evan T. Jones, ‘The Cabot Project, Report No. 4: Ruddock’s ‘Appendix’ Documents, Summer 2010’ (unpublished report, University of Bristol, currently [November 2012] in draft).

<sup>4</sup> Bristol Record Office (BRO), 01854, p. 91. For the date, TNA: PRO, KB27/921, rot. 32.

<sup>5</sup> ‘Attorney’ was a typical term for those who, in later centuries, might be described as a ‘factor’, ‘servant’ or ‘agent’.

<sup>6</sup> Such a division of responsibilities can be attested on some of Bristol’s other great ships in this period: T. F. Reddaway and A. A. Ruddock, eds., ‘The Accounts of John Balsall, Purser of the Trinity’, *Camden Miscellany XXIII* (Camden Society, 4th series, vii, 1969), 1-28.

benefit.<sup>7</sup> Weston was thus petitioning the Chancellor in the hope that the case would be removed to the Court of Chancery, where it could be tried on grounds of equity.

Weston's loan of £12 looks like a fairly standard 'sea-loan', with the £3 6s 8d interest being permissible under usury laws because it represented the 'adventure' or risk that the lender accepted.<sup>8</sup> Under this arrangement, if the ship sank through adverse weather, or was captured by pirates, before reaching her port of destination, the loan would not be repayable. Since the terms of the loan were clear and both parties acknowledged the debt, the dispute centered entirely on whether the ship sank before or after she reached Kingroad.

During the later 1480s the *Anthony* was the largest ship in Bristol's marine, at c.380 tons. She was also a relatively young vessel, having made her maiden voyage in 1482-3.<sup>9</sup> Customs records show that she had sailed to Lisbon on 8 September 1487, under master John Girdeler, carrying goods that would have accounted for about five percent of Bristol's total annual trade.<sup>10</sup> Since she was wrecked, the customs accounts contain no record of her return.<sup>11</sup> The loss, however, was of such magnitude that it was recorded in the mayor's chronicle, which noted that 'This yere a grete ship called the Anthony of Bristowe was lost at Kingrode, in defaute of the *Master* of the same ship'.<sup>12</sup> The official view of the event, as recorded by the Town Clerk, seems then to have been that the ship had reached Kingroad before being wrecked and that this had occurred as a result of the shipmaster's negligence. It is unclear whether Weston was blamed in any way for the loss.

The outcome of this petition is known. Weston, as noted on the dorse of the petition, was successful in obtaining a writ out of Chancery, a *certiorari* that required the mayor of Bristol to certify the court of the circumstances of Weston's arrest.<sup>13</sup> The mayor's return to the writ, which does not survive, would have included brief details of the suit in the Bristol court. The progress of the Bristol suit can, however, be traced from other sources. Since Weston had defaulted on his original appearance, an order had been made for his arrest and he was required, as he said, to give surety for his further appearance. This was provided by the wealthy merchant-shipowner, William de la Founte.<sup>14</sup> On receipt of the Chancery writ the mayor suspended proceedings against Weston. Respite was relatively brief. Chancery did not assume jurisdiction and the case was returned to Bristol for determination. There, on 2 July 1490, a jury of twelve men, including five shipmasters, gave their verdict for Smith, reciting that the *Anthony* had come in safety to Kingroad, so that the debt was payable. In

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<sup>7</sup> Such claims of corrupt dealings were common in petitions to the Chancellor, since they were a recognised justification, under 27 Edw. III Stat. 2, c. 21, for the speedy removal of a case to Chancery: *Statutes of the Realm*, I, 340-41.

<sup>8</sup> Robin Ward, *The World of the Medieval Shipmaster: Law, Business and the Sea, c.1350-1450* (Woodbridge, 2009), 72-3.

<sup>9</sup> TNA: PRO, E356/22, rot. 10d. The ship is never given her addition of 'Margaret/Marget' in the customs accounts, since she was the only '*Anthony*' frequenting the port at this date.

<sup>10</sup> The lading would have had a customable value of £1,168 at a time when the total value of Bristol's overseas trade (both imports and exports) was c. £20,000 to £30,000 pa: TNA: PRO, E122/20/7, mm. 23r, 23d.

<sup>11</sup> TNA: PRO, E122/20/7, mm. 23r, 23d; not in E122/161/27.

<sup>12</sup> L. Toulmin Smith, ed., *The Maire of Bristowe is Kalendar* (Camden Society, New Series, v, 1872), 46.

<sup>13</sup> At this period summary orders for the issue of writs and, occasionally, decrees and other orders of the court were noted by a clerk on the dorse, or back, of the petition. On process, and Chancery's developing jurisdiction in the later fifteenth century, P. Tucker, 'The Early History of the Court of Chancery: a Comparative Study', *English Historical Review*, cxv (2000), 791-811.

<sup>14</sup> BRO, 01854, p. 91. For de la Founte, Heather Dalton, "'Into speyne to selle for slavys": English, Spanish, and Genoese Merchant Networks and Their Involvement with the "Cost of Gwynea" Trade before 1550' in *Brokers Of Change: Atlantic Commerce And Cultures In Pre-Colonial Western Africa*, ed. Toby Green, British Academy Proceedings Series (Oxford, 2012), 113-16.

response the mayor, as judge, awarded Smith the full debt and £1 in costs and damages. Weston subsequently attempted an appeal in King's Bench against this verdict, alleging errors in law.<sup>15</sup> There is no evidence, however, that this was successful.

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<sup>15</sup> J. H. Baker, ed., *Reports of Cases by John Caryll* (2 vols., Selden Society cxv, cxvi, 1999, 2000), i, 88-89; TNA: PRO, KB27/921, rots. 32r, 32d, and continuation. The appeal preserves the record of the Bristol case.

*The petition*<sup>16</sup>

To the moost reuerent ffader in god the Archebisshop  
of Caunterbury primat and Chaunceller of England.<sup>17</sup> }

unto John ffoster of Bristowe merchaunt  
Humbly shewith unto your good grace your pour suppliaunt William Weston late attourney ^ of a ship called the Antonye Marget  
of Bristowe . that where as he uppon ij yere past and more beyng at lusshebourne<sup>18</sup> in portugall with the said ship there  
to be laden . borrowed of oon Thomas Smyth by way of eschaunge xij li sterlinges<sup>19</sup> . ffor the which your said Suppliaunt shuld  
content and paie unto the said Thomas within xxj dayes after the commyng of the said ship to hir porte of discharge called the  
Kyngrode<sup>20</sup> in safty xv li vj s viij d<sup>21</sup> of lafull monye of England . And it was then accorded and agreed that the said  
Thomas shuld for the said encrease and gayn<sup>22</sup> bere the aventure of the said monye<sup>23</sup> . so that if it shuld happe the said ship  
to myschance by tempest or enemyes . that then your said suppliaunt shuld be discharged as to and for the paiement of the said  
xv li vj s viij d. or any parte therof . And after that *gracious* lorde your said suppliaunt departed *with* the said ship laden . out of  
the said parties of portugale and ^ brought and conveide<sup>24</sup> within ij myle of the ^ rode<sup>25</sup> called Kyngrode where the said ship  
before she myght be brought into the same rode by grete tempest of weder was dryven uppon the lande . by meanes wherof the  
said ship brake and all the goodes and merchaundises theryn conteyned were lost drowned and dryven away . by the rages of

<sup>16</sup> For an image of the document, [http://aalt.law.uh.edu/AALT7/ChP/C1no175/TMG\\_0080.htm](http://aalt.law.uh.edu/AALT7/ChP/C1no175/TMG_0080.htm); dorse at IMG\_0081.

<sup>17</sup> John Morton, Lord Chancellor, 1486–1500. For 1486, see *Cal. Close Rolls 1485-1500*, no. 67; TNA: PRO, C 82/9. Cf. *DNB*.

<sup>18</sup> ‘lusshebourne’: Lisbon.

<sup>19</sup> £12 sterling, or equivalent in local currency.

<sup>20</sup> An anchorage in the Severn Estuary, lying between Avonmouth and Portishead, about six miles from Bristol.

<sup>21</sup> £15 6s 8d.

<sup>22</sup> i.e. Weston was to repay £3 6s 8d more than the original sum borrowed.

<sup>23</sup> i.e. Smith took the risk of loss at sea.

<sup>24</sup> A part-completed word, deleted, follows ‘conveide’.

<sup>25</sup> ‘rode’: road – a sheltered area of water near the shore, where ships could usually anchor in safety.

said tempest . Which not *withstandyng* the said Thomas intendencyng to trouble and vex your said Suppliaunt nowe late hath commensed an accion of dett of xv li vj s viij d affore the maire of the said Town of Bristoll and by *vertue* therof hadde hym arrest and compelled hym to fynde suertie<sup>26</sup> to answer to the said accion . Which Thomas hath suche unlauffull fauour of the said maire which is juge in the said cause . that xij men at the request and *nominacion* of the same Thomas been enpanelled to trie the same accion . Which been so parcial *with* the same Thomas that they intenden to cast<sup>27</sup> your said Suppliaunt in the said *somme* of xv li vj s viij d *contrary* to right and good conscience and to his utter undoyng onlesse that your good *grace* be unto hym shewed in this behalf That it wold please the same your grace to direct a *cerciorari*<sup>28</sup> unto the said mayre commaundyng hym by the same to haue the cause of arrest of your said suppliaunt in the Kynges Court of Chauncerye at a *certeyn* day tobe lymytted . there suche direccion tobe taken in the *premisses* as may accord *with* right and good conscience . ffor the loue of god and in the way of charite

*verso*

Coram domino Rege in Cancellaria sua r' a die  
*proximo futuro*  
 pasche ^ in unum mensem.<sup>29</sup>

<sup>26</sup> 'suertie': surety – i.e. a formal financial bond, provided by a third party, that would cover the defendant's costs if the prosecution was successful.

<sup>27</sup> 'cast' – i.e. to defeat in law / to condemn.

<sup>28</sup> 'cerciorari' – a writ of certiorari. As the petition goes on to say, this was an order to the mayor of Bristol to inform Chancery of the reason for Weston's arrest.

<sup>29</sup> This latin endorsement indicates that the writ of certiorari was issued, and that it was returnable before the king in Chancery at the latest by a month after the Easter that followed the sealing date given in the writ. In 1490 Easter fell on 11 April. Although the sense is clear, we have followed the precedent set by Dr P Barnes in not extending the 'r', since the precise form taken depends on whether it is regarded as describing the writ, which was returnable, or the action required. The endorsement itself served as a direction to the Chancery clerks who would be drawing up the writ: all the other variables could be extracted from the petition.