Dickens and the Law

Barrie Lawrence Nathan

School of Law, SOAS University of London

Dickens' use of the law in his novels is very familiar and has been the subject of a vast literature. This note is just a very brief summary of a few points of interest. *Jarndyce v Jarndyce* is probably the best known case in English fiction, just as *Bardell v Pickwick* is probably the best known trial. Dickens' connection with the law began early. In 1827 at the age of 15 he became a junior clerk in a solicitors' office in Gray's Inn, where he worked for some 18 months. To understand what this entailed at that time, we need only turn to *The Pickwick Papers*:

> There are several grades of Lawyers' clerks. There is the Articled Clerk, who has paid a premium, and is an attorney in perspective, who runs a tailor's bill, receives invitations to parties, knows a family in Gower Street and another in Tavistock Square, goes out of town every long vacation to see his father, who keeps live horses innumerable: and who is, in short, the very aristocrat of clerks. There is the salaried clerk—out of door, as the case may be—who devotes the major part of his thirty shillings a week to his personal pleasure and adornment, repairs half price to the Adelphi at least three times a week, dissipates majestically at the cider cellars afterwards, and is a dirty caricature of the fashion, which expired six months ago. There is the middle-aged copying clerk, with a large family, who is always shabby, and often drunk. And there are the office lads in their first surtouts, who feel a befitting contempt for boys at day-schools, club as they go home at night, for saveloys and porter, and think there's nothing like 'life.'

Dickens no doubt was an office lad. His connections with the law then and afterwards meant that his depictions of it, both in his novels and other works, were remarkably accurate. Beyond their literary merit they serve as vivid historical sketches.

Only once did Dickens become a litigant himself, when he brought an action in Chancery against several defendants for breach of copyright. He won, but the costs far outweighed any damages he could recover from the defendants. He resolved never to repeat the experience.

'The Trial' from The Pickwick Papers. *Source: scanned image Philip V Allingham.*

It is in *The Pickwick Papers* that we come across the trial of *Bardell v Pickwick*, an action for breach of promise. This cause of action arose when a man's proposal of marriage was accepted by a woman and he subsequently refused to go ahead with the marriage. The proposal and the acceptance were treated as if they were an ordinary contract (although the breach is referred to as a tort). Breach of the contract entitled the lady

to sue for damages. Theoretically the same applied if a woman jilted a man, but in fact this hardly ever happened, if it happened at all. Failure to pay the damages would lead to imprisonment in a debtors' prison. Although this might be thought of as ancient history, in fact it was not abolished until 1970 by the Law Reform (Miscellaneous Provisions) Act. The footballer, George Best, was one of the last men to be sued in this country.

Mrs Bardell brought her suit in the Court of Common Pleas. She was represented by solicitors, Dodson and Fogg, and Mr Serjeant Buzfuz. Mr Pickwick was represented by his attorney,[1] Mr Perker, and Mr Serjeant Snubbin. Serjeants-at-law at that time had exclusive rights of audience in the Court of Common Pleas. They were a very old order. There was a King's Serjeant long before there was a Queen's Counsel. Becoming a serjeant led to assured wealth. After they lost their exclusive rights of audience in 1834, the order gradually died out and was replaced by Queen's Counsel. The last Englishman to be appointed a serjeant was Nathaniel Lindley, later to become Lord Lindley. He retired in 1905. The last serjeant was an Irish Serjeant, Serjeant Sullivan, an Irish barrister who practised at the English bar until 1949.[2]

Unfortunately for Mr Pickwick, neither his attorney nor his serjeant were experienced or effective in this type of work. At the trial Serjeant Buzfuz exhibits the browbeating style of advocacy that was typical of many Victorian barristers, and indeed continued more or less until Norman Birkett introduced a more polite, but very effective, style in the 1920s and 1930s. The aggressive tactics of Serjeant Buzfuz and Dodson and Fogg may give the impression that Mrs Bardell was a gold-digger, a plain woman, seeking to entrap Mr Pickwick. In fact she was a hard-working, honest woman, a widow, described as 'a comely woman of bustling manners and agreeable appearance, with a natural genius for cooking'. She sincerely believed that Pickwick had proposed to her.

The suit arose from a conversation between Mr Pickwick and Mrs Bardell, his landlady, in which Pickwick intended to consult her about his employing Sam Weller as his manservant. Pickwick never asked her in so many words, 'Will you marry me?' and she never said 'I will'. Dickens cleverly constructs a conversation in which everything Pickwick

---

[1] The terms 'solicitors' and 'attorneys' are used almost interchangeably.

[2] One of my former heads of chambers, Jack Sarch, was actually led by Serjeant Sullivan in the 1940s. In a trial lasting three days Sullivan only opened his brief once, to check a point. Otherwise he carried all the facts in his head.

says fits in with his thoughts about employing Sam, but can also be taken as a subtle proposal of marriage. It begins with him saying:

> 'Mrs. Bardell', at the expiration of a few minutes.
>
> 'Sir,' said Mrs. Bardell again.
>
> 'Do you think it's a much greater expense to keep two people, than to keep one?'
>
> 'La, Mr. Pickwick,' said Mrs. Bardell, colouring up to the very border of her cap, as she fancied she observed a species of matrimonial twinkle in the eyes of her lodger; 'La, Mr. Pickwick, what a question!'

And so it goes on, culminating in Mrs Bardell flinging her arms round Pickwick's neck, bursting into tears and fainting in his lap. At that point three friends of Mr Pickwick enter the room.

There is no doubt that the scene appears incriminating. It needs Pickwick to explain it. The trouble is that at that time neither plaintiff nor defendant were allowed to give evidence. Buzfuz cunningly called Pickwick's friends among witnesses for the plaintiff. The result was that there was virtually no challenge to the plaintiff's evidence and no explanation of the misunderstanding. It is not clear what was the reason for this exclusion of evidence which any modern lawyer would regard as vital. In criminal cases the supposed reason was that if a guilty defendant could be allowed to give evidence, he or she would be compelled to lie, and thus add the sin of perjury to that of the crime. It may be that analogous thinking applied in civil cases.

Percy Fitzgerald, an Irish barrister who was a friend and contemporary of Dickens, wrote a book in 1902, treating the trial as if it had been a real case. By that time the law had changed. He wrote:

> Since the law was changed both plaintiff and defendant may be examined in such cases as these. What a different complexion this would have put on the suit. The whole case would have tumbled into pieces like a pack of cards. For Mr. Pickwick 'put into the box' would have clearly shown that all that had been thus misconstrued, was his proposal for engaging a valet, which was to have been that very morning. He would have related the words of the dialogue, and the jury would have seen at once how the mistake arose.

In *The Pickwick Papers* Dickens satirizes the procedure of the court in a humorous way. In *Bleak House Jarndyce v Jarndyce* is a *leit motif* rumbling around under the surface throughout the book. It has been in process for decades. It never comes to trial. No one really understands it. It affects everyone who comes into contact with it. Hopes are raised and dashed. Lives are ruined. It was not a satire, but a biting condemnation of

the scandalous delay and costs of some cases in the Chancery Court. It is difficult today to understand how such cases came about. A very helpful illustration is set out in the 'Introductory Note' of the Norton Critical Edition of *Bleak House* (1977).

> Let us suppose a wealthy property owner dies and leaves most of his estate to a nephew, with also a few bequests to his servants. Another nephew contends that the will is invalid, and that an earlier will, leaving part of the estate to the second nephew, is the proper one. Employing a solicitor, this second nephew (the plaintiff) has a bill drawn up to state his claims against the first nephew (the defendant), and this opening transaction is filed in the Court of Chancery.
>
> Once such procedures were initiated, the heirs could not draw on the estates they had inherited, for all property was taken over by the court and held until a decision was reached—hence the expression that a house is '*in Chancery.*' Such an arrangement assured the Court that expenses involved in the case would be covered. If the settlement were long delayed, it also meant that some of the heirs would have a very long wait or would never receive the legacies assigned to them. As *The Times* commented (March 28, 1851) 'Butlers and housekeepers, and gardeners of the kindest master in the world, in spite of ample legacies in his will, are rotting on parish pay [ie on welfare payments].
>
> These proceedings having been launched, the first nephew would be obliged to employ a solicitor and a staff of clerks to gather evidence from witnesses at a hearing held under the auspices of commissioners appointed by the Court. All the living and travel expenses of these officials and witnesses had to be paid for by the litigants. Copies of all the evidence presented at these proceedings had to be made for the participants in the case and at their expense. … After the solicitors had gathered the written evidence for their cases, court officials … reviewed the assembled evidence and reported on whether it was in satisfactory order to present before the Lord Chancellor. These well-paid Chancery officials seem to have played a large role in delaying the settlement of the cases.

In his preface, written in 1853, Dickens refers to a Chancery judge he had met, who had claimed that the Court of Chancery was 'almost immaculate'. No doubt the judge had been reading *Bleak House* in the instalments. The only blemish, according to the judge, was due to the parsimony of the public in not providing more money so that more Chancery judges could be appointed. Dickens makes it clear that *Jarndyce v Jarndyce* is by no means exaggerated or unique:

> I mention here that everything set forth in these pages concerning the Court of Chancery is substantially true, and within the truth. … At the present moment there is a suit before the Court which was commenced nearly twenty years ago; in which thirty to forty counsel have been known to appear at one time; in which costs have been incurred to the amount of seventy thousand pounds; which is a

> *friendly suit*; and which is (I am assured) no nearer to its termination now than when it was begun. There is another well-known suit in Chancery, not yet decided, which was commenced before the close of the last century, and in which more than double the amount of seventy thousand pounds has been swallowed up in costs. If I wanted other authorities for JARNDYCE AND JARNDYCE, I could rain them on these pages, to the shame of a parsimonious public.

Reforms later in the century put an end to the worst vices of the system, although there is an anecdote, no doubt apocryphal, about Wilfred Hunt, an eminent chancery barrister who flourished in the 1930s and 1940s. It seems the desire for long trials had not entirely died out. He was briefed for a trial which was due to last several weeks. Every beneficiary and potential beneficiary was separately represented, some with leading counsel, at very substantial fees. On the day before the trial was to begin, the solicitors settled the case. Hunt is alleged to have remarked, 'What a pity it is that such a wonderful estate should be squandered on the beneficiaries.'[3]

There are several references in Dickens' works to the Inns of Court and the Inns of Chancery. The Inns of Chancery had endured for centuries. It is not entirely clear what they were. They had different functions at different times. All of them seemed at one time to be rather like preparatory schools for would-be barristers, who were trained so that they were able to be admitted to an Inn of Court. Later they were mainly occupied by attorneys and solicitors. Many of them were named after their founder, such as Clement's Inn, Clifford's Inn and Thavie's Inn. They were defunct by the 19th century, and mostly demolished. A few of them are represented today by plaques on the wall indicating where they were sited. Dickens was a tenant in Furnival's Inn when he was first married and he began to write *The Pickwick Papers* there. When Pip, in *Great Expectations*, first came to London, he lodged in Barnard's Inn with Herbert Pocket. The hall of the Inn still exists and is occupied by Gresham College.

Dickens learned shorthand in his time as a solicitors' clerk and thereafter worked as a parliamentary reporter and court reporter. One of his early pieces was a description of a visit to Doctors' Commons. This court specialized in ecclesiastical and civil law (a system based on Roman law as opposed to common law). He recounted one of the cases which he watched:

> Under a half-obsolete statute of one of the Edwards, the court was empowered to visit with the penalty of excommunication, any person

3 Even if true, Hunt was joking. He was notorious for the modesty of his fees.

> who should be proved guilty of the crime of 'brawling', or 'smiting',[4] in any church or vestry adjoining thereto.

It was alleged against the defendant, one Thomas Sludberry, that in a parish vestry meeting he had said to one Michael Bimple, 'You be blowed';

> and that on the said Michael Bimple and others remonstrating with the said Thomas Sludberry, on the impropriety of his conduct, the said Thomas Sludberry repeated the aforesaid expression, 'You be blowed!'; and furthermore desired and requested to know, whether the said Michael Bimple 'wanted anything for himself'; adding, 'that if the said Michael Bimple did want anything for himself, he, the said Thomas Sludberry was the man to give it him'; at the same time making use of other heinous and sinful expressions, all of which Bimple submitted, came within the intent and meaning of the Act; and therefore he, for the soul's health and chastening of Sludberry, prayed for sentence of excommunication against him accordingly.

The judge found against Sludberry and

> then pronounced upon Sludberry the awful sentence of excommunication for a fortnight, and payment of the costs of the suit. Upon this, Sludberry, who was a little, red-faced, sly-looking ginger-beer seller, addressed the Court and said, if they'd be good enough to take off the costs, and excommunicate him for the term of his natural life instead, it would be much more convenient to him, for he never went to church at all.

How lucky we are to still be able to enjoy Dickens and the law.

About the author

Barrie Nathan *is a Visiting Professor at Sun Yat-Sen University, Guangzhou, China, and a Visiting Lecturer at SOAS, University of London. After graduating with an LLB (Hons) from King's College, University of London, he was called to the bar and has spent most of his working life practising as a barrister in a wide range of common law and chancery areas. He was the Principal Lecturer on the Lord Chancellor's Training Scheme for Young Chinese Lawyers for 10 years until the scheme came to an end. He has had articles published in* Trusts and Trustees*, the* Journal of Comparative Law*, the* New Law Journal *and the* Solicitors' Journal*. He currently teaches Contract Law at SOAS on the LLB programme and has previously taught Civil and Commercial Conflict of Laws, and Procedural Principles and Ethical Standards on the LLM. His research interests include the judiciary.*

Email: barrie@barrienathen.net.

[4] Striking with a firm blow.

Main sources for this contribution

Baker, J H (2000) *The Common Law Tradition: Lawyers, Books and the Law* London and Rio Grande OH: The Hambledon Press.

Dickens, Charles (1836) 'Doctors' Commons' *The Morning Chronicle* (11 October 1836) in *Dickens' London* (1966) London: The Folio Society.

Dickens, Charles (1977) *Bleak House* with an 'Introductory Note on Law Courts and Colleges' London: Norton Critical Edition.

Dickens, Charles (2003) *The Pickwick Papers* with a Dickens chronology by Stephen Wall, London: Penguin Classics.

Fitzgerald, Percy (1902) *Bardell v Pickwick: A Dickens of a Case* with a 'Foreword' by Lady Hale (2012) London: Hesperus Press Ltd.

Legislation, Regulations and Rule

Law Reform (Miscellaneous Provisions) Act 1970