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Book Reviews

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Section 2: This Act shall apply only to counties having more than

Section 2: Said rules shall neither abridge, enlarge or modify the substantive rights of any litigant, and shall take effect six months after their promulgation.

Section 3: That thereafter, all laws in conflict with said General Rules shall be of no further force or effect.

A BILL TO BE ENTITLED "AN ACT TO AMEND SECTION 4652 OF THE CONSOLIDATED STATUTES RELATIVE TO APPEALS *IN FORMA PAUPERIS* IN CRIMINAL CASES."

The General Assembly of North Carolina do enact:

Section 1: That Section 4652 of the Consolidated Statutes be, and the same is hereby amended so as to read, as follows:

"*4652. Appeal granted; bail for appearance.* That the affidavit required in the preceding section may be filed at any time during the term or within 10 days from the adjournment of the term either with the judge or the clerk, and it shall be the duty of the judge or the clerk on filing the affidavit to grant the appeal without security for costs, and for any bailable offense the judge shall require the defendant to enter into recognizance in a reasonable sum to make his appearance at the first term of the Superior Court to be held in the county and to further answer the charge preferred."

Section 2: This act shall be in force from and after its ratification.

BOOKS REVIEWS

Abraham Lincoln, by Albert J. Beveridge. Houghton Mifflin Company, Boston, 1928. 2 vols. Pp. xxviii, 607; pp. vii, 741.

Abraham Lincoln has suffered by being over-idealized. Probably the best thing about this splendid work is the fact that the mythical saintliness of Lincoln is shown to be non-existent. A saint, for instance, if a member of the legislature of Illinois in the year 1835, would hardly have log-rolled and traded votes in the manner that Lincoln did in his successful effort to get the state capital moved from Vandalia to his home town of Springfield. That was about the time when the internal improvements fever hit Illinois, and Lincoln and his associates got votes for Springfield from each county in the state by portioning out internal improvements appropriations with such a lavish hand that the moving of the capital was said by some to have cost the state $6,000,000; bonds were issued that could

not be paid and the state, to use the language of its own governor, from a financial standpoint "became a stench in the nostrils of the civilized world." Nor would a saint have jumped out of a second-story window of the State House in an effort to break a quorum, or have written to his partner describing certain phases of the law business by saying that "a damned hawkbilled Yankee is here besetting me at every turn about $80 due a client." All of the foregoing, and a good deal more of like character, was done by Lincoln, and it is all recorded in these volumes with a faithfulness and candor that would have done credit to Honest Abe himself.

To the practicing lawyer probably no part of the work exceeds in interest that which relates to his twenty years of practice before the *nisi prius* and appellate courts. As a trial lawyer he was highly successful, but "he was no phenomenon of success. He often failed. He had runs of bad luck." During one period of three months of riding the circuit "he was beaten in every trial at every court held throughout the whole circuit." As a trial lawyer he seems uniformly to have impressed judges, juries, witnesses and opposing counsel with his fairness. One United States District Judge said that he "never intentionally misrepresented the evidence of a witness or the argument of an opponent, nor misstated the law according to his intelligent views of it." In the acceptance and rejection of employment he seems to have followed the course of most high-minded and honorable attorneys. He was not willing to lend himself and his talents to a person undertaking to perpetrate a fraud, but he did not, as attorney, undertake to try both sides of a case when it was tendered to him. "He was no knight-errant of the law seeking out the poor and distressed in order to lift up and relieve them, scorning the service of powerful and rich that he might be free to assail them. He accepted what came to him, provided it was not morally bad, and did his best for his client."

His court house methods are described as follows: "When speaking to juries he took great pains to make himself understood. He spoke directly and exclusively to them. His statements were very clear, very simple, his sentences short, compact, and distinct, his words plain and familiar. In brief, he spoke the language of the jurymen, the speech of the people. And he centered attention upon the one crucial point in the case—he 'never let it escape the jury,' declares an associate who heard Lincoln try more than a hundred

cases. He took pains that the jury never should be confused, never required to have in mind too many points. Lincoln was skillful in the questioning of witnesses and uncommonly clever in the difficult and dangerous art of cross-examination. He never made notes of testimony, but remembered every word of it. He never asked an unnecessary question, never brow-beat witnesses, never attempted to confuse or distract or alarm them. Instead he tried in a gentle and friendly fashion to assist the witness to tell the facts—provided he thought that the witness was honest and truthful. But if he believed that the witness was lying or trying to dodge his questions, or to impose on the jury in any way, he became severe and merciless. Yet in the conduct of the most exciting case Lincoln never displayed emotion; perfectly calm, he appeared to be without either enthusiasm or apprehension."

The notes that he made of a jury speech in one of his cases have been preserved. It was a case where he represented the widow of a revolutionary soldier in a suit against a pension agent who had collected a pension of $400 and charged the widow $200 of it. The notes are as follows: "No contract. Not professional services. Unreasonable charge. Money retained by Def't not given by Pl'ff. Revolutionary War. Describe Valley Forge privations. Ice—Soldier's bleeding feet. Pl'ff's husband. Soldier leaving home for army. *Skin Def't.* Close." The italics are Lincoln's. The bystanders report that he did, in fact, "skin the defendant," that he "skinned him alive."

Like most good lawyers he was always willing to help younger members of the bar. One time while he was busily engaged in trying to connect his suspender with his pants by making a plug perform the function of a button he was approached by a young lawyer. His reply was, "Wait until I fix this plug for my 'gallis' and I will pitch into that like a dog at a root."

The highest single fee that he ever made was $5000. He made several other fees closely aproximating that figure but the author says that attorney fees for the kind and character of services usually rendered by Lincoln ran from $10 to $50. There are many true stories of Lnicoln serving the poor and distressed without any compensation at all, but he insisted on being paid when he considered that he had earned his fee, and the court records bear out the fact that on numerous occasions he and his partner sued clients and recovered judgments for fees.

His office habits must have been a trial indeed to his partner. He would come to the office about nine o'clock of a morning and the first thing he did was to lie down on the lounge, which seems to have been a universal piece of furniture in law offices in former times, put one leg up on a chair and read the newspapers—always reading aloud. He would frequently, so his partner Herndon reports, spend the entire forenoon in the office talking politics, relating stories and reading newspapers and poetry aloud. Frequently he would fall into fits of abstraction, sit opposite his partner at the table in the office, look for a long time with vacant eyes steadily at the wall, without a sound or a motion, and then suddenly spring to his feet, burst into wild laughter and rush from the room. Apparently no one ever dreamed of cleaning his office, certainly not he himself. One time an uncommonly energetic law student who had associated himself with the firm swept the room to the amazement of everybody, and found such piles of dirt in the corners that seeds were sprouting in them.

In that portion of the books that deals with Lincoln's life as a practicing lawyer the author gives detailed accounts of some of his more important cases, and it is, of course, extremely interesting to view his methods and manner of trial and argument. He seems to have required plenty of time for preparation, and unless he did have plenty of time to prepare a case he was more than likely to lose it. He was just as successful in the appellate courts as he was in the trial courts. Before the trial courts he did not cite much law and cared very little for authorities, but in the appellate courts he was zealous in working out the law of his cases and his briefs contained full citations in support of all of his points.

Comparatively speaking, only a small portion of the books is devoted to Lincoln's life as a practicing lawyer because he was at heart interested only in politics. He was distinctly a politician, one who was always seeking to obtain office and to hold office after he had obtained it. His partner Herndon said of him that "the engine of his (political) ambition was never still. That he did not care much about law but thought constantly of politics." Accordingly, the author, after giving a thorough and exhaustive account of his early years, very properly devotes most of the work to a discussion of the political features of his life. He was an unsuccessful and then a successful candidate for the legislature, an unsuccessful and then a

successful candidate for Congress, an unsuccessful candidate for the Senate and finally, of course, a successful candidate for the presidency. With consummate skill the author treats of the political issues which were outstanding during Lincoln's political life. These were the issues which led up to and finally eventuated into the Civil War, and to one like the reviewer, whose knowledge of these issues has always been more or less hazy, it is a delight indeed to find them so clearly explained, explained in a narrative that always runs and is always vivid. The first chapter in the second volume is entitled, "Seeds of War." It covers seventy pages and the major portion of it is taken up with a statement not only of the position of the South, but with a clear demonstration that the legal and historical position of the South was practically unassailable. Among other things, he enlarges upon the extent to which the South had dominated the nation's politics up to 1850, and in a footnote he gives the number of years that the principal national offices were held by the Southerners from the inception of the government to the year 1850. The reviewer was amazed to discover that during the first sixty years of the nation's life Southerners held the office of president for forty-eight years and Northerners for only twelve, that Southerners held the position of chief justice of the Supreme Court for forty-eight years and Northerners for only eleven years, and that in numerous other powerful position Southerners continuously predominated.

The books cover Lincoln's life from birth to election as president, 1809-1858. Senator Beveridge died just before completion of the second volume. It was his intention, of course, to write a complete biography. It is a misfortune that he did not live to complete the work because undoubtedly these are the best books that have ever been written about Lincoln and a complete biography of Lincoln by this author would have been a landmark in biographical literature. Beveridge was prepared to write a biography of Lincoln better than anyone else who has tackled the job, because, besides being one of the most brilliant and effective biographers in the country, his own life, in some of its most important aspects, had run parallel to Lincoln's. He was born poor, became a successful lawyer, was a senator and a national figure in politics and was more capable than any other of understanding and elucidating the events that went to make up the life of his amazing subject. It is to be hoped that the author's family or his publishers may be able, sooner or later, to

find someone who can take up the work where it was laid down and carry it on, in the Beveridge style, to completion.

C. W. TILLETT, JR.

Charlotte, N. C.

Charles Dickens as a Legal Historian, by William S. Holdsworth. Yale University Press, New Haven, 1928. Pp. vi, 157.

The learned author of the *History of English* and present holder of the Vinerian Chair at Oxford has put both lawyers and Dickensians in his debt with this little book, which owes its origin to a series of lectures given at Yale University in 1927.

The period of Dickens' novels extends from 1835 to 1870, and covers roughly, therefore, the period of transition between The Reform Bill of '32 and the Judicature Acts of the '70's, when the legislature was slowly effecting those reforms of substantive law and procedure first set in motion by Jeremy Bentham. Much, indeed, of the legal machinery which Dickens describes became obsolete in his own day so that we have in his pictures of lawyers and the law many archaic survivals which throw light on an earlier age.

Dr. Holdsworth has pointed out how difficult it is for the legal historian to envisage from a study of the reported cases, statutes, and treatises the actual life and ways of thought of any past period of the law. Nor do the writings of lawyers themselves help us greatly here, for aside from Fortescue in the fifteenth century, Roger North (the brother of Lord Chancellor Guilford) in the seventeenth, and Samuel Romilly in the late eighteenth century, few can be named. We must turn aside to the novelists, therefore, to learn how lawyers and judges lived, how the machinery of the law actually operated, and how the layman regarded the law in his contacts with it. In Fielding, for instance, himself a Barrister of the Middle Temple and a magistrate who did much toward criminal reform in London, we learn of Newgate and of debtors' prisons; in Thackeray we have those unforgettable pictures of life in chambers in the Temple and of *Pendennis* and *Warrington* dining in hall at the "Upper" Temple; and in that now about forgotten novel, Samuel Warren's *Ten Thousand a Year,* we have a book devoted to the evils of the old real action of ejectment, unscrupulous solicitors, parliamentary electors after the Reform Bill, and the new joint stock companies. In our own day

Mr. Galsworthy has given us a brilliant picture of a London solicitor and of two cases in the courts, in his *Forsythe Saga.*

But for our purpose Dickens is unique. His extraordinary genius was aided by two excellent handmaidens: an unusual power of observation and a first-hand knowledge of the workings of the law. As Bagehot has said, "he describes London like a special correspondent for posterity." And at the age of twelve he had visited his father in the Marshalsea Prison (where that unfortunate original of Mr. Micawber was imprisoned for debt); he had served a few years later with two firms of attorneys; and had been a reporter in the Doctors' Commons and in the Court of Chancery at the age of eighteen, when the woolsack was occupied by Lord Lyndhurst, the son, it may be remembered, of the Boston portrait painter, John Singleton Copley. And in 1844 he had been the victorious plaintiff in five chancery suits against publishers who had printed *The Christmas Carol.* Among his intimate friends he numbered many eminent lawyers, including Serjeant Talfourd, the editor of the works of Charles Lamb. It is little surprising, then, that Dickens' novels should be, to use Dr. Holdworth's words, "a gallery of pictures of the life of the law in his own day."

The book falls into four parts: I. The Courts and the Dwellings of the Lawyers; II. The Lawyers, Lawyers' Clerks, and Other Sattelites of the Law; III. *Bleak House* and the Procedure of the Court of Chancery; IV. *Pickwick* and the Procedure of the Common Law. It always comes somewhat as a shock to see the court-rooms and chambers in which great judges have "formed" the law. Anyone who sees for the first time that squalid little room in the basement of the Capitol at Washington, into which is now crowded the law library of the Supreme Court, and who recalls that here were rendered the opinions of Marshall and Story, will realize this truth. It should not surprise us greatly, therefore, to learn that in the courts surrounding Westminster Hall, which were remodelled in 1828 and remained in use until the erection in 1884 of the new Royal Courts of Justice in the Strand hard by Temple Bar, where the Lord Chancellor and Vice-Chancellor sat, the Court of the Master of the Rolls was relegated to an upper floor (here Jessel once reigned!), that of the Second Vice-Chancellor was known familiarly as the "dog-hole," and the third Vice-Chancellor's on the floor above was called the "cock-loft." The court terms were so short that many cases were

heard after term at Serjeant's Inn or even at the Guildhall; hence the trial of the famous cause of *Bardell v. Pickwick* at the latter place. Dickens has left us vivid pictures of various other old courts and of the offices of the courts and judges' chambers scattered round about Chancery Lane. And among others we have Doctors' Commons, which survives as a court today in the Probate, Admiralty, and Divorce Division of the High Court of Justice. Here, *Steerforth* explained to young *David Copperfield,* then serving his 'prenticeship with that famous firm of proctors, *Spenlow* and *Jorkins,* "you shall go there one day and find them blundering through half the nautical terms in Young's Dictionary . . . ; and you shall go there another day and find them deep in the evidence, pro and con., respecting a clergyman who has misbehaved himself; and you shall find the judge in the nautical case, the advocate in the clergyman's case, or contrariwise. They are like actors; now a man's judge, and now he's not a judge; now he's one thing, now he's another! Now he's something else, change and change about; but it's always a very pleasant, profitable little affair of private theatricals, presented to an uncommonly select audience." But at the time of which Dickens thus wrote, there sat on the bench of this dingy little court, with its silver oar, symbolical of its maritime jurisdiction, on the advocates' table, an eminent judge who retired after a quarter-century of service in 1828, and whose decisions are the foundation of modern prize law, Lord Stowell. His brother, Lord Eldon, was at this time Lord Chancellor. In Dickens we have, too, those inimitable pictures of lawyers' offices.

The second chapter parades before us that amazing gallery of portraits of Dickens' barristers, solicitors, attorneys, lawyers' clerks, and all the lesser hangers-on of the law, *Serjeants Buzfuz* and *Snubbin, Uriah Heep, Perker, Dodson* and *Fogg, Tulkingham, Jaggers, Wemmick,* and the rest. His barristers are few but his solicitors and clerks many. We learn that *Serjeant Buzfuz* who made the most of *Mr. Pickwick's* innocent but unhappily worded notes to his landlady, *Mrs. Bardell,* about chops and tomato sauce and warming-pans, can be identified as Serjeant Bumpas; and that the original of *Stareleigh, J.,* was Mr. Justice Gaselee, who retired from the Bench, Dr. Holdsworth remarks, shortly after the trial scene in *Pickwick* appeared. Few who saw the play based on the novel a year or so ago will forget the telling effect of that scene. It is also interesting to find that the idea of *Buzfuz's* speech came from that of the plaintiff's counsel

in the famous action for criminal conversation brought by Mr. Norton against Lord Melbourne. The Mrs. Norton of this action, incidentally, was one of those sisters whom M. Maurois in his *Vie de Disraeli* has so brilliantly drawn and who figures as the heroine of George Meredith's *Diana of the Crossways.*

In the third chapter we pass to the famous case in Chancery of *Jarndyce v. Jarndyce.* If it is Lord Lyndhurst whom Dickens describes as Lord Chancellor in *Bleak House,* the time of the story must be, so Dr. Holdsworth points out, about 1827, when Lord Lyndhurst succeeded Lord Eldon: "That was the very worst period of the Court of Chancery. The report of the first Chancery Commission, which had been published in the preceding year, had revealed a monstrous state of affairs, and as yet the legislature had not begun the long task of applying a remedy" (p. 79). The story appeared in 1852-1853, when many of the abuses of Chancery had been remedied by legislation, but if we take the earlier date as the true one of the novel, its picture of the interminable delays and the frittering away of the property of suitors in chancery while the original parties to the suit grew old and died and the next generation was in turn impleaded, is not exaggerated, but dreadful fact. "In fact," says Dr. Holdsworth, "I am sure it would be possible to produce an edition of *Bleak House,* in which all Dickens' statements could be verified by the statements of the witnesses who gave evidence before the Chancery Commission, which reported in 1826" (p. 81). Quoting from his own *History,* he gives in detail the course of a bill in equity and the answer, and points out the futility of much of the procedure to accomplish the end sought; such, for instance, as the taking of evidence; he traces the history of the Six Clerks and shows how their successors' fees wasted away the substance of the estate, while the Chancellor postponed a final decree from year to year in the futile hope of doing ideal justice. The Chancery Commission of 1850 fortunately brought these things to light and the Act of 1852 to an end.

In the last chapter, the author explains among other things why the shrewd *Messrs. Dodson* and *Fogg* began their action against *Mr. Pickwick* not with an original writ but by a mesne process, a *capias ad respondendum, i.e.,* a writ directing the sheriff to arrest the defendants; of why pleadings and judgment had to be entered in term time; and of the nature of special juries; of the then existing rules of evidence which prohibited the parties giving testimony; and of the