*Martin Hinton**

MR JAGGERS: ATTORNEY-AT-LAW

INTRODUCTION: CHARLES DICKENS AND THE LAW

IN many of the works of Charles Dickens we are presented with characters who are learned in the law, if not with a plot within which there is woven a legal dispute. In *Pickwick Papers*, for example, we meet Serjeants Buzfuz and Snubbin, the Attornies Parker, Pell, Dodson and Hogg, and witness the trial of the cause *Bardell v Pickwick* presided over by the Honourable Justice Starleigh. In *Our Mutual Friend* the will of the supposedly murdered John Harmon forms the backdrop against which the romance of Eugene Wrayburn, Barrister-at-Law (best friend of Mortimer Lightwood, Attorney-at-Common Law and Solicitor of the High Court of Chancery) and Lizzie Hexam unfolds. In *David Copperfield* we cringe at our acquaintance with the cadaverous Uriah Heep, law clerk, who improves his knowledge by reading from Tidd's *Practice*.[1] And, of course, there is *Bleak House* in which the Lord High Chancellor of England himself presides over that monument to the High Court of Chancery, *Jarndyce v Jarndyce*. Dickens takes us to the Marshalsea, Newgate Prison, Doctor's Commons, the King's Bench, Chancery, the Old Bailey, the Temple, Lincoln's Inn, Serjeant's Inn, Police Courts, Coroner's Courts and the Insolvent Court. We meet Judges, Magistrates, Coroners, Beadles, Sheriffs, Serjeants-at-Law, Barristers, Attornies, Solicitors and numerous types of legal clerk. Dickens' novels brim full of the legal profession and its practices in Victorian England.

Whether Dickens' notions of the law be "precisely those of an attorney's clerk" or be indicative of a detailed knowledge of the law and its practice, is neither here nor there.[2] The value to the historian of the Victorian era that is to be had from Dickens' works does not necessarily arise from their

---

* B A (Jur), LL M (Adel); LL M (Lond); Solicitor, Office of the Director of Public Prosecutions (SA).

1 Tidd, *The Practice of the Court of King's Bench, in personal actions with references to cases of practice in the Court of Common Pleas* (Alsop, Brannan & Alsop, New York, 2nd American ed 1807).

2 Stephen, [1857] *Edinburgh Review*. The author was none other than Sir James Fitzjames Stephen, then a judge of the Court of Queen's Bench, who was critical of Dickens and his criticisms of the High Court of Chancery in *Bleak House*.

precision on points of law or procedure but from their photographic qualities.[3] Of *Pickwick Papers,* Theobald Matthew said:

> [I]n the pages of that immortal work are faithfully recorded fragments of legal history which fallible memory cannot be expected to retain, and that the story of the suit for breach of promise brought by Mrs Bardell, widow, against Samuel Pickwick, gentleman, is a mine of useful information to the antiquarian. Has not the time come for an annotated edition of that masterpiece, to which the student-at-law may be referred by readers and lecturers for a reliable account of the practical working of the law of personal actions when Queen Victoria ascended the throne?[4]

The sentiment contained in these comments applies equally to the many works of Dickens wherein the law and its satellites are referred to.

The unique powers of observation and description that he possessed compel one to conclude that in his works we are provided with an accurate picture of the legal profession and its preoccupations at a point in time just prior to a period of immense change. As they say, 'a picture is worth a thousand words', and in the works of Dickens we witness what the statute books of old cannot divulge. We see the practice of law.

It must also be remembered that Dickens does not write of the law and its practice from the position of a layman. His experience and knowledge of the law was not inconsiderable;[5] at the age of fifteen he became a writing clerk in the law firm of Ellis & Blackmore.

> His duties would have included the copying of documents, administering the registration of wills and visiting on errands the various lawyers' offices and courts of the law; in Dickens' fiction the law is always a place of barren mystery and labyrinthine ways, and there is no doubt that something of its intricacy and its sterility were impressed upon him as he trudged to and fro between such public

3 Dickens set his works, almost exclusively, in his own time, 1812-1870.

4 Matthews, "*Bardell v Pickwick*" (1918) 34 *LQR* 320 at 320.

5 Collins, *Dickens and Crime* (Macmillan & Co, London 1962), notes that Dickens' knowledge of the law was not professional and that he was stronger on civil law than on criminal law. He writes: "But even an attorney's clerk can 'get the hang of it', and a lad so observant as Dickens could pick up a good deal not only of the detail but also of the atmosphere of the law and its personnel": p175.

> offices as the Alienation Office, the Sixpenny Receiver's Office, the Prothonotaries Office, the Clerk of the Escheats, the Dispensation Office, the Affidavit Office, the Filazer's, Exigenter's and Clerk of the Outlawry's Office, the Hanaper Office and the Six Clerk's Office.[6]

Soon after he became a reporter in Doctor's Commons. As a writer he himself was a litigant in Chancery on no less than five occasions, each concerning the law relating to copyright. Despite his success as a writer, he often worried about the financial security of his family. So much so that he saw the law as an alternative vocation and promptly enrolled as a pupil barrister with the Inns of Court, though never undertaking the requisite studies. Dickens had numerous friends who were members of the judiciary, not the least being Chief Justice Lord Campbell and a son who not only took silk but was also knighted for his contribution to the law.[7] At one point in his life Dickens even consulted some of his powerful friends about his chances of becoming a Metropolitan Magistrate.

This article is concerned with arguably the most famous of Dickens' lawyers, the titan Jaggers, who is given life in the leaves of *Great Expectations*.[8] Through Jaggers one can gain an appreciation of the role of the attorney within the legal profession as it was in Victorian England. This article, therefore, draws upon *Great Expectations* as a source of invaluable information of the history of a now defunct branch of the legal profession: the Attorney-at-Law. Whilst heavy reliance is placed upon the historical works of, amongst others, Sir William Holdsworth, Michael Birks and EB Christian as corroborative of the accuracy of Dickens' portrayal of the practice of an attorney in casting the character Jaggers, such portrayal, in turn, complements the historical value of those works by providing the legal historian with vivid insight into the actual implementation and practice of the law by attornies, something which cannot be drawn from statutes, yearbooks, treatises and the like. Dickens

---

6 Ackroyd, *Dickens* (Sinclair-Stevenson, London 1990) pp115-116.

7 Sir Henry Fielding Dickens QC of the Middle Temple.

8 This novel is set in the time of Dickens' boyhood, 1810-1830, although certain critics have opined that it is a fictional expression of the 1850s. Assuming, for the sake of argument, that the time frame of the novel commences in 1810, it is approximately the year 1828 when Pip goes up to London to become a gentleman and first comes into contact with Mr Jaggers. There is little, if any, difference in the practice of law throughout this time and on into the reign of Victoria.

is an unwitting legal historian and, as Holdsworth explains, an historian of immense value, for

> [in his] description of the courts, the lawyers, and the law of his day, we get an account of those many archaic survivals, which help us to understand earlier periods in the history of our law; we get an account of the way in which the curious mixture of ancient and modern rules, which made up the law of that time, were then worked and applied; and we get an account of the results which they produced.[9]

MR JAGGERS, ATTORNEY-AT-LAW

> He was a burly man of an exceedingly dark complexion, with an exceedingly large head and a corresponding large hand. He took my chin in his large hand and turned up my face to have a look at me by the light of the candle. He was prematurely bald on the top of his head, and had bushy black eyebrows that wouldn't lie down, but stood up bristling. His eyes were set very deep in his head, and were disagreeably dark and suspicious. He had a large watch-chain, and strong black dots where his beard and whiskers would have been if he had let them.[10]

Mr Jaggers is an Attorney-at-Common Law practising primarily in the criminal jurisdiction and, in that connection, appearing regularly in the police courts of central London.

> As I was taking my departure he asked me if I would like to devote five minutes to seeing Mr Jaggers 'at it'? ... We dived into the City, and came up in a crowded police court, where a blood relation (in the murderous sense) of the deceased with the fanciful taste in brooches, was standing at the bar, uncomfortably chewing something; while my guardian had a woman under examination or cross-examination - I don't know which - and was striking her, and the bench, and everybody with awe. If anybody, of

9 Holdsworth, *Charles Dickens as a Legal Historian* (Yale University Press, New Haven 1928) p2.

10 Dickens, *Great Expectations* (Penguin English Library, Harmondsworth 1955) ch11.

> whatsoever degree, said a word that he didn't approve of, he instantly required to have it "taken down". If anybody wouldn't make an admission, he said, "I'll have it out of you!" and if anybody made an admission, he said, "Now I have got you!" The magistrates shivered under a single bite of his finger. Thieves and thieftakers hung in dreaded rapture on his words, and shrank when a hair of his eyebrows turned in their direction. Which side he was on I couldn't make out for he seemed to be grinding the whole place in a mill; I only know that when I stole out on tiptoe he was not on the side of the bench; for he was making the legs of the old gentleman who presided quite convulsive under the table, by his denunciations of his conduct as the representative of British law and justice in that chair that day.[11]

But what type of creature was the attorney-at-law?[12] What was their rank in the legal profession? In what courts did they practice? How were they received by others learned in the law? And why are they no longer to be found in the common law courts of England? Through Mr Jaggers, Dickens provides us with great insight into the role of the attorney in the practise of law in Victorian England and evidence indicative of the reasons for their demise as a branch of the legal profession.

MURDER MOST FOUL

Through Pip Wemmick, Jaggers' law clerk, who, by the way, appears not to be engaged in any form of tutelage in preparation for admission as an attorney or solicitor,[13] we learn of the case that 'made' Jaggers the renowned attorney that he is when first Pip meets him. The case was one of murder. The motive, jealousy. It was alleged that the accused, a

---

11 As above ch24.

12 For a discussion of the history of the attorney in Australia, see Birks, *Gentlemen of the Law* (Stevens & Sons, London 1960) pp261-269.

13 Unlike Mr Guppy in *Bleak House*, for example, one of the clerks at Kenge & Carboy who manages to secure articles with the firm which, upon completion, will result in his admission as a solicitor of the High Court of Chancery. Hence, he had good prospects. Likewise, David Copperfield secured articles with the firm Spenlow & Jorkins which would result in him becoming a Proctor, a "sort of monkish attorney" (in the words of Steerforth in Dickens, *David Copperfield* (Clarendon Press, Oxford 1916) ch23) in the Court of Doctor's Commons. As to the roles of the various types of legal clerk in Victorian England, see Birks, *Gentlemen of the Law* ch8.

handsome young woman with gypsy blood, had strangled another woman ten years her senior and "very much larger, and very much stronger". The accused had been married 'over the broomstick' to a man more a match for the deceased and was "a perfect fury in point of jealousy". The three led tramping lives until the murdered woman was found dead in a barn near Hounslow Heath. "There had been a violent struggle, perhaps a fight." The deceased "was bruised and scratched and torn, and had been held by the throat at last and choked". The evidence pointed to this woman. Jaggers acted for her, and "on the improbabilities of her having been able to do it" he rested his case.

> It was a desperate case, and it was comparatively early days with him then, and he worked it to general admiration; in fact, it may almost be said to have made him. He worked it himself at the police office, day after day for many days, contending against even a committal; and at the trial where he couldn't work it himself, sat under counsel and - every one knew - put in all the salt and pepper.[14]

ATTORNEYS AND BARRISTERS

Pausing for a moment, it is apparent from Wemmick's narration that Jaggers, by dint of his position within the legal profession, was prevented from appearing in the capacity of a barrister on behalf of the accused at her trial. By the same token, it obviously fell to Jaggers as attorney for the accused to prepare the matter for trial, including appearing on her behalf in all preliminary hearings such as the committal proceedings that would have taken place in the Police Court. The demarcation of the roles of the attorney and the barrister had been determined long before the nineteenth century,[15] the essential difference being that

> If you appear by attorney, he represents you, but when you have the assistance of an advocate you are present, and he supports your cause by his learning, ingenuity and zeal. Appearance by Attorney is one thing, but admitting

14 Dickens, *Great Expectations* ch48.

15 Albeit that throughout the 300 years preceding Victoria's ascension to the throne, the role of the advocate and the attorney and solicitor on numerous occasions became blurred: see Holdsworth, *A History of English Law* Vol 6 (Methuen & Co, London, 2nd ed 1937) pp432-444.

> advocates to plead the cause of another is a totally different proceeding.[16]

Likewise, Pollock and Maitland in their *History of English Law* comment that the historical origins of the advocate or barrister lie in the permission given an accused to be assisted by a friend in making his plea to a charge against him. The accused could always refute the plea made on his behalf by his friend. As early as the laws of Henry I an accused was permitted such assistance, albeit not where he was charged with a felony.[17] However,

> It was otherwise with the attorney, for the attorney represents his principal: he has been appointed, attorned (that is, turned to the business in hand) and for good and ill, for gain and loss (ad lucrandum et perdendum) he stands in his principal's stead. In England and in other countries the right to appoint an attorney is no outcome of ancient folk-law; it is a royal privilege. The King, as is often the case, has put himself outside the old law: he appoints representatives to carry on his multitudinous law-suits, and the privilege that he asserts on his own behalf he can concede to others.[18]

We see evidence of this in Jaggers' representation of Magwitch in the Police Court. Magwitch's committal for trial on a charge of returning to England in contravention of the conditions of his transportation to New South Wales is delayed for want of a witness to identify him (Compeyson being dead) and because "Mr Jaggers on the prisoner's behalf would admit nothing".[19] Thus the attorney speaks and thinks for his client, whilst the barrister puts to the Court that which the client wishes himself to say. As he lacks the true skills to do so himself in the most effective manner, the client seeks the assistance of counsel. Thus the instructing of an attorney to act on one's behalf in one's place and the retaining of a barrister to

---

16 [1839] *The Serjeants' Case* per Lord Brougham as reported in Manning's *Serviens ad Legem* and cited in Holdsworth, *A History of English Law* Vol 2 (Methuen & Co, London, 4th ed 1936) pp311-312. Holdsworth notes that from the reign of Edward I right through to the nineteenth century the distinction between the role of the attorney and that of the advocate or barrister is preserved and enforced as is evident in the records of the courts.

17 See Holdsworth, *A History of English Law* Vol 2 pp312ff.

18 Pollock & Maitland, *The History of English Law Before the Time of Edward 1* Vol 1 (Cambridge University Press, Cambridge, 2nd ed 1898) pp212-213.

19 Dickens, *Great Expectations* ch55.

present one's case are two different things. The distinction between attorney and barrister, or, rather, solicitor and barrister, has been maintained right through to the present day, albeit that the justification for the distinction has shifted ground.

ERRANT ATTORNIES

In the Victorian era, one of the principal reasons for maintaining the distinction between attorney and barrister and the nature of the legal work they may undertake would have been that it was warranted by virtue of the different modes of education and admission to practice. But the reasons would have gone far beyond this. Throughout the eighteenth century in particular, the attorney's profession was viewed with contempt by the public and the higher order of legal practitioner alike. 'Pettyfogging' was an adjective often used in describing the profession.[20] Holdsworth, in his *History of English Law*, explains that, unlike barristers who were all to be found in London and subject to the control of the Benchers of the Inns of Court, there was no corresponding mechanism that served to regulate the attorney or solicitor.[21] There was a multitude of attornies spread throughout the land, preying on unsuspecting litigants at the doors of the multiple minor courts to be found in the provinces. There was no mechanism by which the attornies could be held accountable for their advice or the action they instituted on behalf of their clients. Where once they were members of the Inns of Court, they were now excluded.[22] The prevailing situation was ripe for abuse. The Inns of Chancery, to which the attornies were still members at the insistence of the judges, had fallen into a state of disarray, rendering them incapable of performing for the attornies those services which the Inns of Court rendered the barristers whilst simultaneously safeguarding the interests of their clients.[23]

---

20 The term is derived from the comedy by Webster, *A Cure for Cuckold*, in which the attorney Master Pettyfog works out of taverns wherein he received a percentage on the wine consumed by his clients. It was quite common for attornies to work from such premises. Dickens provides us with an example in the form of Solomon Pell, the attorney who pilots Mr Pickwick and Sam Weller through the Insolvency Court in Dickens, *Pickwick Papers* (Clarendon Press, Oxford 1912).

21 See Holdsworth, *A History of English Law* Vol 12 (Methuen & Co, London 1938) pp51-63.

22 See Bellot, "The Exclusion of Attornies from the Inns of Court" (1910) 26 *LQR* 137; see also Holdsworth, *A History of English Law* Vol 6 pp441-443.

23 See Holdsworth, *A History of English Law* Vol 6 pp488-489; see also Robson, *The Attorney in Eighteenth-Century England* (Cambridge University Press, Cambridge 1959) p52.

Comparatively free of regulation, many spurious and untrained identities[24] took up the practice of being an attorney because the financial rewards were considerable in their own right, not to mention that, with 'sharp' practice, such rewards could be sizeably enlarged.[25] Whilst Jaggers appears above reproach, Dickens provides us with an example of 'sharp' practice in *Pickwick Papers*:

> "There was such a game with Fogg here, this mornin'", said the man in the brown coat, "while Jack was upstairs sorting the papers, and you two were gone to the stamp-office. Fogg was down here, opening the letters, when that chap as we issued the writ against at Camberwell, you know, came in - what's his name again?"
> "Ramsey" said the clerk who had spoken to Mr Pickwick.
> "Ah, Ramsey - a precious seedy-looking customer". "Well, sir", says old Fogg, looking at him very fierce - you know his way - "well, sir, have you come to settle?" "Yes, I have, sir", said Ramsey, putting his hand in his pocket, and bringing out the money, "the debt's two pound ten, and the costs three pound five, and here it is, sir": and he sighed like bricks , as he lugged out the money, done up in a bit of blotting-paper. Old Fogg looked first at the money, and then at him, and then he coughed in his rum way, so that I knew something was coming. "You don't know there's a declaration filed, which increases costs materially, I suppose?" said Fogg. "You don't say that, sir", said Ramsey, starting back; "the time was only out last night, sir". "I do say it, though", said Fogg, "my clerk's just gone to file it. Hasn't Mr Jackson gone to file that declaration in Bullman and Ramsey, Mr Wicks?" Of course I said yes, and then Fogg coughed again, and looked at Ramsey. "My Gods!" said Ramsey; "and here have I nearly driven myself

24 See, eg, *Frazer's Case* (1757) 1 Burr 291 and the *Highwayman's Case* (1893) 9 *LQR* 197 at 197-199 as discussed by Holdsworth, *A History of English Law* Vol 12 pp58-59.

25 Christian, *A Short History of Solicitors* (Reeves & Turner, London 1896) makes mention of 'vagabond attornies', attornies of no fixed address, who prayed upon the ignorant instituting frivolous suits on their behalf for no reason other than securing a fee. It is apparent from Robson, *The Attorney in Eighteenth-Century England*, that the regulation of attornies was a problem stemming back to the fifteenth century. See also the comments of Fielding in relation to Lawyer Scout, an attorney, in Fielding, *Joseph Andrews* (Clarendon Press, Oxford 1967) bk4 ch3 pp284-286.

> mad, scraping this money together, and all to no purpose". "None at all", said Fogg coolly; "so you had better go back and scrape some more together, and bring it here in time". "I can't get it, by God!" said Ramsey, striking the desk with his fist. "Don't bully me, sir", said Fogg, getting into a passion on purpose. "I am not bullying you, sir", said Ramsey. "You are", said Fogg: "get out, sir; get out of this office, sir, and come back, sir, when you know how to behave yourself". Well, Ramsey tried to speak, but Fogg wouldn't let him, so he put the money in his pocket and sneaked out. The door was scarcely shut, when old Fogg turned round to me, with a sweet smile on his face, and drew the declaration out of his coat pocket. "Here, Wicks" says Fogg, "take a cab, and go down to the Temple as quick as you can, and file that. The costs are quite safe, for he's a steady man with a large family, at a salary of five-and-twenty shillings a week, and if he gives us a warrant of attorney, as he must in the end, I know his employers will see it paid; so we may as well get all we can out of him, Mr Wicks."[26]

On numerous occasions throughout the eighteenth century, the legislature and the judges of the common law courts intervened in an effort to regulate the errant attornies.[27] But it was not until 1729 that a concerted effort was made to regulate the practice of attornies and solicitors.[28] An Act was passed in that year dealing primarily with the education and admission to practice of attornies and solicitors. The conditions to be satisfied before one may be admitted as an attorney, as laid down by the 1729 Act, survived well into the nineteenth century and would have governed Jaggers' education and admission. By virtue of that Act, Jaggers would have had to complete five years as a clerk articled to an admitted and practising solicitor or attorney.[29] Upon completing his articles, Jaggers would have enrolled in the court or courts in which he intended to practise and, before being admitted as a practitioner of such courts,[30]

---

26 Dickens, *Pickwick Papers* ch20.

27 See Holdsworth, *A History of English Law* Vol 12 pp53-56.

28 2 Geo II c23 (1729).

29 An Act of 1749 forbade a non-practising solicitor or attorney from taking on an articled clerk: 22 Geo II c46 (1749) para7. The Act of 1729 prevented the principal from taking on more than two articled clerks at any one time.

30 2 Geo II c23 (1729) paras1, 3. As Jaggers practised in the criminal jurisdiction and appeared at General and Quarter Sessions (evident in the application he made to stay the execution of Magwitch), his compliance with the conditions for

subjected himself to the judges for the purpose of being examined as to his fitness and capacity to act as an attorney.[31] Thus, admission as a solicitor or attorney was a matter for the judges of the respective courts. The solicitor or attorney was an officer of the Court and thus subject to regulation and discipline at the hands of the Court. In the case of barristers, power to call a candidate to the Bar, and thereby admit him to practise as a barrister, vested with the Benchers of the Inns of Court as did matters of education and discipline. Despite the good intentions of the legislature and the judges, none of the rules implemented for the purpose of regulating the attornies and solicitors proved sufficient. What was lacking, according to Holdsworth, was an organised body whose business it was to see and compel compliance with the rules of practice. Such a body arose from the ranks of the attornies themselves from a quarter intent upon improving the image of the profession. That body became known as the Society of Gentlemen Practitioners in the Courts of Law and Equity, the forerunner to the present-day Law Society, and with its creation and the cementation of its role in the legal system there came respectability for attornies and solicitors.[32]

One of the principal evils that the Act of 1729 sought to eradicate was the practice whereby a person held themselves out as an attorney and performed tasks on behalf of clients when in truth they were not qualified to do so. Attornies themselves had encouraged this abusive practice by permitting such rogues to practise under the supervision of a qualified practitioner provided a suitable division of the spoils could be agreed. After 1729, however, attornies and solicitors were required to endorse any writ or warrant issued at their behest on behalf of a client with their name, thus introducing a measure of accountability. Furthermore, should an

admission as prescribed in the Act of 1729 was mandatory under the Act of 1749: 22 Geo II c46 (1749) para12. This Act also served to create formally the 'solicitor' as a class of legal practitioner: Birks, *Gentlemen of the Law* p136.

31 As above paras2, 4, 6, 8; see also Holdsworth, *A History of English Law* Vol 12 pp54-55; Birks, *Gentlemen of the Law* ch7.

32 On numerous occasions, the Society of Gentlemen Practitioners successfully issued proceedings against errant attornies and solicitors in an effort to bring respectability to the profession. The result of such cases was, quite often, that the convicted defendant would be struck off the roll of that court or those courts in which he was admitted, thereby forbidding him to practice. Furthermore, on behalf of its members, the Society lobbied the Government on legislative reforms and made representations concerning increases in fees. The Society also forged relations with the Bar that served to demarcate the role of the two branches of the profession, their conduct, and their on-going relationship. See Holdsworth, *A History of English Law* Vol 12 pp63-72; see also Birks, *Gentlemen of the Law* ch7.

attorney or solicitor be discovered to have 'lent' their name to a person not admitted, that attorney or solicitor would be struck off the roll. Nevertheless, as I noted above, it appears that Jaggers was beyond reproach. Any money paid to his clerks for his services would have been as a result of an individual facing criminal charges or as a result of Jaggers being retained by the prosecution. That is, in the criminal jurisdiction, there was far less scope for the attorney to encourage the institution of spurious cases.

RETAINING THE ATTORNEY

One thing that is particularly interesting about Jaggers and his fees, though, is the fact that he is not prepared to act without first receiving payment.

> [A]s I was looking out at the iron gate of Bartholomew Close into Little Britain, I saw Mr Jaggers coming across the road towards me. All the others who were waiting, saw him at the same time, and there was quite a rush at him. Mr Jaggers, putting a hand on my shoulder and walking me on at his side without saying anything to me, addressed himself to his followers.
> First, he took the two secret men.
> "Now, I have nothing to say to you", said Mr Jaggers, throwing his finger at them. "I want to know no more than I know. As to the result it's a toss up. I told you from the first it was a toss-up. Have you paid Wemmick?"
> "We made the money up this morning, sir", said one of the men, submissively, while the other perused Mr Jaggers' face.
> "I don't ask you when you made it up, or where, or whether you made it up at all. Has Wemmick got it?"
> "Yes, sir", said both men together.
> "Very well; then you may go."
> ...
> "Then why," said Mr Jaggers, "do you come here?"
> "My Bill, sir!" the crying woman pleaded.
> "Now I tell you what!" said Mr Jaggers. "Once for all. If you don't know that your Bill's in good hands, I know it. And if you come here, bothering about your Bill, I'll make an example of both your Bill and you, and let him slip through my fingers. Have you paid Wemmick?"

> "Oh yes, sir! Every farden."
> "Very well. Then you have done all you have got to do. Say another word - one single word - and Wemmick shall give you your money back."
> This terrible threat caused the two women to fall off immediately.

I say that this is interesting, for it remains the case today that a solicitor may not be compelled to expend his expertise on behalf of another unless he is in funds. Furthermore, there was no such thing as legal aid during the reign of Victoria. Thus if Jaggers was to receive payment, it had to come from the accused or their family, and if he did not get it in advance, then, taking into account the nature of his clientele - the poor and the destitute - it would be likely that he would have to issue proceedings for the recovery of a debt. Such proceedings would result in the debtor being imprisoned until such time as the debt was cleared, which would be much to Jagger's disadvantage.[33]

ATTENDING UPON COUNSEL

Before continuing with Wemmick's account of the murder trial, there is one last point of interest to be drawn from the story so far. As indicated above, the separation of the duties of the bar from those of the attornies in handling a client's matter prevented Jaggers from pleading the case for his client, but it is interesting to note that he was present in court putting in "all the salt and pepper". Obviously Jaggers was regularly whispering instructions to the barrister pleading the case.[34] This again is an example of the difference between the attorney who acts on behalf of the client as if in the client's place, and the barrister who is merely a vessel pleading the case. Once the accused woman was committed for trial it would have been incumbent upon Jaggers to brief a barrister to plead the case on her behalf. By the time of Victoria it had become the custom amongst the branches of the legal profession that a barrister could only accept a brief from an attorney or solicitor and could not deal directly with a lay client. This practice arose as a consequence of the branches of the profession

33 In many of the works of Dickens we are presented with debtors who are incarcerated in the Fleet or the Marshalsea for failing to make good their debt. Mr Pickwick is imprisoned in the Fleet (*Pickwick Papers*), Mr Micawber is taken off to the Marshalsea (*David Copperfield*), and Little Dorrit's father is also imprisoned in the Marshalsea (*Little Dorrit*).

34 By virtue of the statute 6 & 7 Wm IV c114 (1836) all accused persons were permitted representation by counsel at trial; see also Chowdharay-Best, "The History of the Right to Counsel" (1976) 40 *Journal of Criminal Law* 275.

making concerted efforts to distinguish one another's function. In the case of *Bennett v Hale*[35] the Court of Queen's Bench made it clear that there was no legal obstacle to a barrister accepting a brief directly from a lay client, but commented that the practice that had arisen to the contrary was commendable. A second facet to this practice is the necessity of an attorney or solicitor attending upon counsel in court. If it was not the law in Jaggers' time that a barrister could not accept instructions directly from a lay client, then obviously it must have been permissible for a barrister or pleader to appear in a matter without being attended upon by a solicitor or attorney. This is quite different from modern times where codes of practice require a solicitor to be in attendance upon a barrister save, and here I generalise, where the matter is trivial. In any event, once the accused was committed for trial and Jaggers had briefed the case, there was no need for him to attend the trial. Nevertheless, from Wemmick's account, and, indeed, from other trials or applications in the works of Dickens, it also appears to have become the custom amongst the profession that a barrister be attended upon in court by those from whom he had accepted his brief.[36] Thus, for example, we see the consultation between Dodson and Hogg and Serjeant Buzfuz about the none-too-cooperative answers of Samuel Weller in the course of his examination-in-chief in *Bardell v Pickwick*.

ATTORNIES AND SOLICITORS

To date the greater portion of this article has explained the role of Mr Jaggers as an attorney-at-common law in the legal process. The distinction between the role of the attorney and the role of the barrister is clear from the above, but what of the attorney and the solicitor? In essence, by the time of Jaggers' admission as an attorney to one of the common law courts, there was no distinction to be had in practice between solicitors and attornies and their function within the law. In *Our Mutual Friend* we see that Mortimer Lightwood is an Attorney-at-Common Law and Solicitor of the High Court of Chancery. Nevertheless, until the passing of the *Judicature Act* 1873 (UK), solicitors were traditionally associated with the High Court of Chancery and attornies with the common law courts.[37] Holdsworth explains that, historically, an

35 [1846] 15 QB 171.

36 Parker attends upon Serjeant Snubbin in *Pickwick Papers*, and in chapter 1 of *Bleak House* Dickens describes the solicitors in attendance upon the barristers in the High Court of Chancery.

37 Eg, Queen's Bench, Court of Common Pleas. The *Judicature Act* 1873 (UK) provided that, in the future, solicitors, attorneys and proctors would all be

attorney's instructions to act on behalf of a client were strictly limited to necessary action arising out of the litigation in which the client was concerned. It was not for the attorney to perform tasks which were not directly concerned with the cause in which he had been instructed. However, it was often the case that peripheral tasks needed to be performed in the interests of the client and such tasks fell to a new class of legal entity - the solicitors.

> The need for the assistance of these persons did not grow less as time went on. Thus, a litigant who lived in the country might find it advisable to employ skilled persons to send him early information from Westminster of the next move of his opponent, or to watch and report upon his opponent's relations with sheriffs, possible jurymen, or witnesses, in the country where the action was to be tried.[38]

In time, an attorney who could only practise in that court to which he had been admitted, could act as a solicitor for his clients in other courts. Holdsworth notes that

> No doubt the attorney of the Common Pleas, who acted as a solicitor in the King's Bench, employed an attorney of the King's Bench, and shared the profits; and the same sort of profit-sharing arrangement could easily be entered into with a person who was an attorney of neither bench. Thus we get the common solicitor who, according to the orders of the King's Bench and Common Pleas issued at the end of the Seventeenth Century, was, after five years practice, qualified to be admitted as an attorney.[39]

It was with the creation of the courts of equity, that is, the Star Chamber, the Court of Requests, and the Court of Chancery, that solicitors were started on the road to respectability. Unlike the common law courts where a client's services were performed externally by his attorney, the only persons who could act as attornies on behalf of a litigant in the jurisdictions of the new courts were those who were members of the

---

referred to as "Solicitors of the Supreme Court". The Act also combined many of the ancient courts into one Supreme Court of Judicature and abolished others: 36 & 37 Vic c66 (1873); see also Bowen, "The Law Courts Under the Judicature Acts" (1886) 2 *LQR* 1.

38 Holdsworth, *A History of English Law* Vol 6 p451.

39 As above p453.

court's clerical staff. Hence we often hear of the Six and Sixty Clerks of the Court of Chancery who were responsible for drafting the pleadings of all parties concerned in litigation before that Court or to be instituted in that Court in addition to other procedural duties. Holdsworth tells us that the increase in the amount of work in Chancery, the Star Chamber and the Court of Requests meant that the resources of those courts were insufficient to cater for all litigants.[40] This led to the use of 'irregular agents': solicitors. The amount of business put before these courts did not wane and in time the role of the solicitors in the proceedings of these courts could not be denied. Soon the solicitors assumed many of the functions of the Six and Sixty Clerks and, no doubt, would have similarly assumed the function of the corresponding clerks in the Star Chamber and Court of Requests had those courts survived. The fact that those courts are no more is the reason why solicitors became associated with the Court of Chancery solely. By the time Queen Victoria ascended the throne, solicitors were well-entrenched as the legal representatives of litigants in cases in the High Court of Chancery.

Solicitors, like the attornies, however, were not the subject of any controlling body and became the subject of complaint due to their abuse of their position. This being so they were soon lumped into the same class of legal practitioner as the attorney and with the Act of 1729 were, for all intents and purposes, amalgamated save but in name.[41] It was not until the *Judicature Act* 1873 (UK) that solicitors and attornies were formally abolished as distinct classes of legal practitioners. Thereafter solicitors and attornies alike were to be referred to as "Solicitors of the Supreme Court of Judicature".[42] Thus whilst Mr Jaggers is undoubtedly an attorney, and therefore on the roll of either the Court of Common Pleas or the King's Bench, or both, it is quite possible that he was also a Solicitor of the High Court of Chancery. The only evidence we have of Jaggers' knowledge of Chancery, or his preparedness to act in that jurisdiction, is that which can be drawn from his advice to Pip that they must "try at all events" to recover some of Magwitch's property which, by virtue of his

40 As above pp453-454.

41 The Act of 1729 (2 Geo II c23 (1729)) permitted attornies and solicitors admitted in one court to practice in another provided they had obtained the written authorisation of an attorney admitted in that court. Furthermore, a solicitor admitted in one court of equity could be admitted in another of the courts of equity. Attornies could be admitted as solicitors, and common solicitors of at least five years standing could be admitted as attornies.

42 *Judicature Act* 1873 (UK) (36 & 37 Vic c66 (1873)) para87 provided that solicitors, proctors and attornies should henceforth all be called "Solicitors of the Supreme Court".

return from Australia contrary to the order of the court that had transported him, had been forfeited to the Crown. Any argument to be mounted leading to the return of the property would have been one based in equity, that is, on the grounds of fairness, and would be made in the High Court of Chancery.

ETHICS?

Returning to Wemmick's recount of the murder trial. Jaggers based his defence of the accused on the premise that being such a slight person rendered it improbable that she was the killer of the "very much larger, and very much stronger" deceased. One difficulty that he faced in portraying the accused as a woman physically incapable of committing this most heinous crime was the fact that it was readily apparent to the eye that the wrists and hands of the accused possessed extraordinary strength.

> "You may be sure", said Wemmick, touching me on the sleeve, "that he never dwelt upon the strength of her hands then, though he does sometimes do now".[43]

To overcome this obstacle, the cunning Jaggers indulges in what is trickery for some, but professionalism for others.

> "Well, sir!" Wemmick went on; "it happened - happened, don't you see? - that this woman was so very artfully dressed from the time of her apprehension, that she looked much slighter than she really was; in particular, her sleeves are always remembered to have been so skillfully contrived that her arms had quite a delicate look".[44]

Unlike today, Jaggers would not have had the benefit of being able to refer to any ethical guidelines in the conduct of his practice. Today, where a client reveals his guilt to his lawyer, the lawyer cannot then stand in Court and profess his client's innocence. Without doubt the Crown may be put to proof in such circumstances,[45] but innocence could not be positively asserted. There is evidence in *Great Expectations* of the existence of some code of ethics to which Jaggers subscribes. For instance:

---

43 Dickens, *Great Expectations* ch48.

44 As above.

45 It is incumbent upon the Crown to prove an accused's guilt beyond reasonable doubt: *Woolmington v DPP* [1935] AC 462.

> "Oh!" said Mr Jaggers, turning to the man, who was pulling a lock of hair in the middle of his forehead, like the Bull in Cock Robin pulling at the bell-rope; "your man comes on this afternoon. Well?"
> "Well, Mas'r Jaggers", returned Mike, in the voice of a sufferer from a constitutional cold; "arter a deal o' trouble, I've found one, sir, as might do".
> "What is he prepared to swear?"
> "Well, Mas'r Jaggers", said Mike, wiping his nose on his fur cap this time; "in a general way anythink".
> Mr Jaggers suddenly became most irate. "Now, I warned you before", said he, throwing his forefinger at the terrified client, "that if you ever presumed to talk in that way here, I'd make an example of you. You infernal scoundrel, how dare you tell ME that?"[46]

It is obvious from this quotation that Jaggers is repulsed by the disclosure of the fact that the alibi witness, a witness that Jaggers would call on behalf of the defence, is prepared to lie to the Court. But the question is: Does Jaggers' exception to the witness arise as a consequence of the fact that he now knows that the witness will lie and therefore potentially compromise the defence and indeed Jaggers himself? Or is Jaggers irate at the mere thought of a witness lying to a Court of law? "[H]ow dare you tell ME that?" The emphasis given to the word "me" in this sentence is given by Dickens himself. By such emphasis does Dickens seek to convey to the reader the fact that Jaggers is as white as white? Or is the inflection giving Jaggers' voice a means whereby he seeks to indicate that if Mike tells him that the witness will lie he cannot be used, thus inviting Mike to correct himself? Reading on, it is apparent that Jaggers' motivation is the latter.

> The client looked scared, but bewildered too, as if he were unconscious of what he had done.
> "Spooney!" said the clerk, in a low voice, giving him a stir with his elbow. "Soft Head! Need you say it face to face?"
> "Now, I ask you, you blundering booby", said my guardian, very sternly, "once more and for the last time, what the man you have brought here is prepared to swear?"
> Mike looked hard at my guardian, as if he were trying to learn a lesson from his face, and slowly replied, "Ayther to

46 Dickens, *Great Expectations* ch20.

> character, or to having been in his company and never left him all the night in question".[47]

Jaggers is now in a position where he can inform the Court, if asked, that to his knowledge the witness will testify as to the whereabouts of the accused on the night in question or as to the good character of the witness. He has distanced himself from the witness, rendering it impossible that his reputation as a professional man of integrity and an officer of the Court be compromised. Furthermore, not knowing that the witness is not, in fact, a witness of truth, there is no bar to his calling the witness.

The point to be had is that Jaggers' caution in accepting the alibi witness bespeaks the existence of an unwritten code of ethics and conduct at a time when there was not in existence any formal code, although as an officer of the Court, Jaggers could be punished by it for any impropriety in the conduct of matters before it. Jaggers is similarly motivated in advising Pip to take care in phrasing his questions about his benefactor so as not to make known to Jaggers the fact that Magwitch is present in England.

> "Now, Pip", said he, "be careful".
> "I will, sir", I returned. For, coming along I had thought well of what I was going to say.
> "Don't commit yourself", said Mr Jaggers, "and don't commit any one. You understand - any one. Don't tell me anything: I don't want to know anything; I am not curious."
> Of course I saw that he knew the man was come.
> "I merely want, Mr Jaggers", said I, "to assure myself that what I have been told, is true. I have no hope of its being untrue, but at least I may verify it."
> Mr Jaggers nodded. "But did you say 'told' or 'informed'?" he asked me, with his head on one side, and not looking at me, but looking in a listening way at the floor. "Told would seem to imply verbal communication. You can't have verbal communication with a man in New South Wales, you know."
> "I will say, informed, Mr Jaggers."
> "Good."[48]

Here, Jaggers is again cautious to avoid the receipt of actual knowledge of the commission of a crime, the return to England of a transported prisoner.

---

47 As above.
48 As above ch40.

His unspoken belief that the convict, Magwitch, has returned does not prevent him from offering advice to Pip. Were he to know of Magwitch's return, however, then any advice he may offer would see him an accessory to an offence of harbouring or assisting a criminal in the commission of an offence. Furthermore, should the need arise, in representing Pip or Magwitch in the future, the options available to Jaggers in defending either would be severely limited because his prior knowledge would see him 'committed' to adopting a position where innocence could not be positively asserted.

From these examples of Jaggers' ethical approach to the practice of law, we may assume that in defending the alleged murderess, Jaggers was similarly cautious to avoid being positively informed that she had, in fact, committed the crime, a suspicion he undoubtedly had, but as her legal representative he is necessarily prevented from acting upon *his* suspicions and confined to acting on her instructions in her best interests.

THE VERDICT

Beyond the conspicuous strength of his client's wrists and hands, Jaggers also had to contend with the fact that the backs of her hands were lacerated and the contention of the prosecution that such lacerations were caused by the fingernails of the deceased administered in the course of a fight. Jaggers was able to adduce evidence that the accused had struggled through a "great lot of brambles which were not as high as her face; but which she could not have got through and kept her hands out of; and bits of those brambles were actually found in her skin and put in evidence".[49] In proof of the accused's jealousy we are told that the Crown adduced evidence to the effect that the accused, at about this time, had had a child by the man; a child she destroyed to revenge herself upon him.

> Mr Jaggers worked that, in this way. "We say these are not the marks of finger-nails, but the marks of brambles, and we show you the brambles. You say they are the marks of finger-nails, and you set up the hypothesis that she destroyed her child. You must accept all consequences of that hypothesis. For anything we know, she may have destroyed her child, and the child in clinging to her may have scratched her hands. What then? You are not trying her for the murder of her child; why don't you? As to this case, if you *will* have scratches, we say that, for anything

49 As above ch48.

> we know, you may have accounted for them, assuming for the sake of argument that you have not invented them?"[50]

Wemmick assures Pip that, in short, Jaggers was "altogether too many for the Jury, and they gave in". The accused was acquitted.

50 As above.