Book Reviews

of

The Law in Shakespeare

by

Cushman K. Davis

Cushman Kellogg Davis was a lawyer, orator, politician and author of *The Law in Shakespeare* published by the Washington Law Book Company in 1883. A second edition by West Publishing Company followed in 1884; and a reprint came out in 1941. It is posted elsewhere on the MLHP.

In 1884 it was reviewed in two St. Paul newspapers and mentioned in *The Literary World*, a Boston journal. A review by a Shakespeare scholar was published in the *North Carolina Law Review* in 1941. These are the only book reviews found so far. This perhaps should not be surprising as there were few law reviews published in the 1880s. The law and literature movement would not take off until the latter part of the next century.

Davis concluded that Shakespeare was "learned in the law" and that Francis Bacon did not write the plays attributed to Shakespeare. The authorship question was, in the words of Martin Ridge, "the most popular literary puzzle of the age."* Two Minnesota lawyers became Bacon advocates: most famously Ignatius Donnelly in *The Great Cryptogram* (1888) and Neil B. Ferguson, whose obsession with the matter was recounted with puzzlement and dismay by members of the committee that drafted and delivered his bar memorial for the Ramsey County Bar Association on April 27, 1928.**

Four reviews of Davis's literary study are posted here (when others are found they will be added).

*** Martin Ridge, *Ignatius Donnelly: The Portrait of a Politician* 228 (Univ. of Chicago Press, 1962).**

**** See "Neil Byron Ferguson (1853-1927)" (MLHP, 2012).**

THE SAINT PAUL AND MINNEAPOLIS PIONEER PRESS

Sunday, February 24, 1884, page 4.

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Davis on Shakespeare

Ex-Gov. Davis takes for the legend of his brochure, which is reviewed at length this morning, Hamlet's question, "Why should not this be the skull of a lawyer?" Is a governor sure that there is any skill at all in that grave under the chancel in Stratford church? There is no name on the slab that covers it – the mural tablet says distinctly that the remains of William Shakespeare "lie within this monument;" and the grave of Mrs. Shakespeare and her husband are not pointed out as one and the same, though we are told that she earnestly desire[d] to be laid in the same grave with the body of her departed liege. It seems the world is never to know what is in that grave. For the Shakespeareans are still scared from opening it to see by a witch's curse 300 years old – albeit it is only against "moving," and says nothing about looking at certain bones; and if anyone else attempts to touch things the Stratford Beadle proposes to pitch him into the Avon forthwith.

But, supposing mortal remains of William Shakespeare to lie in that grave. Who and what was he when living? Gov. Davis now demonstrates that he was no attorney's clerk, as Lord Campbell believed, but a ripe, learned and profound lawyer; so saturated with precedents that at once in his sublimest and sweetest flights he colors everything with legal dyes, sounding every depth and shoal of poetry in only the judicial key. But, unfortunately for Gov. Davis, while the roles of Westminster and the Inns of Court contain no allusion to William Shakespeare the barrister, the records of the British stage show that, just at the time Gov. Davis makes him out the lawyer, he is managing two great theaters in London.

Other alleged documents, synchronizing very nearly with these two search warrants, again exhibit him as a large speculator in real estate, enjoying an income of $25,000 per year – a poet subscribing sonnets to Lord Southampton, which on perusal turn out to be not

sonnets except in form, but together a form of rhymed diary of Southampton's own private love affairs – (at least they coincide with those affairs by little squeezing according to Massey and others.) Add to all this that William Shakespeare was at once a butcher's apprentice and a student of the Stratford grammar school; that the curriculum at that grammar school consisted entirely of a venerable birch Rod, Lily's Latin paradigms, the "Criss-Cross Row" in the church catechism; that the graduate of this grammar school (for he did not go there, as the Baconians allege, it is an eternal verity that he went to no other educational institution) wrote the "Venus and Adonis" as the first "heir of his invention," etc., etc., etc.; and no wonder our brains reel when we try to ask ourselves who was this Immortal, anyhow, who wrote the divine page called his? Gov. Davis has added a notable contribution to the material accumulating to answer this question, if answered it ever is to be. The Baconians will, perhaps, accuse him of unprofessional conduct in moving to cross off the roll of Shakespearean possibilities the name of a great lawyer and lord chancellor. But they will find their consolation in the fact that here is an entirely new arsenal for carrying on their warfare. For nobody has ever so unmistakably shown the lawyer in the play before. In fact Gov. Davis will thus find his peace all around. Shakespearians will purr him for his heavy blows at the Baconians, Baconians will secretly approve him for building better than he knew when he traced an aristocratic lawyer in every Shakespearean line, and the neutral student will add the book to a Shakespearana, among the fresh rather than the stale matter, with pleasure and thanksgiving.

No Minnesotian will fail to feel honored that one of our most distinguished fellow citizens has, for the first time, drawn from the history of Francis Bacon, if not from that of William Shakespeare, an almost insuperable and unsurmountable reason why Francis Bacon, at least, could not have been William Himself!

St. Paul Daly Globe *

March 17, 1884, at 4

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EX-GOV. DAVIS' BOOK.
THE LAW IN SHAKESPEARE.

By C. K. Davis, St. Paul;
West Publishing Company,
1884.

It is said that it is the Homer and Shakspeare in men which reproduce their works generation after generation.

For the English poet the almost universal belief in his august fame and the supremacy of his genius have been proclaimed and analysed, and interpreted for three hundred years by scores upon scores of minds fitly qualified through study and passionate zeal.

An invidious and despoiling minority after three centuries of the world's faith in Shakspeare denounce it as a too credulous acceptance, and proceed upon one quibble or another, some conjecture or plausible gossip to rout him from his fame.

Quite a readable volume was published by Mr. Appleton Morgan in 1881 which has for one argument a positive historical blunder of M. Guizot in stating that all of Shakspeare's plays were written during his sojourn in London, that he wrote nothing on his return to Stratford, and that he was "ignored and unknown."

Mr. Morgan is really quite contemptuous over the world's credulity. "Formidable as it was in age," he says, "the presumption as to William Shakspeare's authorship of the great dramas which for three hundred years had gone (mark the tense!) by his name had only to be touched by the thumb and finger of common sense to crackle and shrivel like the egg that sat on the wall in the Kindergarten rhyme."

*** Curiously "Shakespeare" is spelled correctly in the headline of the review but misspelled in the review itself – as "Shakspeare." The original spelling has been retained here.**

Another division of sceptics while denying Shakspeare's authorship of the plays are generous enough to concede that he had some hand in them. This is Mr. Morgan's belief if he has any in Shakspeare. No less a person than Sir Patrick de Colquhoun member of the Royal Society of Literature, London (founded by George III.) put forth a paper in 1879 conveying the theory that Shakspeare as an enterprising theatrical manager bought the plays and produced them on his stage thereby showing a critical insight, and an eminent judgment in selection which has never been equalled.

The dramas were the work of a clique of learned men, Greene, Peel and others, but Bacon did not belong to the dramatic partnership, says Sir Patrick.

It is curious to note how obtuse this mutiny against Shakspeare will make people. Sir Patrick ignores the fact of Greene's attack on the poet as a plagiarist in the weak witless description of "an upstart crow beautified with our feathers who thinks himself the only *Shake-scene* in the country." This venomous slur was duly resented at the time and pronounced a foul libel.

The best quality of heretical intellect dissenting from Shakspearian faith, is given to the Baconian idea of authorship and the leader of it was a name-sake of James the First's great Lord Chancellor.

Poor Miss Delia Bacon, after all her vehement energy, her learning, her life-long enthusiasm, and singleness of devotion to the advancement of Bacon's claim to Shakspeare's laurels, would be forgotten in this generation were it not for the fine, just and merited tribute of Nathaniel Hawthorne in the paper called "Recollections of a Gifted Woman" in "Our Old Home," a series of English sketches.

She gave her life to this mania—exiled from home and country of her own volition to prosecute her researches with a zeal and learning which gave the Bacon theory against Shakspeare its first actual impetus, and its converts. She haunted Stratford-on-Avon. Day and night she studied the church, speculating whether the tomb of the "Old Player" and "Lord Leicester's groom" as she impiously termed the poet of all time, could not be sacked for the papers which she

claimed were buried with him which were the cause of the terrible curse upon his tomb he escaped detection as a fraud.

At midnight with a dark lantern she invaded the awesome precinct where the poet's ashes were secure from her desecrating investigation, and with the dread malediction confronting her, she was not deterred from her ultimate hope of having the tomb opened.

But the sad ending was madness for the forlorn American enthusiast, and Hawthorne hints that the Shakspearian malison extends to aught that disturbs the poet's repose in death, or the security of his universal shining renown as well. And yet it is pretty certain that this memorable tomb has been desecrated more than once.

Charles Knight is said to have witnessed the opening of the tomb when the Stratford church was restored, and there is a memorandum in the *Monthly Magazine* (London) 1818 as follows: "Notwithstanding the anathema pronounced by the bard on any disturber of his bones, the church wardens were so negligent a few years ago as to suffer the sexton in digging the adjoining grave of Dr. Davenport, to break a large cavity into the tomb of Shakspeare. Mr. _____ told the writer that he was excited by curiosity to push his head and shoulders through the cavity, that he saw the remains of the bard, and that he could easily have brought away his skull, but was deterred by the curse the poet invoked on any one who disturbed his remains.

There is still another representation of malcontents who admit that Shakspeare was the dramatist but that he was a plagiarist. The brunt of such a charge is comprised in the statement that he stole Hamlet from a Corinthian romance by Herodotus, and an article in *Frazer's Magazine* called a "Greek Hamlet" ingeniously traces a resemblance between the mad prince of Herodotus and the distraught Dane of Shakespeare.

But cribbing is a trifling charge where identity itself is at stake.

It is singular that nearly all the anti-Shakspearian element is American.

Miss Bacon, Judge Holmes, George Wilkes Appleton Morgan, Orrin Follett and rumor says that the well-versed intelligence of Ignatius Donnelly is at work on this contest to which we cannot wish the same success as a political one he had in hand a while ago.

It would appear to be a revolt from allegiance to England's greatest mind as from English sovereign rule.

Or, as if the restlessness or nervousness of this people affected the mind to the unsettling of beliefs, traditions, history, laws, and inclined it to skepticism and irreverence of everything divine and human.

What is the pathology of it?
The poet says truly:
Romance besides his unstrung lute
Lies stricken mute
The old time fire, the antique grace,
You will not find them anywhere,
To-day we breathe a common place,
Polemic scientific sir:
We strip illusion of her vail;
We vivisect the nightingale.
To probe the secret of his note.

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The law of compensation holds good, for if a cabal of Americans is despoiling Shakspeare of his bays an offsetting majority is unremittingly making a sufficing and admirable amends.

As a contribution to the literature of Shakspeare, the recent work of Ex-Governor Cushman K. Davis entitled the "Law in Shakspeare" will give every thoughtful reader a grateful sense of the wise devotion of the hours of learned and studious leisure. Mr. Davis is a scholar of generous and wide reaching cultivation who has given the subject of his contemplation the scope of an intellect professionally trained for

the discharge of his task, and familiar with the noblest productions of every age in literature, and every speculation and theme in human research. He is an original thinker, with a calm, convincing gracious genius for putting the results of his inquiry and reflection into language of the most captivating clearness, and perfect strength. The scheme of his book is not original. Within a period of five-and-twenty years, at least two studies of a similar character have been published, one by John, Lord Campbell; called Shakspeare's *Legal Acquirements Considered*, and still another is added by a Massachusetts lawyer within a few months. In his illustration of Shakspeare's legal erudition Mr. Davis is unlike any other writer in the same speciality, and there is no bias of precedent.

Exposition, instruction, citation, and polished phraseology are interfused with the largeness and warmth of conviction in the great dramatist's "divine plenitude of power" compact of all intuitions—a conviction which does not deny that there were men more learned than Shakespeare coeval with him, but never one with so much knowledge.

Read this finely tempered contrast between Shakespeare and Bacon.

"The differences between these most august of intellectual beings are manifest.

"Both were sages; one was a poet, the other a philosopher. It is the difference between Homer and Plato. Both had great imaginations, but Bacon's was a reasoning imagination, which disclosed its reasoning processes.

"That of Shakspeare was intuitive, and left little trace of its trackless paths of development.

"It is the difference between two continents of vast area, watered by great and fertilizing rivers, full throughout of nature's wonders; but one is temperate, orderly, subject to little variation while the other is tropical, ravaged by storms; the home of the greatest beauties sleeping in the very dens of the greatest terrors, and both beneficent and enduring. Each was a discoverer.

"But Bacon made his quest in the material world, while Shakspeare voyaged through the mind and soul of man, and reached their destinies."

"One is the Columbus and the other the Dante of thought."

We Minnesotians knew what to expect from the comprehensive summary of Shakspearian power in Mr. Davis' argument in the Page impeachment, but the introductory paper in this book, from first to last where he proves the inherent improbability of all claims to the poet's fame, belongs to the literature of power.

One of the statements which is quoted as remarkable in Lord Campbell's book is:

"While novelists and dramatists are constantly making mistakes as to the law of marriage, of wills, and of inheritance.—to Shakspeare's law, lavishly as he propounds it, there can neither be demurrer nor bill of exceptions nor writ of error."

Mr. Davis, too, makes a very memorable, striking and wholly novel assertion when he tells us of Shakspeare, that, "In all his works there is not one direct word for liberty of speech, thought, religion,—those rights which in his age were the very seeds of time, into which his eye, of all men's, could best look to see which grain would grow, and which would not. In all ages great men and great women have died for humanity, but none of these have been commemorated by him. The fire of no martyr gleams in his pages * * * * He was silent concerning those great agitations for personal right and liberty which so shortly after he died, subverted the monarchy, put aside the peer age, overthrew the church, and forever established that the state is made for man and not man for the state."

As a finale the words of Hawthorne concerning Shakspeare will be more appropriate than anything else that might be written:

"There is no exhausting the various interpretation of his symbols; and a thousand years hence, a world of new readers will possess a whole library of new books, as we ourselves do, in these volumes old already."

THE LITERARY WORLD

Volume 15, June 14, 1884, at page 201

"The Law In Shakespeare," by Cushman K. Davis. A second edition of this interesting book has been Issued by the West Publishing Company, St. Paul, Minn. It Is a well-printed volume of more than three hundred pages, and cites and discusses 312 passages in which Shakespeare uses legal technicalities. The frequent cross-references and the good index of sixteen pages will be appreciated by the student.

We have not taken pains to compare the matter minutely with that of preceding books on the same subject, but we are inclined to think that it is more complete than any of them; while the clearness with which even the commonest law terms are defined renders it especially useful to those who are unversed in legal lore.

The Baconian delusion is incidentally criticised and condemned in pages 37-48. Mr. Appleton Morgan, in an article in the St. Paul *Pioneer Press* of February 24, 1884, says of this portion of the book: "Gov. Davis has added a notable contribution to the material accumulating to answer this question, if answered it ever is to be. . . . . Shakespearians will purr him for his heavy blows at the Baconians; Baconians will secretly approve him for building better than he knew when he traced an aristocratic lawyer in every Shakespearian line; and the neutral student will add the book to his Shakespeariana, among the fresh rather than the stale matter, with pleasure and thanksgiving."

NORTH CAROLINA LAW REVIEW

Volume 20, December 1941, pages 130-134.

The Law in Shakespeare. By Cushman K. Davis. Washington: Washington Law Book Company. 1941 (reprint). Pp. 303. $2.50.

This is an exceedingly valuable book for scholars and students of Shakespeare and a treasure-house for lawyers who may wish to appreciate Shakespeare or to use him in pleading, writing, or speaking. The writer undertakes to explain virtually every line and passage in Shakespeare which employs legal terminology and to show that in almost every instance Shakespeare used these words with the right legal applications. He deduces from this fact the conclusion that Shakespeare was learned in the law and was at one time a lawyer.

Shakespeareans will derive pleasure and profit from consulting this book. They will here learn the real meaning of the legal terminology used by Shakespeare with extraordinary artistic effect. Hundreds of terms which we read without understanding, such as "taken with the manner," meaning "caught with stolen goods still in your hands," come to mean something to readers who may get the music but not the sense out of Shakespeare's lines. Lawyers coming out from John Gielgud's, Leslie Howard's, and Maurice Evans' acting of *Hamlet* have felt a hundred thrills which we the laymen, without this book, would not have experienced at all.

But the author's conclusions as to Shakespeare cannot, all of them, be accepted. For example, that Shakespeare was a lawyer or that he was a conservative aristocrat in his views. Anyone who wishes to con-suit the Furness' *Variorum* of *Hamlet* or *Lear* will find plenty of books listed at the end of each showing Shakespeare's extraordinary familiarity with medical terms, a familiarity which leads some to conclude that Shakespeare must have been a doctor. His familiarity with terms connected with clothing might lead one to suppose that he was at one time apprenticed to a tailor. His knowledge of butchery might make one believe he had been apprenticed to a butcher; which, indeed, is one of the earliest traditions. The writer of

this review, having raised stock for fifteen years between teaching Shakespeare at the University of Colorado and the University of North Carolina sometimes has been tempted while reading *The Taming of the Shrew* to believe that Shakespeare was a veterinarian, for his familiarity with the diseases of horses is most extraordinary. Then too the immense number of articles piling up every year* dealing with the psycho-analytic aspects of *Hamlet, et al*., might lead one to believe that Shakespeare was extremely interested in psychiatry, which, of course, he could not have been. His use of technical military terms makes it very difficult for us to believe that he was not at one time a soldier. The truth of the matter is that there were little handbooks on almost all these subjects which would enable a man whose mind moved with the rapidity and extensiveness of Shakespeare's to pick up almost all these matters without a great deal of effort. Thus, for example, in regard to military terms, notice the way in which columnists who never smelled powder now employ in figurative language "black-out," and "panzer movements" in connection with the rapid progress of Rotary Clubs and Y.M.C.A. movements in different towns.

One extremely important matter which apparently is not considered in this book is the great number of lawsuits in which Shakespeare became more and more involved as he acquired various sorts of property in Stratford-on-Avon. Apparently, he grew more irritable and would sue at the drop of a hat. Those of us involved in lawsuits over land certainly know how to use the term "fee simple."

Perhaps the most dangerous matter emphasized by the author is found on pp. 34-35:

> **"There is no pity for common suffering, no lash for the great man's contumely towards the lowly; only a languid murmur against the insolence of office, contemptuous pity for the whipped and carted strumpet, and nothing which would have hindered his promotion had he entered the debasing scramble of favoritism which disgraced his time. He pleased Elizabeth, he pleased James, he would have pleased Napoleon."**

*** See "Shakespeare", *Renaissance Bibliography*, Studies in Philogy (1938-1940).**

The author seems to come to the conclusion that Shakespeare was a conservative aristocrat and was strong always on the strongest • side. We all seem to forget in talking about this matter that a great number of Shakespeare's scoundrels (see *Richard III* and *Macbeth*) are high in rank and that his finest people are often of the lower ranks, witness the doctor in *Macbeth*.

The author of the book himself quotes from Lear on p. 247 a passage which denounces in the fiercest and boldest terms corruption and tyranny in all high places. If he had quoted the rest of this passage from *Lear* he would have found that Shakespeare as in many other passages in his plays seems at times to be in keen sympathy with the underdog and the oppressed of all kinds. In the *Lear* passage as in many others Shakespeare very frequently goes far beyond what the author calls on p. 35 a "languid murmur against the insolence of office." If the *Lear* passage is a languid murmur then the writer of this review does not know the meaning of the term.

Shakespeare in regard to the matters taken up by the author of this book, as in regard to almost all other matters, is never a fanatical advocate of an extreme point of view, however much his characters, such as Coriolanus on one hand and Lear on the other may with dramatic appropriateness express these extremes. Who would be so bold as to say which of the two diametrically opposed attitudes toward the people expressed in the two passages following stands for Shakespeare's fixed rather than his fluctuating personal opinion?

CORIOLANUS

"You common cry of curs! whose breath I hate
As reek o' 'th' rotten fens, whose loves I prize
As the dead carcasses of unburied men

LEAR

"Poor naked wretches, wheresoe'er you are,
That bide the pelting of this pitiless storm,
How shall your houseless heads and unfed sides,

That do corrupt my air, I banish you!
. . . . . .
Despising
For you the city, thus I turn my back;
There is a world elsewhere."
—Act IV, iii, 120-123; 133-135

Your loop'd window'd raggedness, defend you
For seasons such as these? O, I have ta'en
Too little care of this! Take physic, pomp;
Expose thyself to feel what wretches feel,
That thou mayst shake the superflux to them,
And show the heavens more just.
III, iii, 28-36

". . . that I am wretched
Makes thee the happier; heavens, deal so still!
Let the superfluous and lust-dieted man,
That slaves your ordinance, that will not see
Because he does not feel, feel your power quickly;
So distribution should undo excess,
And each man have enough."
IV, i, 68-74

It would be unfair for the reviewer to leave this work without emphasizing very decidedly that it is an impressive book, valuable indeed to both layman and lawyer. Attorneys and judges will find in it the statements with which they are familiar expressed by one who can say almost anything that comes into his head better than others can say it. The lawyer can go to it for aid and inspiration and the judge can secure from it renewed faith in that virtue of fair play which should always be a condition precedent to an opinion handed down by any judge worthy of the name.

Shakespeare better even than the lawyer himself has expressed, for example, the importance of avoiding the kind of haste and impulse which can wreck any judicial system of any age. Says Gratiano at the trial of Shylock:

"And I beseech you,
Wrest once the law to your authority:
To do a great right, do a little wrong,
And curb this cruel devil of his will."

Replies Portia:

"'Twill be recorded for a precedent,
And many an error by the same example
Will rush into the state: it cannot be."

GEORGE COFFIN TAYLOR.

University of North Carolina.

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