Hatred, Ridicule or Contempt: A Book of Libel Cases: by Joseph Dean, 1953, Constable & Co. Ltd., London, 271 pp., 18/9 in Australia.

"*Quicquid agunt homines*", wrote Juvenal, "*hoc nostri farrago libelli est*". The same might be said of the work under review, and, in a punning sense, of the subject with which it deals. Libels, like torts generally, are infinitely various, not limited and confined, and Mr. Dean exploits to the full the journalistic possibilities of the wide diffusion of topics with which the cases have been concerned.

If the prospective reader is seeking a series of court dramas he will find almost every category represented. The chapter entitled "A Policeman's Feet",[1] like the one dealing with Mr. Blennerhasset's misfortunes,[2] serves up satisfying broad farce. In "A Rose by Any Other Name"[3] the humour is touched with not a little vulgarity. On the other hand "The Westminster Libel Shop"[4] is a serious historical piece, dealing with a nineteenth century struggle between the House of Commons and the Courts on the question of Parliamentary privileges. In the author's capable hands the story is absorbing, though his description of the Parliamentary tactics as "malevolent" seems exaggerated. The history of Professor Laski's libel action against a newspaper for imputing to him advocacy of violent revolution promises at first sight to be a similar serious historical piece.[5] But here Mr. Dean's material let him down. The case seems to provide no insight whatever into the important social and constitutional questions which could have been involved, and the money subscribed by the public towards Professor Laski's costs is clearly seen to have been wasted. Other chapters in the book present to the reader in turn tales of international intrigue ("Salome and the Black Book"[6] and "Winston Churchill and the Battle of Jutland"[7]), murder and horror ("Rasputin"[8]) and the supernatural ("Sermons in Trances"[9] and "Black Magic"[10]).

Of the pieces which rely for their success on their dramatic appeal, "The Ordainments of the Theatre"[11] is the most successful. This is the story of the action by the actress Ethel Irving against a dramatic critic and the newspaper which employed him. The words complained of were that the actress in the course of a performance had become "a raging, frothing epileptic, rolling on the floor and biting her toenails". The question was, of course, whether this overstepped the bounds of fair comment. No light is thrown on this matter in the course of the trial, but a delightful drawing room comedy unfolds with judge, counsel and witnesses together contributing witty dialogue. Darling J., sadly miscast in the melodrama "Salome and the Black Book"[12] is here seen at his best, purveying the anti-climactic and off-key humour to which the adjective "shaggy" has in more recent times been applied. The following is a fair sample:

" 'What would you say, Mr. Hastings,' his Lordship then asked, 'if a barrister did not follow his instructions but bit his toenails in Court?'

The effervescent advocate had no answer to this one and the judge supplied his own, 'I should call it contempt of Court.' "[13]

The medical profession added its quota of absurdity to that provided by its

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[1] C. xiv.
[2] C. x.
[3] C. xii.
[4] C. xix.
[5] C. xxi.
[6] C. i.
[7] C. ii.
[8] C. xiii.
[9] C. iv.
[10] C. xviii.
[11] C. iii.
[12] C. i.
[13] At 50.

legal brethren. We are told that "there was a short appearance in the witness box by a surgeon experienced in epilepsy who testified that Ethel Irving's performance was nothing like an epileptic fit".[14]

The denouement is of a piece with the rest:

The sparkling performance had now been going on for nearly two days, and the Judge said, 'I have been wondering whether this piece is to be played to the end'. 'That is very difficult', said Hogg, 'owing to the attitude of the other side: we have not received an apology.' 'We have not', said Hastings, 'been asked for one.' Nevertheless, learned counsel put their wigs together, and shortly afterwards announced that they had settled the action."[15]

There is little in the above which is of legal interest. We may admit with the author that law is a complex. But not even the most enthusiastic advocate of the study of law in action as opposed to law in the books would elevate the accounts of most of these cases to the level of social documents. Yet there are other chapters in the book which consist of straightforward accounts of cases in which the main interest is in the legal problems, and the competence with which these chapters are handled explains why the publishers should have submitted the work to a legal review. The introduction describes the law of libel in strokes which are bold, but also accurate. The chapter "Libel or No Libel"[16] is a well presented selection of cases on this topic, and "Artemus Jones and his Consequences"[17] contains a fairly comprehensive collection of authorities dealing with the rules determining whether a libel refers to the plaintiff.

Such criticisms as might be made of these parts of the work reflect the uncertainty of the law rather than the author's representation of it. For instance, there is a certain inconsistency between the account of the nature of libel given in the introduction and that to be inferred from his account of *Hulton* v. *Jones*.[18] In the introduction it is made clear that the test of the defamatory character of a statement is to be found in the presumed reaction to it of the "reasonable man".[19] On the other hand, in recounting the circumstances of *Hulton* v. *Jones* the author points out that evidence was given by certain persons to the effect that they had understood the words to be defamatory of the plaintiff. Mr. Dean argues in effect that this interpretation was unreasonable, but adds that "the Courts must take the world as they find it, and there the evidence was, and it could not be gainsaid."[20] Such evidence can be gainsaid, as Mr. Dean's own account[21] of *Capital & Counties Bank* v. *Henty*[22] shows. There a large number of persons had understood the words to be defamatory of the plaintiffs and had caused heavy loss to the plaintiffs in consequence, but the House of Lords refused to find that the words were reasonably capable of this interpretation. The same point emerges from Mr. Dean's account[23] of *Byrne* v. *Deane*[24]. Here the assertion complained of was that the defendant had informed the police of the existence of poker machines in a golf club. It was admitted that this would be regarded as casting a reflection on the plaintiff by a large number of persons, but the Court could not regard such an attitude as reasonable.

The truth seems to be that the law itself shows signs of strain in respect to this matter. And the explanation is to be found in the diverse character of the interests which the law of libel protects. Of these the interest of the plaintiff in the good opinion of "right thinking" members of the community is only one. Another which the law of libel frequently serves to protect is his interest in freedom from pecuniary injury caused by the effect of false statements made about him on the conduct of third parties. If, as is very often the case, the false

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[14] At 52. [15] At 54.
[16] C. vii. [17] C. ix.
[18] *E. Hulton and Co.* v. *Jones* (1909) 2 K.B. 444; (1910) A.C. 20.
[19] At 12. [20] At 132. [21] At 119-121.
[22] *The Capital and Counties Bank Ltd.* v. *George Henty and Sons* (1880) 5 C.P.D. 514; (1882) 7 App. Cas. 741.
[23] At 122-123. [24] (1937) 1 K.B. 818.

statement attacks both these interests, no difficulty arises. But if it infringes only the second, and action for libel is technically not available and the appropriate action is one for injurious falsehood. But the requirements for success in the latter type of action are so stringent that it is not surprising that the courts should occasionally have been tempted to strain the law of libel to cover cases where the words were likely to be highly injurious in fact though not strictly defamatory in the eyes of a reasonable man.

Another matter which Mr. Dean's account leaves in some confusion is the bearing of the truth of a statement made on the availability of an action for defamation. He points out in the introduction, what is correct in England, that truth is a complete defence to a civil action for libel.[25] Yet he represents *Cassidy* v. *Daily Mirror*[26] as a case in which the plaintiff succeeded though the words were true in their natural and ordinary meaning.[27] Here again, the apparent inconsistency reflects rather the doubtful state of the law than deficiencies in Mr. Dean's account. The words were that Mr. Cassidy had announced his engagement to Miss X. This was true. But Mr. Cassidy was already married to the plaintiff, who claimed that her friends reasonably thought that she was living in sin. The decision for Mrs. Cassidy can be explained in two ways. Firstly, it could be said that the words had a number of natural and ordinary meanings to different reasonable people some true and some false. To Mrs. Cassidy's friends the natural and ordinary meaning was the one she complained of. This interpretation involves the premise that the "meaning" of a libel has in law an extended sense. The "meaning" of a statement is, in law, usually what a reasonable man would understand that the publisher of it intended to convey. But no friend of Mrs. Cassidy could reasonably have thought that the announcement in the newspaper was intended by the writer of it to convey that Mrs. Cassidy was living in sin. The "meaning" given to the libel by her friends was rather an inference which the friends themselves reasonably drew from their belief in the truth of the statement in its other "meaning". If this is the explanation of *Cassidy's Case* the consequence is that no man can safely make a true statement, however unambiguous, if somebody, by reason even of circumstances not within the knowledge or means of knowledge of the author may reasonably draw false and defamatory inferences of fact from the state of affairs it describes. On this principle it might even be defamatory to walk down the street if onlookers could reasonably infer that someone who had mistakenly stated that the pedestrian was in another town was a liar.

But there is a second possible interpretation of *Cassidy's Case* which would make the law stop short of this point. It is a well settled rule that for the purposes of the law of defamation a statement that a third party asserted a fact is equivalent to the assertion that the fact is as the third party stated it. Hence the statment in the newspaper involved in *Cassidy's case* that the engagement had been announced was equivalent to saying that the engagement existed. And a reasonable reader would take it that the writer intended to convey by this that the parties to the engagement were single. In this ordinary sense of the "meaning" of the libel the words were false. It still remains true, however, that in this meaning the words were not defamatory of anyone. To make out the libel it is still necessary to state a principle that if reasonable people are able to draw a false inference from their belief in a state of affairs asserted by the words, this false inference is to be taken as the "meaning" of the libel. But on this second interpretation of *Cassidy's Case* such a principle need only be regarded as coming into operation when the words are false in the more ordinary sense of the word "meaning". It is submitted that this second interpretation is preferable. Otherwise a man may be subject to an action although he has stated

[25] At 12.
[26] *Cassidy* v. *Daily Mirror Newspapers Ltd.* (1929) 2 K.B. 331.
[27] At 136-137.

the truth in perfectly explicit and unambiguous terms and the public benefit required that that truth should be stated.

A final word may be said in compliment to the author's literary style. He has woven the scattered materials of his book skilfully together, and the result is eminently readable.

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