

Hatred, Ridicule, or Contempt. By Joseph Dean. New York: McMillan Co., 1954. Pp. 271. \$3.75.

Mr. Dean has set out to tell the stories of some forty cases which have arisen under the English law of libel and to tell them with sufficient brevity and simplicity to entertain the layman. He has succeeded very well indeed, and the result is a consistently amusing and interesting book, which if it were a novel would fall in the genre of "good summer reading."

He has shown in the selection of his cases a nice eye for the colorful and the anecdotal. We have such items as Sir Patrick Hasting's cross examination of Harold Laski on his theory of revolution; we have a criminal libel case in which the defendant during the course of the trial charges the presiding judge with sexual perversion; we have George III defamed in verse by Byron, and Winston Churchill and Lord Balfour testifying on the communiqués after Jutland; we have a cause célèbre in the world of fine art some seventy years ago when a noted sculptor accused of employing the functional equivalent of a ghost writer won his libel suit by modelling a bust in the court room during the trial. We have, excellently told, the great constitutional battle behind *Stockdale v. Hansard*¹ which found the Sheriff of Middlesex, as the author puts it, "in a position of impossible delicacy"—if he executed Stockdale's judgment against the Hansards he would be in contempt of the House of Commons and if he did not, he would be in contempt of the Court of Queen's Bench; and as it turned out, he ended up in contempt of both bodies. We have the English court becoming dreadfully humorless over a mildly risqué American cartoon about two roses; we even have the sex habits of William Ewart Gladstone in issue; we have an instance of defamation by tombstone; and we have as well a series of plaintiffs who have become well known in American torts casebooks—Princess Youssoupoff, Artemus Jones, Cyril Tolley, Horatio Bottomley and General Cassidy's wife.

Perhaps the most successful of the author's stories is that of *Morris v. Associated Newspapers, Ltd.*,² a case which proves for all time the versatility of the libel action in bringing great issues into the courtroom. Early in the thirties a trance medium, Meurig Morris, a frail, apparently uneducated young girl, began making widely publicized public appearances at which a spirit control named simply Power delivered, through her, elaborate and striking sermons in a sonorous baritone. A newspaper reporter assigned to cover her performances finally wrote an article strongly suggesting she was a fraud. She sued for libel, and the defense in part was truth. After several days of an extraordinary trial, English law was saved from adjudicating the truth of the claims of spiritualism in a libel action only by the good sense of the jury which rendered the inconsistent, but admirable, verdict that the

¹ 7 C. & P. 731 (1837); 9 A. & E. 1 (1839); 11 A. & E. 253, 297 (1840).

² London Times (Feb. 21, 1933).

article in question was privileged as fair comment but that there was no fraud proven as to Miss Morris. Perhaps the high point of the trial came when Power suddenly addressed the judge who thereupon ordered Miss Morris, and Power, removed from the courtroom, and raised an unusually difficult jurisdictional conflict. Mr. Dean saves for posterity Justice McCardie's final paragraph of summation:

For myself I say advisedly as a judge that as long as I remain a judge I care not for all the incarnate or discarnate spirits in the world. As long as I remain on the bench I shall resolutely seek to reach for truth and I shall firmly advise juries to reach for truth, no matter if ten thousand million discarnate spirits come around me. You have got to find out what the truth of the matter is here. Sir Oliver Lodge says that we are living in a world of illusion. Perhaps we are, but whether it is an illusion or not, this court is an illusion to which we must conform—you have got to give your verdict.

Since Mr. Dean, and his publishers, are content to be entertaining and leave it at that, it would not be altogether appropriate to take the book as an occasion for extended discussion of the Anglo-American law of defamation. But a few further reflections may be noted briefly.

The first point is the familiar one that there appears to be a genuine difference between the English and American attitude toward libel actions. Although in recent years we have seen Hiss sue Chambers, McCarthy sue Benton, and Quentin Reynolds sue Pegler, it is very doubtful that we regard the failure to sue for libel as an admission. But in England, as Mr. Dean's book confirms, the bringing of a libel action is quite respectable and in some situations the social compulsion to do so appears very strong. Mr. Dean's telling of the controversy between Gladstone's sons and Peter Wright, a writer, is an excellent instance. Wright having accused Gladstone, who was by then dead, of sexual irregularity and hypocrisy throughout his life, Gladstone's sons by publicly charging Wright with being a liar and a "foul fellow" were able to force him, as the author puts it, to "ordeal by trial." Wright, incidentally, lost the action and Gladstone's reputation as a pillar of respectability was saved. The Laski case appears to be another illustration. Did not Laski have to sue? There is in this national difference, as David Riesman suggested a decade ago,³ an excellent cue for a sociological exploration of the sources of the two national attitudes.

This first point leads readily to a second. On the English view the law of defamation may be considered not so much a way of giving monetary recovery for loss occasioned by injury to reputation, as a way of securing an official and definitive determination of the truth of a charge. Here we come at once to a series of questions going to the heart of the law's policy. Can the monetary aspect be removed and the law still function as an ef-

³ Riesman, *Democracy and Defamation*, 42 Col. L. Rev. 727, 1085, 1282 (1942).

fective vindicator? Is the establishment of the truth or falsity of charges, absent the money damages, a sensible, or even feasible, function for a busy legal system? And, in America at least, if damages remain the cornerstone of the law of defamation, will the plaintiff we have in mind when we explain the policy behind the law be the plaintiff who will actually be coming to court? Is the law of defamation, despite its antiquity, not an instance of the law's attempt to be overcivilized? Mr. Dean's book is instructive in this regard, although he preserves a tone of careful neutrality. As we run through his forty cases it is not clear that any significant injustice would have resulted if none of the plaintiffs had been given a remedy at law. And as a corollary we may also note how infrequently the defendant fits the image of the malicious scandalmonger.

A different line of reflection is suggested by those of Mr. Dean's cases which are familiar to the American casebook. The point goes to the anemia of the appellate case as contrasted to the full story. The account of the background of *Bottomley v. Woolworth*,⁴ for example, which established the so-called "disseminator's privilege" in English law is fascinating and the chapter title "Bottomley's Last Case" is apt. Knowing something of Horatio Bottomley's career adds immeasurably to our sense of reality about this particular litigation. But such additions are not an unmixed blessing and too much personal history of the particular case surely can become a distraction and a source of confusion. It is not easy to see where the happy line is between law viewed as a set of abstract dehydrated rules and law viewed as a compilation of human interest anecdotes. Mr. Dean's book then is for the law teacher at least a teasing reminder of the problem of how to make the study of law more interesting in human terms, without making it too much so.

Not all of Mr. Dean's cases are recent and the older ones such as *Cooper v. Wakely*⁵ (1828) involving a surgeon and *Belt v. Lawes*⁶ (1882) involving the sculptor suggest one final reflection. Defamation cases are an excellent index of the mores and values of a given period. Mr. Dean's book goes just far enough to start one thinking of the possibility of a systematic study of different periods in Anglo-American history traced through the index of the changing content of defamation litigation.

Hatred, Ridicule, or Contempt is an engaging addition to an important branch of the literature of law—that branch which seeks to make law's problems, its hard-won experience, and its fascination accessible to the layman.

HARRY KALVEN, JR.*

⁴ 48 T. L. R. 521 (C.A., 1932).

⁵ 3 C. & P. 474 (1828).

⁶ 51 L.J.Q.B. 359 (1882).

* Professor of Law, University of Chicago.