This collection of materials is much more than the traditional case book. It is not the kind of collection which prevents the broad approach by treating different aspects of a fact situation in different places. But the authors' initiatives deserve further thought on the pattern they sometimes fail to present and the connections which are certainly there but not made. In its present form the challenge of its title and first chapter is perhaps not quite maintained. It deserves to be.

DAVID C. JACKSON*

Wicked, Wicked Libels, edited by MICHAEL RUBINSTEIN (Routledge & Kegan Paul, London and Boston, 1972), pp. i-ix, 1-179. English Price £2.50 (Hard Cover).
ISBN 0 7100 7239 2.

> 'This must be the wood,' she said thoughtfully to herself, 'where things have no names. I wonder what'll become of *my* name when I go in? I shouldn't like to lose it at all—because they'd have to give me another, and it would be almost certain to be an ugly one.'[1]

Mr Rubinstein states in his Introduction:

> The law of libel is the instrument of censorship by which dignity—too often pseudo-dignity—is to be upheld. Like the law of the land throughout its whole range, it is but a blunt instrument; it metes out that mean measure of justice which is the most that imperfect man can offer to imperfect man. (p. 2)

If the popular appetite for scandal is the reason why the law protects individual dignity from its excesses, and those of satire, then many of the practical weaknesses and imperfections of the law of libel pointed out in this book will go far towards feeding that very appetite. If the reasonable reader would conclude that at some points under the 'battery of spotlights' (p. 2) assembled by the editor the law of libel in action is scandalous, the point reached is libels libelled. The implication of *Wicked, Wicked Libels* as a title may then become apparent, but only, of course, in the light of truth and fair comment on a matter of real public interest.

The number of potential libel plaintiffs is very large, co-extensive with or perhaps overflowing the number of 'good names' established in the community. Libel defendants on the other hand generally belong to the narrow class which comprises newspaper proprietors, editors, book publishers, authors and printers. The latter, as a relatively scarce commodity in a busy market are much sought after by plaintiffs, and they thereby acquire multiple experience of the libel laws in action. The bulk of this book gives some of these defendants, and those lawyers who advise them or are otherwise concerned with libel law, an opportunity to comment from their own knowledge on the actual operation of these laws. The time chosen for the book's appearance could well have been a response to the Court of Appeal decision on exemplary damages in *Broome v. Cassell & Co. Ltd.*[2] It threw open again the questions thought to have been settled by Lord Devlin in *Rookes v. Barnard*[3]. The House of Lords decision on appeal in *Cassell & Co. Ltd. v. Broome*[4], has affirmed the authority of *Rookes v. Barnard,* and this may have relieved to some extent the anxieties of potential defendants about a possible spiralling of already high damages awards. In any case, the book canvasses broader and far more significant issues than this.

The following general comment on the law of libel is made by Mr Richard Ingrams, editor of *Private Eye*:

> its faults to me would seem to lie in its vagueness. The law assumes that a man has a reputation, like he has a pair of legs; that this can be damaged and the damage then assessed in terms of money. (p. 90)

* M.A., B.C.L. (Oxon.).

1 Lewis Carroll, *Through the Looking Glass* (1871).
2 [1971] 2 W.L.R. 853.
3 [1964] A.C. 1129.
4 [1972] 2 W.L.R. 645.

Of the libel law notion that a plaintiff is lowered in the estimation of right-thinking members of society generally, Mr Rubinstein states:

> the very words are redolent of an outmoded Victorian hyper-sensitivity relying on a concept wholly at variance with contemporary understanding of social psychology . . . (pp. 143-4)

Whilst almost anything can, in appropriate context, be defamatory the libel plaintiff need not show any actual damage to make out his claim. Further, in any defence based on the truth of what is complained of, there is a wide difference in practice between what one knows to be true, and what can be proved so in court. For these reasons, and concern for heavy legal costs and possibly damages, most defendants will move to settle even claims of a 'gold-digging' nature, and those where the material is true, although uncertain to be found so in court through the 'risks of litigation'. Mr Cecil H. King, former Chairman of Mirror Newspapers Ltd comments on this aspect:

> I would be inclined to say in the course of my forty-five years in Fleet Street that most libels were true and that in most cases the plaintiff suffered no real damage. (pp. 96-7)

Between them, newspaper proprietors in England, and I believe also in Australia, retain large numbers of lawyers to 'vet' material for libel before it goes to press. The difficulty of the task is not so much in the legal problem of whether a particular piece might be held defamatory, which it very commonly could be. Rather, it is in reconciling this approach to the pace of popular journalism (the rush to the streets), the need for colour and imagination in journalistic writing and, included in this, the duty of the paper to present the results of its enquiries to its readers with some substance left in them. The preventive lawyers can make anything 'safe' for libel by completely defusing it, and turning it to suet. But the dead article makes no sales. Further, the time lapse may be critical; in the words of Mr Anthony Lincoln, Q.C. '[t]he spectre of obsolescence stalks noisily down Fleet Street . . .' (p. 59). By the time all conceivable libel possibilities are weighed, the article in question may have died a natural death. In practice, the lawyer in this context may reduce the risks for his client, but ultimately some of these risks have to be taken, and the claim or writ becomes almost a by-product of popular journalism.

Several contributors highlight the different effect of a claim or writ for libel on a newspaper and on a book publisher. By the time he receives a claim or writ the newspaper publisher has finished with the particular issue containing the material complained of, at least in a commercial sense. He may then deal with the claim itself, be it vexatious or otherwise. The book publisher, in order to avoid possible aggravation of damages later, will often have to withdraw the book from the market and recall unsold copies, at the very time immediately following publication and review, when demand is at its highest. Sometimes an amended version may be re-issued quickly but this is not always possible if extensive areas need to be excised or re-written. The book may be killed whether or not the libel claim is substantiated. The suggestion that courts should take this into account in favour of book publishers has much merit.

For whatever it is worth, publishing contracts impose on authors an indemnity for 'libel' enforceable by their publisher. The author has no choice, as all publishers adopt this practice, and doubtless no problems arise until a claim or writ appears. In many cases, given the scale of libel damages and costs, the author will be able to pay only a small percentage of the amount technically recoverable under the indemnity. So, often, a publisher will elect not to claim against his author, where the latter has not been malicious in writing what was complained of, and has not got a bad libel record. In any case the publisher will value the author's goodwill where he wishes to keep the author on his list. However, a publisher insured against libel finds this kind of discretion denied him—the underwriter controls the action from receipt of the claim and if actual losses are incurred will usually insist on enforcing the indemnity. This can cause major publisher-author discord, the more so as the underwriter acts in the name of the publisher to enforce the indemnity.

To my mind, much of the merit of this book lies in its emphasis on libel practice. This is a most effective way of gauging whether the libel law is fulfilling a legitimate social function, properly balancing the competing interests of the defamed against those of what is in practice a rather narrow range of defendants. Claims that the present system in Britain is unbalanced in favour of the plaintiff-claimant seem very credible. Mr Rubinstein himself suggests one possible counter-measure—a new right to both publishers and authors to counterclaim for damages, including losses caused by disruption of publication following receipt of a claim, and damage to their reputations, in any libel action other than one in which a claim for special damages only is pleaded. This he claims:

> . . . should help to restore balance to the administration of justice, if our society is not yet mature enough to treat insults with the same indulgence as flattery. (p. 144)

RENN WORTLEY*

Labour Law in Australia, by E. I. SYKES, B.A. (QLD), LL.D. (MELB.) and H. J. GLASBEEK, B.A., LL.B. (HONS) (MELB.), J.D. (CHIC.), (Butterworths, Australia, 1972), pp. i-lii, 1-771. Recommended Australian price $25.85 (hard), $18.00 (limp).
ISBNs O 409 43850 2 (hard) & O 049 4385 O (limp).

Nolan and Cohen published their first edition of *Federal Industrial Laws* in 1948. The fourth edition, edited by C. P. Mills and G. H. Sorrell, now stands in the bookshelves of every trade union, employer and industrial advocate in Australia. *Labour Law in Australia,* which will now stand beside Nolan and Cohen, could not have been published at a more opportune time; it is a useful review of the law as it stands and it discusses the newly revived question of trade union immunity from actions for tort in respect of acts alleged to have been done in furtherance of industrial disputes. This is especially timely.

Rookes v. Barnard[1] has tempted one or two rather adventurous employers. The more far-sighted employers are unwilling to take the leap into darkness which that case seems to invite. If the principle enunciated in the English decision was held to be law in Australia, it would bring about the total collapse of our arbitration system and put an end to the orderly resolution of industrial disputes.

Professor Sykes believes that the loss of credibility of the penal sanctions of the federal arbitration system may possibly lead to a revival of actions at law for the wrongs of conspiracy and unlawful inducement of breaches of contract. He declares that if a strike is made illegal by statute or award, it may follow in law that the combination that plans and leads the strike will become liable to pay personally damages commensurate with the harm done, that is to say, genuine compensation, and limited in practice only by the capacity of the defendants to pay. The retribution will not be finite and limited as are the penalties contemplated presently by the Conciliation and Arbitration Act.

Mr H. J. Glasbeek, Professor Sykes' co-author, sees the existence of active organizations of employees as a logical development within the structure of a *laissez-faire* society. He argues that the law ought therefore to remain truly neutral in its exercise of control of the competing elements in industrial conflict. Each is a legitimate interest entitled to equal consideration. Glasbeek notes without comment the thesis commonly advanced that the judges, who declare the law, are only too happy to be true to their own social backgrounds and class origins in expounding the law to be applied from case to case.

* LL.B. (Hons); Barrister and Solicitor; Senior Tutor in Law in the University of Melbourne.
1 [1964] A.C. 1129; [1964] 1 All E.R. 367.