

COMMENT

A libel case is no place for a jury if we value the truth

There is no question that Richard Burke, archbishop emeritus of Benin, lost his libel action against RTE last week. We were told he had “no exposure to costs”, but if Burke’s only objective was to avoid a legal bill then he could have desisted from taking the action in the first place.

RTE is paying €275,000 towards his legal fees for the eight-day trial, a cheap victory for the station. Even though the case was clearly going its way, and even if full costs had been awarded against Burke after another week in court, there was no chance of RTE recovering the €1m it would have spent by then. For €275,000, RTE got rid of him at a discount.

No, Burke lost, and heavily. Not only did he receive no apology from RTE over what he claims were allegations of paedophilia, but his sad and unseemly sexual history with a number of women, some married, during his tenure in Nigeria was laid bare.

He had sought punitive damages from RTE, and given the unpredictability of the libel regime in this country, he had good reason to expect a serious payday. Instead he got no damages, and returns empty-handed to his life on social welfare in London.

The purpose of a libel victory is to restore the plaintiff’s reputation in the eyes of “right-thinking people”, and to reflect the extent of the wrong in compensation. Even if Burke had won big, and the jury had found that Dolores Atwood was 20 and not 14 when the bishop first had sex with her, it’s debatable whether right-thinking people would have restored him to their highest regard.

He was a bishop, he’d broken a vow of celibacy with at least 10 women, and he’d paid Atwood €176,000, some of it from diocesan funds, to keep their secret. It’s kind of a moot point whether one of those many women was a deceptively mature teenager when he first seduced her. The merit, or



BRENDA POWER



Just how much hardship will be visited on lone parents by the ending of a benefit to those whose children have reached the age of seven? According to critics, some parents working part-time will lose up to €140 a week. But the government insists this measure is necessary to lift lone parents out of reliance on hand-outs, and facilitate their return to the workplace, and that it will be replaced by other benefits as the recipients move to the jobseeker’s allowance.

Previously, the benefit was available until the child was 21, which was undeniably excessive. An adult of 18 doesn’t need a full-time parent at home, and a child of seven is in school until mid-afternoon, freeing up a good amount of the parent’s day to seek employment. But isn’t there another potential source of support for lone parents that’s largely unexplored? Now that unmarried fathers are to be named on birth certs, is it not time to begin pursuing delinquent dads — and 87% of the absent parents are fathers — for their share?

otherwise, of a libel case is rarely the only consideration for either party. So long as the decision rests in the hands of a jury, rather than a judge sitting alone, it will always be worthwhile for the plaintiff to have a punt, and worth the defendant’s while to settle if possible.

Libel is the only area of law in which the public are required to grasp complex legal points, apply them to sets of fiercely disputed facts and inferences, and then quantify the gravity of the damage.

Murder cases, by comparison, are straightforward and even then juries can be confused — at the end of a lengthy charge in the Graham Dwyer murder case, the foreman of the jury asked: “What are we meant to find him guilty of?”

In a libel case I witnessed some years ago, the judge instructed the jury to “use your common sense” in deliberations. They returned with a question: what did the judge mean by common sense, and how should they use it?

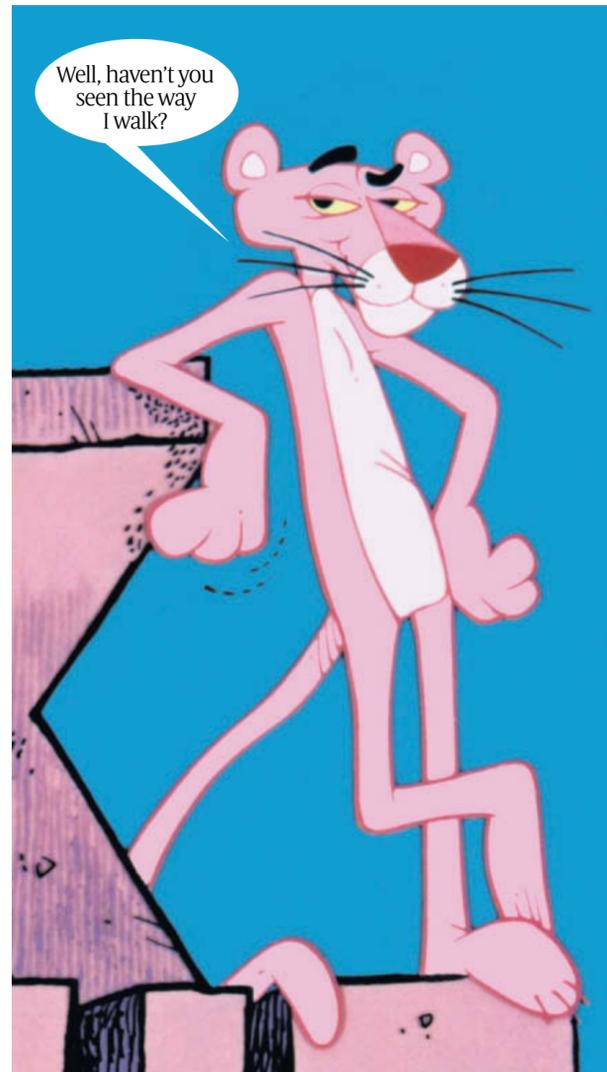
The use of juries in libel actions is the single greatest challenge to freedom of the press in Ireland, because of the massive uncertainty it creates. You might have the strongest case in legal history, be buttressed by decades of unequivocal precedent, and still go down for hundreds of thousands because the jury felt sorry for the poor plaintiff taking on a big mean newspaper all on his own.

The use of juries means that litigious characters can scatter libel writs like confetti safe in the knowledge that few media organisations can afford the high-stakes gamble of taking them on.

The use of juries in libel cases means truth isn’t the trump card it ought to be. If he hadn’t been facing a jury last week, Burke might have fought on, and might have won. Or he might never have taken his case in the first place.

The frustrating reality is that, now, we have no way of knowing where justice lay.

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Peppa Pig and Pink Panther’s outing

Jerry Buttimer, a gay TD, reckons the kiddies’ television character Peppa Pig should be portrayed as homosexual, so as to help the “normalisation” of the LGBT community. Poor old Peppa — as if being a talking pig in a dress didn’t put her into a sufficiently marginalised minority.

Bert and Ernie have been outed, but if we’re looking for closeted gays among children’s cartoon characters, I’ve always

had my doubts about Dora the Explorer. Not to mention the Teletubby with the handbag and the Pink Panther.

In fact, it’s probably time to set kids straight about lots of well-loved figures. Am I the only one who realised the mother in *The Tiger Who Came To Tea* was a raging alcoholic, who trashed the house while the dad was at work, and then blamed it on an imaginary beast?

Supersize kids are showing their age

Teachers in the UK can lawfully “confiscate, keep or destroy” unhealthy snacks they find in pupils’ lunches, a government minister pointed out last week, once they warn parents that searches will take place.

Launching “search and destroy” missions on Thomas the Tank Engine lunchboxes seems a rather heavy-handed tactic, but then, given our levels of child obesity a heavy hand is probably better than a heavy seven-year-old who can’t fit into a standard school uniform.

The Irish School Wear Association (ISWA) claims many second-class pupils now need adult-sized uniforms. However, the zero-VAT rate for children’s clothing only applies up to a size that once equated to age 10, but now might only fit a six-year-old. So the ISWA suggests all uniforms be subject to a zero-VAT rate, regardless of age or size.

In other words, they want a “one-size-fits-all” VAT rate, to allow for the fact that one cannot make assumptions about a seven-year-old’s school jumper any more.

Silver-grey is the hottest new fashion shade for hair — the only snag is you’ve got to be far too young for the slightest possibility that it’s natural. Under 30 with grey hair and you’re on trend. Over 30, you’ve let yourself go. Cheryl Used-to-be-Cole, 32, recently revealed she found her first grey hair and plucked it rather than colour it — hardly a great advert for L’Oréal, whose home dyes she’s supposedly been using for years.

Meanwhile, a survey by a hair clinic has found that 54% of women have been dyeing their hair for so long their partners have never seen their real colour, and they’ve never revealed what it is. In fairness, if I’m any guide, it’s probably because they’ve forgotten.

MY WEEK DECLAN KIBERD

It’s all so academic in Ireland but there’s time to tango in Argentina

NOVEL DEFINITION

“The only person reading my books is my mother.” So said JG Farrell. In the late 1960s there was much talk in London papers of the death of the English novel. But the real crisis was not in quality but in sales. Murdoch, Golding, Spark were all in their pomp but not selling enough copies. Cue the Booker Prize. Its aim: to find a novel that would be “a cross between *Ulysses* and *Gone with the Wind*”.

I learn all this from a wonderful dissertation by Notre Dame student Kara Donnelly, who tracks the move from baggy postcolonial novels of the 1980s to the English heritage tales of today. These days England feels to many like an occupied country, and its novelists consider themselves as obliged as any colonial subject to represent their nation and race. No longer can “England” be assumed; it must be arduously researched (Byatt, Mantel et al) for consumption not just at home but elsewhere, and eventually on heritage TV in America.

Shortly after Kara passes her oral exam with distinction, Matt Cooper on Today FM is asking me why so many Irish Revivalists, while preaching self-help, felt the need to visit America. Money? Ratification? Probably a bit of both. W B Yeats came back from his lecture tour with a fur coat, a paunch and a list of future publishers.

Out in RTE, Sean O’Rourke shifts the focus from America to Russia. What did Lenin mean when he wrote, some time after the Easter Rising, that “the misfortune of the Irish was that they rose too soon”? It may be the only recorded instance of our people being accused of getting up too early in the morning — but I suppose Lenin felt that, if the rebels had waited until the morale of the First World War soldiers in the trenches was even lower, there might have been mass desertions and a European-wide revolt. In the year 1917.

FEELING REVIVED

I wouldn’t be fielding these questions in radio studios if this were a normal week but the *Handbook of the Irish Revival 1891-1922*, which I’ve co-edited with my friend PJ Mathews, is being launched by the Abbey Theatre. We listen to wonderful fiddle-playing and brilliant performances of extracts while seated onstage amid the set for The

The writer finds himself answering random questions on radio shows and pondering the popularity of psychoanalysis in Buenos Aires



Shadow of a Gunman. President Michael D Higgins honours the handbook with a lecture in the Abbey. He explains that it brings together more than 200 short texts, which reconnect citizens with the founding cultural and political writings of our nation. They include a letter from Maud Gonne to W B Yeats telling him Easter, 1916 is a bad poem, unworthy of him or of the event. He was hoping it might prompt her to go to bed with him after two decades of frustrating foreplay.

I hear that Eddie Holt has passed away. He it was who first alerted me to the great journalism produced by leading Revivalists — Hanna Sheehy-Skeffington, Maud Gonne and Mary Colum, Joyce, James Connolly and Arthur Griffith. I hope Eddie’s essays on Yeats can be published. Eddie was sharp, gentle and kind, but also profoundly audacious in his analyses. He was one of the best TV critics; every sentence was lucid, elegant, luminous.

STEPPING OUT

On Thursday I’m bound for an Argentina-Ireland summer seminar conducted by Notre Dame University in Buenos Aires. Borges, that city’s greatest writer, believed his fellow storytellers could use Spanish as the Irish employ English, “without superstition”, with the freedom of a people not intimidated by direct investment in those languages but able to play around with the words. Much as black people, in fooling about on violins and pianos, produced the art of jazz.

Buenos Aires turns out to have more psychoanalysts than New York — hardly surprising given its constant economic crises. Newsstands are filled with magazines about psychoanalysis and knitting — go figure. A century ago its incomers enjoyed rapid upward mobility, but nowadays the beautiful Paris-style pavements go unrepaired.

The tango — that ultimate expression of male loss and longing — has made a comeback. Once the disreputable art of brothels, it has replaced the song and dance of gaucho cowboys as the national form. And, like all national forms, it is getting commodified on global circuits. Borges loved its modernity, rawness and openness to all the ethnic traditions that incomers brought to his city — but what would he make of the form now sent out to the world? We’ll never know.

Declan Kiberd teaches at Notre Dame. *Handbook of the Irish Revival 1891-1922* is published by Abbey Theatre Press



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